
(1963) 08 CAL CK 0006
In the Calcutta High Court

The State of West Bengal and others

APPELLANT

Vs

Sailendra Nath Bose

RESPONDENT

Date of Decision : 23-08-1963

Acts Referred:

Constitution of India, 1950 — Article 226, 361, 361(1)

Citation : 68 CWN 203

Hon'ble Judges : H.K. Bose, C.J;G.K. Mitter, J

Bench : Division Bench

Advocate : S.M. Bose, B. Das and S. Bose, for the Appellant;Noni Kumar Chakravarty, Nepal Ch. Sen and Basu Deo Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Mitter, J.—This is an appeal by the State of West Bengal and others against the issue of a writ in the nature of certiorari quashing the order of dismissal passed on the respondent and granting him incidental reliefs.

2. The represent had joined Government service as a sub-inspector of police and had risen to the rank of Assistant Commissioner of police in 1958 when disciplinary proceedings were started against him. The immediate cause of the taking of these proceedings was the information given by one Jagadish Chandra Dhar, then employed as a sergeant in the Calcutta Police force to the Special Officer, Enforcement Branch of the State of West Bengal that the respondent had asked for illegal gratification in the sum of Rs.200/-. In return for which he had promised to help Dhar out of some disciplinary proceedings which were then pending against Dhar. According to the Government's case 20 ten rupee notes on which the numbers were taken down on the morning of the 15th October, 1958 were handed over to Dhar to be given to the respondent in the middle of the day outside the gate of the Port Police Office on Dumayune Avenue where the represent was working. The arrangement was that Dhar should go to the Port Police Office with an envelope containing the said notes and make over the same to the respondent at the time when the latter would be coming out of the office

for his midday meal. The police party was to consist of S. N. Mukherjee, Deputy Commissioner, Enforcement Branch, N. N. Basu, Special Superintendent of said Branch, P. Ghosal, an assistant Commissioner, A. R. Roy Chowdhury of the West Bengal Transport Directorate and Sub-Inspector A. Bhattacharjee of the Enforcement Branch. The party traveled in two vehicles, one a private car belonging to A. K. Roy Chaudhuri and the other a closed delivery van belonging to the Arya Bakery which was requisitioned for the purpose. The vehicles were parked at Dumayune Avenue about 30 yards to south main gate of the Port Police Office. Sergeant Dhar, Sub-Inspector A Bhattacharjee were dropped at a point a little to the north of the main gate of the Port Police Office whereas the others were to remain in their respective vehicles. Shortly before 2 P.M. the respondent came out of the main gate of the Port Police Office in his jeep. According to the Government case Sergenat Dhar made over the envelope containing 20 currency notes to the respondent who after counting them put the same in his pocket. The jeep was moving slowly all the time. After it had covered a distance of about 20 yards to the south the jeep stopped and the respondent jumped down therefrom and threw away the envelope containing the notes on the road having caught sight of Sub-Inspector Bhattacharjee of the Enforcement Branch. After some discussion the respondent was taken to Naba Gopal Das, Special Officer, Enforcement Branch, before whom he made a statement denying having demanded or accepted any bribe from Sergeant Dhar. According to the respondent while making over the envelope sergeant had told him that it contained a letter from one Chandi Charan Ghose, an officer of the West Bengal Agricultural Department who was known to the respondent on opening the envelope and finding that it contained no letter but currency notes he had got down from the jeep and thrown away the notes calling upon sergeant Dhar to stop as he wanted to take the latter to the Deputy Commissioner of Police for having offered bribe to him.

3. An order of suspension was passed against the respondent on October 17, 1958 and a charge sheet was submitted to him several months thereafter, i.e. May 19, 1959 and disciplinary proceedings were started under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. The charges were grouped under four main heads, the first being split up in six parts each part containing allegation of demand of illegal gratification and/or acceptance of the same from different police officers. Charge 1 (a) related to the incident narrated above while charges 1(b), (c) and (d) related to demand of money made from three other police officers in 1957-58. Charge 1(e) related to demand and acceptance of illegal gratification in the year 1953 and charge 1(f) related to a similar incident in 1954-55. It is not necessary to give the details of the second and the third group of charges excepting to state that these related to demand and acceptance of regular monetary contribution from different persons from 1953 onwards. The fourth Charge related to a very serious disregard of good order and discipline spread over a period of three years from 1956 to 1958.

