

Waman Karpe Vs. State and ors.

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Court : Madhya Pradesh

Decided On : Feb-26-1959

Reported in : AIR1959MP322

Judge : T.P. Naik, ;Abdul Hakim Khan and ;H.R. Krishnan, JJ.

Acts : [Constitution of India](#) - Article 311(2); M.B. Civil Service (Punishment and Appeal) Rules, 1950 - Rule 8(4)

Appeal No. : Civil Misc. Case No. 10 of 1955

Appellant : Waman Karpe

Respondent : State and ors.

Advocate for Def. : Mungre, Govt. Adv.

Advocate for Pet/Ap. : Karkare, Adv.

Disposition : Petition allowed

Judgement :

Krishnan, J.

1. The applicant, who is an Excise Officer, has been reduced in rank by order of the Commissioner, Customs and Excise, Mudhya Bharat dated 10-9-1953 after inquiry and the usual proceedings and notices. After filing his appeals and

revisions to the Government, the applicant has moved this Court for an order in the nature of a writ directing the Government to restore him to the rank and pay that he held originally and make good the reduction in salary consequent on the order of reduction in rank. The grounds are apparently multiludious and the arguments have been very lengthy. However, they can be divided into three headings viz:--

(i) Grounds immediately based on Article 311(1) to the effect that the Commissioner, Customs and Excise Madhya Bharat was subordinate in rank to the appointing authority which the applicant asserts was the Government', presumably the Government of Madhya Bharat.

(ii) Those based on alleged breach or non-observance of the provisions in the rules made by the Government for the conduct of such proceedings against officers. The applicant has also referred in this connection to certain circulars by Government. Actually the circulars are not statutory rules, but as it happens, they have only explained the provisions in the statutory rules and have no independent force.

(iii) Those based on the merits of the allegations against the applicant.

2. It would be convenient to take up the headings one by one.

(i) This ground is, as it were, the sheet anchor of the applicant's case. He was appointed on 3-11-1930 as Head-Bhatkar in the Gwalior Distillery by Trade Member of the erstwhile Gwalior Government. Even after merger and the creation of the State of Madhya Bharat he continued. He asserts that the preparation of a gradation list, its circulation for objections, if any, and the final approval of the gradation list all amounted to a fresh appointment by the Government of Madhya Bharat, and, therefore, the entire proceedings are void, the Commissioner of Customs and Excise being an officer subordinate to the Madhya Bharat Government.

He has further relied upon the rulings of the Madhya Bharat High Court, namely, the cases of *Abdif Mohd. Khan v. M. B. State*, AIR 1956 Mad B 259 and of *Ram*

Chandra Gopal Kao v. D. I G Police, AIR 1957 Madh-Pra 126. This aspect of the matter has been discussed at length by us in Raghunath Singh v. State, (Civil Misc. Case No. 63 of '1936, D/-18-8-1958): (AIR 1959 Madh-Pra 43) and we have held that the decision in these two earlier cases were really on the special grounds mentioned in those judgments and that the preparation of a gradation list, is not reappointment in its service, by Madhya Bharat Government. On the same principles, I find here also that the erstwhile Gwalior Government has long ceased to exist, and there is no statutory rule or provision equating it to any existing authority; so I cannot hold that the Commissioner of Customs and Excise is subordinate to the Government of the erstwhile Gwalior State. This disposes of the main ground under heading (i).

3. Ground, (ii) above:

The petitioner has urged that the inquiry was not conducted in accordance with the directions given in the statutory rules. Two breaches have been alleged. Firstly, that he was asked to cross-examine before the charges were framed, whereas he should have been asked to cross-examine after it, and, secondly, that along with the punishment notice he was not given a copy of the inquiry report and was only told that the inquiring officer had found him guilty of the particular charges,

4. The rules provide that the charges should be framed and communicated to the officer concerned and he should be invited to say if he wants to cross-examine and adduce evidence on his own. The rules are silent as to whether witnesses should be examined at a preliminary stage, that is before drawing up the charge, and whether, if they are so examined, the officer should be invited to cross-examine. If the authority that holds the inquiry makes his preliminary examinations ex parte, then hands over the charges to the officer, and asks whether he would like to get the witnesses examined before him and exercise the right of cross-examination and bring his own evidence, it would be perfectly consistent with the rules.