4. One M. Mukherjee, a member of the High Judicial Services of West Bengal was

appointed the enquiring officer. Along with the charge sheet was submitted a statement of facts on which the said charges were based. The respondent was required to show cause within three weeks from the receipt of the charges as to why he should not be dismissed from service. By letter of May 27, 1959 the respondent complained that the charges were extremely vague and lacked in material particulars. He also asked for copies of various documents including the statements of the officers and witnesses, if any, alleged to have been present at the time of the occurrence on October 15, 1958, the statement of sergeant Dhar in respect of the same incident and a copy of his own statement alleged to have been made before the Special Officer, Enforcement Department. By letter dated May 28, 1959 the Enquiring Officer informed the respondent that copies of the statements or witnesses could not be supplied at that stage but that he would be offered an opportunity to inspect the record containing those statements in proper time after he had put in his written statement. The respondent's written statement was put in on June 10, 1959. By letter of even date the respondent again asked for opportunity of defending himself effectively by the supply of copies of the statements and other papers mentioned in his letter of May 27, 1959. He desired to be heard in person and examine witnesses in his defence. By letter dated June 15, 1959 the Enquiring Officer communicated to the respondent that copies of the statements could not be supplied to him but that he might ask for inspection of the record containing all the evidence so far collected against him. According to the petition the respondent wrote again to the Enquiring Officer on June 20, 1959 placing on record that he had not been given copies of the relevant documents and that the non-supply thereof seriously prejudiced him in making out his defence. Some of the charges were amended on June 22, 1959 and the respondent put in a supplementary statement on July 11, 1959. By letter dated July 14, 1959 the Enquiring Officer fixed July 24 as the date for the commencement of the enquiry and gave permission to the respondent to apply for inspection of the record containing all the evidence against him. The respondent was informed that copies of the statements of the witnesses could not be supplied. On July 21, 1959 the respondent prayed for adjournment of the enquiry and for permission to inspect the record. By an order of the said date the enquiry was adjourned till July 30, and the respondent was directed to have inspection of the files containing all the evidence on July 27, between 11 A.M. and 1 P.M. Inspection was given on the 27th July and 28th July. The prayer for further adjournment by the respondent on the last date turned down. The respondent complained in his petition to this Court that in fact he was not allowed to inspect the records but certain statements alleged to have been made by witnesses while examined by the police during investigation were read out to him and notes thereof were taken down by him. The persons present on the date of inspection were the Enquiring Officer and Sub-Inspector A. Bhattacharya. Curiously enough no affidavit in opposition was affirmed by any of the persons present during inspection or at the inquiry. Government's case was put forward in an affidavit of Natinaksna Nanda, Assistant Secretary in the Home Department of the Government of West Bengal. Basing his knowledge on the information

derived from the records he stated in paragraph 15 of the affidavit in opposition that the respondent was allowed to inspect the entire file on July 27 and 28 and to take down the full facts contained in the statements of all the witnesses examined by the Investigating Officer. According to Natinaksna Nanda it was at the desire of the respondent and for his convenience that the statement of the witnesses were dictated to him and taken down by him. Nanda further the stated in the said paragraph that the petitioner did not want to see any documents but wanted to be supplied with copies of the statements of witnesses examined by the Investigating Officer. He also stated in his affidavit that if the petitioner had made any request for inspection of the records and documents the same would have been allowed to him and referred to the respondent's letter dated July 28, 1959 recording that he had taken down notes of the evidence against him as read out and dictated to him with a complaint that in view of the voluminous evidence it was not possible to scrutinize all the evidence and get ready for the defence within the short time at his disposal before the hearing which was fixed for July 30.