In the present case, the inquiry was held more elaborately and the officer concerned (that is the appellant) got, as it were, two opportunities instead of one to cross-examine the witnesses. At the first instance, there were no formal charges

and the witnesses were called one by one in the presence of the officer and were examined and cross-examined by him. It was quite open to him to say that there being no formal charges drawn as yet, he would not cross-examine then and there, and would exercise that right if and when there was a formal charge. He, however, cross-examined. After this formal charges were drawn up under different headings and they were handed over to the applicant and he was directed to submit his explanation and to state further if he wanted to cross-examine the witnesses again.

He gave his explanation, but said that he did not want to cross-examine any further. He was also asked to bring his own witnesses, but he seems to have been satisfied. In other words, he was given an opportunity to explain and to cross-examine after formal charges were drawn up and handed over. He has, in fact, a double opportunity as it were which is quite different from the refusal of opportunity. If one could draw an analogy from the Criminal Procedure Code, a person who was entitled to the benefit of a 'summons case' procedure was afforded the double opportunity that a 'warrant case' procedure provides. Certainly, this is not a breach of the rules.

5. The second respect in which it is alleged that there had been a breach of the rules is this. After the conclusion of the inquiry and the arrival at some findings by the inquiring officer the authority competent to punish would be in a position to decide which of the different punishments should be imposed. Now he should again notice the person concerned to show cause why in the light of the findings in the inquiry, the particular punishment proposed, should not be imposed. Having given due consideration to the cause, if any, now shown against the proposed punishment, the authority will make its final order.

All this is clear and beyond dispute. Clearly it is only fair that the person who is going to be punished should be given not merely a copy of the findings but also of the report on the inquiry that is the reasons as well as the conclusions, if one could borrow the language of the Civil Procedure Code, the 'judgment' as well as the 'decree'. Therefore, the rule provides that along with the punishment notice the inquiry report including the various documents should be sent to the person

concerned to enable him to show cause. It is admitted in this case that the applicant was not given a copy either of the report or of the covering letter. All the same, he showed cause against punishment in a very lengthy written argument which I have carefully perused.

6. The failure to give a copy of this inquiry report is a breach of the statutory rule made by Government in this regard. The question is whether independently of any mischief or prejudice consequent upon this non-supply of copy, the final order should be set aside, or whether we should investigate whether this really resulted in prejudice, and has materially affected the applicant's ability to give a complete explanation against the proposal to impose the particular punishment.

7. Article 226 provides for a remedy that is discretionary, in other words, one that should be granted when the rights of the petitioner are substantially affected and not merely when a particular form is omitted. It is unnecessary to go into any elaborate discussion on the legal philosophy behind these writs, but it is certain the intention is that any substantial injustice should be remedied. Again, breaches of furnishing information or giving a copy of report may be of two kinds.

Firstly, when the report or information is the basis of the charge and is one that the person concerned is not expected to know before hand; what for example is the original heading in the proceeding. If a person is not given a copy of this, obviously the prejudice is so great that the order must be set aside. Secondly, what may be more or less confirmatory of something already known.

For example, the person concerned knows what the charge is and what the finding is, but will be benefited if he knew the process by which the inquiring office has come to the conclusion. Most often he can dispense with it altogether, as he knows what it is all about. Therefore, when the breach is of the kind found here, it should not ipso facto lead to the setting aside of the order, but the Court has to ascertain whether and what kind of prejudice it has led to. The best way of doing it is to study the report and the covering letter, if any, along with the cause shown by him against the punishment. If the cause is such that it does not show any material lacuna, and (as in the present case) meets every point raised in the report, then certainly there is no prejudice.

I have been unable to find any particular in which the cause against the punishment notice could have been improved with the help of the copy of the report. In other words, the absence of the report and the covering letter has not in any manner handicapped the applicant in replying to the punishment notice. It may not be understood that I approve of any omission, however, unimportant, in the drill that the rules prescribe in this regard, but an omission or breach having been committed, in this case I find that it has not caused any prejudice and is not one that would ipso facto lead to the setting aside of the order. Therefore, I find that the grounds under heading (ii) are insufficient to justify our interference with the order reducing the applicant in rank.