5. The enquiry commenced on July 30 and went on till October 5, 1959 being postponed from time to time. As many as 33 witnesses were examined on behalf of the prosecution. As early as August 1, the respondent filed an application for directing Government to produce some documents. The respondent protested against the conduct of the prosecution by Ambica Bhattacharya who was a witness in the case and by two petitions dated August 1, 1959 and August 19, 1959 he asked for production of various documents and papers for the purpose of his defence. He also asked the Enquiring Officer to direct several persons to be present on September 30, 1959 to give evidence in the case. By an order dated 26th September 1959 the Enquiring Officer directed that a letter should be written to the Deputy Commissioner head Quarters for the purpose of sending the documents already called for and he also directed that the persons whom the respondent wanted to examine as witnesses should be present at the enquiry on the date fixed. On September 30 the prosecution case was closed and the respondent examined four witnesses and himself and put in one document marked as exhibit A. The hearing was adjourned till October 5. On that date the enquiry was resumed and the remaining defence witnesses were examined. Arguments on both sides were heard on that date. The Enquiring Officer informed the parties that he proposed to hold local inspection and held the same in the presence of respondent and the Sub-Inspector to note that by letter dated August 1, 1959 and August 19, 1959 the respondent asked for production of a large number of documents; many of these documents related to charges of which the respondent was found not guilty but without a scrutiny thereof some of them cannot be said to be irrelevant so far as charge 1(a) was concerned. The respondent further complained by a letter dated September 25, 1959 that in spite of repealed requests the documents and papers asked for in his letter of August 1, and August 19 had not been supplied to him. The order sheet of the Enquiring Officer does not show when, if at all, the documents asked for were

produced and it is admitted that copies thereof were never supplied to the respondent. It goes without saying that as the respondent was examining and cross-examining the witnesses himself he had no opportunity of taking down notes of the deposition of witnesses.

6. The respondent also complained in his petition to this Court about the examination of Nabagopal Das, Special Officer, of the Enforcement Branch as a witness on the ground that as he had not been examined by the police during the investigation he had no material to cross-examine him. He stated in paragraph 19 of his affidavit that he had made a verbal application for adjournment of the enquiry and for furnishing a copy of evidence of the Special Officer given in examination-in-chief but this was refused. As to this, Nanda stated in his affidavit I opposition that he had no personal knowledge of any such verbal request and that there was nothing on record to show that the respondent had wanted time to prepare himself to make the submissions on the charges.

7. The respondent also complained that S.N. Mukherjee who was at the head order the police party on October 15, 1958 and was examined during the police investigation and submitted written statement was not examined at the departmental enquiry. He complained about the exhibiting of the written statement of S. N. Mukherjee and admission of the same in evidence (Ex. of the proceeding) by the Enquiring Officer in spite of his objection. With regard to the production of defence witnesses the respondent complained that the presence of Chandi Charan Ghose had not been secured in spite of is request.

8. Another branch of the complaint of respondents against the enquiry was the holding of the local inspection after the hearing of arguments. According to the respondent this was improper and in any event the Enquiring Officer should have given him an opportunity to make further submissions after the holding of the local inspection.

9. As mentioned already the Enquiring Officer found the charge with regard to the acceptance of illegal gratification on the 15th October, 1958 to be proved. He considered the evidence of the witnesses on this point, relied on the testimony of N. N. Basu, Special Superintendent, P. Ghosal, Assistant Commissioner of Police, A. K. Roy Choudhury of the State Transport Directorate, who was not connected with the police and found that the respondent had taken the envelope, counted the notes and put the same in his pocket and had thrown out the envelope containing the notes after the jeep had traveled about 15 or 16 yards. On these findings he was of the view that the respondent should be dismissed from service. The Government of West Bengal called upon the respondent to show cause by the memorandum dated December 18, 1959 as to why the punishment proposed should not be impose upon him. The respondent appears to have been given a hearing on December 31, 1959 and the Government of West Bengal passed an order on May 6, 1961 in consultation with the Public Service Commission that he should be dismissed from service. The respondent preferred an appeal to the Governor under Rule 5/(5) of the Civil Services (Classification,

control and Appeal) Rules. The Governor recorded his reasons for coming to the conclusion that the respondent's appeal was without merits by an order dated August 5, 1961.

10. The respondent moved this Court by a petition dated September 25, 1961 taking a large number of grounds in paragraph 32 of his petition. Before the learned trial Judge the respondent complained about the violation of the principles of natural justice in the enquiry. This was divided under seven main heads.

(1) Copies of relevant documents were not supplied at the initial stage to enable the respondent to make out his defence;

(2) The opportunity for inspection of documents given during the enquiry was wholly insufficient and inadequate;

(3) Copies of documents were not supplied to him to enable him to cross examine witnesses;

(4) Chandicharan Ghose whom the petitioner wanted to examine was not called;

(5) The statement in writing of S. N. Mukherjee, Deputy Commissioner of Police was relied upon without calling him as a witness and without giving the respondent an opportunity to cross-examine him;

(6) The Enquiring Officer acted improperly in holding a personal inspection of the place of occurrence after the conclusion of the enquiry;

(7) The refusal of adjournments asked for by the respondent during the enquiry to enable him to make his preparations serious prejudiced him;

11. On the question as to the rules of natural justice which have to be observed in these enquiries reference may be made to two decisions of the Supreme Court. In *Union of India (UOI) Vs. T.R. Varma*, delivering judgment of the Court Venkatarama Aiyar, J. said:

stating it broadly and without intending 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 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.

12. In the *State of Madhya Pradesh v. Chintaman Sadashiva* AIR 1961 Sc 1623, a case in which charges of acceptance of illegal gratification were raised against a police officer the Supreme Court upheld the decision of the High Court that the keeping back of the documents on which the preliminary enquiry was based against the officer was unjustified. The Court further found that the statements made by two witnesses who had spoken about offering money to the officer prior to the actual enquiry should have been supplied to the respondent and that

"failure to supply the said copies to the respondent made it almost impossible for him to submit the witnesses to an effective cross examination." Referring to the observations of Venkatarama Aiyar, J., already quoted it was said that

it is hardly necessary to emphasize that the right to cross examine the witnesses who gave evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice.

13. The learned trial Judge turned down the first and the second objection raised by the respondent. He however upheld the third objection of the respondent on the ground of non-supply of the documents asked for by him and held that the respondent was seriously prejudiced in cross examining the witnesses in the absence of the documents called for. With regard to the fourth objection based on the non-production of Chandi Charan Ghose as a witness the learned trial Judge noted that the enquiring officer was not justified in not compelling his attendance. The fifth branch of the respondent's objection based on the use made by the enquiring officer of a statement in writing by S. N. Mukherjee, the Deputy Commissioner of Police did not according to the learned trial Judge create any prejudice against the respondent as the document had not actually been used against him.

14. The learned Judge held further that the enquiring officer should not have held a local, inspection after the conclusion of the arguments but according to him this impropriety did not go to the root of the matter and did not vitiate the enquiry. The learned trial Judge further held that the proceedings at the enquiry had been hustled to the serious prejudice of the respondent. He found that the respondent was seriously handicapped because of the insufficiency of time allowed to him to meet the documentary evidence used against him, the rejection of the verbal request to supply him with a copy of the deposition of Dr. Naba Gopal Das in examination in chief and his being called upon to cross examine the witnesses when he did not have time to copy out their deposition. An attempt was made before us by Mr. Das arguing the case on behalf of the appellant to show that the learned Judge's conclusions in favour of the respondent were wrong while Mr. Chakravarty, appearing for the respondent argued that some of the objections of the respondent which were not acceded to should have been upheld. It is therefore necessary to examine the merits of the respective contentions of the parties.

15. In my view, the first of the seven objections raised by the petitioner respondent before the learned trial Judge was without any merit. Ordinarily a defendant is not given an opportunity of inspecting documentary evidence in the possession of the plaintiff before he puts in his written statement. If the charge sheet states clearly the facts on which the charge is based I do not see any reason why the delinquent officer should be allowed to have a look at the

documents which may throw some light on the charged framed. In this case charge 1(a) does not suffer from any ambiguity and is not based on any document. The statement of facts accompanying the charge sheet shows that with regard to charge 1(a) sergeant Dhar had made a statement before the Special Officer, Enforcement Department, about the persistent demand for money made by the respondent. Except this statement there is no reference to any document regarding charge 1(a) and I find myself unable to hold that the respondent should have been given a copy of this statement before he put in his defence. In my view, the learned trial Judge was right in turning down this objection.