8. (iii) Then come the several grounds relating to the merits of the proceedings. I purposely have refrained from making any reference to it, and I have dealt with the case as if in vacuo as far as the merits are concerned. Whether certain allegations made against the petitioner should have been believed and whether certain circumstances urged for and against his innocence should have been taken into account are matters entirely within the jurisdiction of the authority dealing with the applicant. The High Court is invited to go into the merits, make a pronouncement setting aside the order if it is not satisfied on the merits.

In my opinion, such an approach is wrong and dangerous. The authorities dealing with the officers subordinate to them are complete masters of facts, subject to such appeals and revisions as are provided in the statutory rules themselves. The High Court is interested only in seeing that the statutory provisions are followed and the requirements of natural justice are observed in that no order adverse to anybody is made without his being given an opportunity of being heard against the order. I, therefore, find it unnecessary and, in fact, improper to enter into the merits of the case though a very good proportion of the argument is in regard to the merits of the order,

9. In the result, I find that there is no justification for our interference under Article 225 of the Constitution in this case. The application is dismissed with costs to the State non-applicant and pleader's fee of Rs. 100/-.

A.H. Khan, J.

10. The facts of this case have been set forth in the proposed order of my learned brother. I shall therefore confine myself to the question, which is the crux of the problem.

11. The admitted facts in brief are that after an enquiry was made and its report submitted to the Excise Commissioner, the Commissioner served a notice to show cause under Section 8(4) of the M. B. Civil Service (Punishment and Appeal) Rules of 1950, why the petitioner should not be dismissed. The petitioner requested the Commissioner for a copy of the Inquiry Report to enable him to submit his reply, but he was told that he could not be given a copy as desired. Without having a copy of the report, which contained the facts and the finding against the petitioner, the petitioner submitted his reply and on the basis of that reply instead of being dismissed, he was reduced in rank.

12. In his petition directed against the order of his reduction in rank, the petitioner has submitted a number of pleas. They mainly relate to his case on merits, which I do not propose to examine. But one of the pleas taken by the petitioner is that the denial of the copy of the findings of the Enquiry Report was in violation of Section 8(4) of the M. B. Government Civil Service Rules and also in derogation of Circular No. 7 dated July 21, 1952, issued by the Appointments Department, which has emphasised the point already stated in Section 8, referred to above.

13. The question is what is the effect of not giving the petitioner the copy of the findings and without giving it asking the petitioner to show cause against the proposed order?

14. The M. B. Government Civil Service (Punishment and Appeal) Rules of 1950 are made in exercise of the powers under Article 309 of the [Constitution of India](#) and as such they have the force of law. There is no gainsaying the fact that in denying access to the findings of the Enquiry Officer Report, the Commissioner disregarded not only a written direction which is mandatory in nature, but he also acted in breach of the natural principles of justice. Clause 4 of Section 8 of the Rules runs thus:

'In all cases where it is proposed to dismiss or remove a person on the findings of the departmental inquiry referred to in Sub-rule (1) above, the person concerned shall again be given, before orders are passed, a copy of the findings and asked to show cause why the proposed action should not be taken against him.'

15. The object of this salutary rule is to afford a reasonable opportunity to the petitioner to make a full and frank explanation. The Rules have been treated by the Government itself as of paramount importance. It is apparent from the fact fact after making the Rules, the Government issued Circular No. 7 of 31st July 1952, in which it pointedly drew the attention of its officers towards these Rules. It said that Civil Service Rules were not being strictly followed and this results in the orders being held null and void when challenged in a court of law. After thus prefacing the Circular, procedure under Section 8 was again explained, and among other things under the heading, 'proceedings under Clause (2) of Article 311 of the Constitution', it was again repeated that a copy of the report of the Enquiry Officer should be given to the official and he should be asked to show cause why a particular penalty should not be imposed on him.

16. The learned Government Advocate has contended that since the petitioner participated in the departmental enquiry, he must have known what the case against him was and therefore the non-supply of the copy of the findings does not prejudice him. It is true, that the petitioner was aware of the evidence adduced against him, but he was unaware of the findings of the Enquiry Committee. And unless he knows the findings, which contain the reasons for the conclusion arrived at against him, I am afraid he is not in a position to refute the findings and give an adequate explanation,

17. During the hearing of this petition an attempt was made to find out how far the petitioner was prejudiced by the finding of the report not being made available to him. This in fact amounts to a discharge of the duty with which the Commissioner is concerned. It is tantamount to a scrutiny of the case on merits, which I submit is not within the province of the High Court.