16. The second objection raised by the respondent appears to be more vital. The respondent was certainly entitled to inspect the evidence collected against him before commencement of the examination of witnesses. The order sheet of the Enquiring Officer merely shows that inspection was allowed on July 27 and 28. The respondent made a definite complaint in his petition that only portions of the statements were dictated to him and that he was not allowed to have a look at the files himself. There is no affidavit of A. Bhattachaerji or of the Enquiring Officer to show what kind of Inspection was allowed. The respondent's letter of July 28 to the Enquiring Officer shows that he had taken down notes of evidence on record as dictated to him on the 27th and the 28th of that month. There is nothing to show that this procedure was adopted in pursuance of a request made by the respondent and Nalinaksha Nanda was not competent to say that the respondent did not want to see any document and that he was satisfied with the dictation of the evidence on record by the Enquiring Officer. In the absence of any affidavit in opposition contradicting the statement made in the petition I would hold that proper inspection of the documents was not allowed to the respondent.

17. The objection of the respondent that he was seriously handicapped in the matter of cross-examination of witnesses because of non-supply of copies of documents is a substantial one. It must be borne in mind that the charges levelled against the respondent were multifarious and related to alleged incidents spread over several years. It is true that he was exonerated of all of them excepting charge 1(a) but one cannot lose sight of the fact that the respondent had to get ready to cross examine all the witnesses who were going to be examined against him and that he could only hope to do so effectively if he had the materials for cross examining them. He had put in two requisitions for production of documents by letters dated August 1 and August 18, 1959. Even on September 26, 1959 when no less than 321 witnesses had been examined the Enquiring Officer was directing the production of documents already called for. The record does not show that these were produced and if they were ever produced it was certainly not before September 30, 1959 when the remaining two witnesses for the prosecution were examined. The respondent's letters dated August 1 and August 18, 1959 set out a large number of documents wanted by him for the purpose of cross examining the witnesses. A good many of

these had no bearing on charge 1(a) but it cannot be said that the others were quite irrelevant for the purpose of consideration of the said charge. I am not in a position to say that items 16, 17 and 18 i.e. personal diaries of A. Bhattacharjee, P. Ghosal and the respondent dated October 15, 1958 would be quite irrelevant in considering the said charge. The same remark would apply to items 1 and 6 of the documents mentioned in the respondent's letter of August 18, 1959. It may also be noted that the Enquiring Officer did not hold that these documents were altogether irrelevant. In my view, the learned trial Judge was justified in coming to the conclusion that failure to have these documents produced in proper time was a violation of the rules of natural justice which should have been observed at the enquiry stage.

18. The fourth objection of the petitioner respondent has no merit. It is true that the respondent wanted to examine Chandi Charan Ghose as a witnesses and that the Enquiring Officer did not held that his evidence would be irrelevant and as such he need not be called. From his order sheet it would appear that the Enquiring Officer directed that Chandi Chran Ghose should be summoned. Why he did not turn up is not explained. It is open to us to consider whether he was a person whose evidence might have helped the respondent. I have no hesitation in holding that he would not have been a material witness at all. The question before the Enquiring Officer was whether Sergeant Dhar had told the respondent that he was making over a letter from Chandi Charan Ghose or whether he had said that he was making over a sum of money as already arranged. The case for the prosecution which the Enquiring Officer accepted was that the respondent had been observed by respectable and unimpeachable witnesses to have stopped momentarily at the gate or the Port Police Office, accepted the envelope handed over to him by Dhar, counted the contents thereof and thrown away the envelopes after the jeep had traveled a distance of about 15 or 16 yards from the gate at the sight of sub-inspector A. Bhattacharjee. The question before the Enquiring Officer was whether the respondent was induced to take the envelope on a misrepresentation by sergeant Dhar that it contained a letter from Chandi Charan Ghose or whether he was accepting the same according to a pre-arranged plan. The evidence of Chandi Charan Ghose most favourable to the respondent would have been to the effect that he had never asked sergeant Dhar to carry a letter from him to the respondent on 15.10.58 but that he was in the habit of sending letters to the respondent through sergeant Dhar. This, to my mind would have made no difference to the result or the finding in the enquiry. The Enquiring Officer rightly held that sergeant Dhar's antecedents were such that no reliance could be placed on his uncorroborated testimony and that his own conclusion was based on the evidence of persons like N. N. Bose, P. Ghosal and A. K. Rooychaudhuri. In my opinion, therefore, the absence of Chandi Charan Ghose from the witness box did not prejudice the respondent at all and he cannot rely on this to support his case of the non-observance of the rules of natural justice in the enquiry.