18. I would in conclusion refer to the Return filed by Shri Atma Ram Shanti Ram Mujumdar on behalf of the State. With regard to the non-supply of the copy of the

findings, which were withheld from the petitioner without rhyme or reason, on page 8 of the Return he has stated thus:

'(d) As to Clause (4) it is submitted that it is true that the copy of the report of the enquiry officer was not given though the petitioner requested for the same on 1-8-1953 but the failure to supply the copy of the report has in no way prejudiced the petitioner inasmuch as the findings of the Departmental Enquiry were intimated to him in the show cause notice dated 27-7-53 as required by Sub-rule (4) of Rule 8. It is also further submitted that the non-compliance in the matter of furnishing the copy of the enquiry officer's report as required by Circular No. 7, is in no way a breach of the fundamental right of the petitioner guaranteed under Article 311 of the Constitution inasmuch as a reasonable opportunity of showing cause against the action proposed to be taken against the petitioner was given to the petitioner as required by Clause (2) of Article 311 of the Constitution.'

19. In other words he does not admit the mistake, but tries to justify it on the ground that it caused no prejudice to the petitioner. He tries to give it a twist by saying that this does not amount to a breach of the fundamental right of the petitioner guaranteed under Article 311 of the Constitution'. I would only point out that the list of fundamental rights is given in Part III of the Constitution from Article 13 to Article 31. Article 311 does not deal with fundamental rights. What is being challenged is a breach of the Rules made under Article 809 of the Constitution. Article 311(2) says that no such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Article 311 lays down that a reasonable opportunity shall be given and the Rules made by Madhya Bha-rat under Article 309, indicate how reasonable opportunity is to be afforded to a person against whom dismissal, removal or reduction in rank is contemplated.

20. We have been referred to two cases. One is AIR 1957 Madh-Pra 126 and the other is reported in Gopalrao Damodarji v. State of Madhya Pradesh, AIR 1954 Nag 90.

21. In the first case, while considering the effect of Article 311(2) it is observed by my learned brothers Dixit and Samvatsar JJ. That

'a person against whom a departmental enquiry is held is entitled to receive copies of depositions and reports of enquiry leading to the charges and failure to give such copies which are necessary for making a proper defence would vitiate an order of dismissal or removal of the civil servant.'

22. In the second case of Nagpur High Court although a copy of the report of enquiry was supplied to the petitioner, yet considerations that led the Director of Food Supplies to inflict a higher punishment were never adverted to, Sinha and Bhatt JJ. held that the requirement of Article 311(2) was not fulfilled. The present case is worse. Here a copy of the Enquiry Report was refused and the petitioner was asked to show cause why he should not be dismissed. He did show cause, though he was handicapped and instead of dismissal was reduced in rank. If he had been supplied with a copy, perhaps, he could have made a more effective representation.

23. It is therefore both on authority and reason that I hold that deliberately withholding the copy of the finding from the petitioner and then asking him to show cause is not in consonance either with Sub-clause (4) of Section 8 of the Madhya Bharat Civil Service Rules referred to above or the principles of natural justice. The refusal to give a copy of the enquiry report amounts to denying him a reasonable opportunity and vitiated the impugned order.

24. For reasons stated above, I would allow the petition and hold that the reduction in rank of the petitioner is in derogation of the Departmental Rules and the petitioner having been denied reasonable opportunity of showing cause, the order is invalid.

Naik, J.

25. This miscellaneous civil case comes before me on a difference of opinion between Khan J. and Krishnan J. The question to be decided is a short one and arises under the following circumstances.