19. The fifth objection of the respondent relates to the statement in writing of S.

N. Mukherjee which was exhibited against the respondent. As S. N. Mukherjee was not called as a witness although he had played an important role on October 15, 1958 the Enquiring Officer should not have taken into consideration any statement in writing made by him. If it had been shown to us that the Enquiring Officer had placed any reliance on such statement we should have been disposed to hold that the report should not be given effect to. But it is quite clear that the Enquiring Officer decided on the guilt of the respondent on the basis of the oral testimony of N. N. Bose, P. Ghosal and A. K. Roy Chaudhuri. The learned Judge was therefore right in overruling this objection.

20. The sixth objection of the respondent also does not seem to be a fundamental one. The Enquiring Officer had every right to hold a local inspection in order to appreciate the testimony of witnesses and to come to his conclusion thereon. Inspection of the site of the occurrence and noting the spots at which the vehicles and Government Officers were stationed would certainly help the Enquiring Officer to Judge whether it was possible for the witnesses to observe what they had spoken about. If as a result of what was gathered by the Enquiring Officer at the local inspection the respondent felt that he would like to put further questions to witnesses who had deposed against him he should have asked for an opportunity to do so. The respondent is not a person who is unfamiliar with these enquiries. Nor can it be said of him that the local inspection was decided upon without any prior notice or at such a short notice that he was prevented from making use of the same to his advantage. The local inspection was decided upon as far back as October 5, 1959 and was held on the 22nd October after notice to the parties on the 19th. The respondent therefore could have judged the pros and cons of the matter and requested the Enquiring Officer to give him an opportunity of putting further questions to witnesses who had been already examined or to examine anybody in support of his case if he wanted to. No such step was taken and it seems to me that the objection is an after thought.

21. My conclusion is the same on the objection based on the ground that Dr. Naba Gopal Das was examined at a late stage without a copy of his statement in examination-in-chief being furnished to the respondent. The latter also complained that his prayer for adjournment of the proceedings made verbally at the time of examination of the said witness was wrongfully refused. The minutes of the proceedings do not throw any light on this aspect of the case. Dr. Naba Gopal Das had certainly something to do with the charge in that it was alleged that sergeant Dhar had first gone to him and complained about the respondent's persistent demand for illegal gratification and it was Dr. Das before whom the respondent had made a statement on October 15, 1958. It is not possible to place much reliance on the verbal request for adjournment alleged to have been made by the respondent. Nor can I find any satisfactory ground for holding that a copy of the deposition of Dr. Naba Gopal Das in examination-in-chief would have helped the respondent in cross-examining him. After all the respondent had to take down notes of the examination-in-chief of other witnesses when they

were called and the same facility was available to him when Dr. Das was examined. Dr. Das's evidence only bore on the statement of sergeant Dhar before the incident and the statement of the respondent himself afterwards. The finding as to guilt however was based on the oral testimony of other witnesses who were present on Dumayune Avenue. Dr. Das's evidence was only material to give a complete picture of the whole thing. The crux of the matter did not rest on his evidence.

22. The seventh objection was based on several grounds. Mr. Chakravorti at first sought to argue that the Enquiring Officer was biased against the respondent and that this was evident from his conduct during the enquiry. This was however not persisted in and I think rightly. Mr. Chakravorti's complaint that the Enquiring Officer did not give proper facility to the respondent for defending himself is not without some force. The respondent as noted already had been faced with a large number of charges. He was allowed to take down notes of evidence dictated to him on July 27 and 28. By his letter of the last mentioned date, he asked for time to scrutinize the evidence to get himself ready for his defence. The request does not seem to have been unreasonable; yet the Enquiring Officer rejected it off-hand on the ground that the respondent had already had one adjournment before. The first adjournment asked for was even before inspection had been given to him. In my opinion, the Enquiring Officer should have given the respondent a few days time to get ready.

23. The respondent's complaint that after the conclusion of the enquiry he was not given proper opportunity of showing cause against the punishment proposed to be inflicted is not without force. In paragraph 26 of his petition, he complained that the deposition of witnesses before the Enquiring Officer and copies of statements of persons examined by the police were supplied to him only in instalments on May 26, 1960, September 22, 1960 and December 2, 1960 and even then copies of the statements of some persons examined by the police were not given to him. This is given a bar denial by Nalinaksha Nanda in paragraph 28 of his affidavit-in-opposition. There is no explanation as to why copies of all the statements were not given to him in one instalment.

24. The respondent raised a grievance about the unsatisfactory nature of the judgment given in his appeal. He charged that the premises relied on by the appellate authority was wrong. In particular, our attention was drawn to a passage in the judgment in appeal wherein reference is made to the statements ascribed to the Enquiring Officer (1) that under the rules it was not open to him to supply copies of statements of witnesses to the delinquent officer but that the respondent had been given an opportunity to inspect the records and take pencil-notes of relevant portions of the statements, (2) that Chandi Charan Ghose had not been summoned because he was not a material witness. Mr. Chakravorty drew our attention to the minutes of the proceedings to show that no such observation had been made by the Enquiring Officer at any stage. If there were any such statements made by the Enquiring Officer in any part of the record, it is

curious that the same was not exhibited in this case. The complainant about the lack of precision in the judgment in appeal is not baseless.

25. For all the above reasons, the learned Judge's finding that the respondent had not been allowed proper and reasonable opportunity of defending himself in the disciplinary proceedings taken against him must be upheld.

26. A new point was, however, taken before us in the reply of the appellant. It was argued that as the order of dismissal made at first had merged in the order in appeal made by the Governor who was not a party to the proceedings, the petition under Article 226 was incompetent and ought to be thrown out. It is the common case of the parties that under Rule 57 (5) of the Civil Services (Classification and Control) Rules, an appeal from the order of dismissal passed against the respondent lay to the Governor of the State - the procedure adopted in this case. It was argued on behalf of the appellant that it was incumbent on the respondent to implead the Governor as a party as he was asking for the issue of a writ of certiorari to quash the Governor's decision of dismissal in appeal. Our attention was drawn in particular to the judgment of the Supreme Court in *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, where it had been laid down that

in a writ of certiorari not only the Tribunal or authority whose order is sought to be quashed but also parties in whose favour the order is issued are necessary parties.

We were also referred to a decision of the Supreme Court in *Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd.*, where it had been observed that

in law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification. Therefore, if the appellate authority is beyond the territorial jurisdiction of the High Court it seems difficult to hold even in a case where the appellate authority has confirmed the order of the original authority that the High Court can issue a writ to the original authority which may even have the effect of setting aside the order of the original authority when it cannot issue a writ to the appellate authority which has confirmed the order of the original authority.

So far as Governor of the State is concerned Article 361(1) of the Constitution provides that

the Governor shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done purported to be done by him in the exercise and performance of those powers and duties.

This goes to show that the Governor can not be made a party to any proceedings in Court, inter alia, in a case where his decision could have been questioned on grounds available to a citizen against other authorities justifying the quashing of the impugned order. Asked as to whether this meant that the citizen was without

a remedy where the appellate order was of the Governor the learned advocate for the appellate contended that although in view of the above provision in the Constitution a Writ of certificate can not issue against the Governor there is nothing to prevent the respondent from filing a suit and claiming the relief asked for. In my opinion, this is not a sound answer. If a writ cannot issue equally a suit would not lie against the Governor. In my view, however, the second proviso to Article 361 shows the way out. This proviso lays down that

nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of State.

This goes to show that a citizen is not without redress when his complaint relates to the performance of the powers and duties of the office of the Governor. Even though he cannot implead the Governor as a party it will be enough if he impleads the State Government and asked for appropriate relief. Notwithstanding the absence of the Governor as a party the citizen can be given relief if the State Government is before the Court. the point is therefore without any substance and must be decided against the appellant.

27. In the result the appeal fails and must be dismissed.

28. Certified for two Counsel.

Bose, C. J. 29. I agree.