26. The petitioner was a Sub-Inspector of Excise Bhabra, Pargana Alirajpur, District Dhar. On 14th May 1953, he was served with a notice, dated 13th May 1953, ordering his suspension and asking him to present himself at Barnagar on 16th May 1953 before the Enquiry Officer on a charge of misappropriating some seized opium from the warehouse, Barnagar

y{ehukjk;.k mik/;k; dh f'kdk;r vQjkrQj djukfxjQrkj gqvk'kqnk vQhe oxSjk os;j gkl] cMuxj]

After a preliminary enquiry, a charge-sheet was served on him on 15th June 1953 (Annexure IX) containing the following three charges:

1- dsl uacj 6@51&52cuke deky oDI cMuxj dh vQ;wu vkus lc baLisDVjhZ ,DlkbZt cMuxj ds pktZlapkyu dky esa Jh ghjkyky ifjofrZr lc bUlisDVj

,DlkbZt ls dkfey tkap ds i'pkr~ rk-4&8&52 dks pktZ esa izklr dh ;g Fksyk vQ;wu e; eksetkek diMs ds yxHkx4&8&52 yxk;r 10&10&52 ds chp cny nh g SA bl izdkj vkus Qjk;teUloh dk mYya?ku vkSj mldh vogsyuk tkucw> dj djrs gq;s 'kklu dks eqxkyrk fn;kg SA

2- mDr iSdst dh vQ;wu dks mijksDr Vkbe ds chp300 esa vkus cspdj mlds cnys feV~Vh] xqM ,yqvk dk lafeJ.k mrus gh otu dkfMikVZes UV dks /kks[kk nsus dh xjt ls j[k fn;k gS vkSj bl izdkj vkus vuqfprykHk mBkdj 'kklu dh IEIfk dks tkucw{k dj {kfr iggapkbZ g SA

3- mDr voS/k dk;Zokgh Lo;a vkus dh gS vFkokuk;k;t dk;Zokgh djus esa vius ,d v/khuLFk deZpkjh Jh jkepj.kyky dks lg;ksx esa 'kkfeyfd;k g SA ;g lkjk dk;Z vkidk xouZes UV d UMDV :Yl ds izfrdwy csbZekuh fy;s gq, g SA

27. After completion of enquiry, the Commissioner of Customs, Excise and Sales Tax, Madhya Bharat Government Gwalior, served on the petitioner a notice (Annexure XI) to show cause against his proposed dismissal. The sai notice was in the following terms:-

^^mijksDr fo'k; izdj.k dk vuqlU/kkufu;ekuqlkj iw.kZ gksdj Jh] dysDVj ,DlkbZt fyk mTtSu dh vksj ls tks fjiks VZ lacaf/krfjdk MZ lfgr esjs le> izLrqr gqbZ gS ml ij

xEHkhjrk iwoZd fopkj fd;k x;kA fd;sx;s vuqlU/kku] fjiks VZ ,oa fjdk MZ ls ;g HkyhHkkafr fl gks pqdk gS fd vnkyr lsvkbZ gqbZ vQhe eqUtCrk vkB lsj tks vkus Jh ghjkyky lc&baLisDVj; ls pktZ esaizklr dh Fkh mls vkus jkepj.kyky osvj gkl dh lgk;rk ls rCnhy dj ds mlds ctk;feV~Vh ,yqck bR;knh vU; inkFkZ FkSyh esa Hkjok fn;sA ;g vij/k/k lk/kkj.k vij/k/k ugksdj vR;ar xEHkhj gS vkSj blds fy;s vki iw.kZ:i ls nks'kh ik;s x;s gSaA

vr,o e/;Hkkjr flfoy lfoZlst ifu'es UV ,UMvihYI :YI lu 1950 dh dye ua- 8 4 ds vuqlkj vki ls bl uksfVI }kjk n;kZQrfd;k tkrk gS fd ml vij/k/k esa vkidks 'kklu lsok ls P;qrcj[kkLr D;ksa u djfn;k tkosA pkj fnol ds Hkhrj mRrj izf'kr djsaA**

28. It may be noted that though the enquiry papers and the report of the Enquiring Officer formed the material on which the satisfaction of the Commissioner was based, a copy of the report of the Enquiring Officer was not given to the petitioner along with the show cause notice even though Clause (4) of R. 8 of the Madhya Bharat Civil Service (Punishment and Appeal) Rules, 1950 made in exercise of the powers conferred on the Madhya Bharat Government under Article 309 of the Constitution specifically enjoined that-

'..... the person concerned shall again be given before orders are passed, a copy of the findings and asked to show cause why the proposed action should not be taken against him.' Not only this, but an application of the petitioner for a copy of the findings was rejected by the Assistant Commissioner, Excise, vide his memorandum, dated 1st August 1953, and he was informed that a copy of the reports of the enquiry and the opinions of the officers could not be given': (See Annexure XII). The petitioner showed cause without the assistance of the copy of the findings of the Enquiring Officer or the opinion of the Commissioner on the said findings with respect to the various charges. By an order, dated 10th September 1953, (Annexure XIII), the Commissioner of Customs, Excise and Sales Tax, Madhya Bharat Government, Gwalior --reduced him in rank by degrading him to the post of a clerk. This order said:--

dk;kZy; dfe'uj dLVEI] ,DIkbZtrFkk ISYI VSDI

e/; Hkkjr 'kklu] Xokfy;j

ekad 18359] Xokfy;j fnukad10 flrEcj 1953

vkWfQl vkMZj

fo'k;% f'kdk;ry{ehukjk;.k mik/;k;} cMuxj vQhe osvj gkl ls cnyus ds lEcU/k esaA

mijksDr izdj.k ds dkxtr ckn pkSd'kh Jh dysDVj,Dikbt mTtSu dh vksj ls er lfgr izklr gksdj fy[kk tkrk gS fd bl dsl esa Jh disZlc baLisDVj dLVEl Hkkojk rFkk jkeojuyky os;j gkl Dydz oMuxj gj nks dks lLisUMfd;k x;k g SA dkxtr pkSd'kh rFkk tokcr Jh disZ o jkeojuyky dk moyksdu fd;k tkrkgS fd%&

Jh disZ lc&baLisDVj; dLVEl Hkkojkdksesvfky ls cgky fd;k tkdj 10 :i;s nl :i;s dsoy ekgokj rUtqy lDysfjdy xzsM 6&3&90 esa fMxzsM fd;k tkrk g SA

Neither the show cause notice nor the final order of reduction in rank show on its face what charges the learned Commissioner found established and what punishment he proposed and ultimately awarded in respect of every one of the charges.

29. Before the High Court, the petitioner contended that his 'reduction in rank' was unconstitutional because he had not been given a 'reasonable opportunity to show cause against his reduction in rank', within the meaning of Clause (2) of Article 311 of the Constitution, inter alia, on the ground that he had not been given a copy of the findings, to which he was entitled under the statutory rules, to enable him to make an effective representation against his 'proposed dismissal' which ultimately resulted in his 'reduction in rank'.

30. Khan J. was of the opinion that 'refusal to give a copy of the Enquiry Report' to the petitioner 'amounted to denying him a reasonable opportunity; while Krishnan J. though holding that the failure to give a copy of the Enquiry Report was a breach of the statutory rules made by the Government in this regard, and 'that it may not be understood that I approve of any omission, however unimportant, in the drill that the rules prescribe in this regard,' was of the opinion that the order of the reduction in rank could not be set aside, as the omission or breach (e.g. non-giving of the enquiry report; had not caused any prejudice to the petitioner.

31. After the decision of the Federal Court in *Secretary of State v. I. M. Lall*, AIR 1945 FC 47, which decision on this point was later approved by the Privy Council also in the *High Commissioner for India v. I. M. Lall*, AIR 1943 FC 121, what constitutes 'reasonable opportunity' within the meaning of Article 311(2) of the Constitution can no more be open to any controversy. Though the decision of the Federal Court was with reference to Section 240(2) of the Government of India Act, 1935, the language and contents of Article 311(2) of the Constitution are similar to the language, purpose and scope of Section 240(2) of the Government of India Act. As pointed out by a Division Bench of this Court in 1954 Nag LJ 148 at pp. 151-152: (AIR 1954 Nag 90 at p. 92):

'In 75 Ind App 225: (AIR 1948 PC 121) their Lordships of the Privy Council while dealing with the interpretation of Section 240(2) of the Government of India Act, 1935, approved of the following observations of the Honourable the Chief Justice of the Federal Court representing the majority view of the court, viz.:

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 reasonable opportunity, it seems to us that the section requires not only notification of the 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 a reasonable time to make his representation against the proposed action and the grounds on which it is proposed to be taken.'

Article 311(2) of the Constitution is in terms similar to Section 240(2) of the Government of India Act, 1935, except that it includes removal also within its ambit. The above observations, therefore, apply with equal force to a case arising under the Constitution. In order, therefore, that the requirements of Article 311(2) of the Constitution should be deemed to be satisfied, it is not only necessary that the proposed action is intimated to the civil servant concerned but also that he should be duly informed of the grounds on which the action is proposed to be taken.'

Further analysing the concept of 'reasonable opportunity' in the context in which these words had been used, the majority judgment of the Federal Court stated:

"It is suggested that in some cases it will be sufficient to indicate the charges, the evidence on which these 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 the 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. That in our judgment involves in all cases where there is, an enquiry and as a result thereof some authority definitely proposes dismissal or reduction in rank, that the person concerned shall be told in full, or adequately summarised form, the results of that enquiry, and the findings of the enquiring officer and be given an opportunity of showing cause with that information why he should not suffer the proposed dismissal or reduction of rank.'

32. To afford a reasonable opportunity to show cause, before the appropriate authority proposes to dismiss or reduce in rank a civil servant, is an obligation imposed on it by the Constitution. What constitutes a 'reasonable opportunity' will generally depend on the facts and circumstances of each case. But, as pointed out by Spcns C. J. in Lall's case, AIR 1945 FC 47 (supra), 'in all cases where there is an enquiry and as a result thereof some authority definitely proposes dismissal or reduction in rank, the person concerned shall be told in full, or inadequately summarised form, the results of that enquiry and the findings of the enquiring officer and be given an opportunity of showing cause with that information why he should not suffer the proposed dismissal or reduction in rank'.

Clause (4) of Rule 8 of the Madhya Bharat Civil Service (Punishment and Appeal) Rules, 1950 only . gave a statutory form to and made explicit what was already implicit in the concept of 'reasonable opportunity' as enunciated by the learned

Chief Justice of the federal Court in Lall's case AIR 1945 FC 47. It is not disputed that a 'reasonable opportunity' in the sense explained in Lall's case was not given in the instant case. On the other hand, a copy of the findings of the enquiring officer, to which the petitioner was entitled under the statutory rules, was withheld from him without any cause, and the authority arbitrarily declined to give it to him even when he asked for it. Under the circumstances, I am clearly of opinion that the provision in the Constitution of affording a reasonable opportunity has not been complied with and that the impugned order is liable to be set aside on that account.

33. The contention that the petitioner was not, in fact, prejudiced in making an effective representation against the show cause notice and hence the impugned order need not be set aside, has no force. In the first place, violation of a constitutional safeguard ought not to be tested on the touchstone of prejudice. Secondly, it is too late in the day to emphasise that it was not enough that a correct decision was reached by the Commissioner of Customs, Excise and Sales Tax, Madhya Bharat Gov-vernment, but it was equally important that he gave reasons for his decision and placed all the material on which his decision was based, before the petitioner, in order to enable him to make an effective representation against it.

The fact that in the instant case an effective representation happened to be made without the aid of such material, does not and cannot absolve the appropriate authority from the obligation imposed on it by the Constitution of affording a reasonable opportunity. Thirdly, if the representation made by the applicant without the aid of the findings of the enquiring officer succeeded to the extent of reducing the proposed punishment from dismissal to reduction in rank, it may well have been that, if the findings were before him, he may have succeeded in demolishing still further the reasons which prompted the enquiring officer to hold against him and which apparently formed the basis of the decision of the Commissioner. Fourthly, having perused the statement filed on 8th April 1958 by the petitioner showing prejudice, I am not satisfied that non-compliance with Clause (4) of Rule 8 of the Madhya Bharat Civil Service (Punishment and Appeal) Rules, 1950 did not, in fact, prejudice him.

34. I am, therefore, of opinion, that the petitioner was not afforded a 'reasonable opportunity' as envisaged in Article 311(2) of the Constitution and his reduction in rank was unconstitutional.

35. I would, therefore, allow the petition and set aside the order of the Commissioner of Customs, Excise and Sales Tax, Madhya Bharat Government, Gwalior, dated 10th September 1953, reducing the petitioner in rank.

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