

Nitya Ranjan Bohidar Vs. the State

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Court : Orissa

Decided On : Apr-10-1961

Reported in : AIR1962Ori78

Judge : R.L. Narasimham, C.J. and ;R.K. Das, J.

Acts : [Constitution of India](#) - Articles 226, 311 and 311(2); Disciplinary Proceedings (Administrative Tribunal) Rules - Rule 6(2)

Appeal No. : O.J.C. No. 202 of 1960

Appellant : Nitya Ranjan Bohidar

Respondent : The State

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : G.K. Misra and ;S.K. Misra, Adv.

Disposition : Petition allowed

Judgement :

Narasimham, C.J.

1. This is an application under Art. 226 of the Constitution, challenging the validity of the order of dismissal from the Government service passed against the petitioner by the Government of Orissa in the Political and Services Department,

by their order No. 309/T dated the 17th August, 1960.

2. The petitioner was appointed as an Assistant Conservator of Forests in 1951 and was posted as Divisional Forest Officer at Parlakhimedi from August 1953 till October 1955. Subsequently he was transferred to Angul as Assistant Conservator of Forests and suspended from Government service on the 31st August 1957 pending departmental enquiry against him regarding various acts of misconduct said to have been committed by him while serving as Divisional Forest Officer at Parlakhimedi. His case was, in due course, referred to the Member, Administrative Tribunal, Orissa (Sri V.S. Tilak, I.A.S.), who on the 2nd December, 1957 forwarded to the petitioner a copy of the charges framed against him.

There were in all 21 charges dealing with criminal breach of trust and temporary misappropriation of Government money, falsification of vouchers and Government records with a view to conceal misconduct, and allied offences. The petitioner submitted his explanation on the 15th September, 1958. The enquiry was held on several days--from 24th November, 1958 to 21st March, 1959. The petitioner's written statement, which consists of 25 volumes, was filed before the Member on the 31st August 1959 and he also examined some witnesses on his own behalf. In all 77 witnesses were examined against the petitioner, 10 were examined on his behalf and 4 were examined at the instance of the Tribunal. The total number of documents exhibited was 150. On the 19th November 1959 the Member, Administrative Tribunal, in a very lengthy order running into 139 type-written pages gave his findings on all the charges. He completely exonerated the petitioner of charges Nos. 1, 3, 4, 5, 19 and 20 partially exonerated him in respect of charges 2, 6, 9, 10, 13 and 21 and held him guilty in respect of the remaining charges. He recommended the petitioner's dismissal from Government service and Government, while accepting the proposed punishment tentatively, issued a second notice as required by Article 311(2) of the Constitution, on the 8th December 1959, calling upon the petitioner to show cause why he may not be dismissed.

The petitioner did not show cause on receipt of this notice, but asked for time on several occasions on various grounds, such as illness, difficulty in securing the

necessary papers etc. Some further time was granted to him but ultimately he was informed on the 8th April 1960 that no further time would be granted and that he must submit his explanation by the 8th June 1960. Eventually, after rejecting the petitioner's prayers for adjournments, Government passed orders on 17th August, 1960, dismissing him from Government service.

3. One of the grounds taken by Mr. G.K. Misra On behalf of the petitioner that the petitioner's prayer for adjournments ought to have been allowed and he should have been given a further opportunity to show cause against the proposed order of punishment viz. dismissal. I am not inclined to accept this argument. The notice under Article 311(2) of the Constitution was issued to him on the 8th December, 1959 and along with that notice a copy of the findings of the Tribunal was also sent. His repeated prayers for adjournment were granted from time to time and as a last chance he was informed (vide Annexure P) that he should show cause by the 8th June 1960 at the latest- Thereafter he made further prayers for adjournments on the ground of illness but did not show cause against the proposed order of dismissal. The dismissal order was passed only on the 17th August 1960.

Under Article 311(2) of the Constitution the petitioner was entitled to a 'reasonable opportunity' of showing cause against the proposed punishment and in the circumstances of this case the period of six months given to him to show cause, was, I think reasonable. If the petitioner would not avail himself of this opportunity and would ask for time again and again, the competent authority was justified in refusing to grant him further time.

4. Mr. G.K. Misra's main contentions, which I think are sufficient for the disposal of this application may now be noticed. They are as follows:

(i) The Member, Administrative Tribunal committed a grave irregularity--amounting to miscarriage of justice--by entering into secret telephonic talks with one Shri H.Mohapatra, Deputy Secretary, Supply Department, after the completion of the proceedings against the petitioner and utilising, in support of his findings, the information furnished by him by the said Deputy Secretary in respect of certain charges, without giving the petitioner a further opportunity to meet the new points that arose out of the reply of the Deputy Secretary.

(ii) In view of the complexity of the case and the mass of evidence that had to be carefully sifted and arranged the refusal to permit the petitioner to be represented by a lawyer amounted to a denial of a reasonable opportunity as showing cause.

(iii) During the Departmental enquiry there was unfair discrimination against the petitioner Inasmuch as while he was denied assistance the Tribunal permitted the prosecution to use a (convenient expression) to be conducted by an experienced Police officer who was fully conversant with conducting criminal cases in law Courts and had sufficient experience as Court Sub-inspector at Chatrapur and also as Prosecuting Inspector on a former occasion in conducting complicated rioting cases at Parlakhimedi. Hence, according to Mr. G.K. Misra, Article 14 of the Constitution was violated.

5. A perusal of the findings of the Member, Administrative Tribunal, shows that after the completion of the enquiry Shri V.S. Tilak had a telephonic talk with Shri H. Mohapatra, Deputy Secretary, Supply Department, on the basis of which the latter sent him a secret D.O. letter No. 27553 dated the 6th November, 1959, furnishing the information asked for. That letter has been quoted in full in the Tribunal's findings. Therein the Deputy Secretary informed the Member, Administrative Tribunal, that during the relevant period the Foodgrains Licensing and Procurement Order, 1952 was in force in Orissa and that in consequence of that order nobody could deal in rice, paddy or millets without a licence from the competent authority. He also informed the Member that sales tax was payable for sale of sugar and kerosene. This information was utilised by the Member, Administrative Tribunal, in arriving at his conclusions in respect of some of the charges as shown below, but it does not appear, that prior to his arriving at his conclusions he disclosed the contents of the Deputy Secretary's letter to the petitioner so as to enable him to meet the points raised therein:

Charge No. 7 : This refers to an alleged purchase of 70 bags of paddy for RS. 1000/- by the petitioner on 1-10-1954. Exhibit 20 is the voucher showing the said purchase signed by one Srinivas Biswas Ray on behalf of his brother Haribandhu Biswas Ray. Mr. Tilak held the story of the said purchase to be false and also held that Ex. 20 was a forgery. One of the reasons given by him for his finding was that

during the period foodgrains could not be sold without a license as the Control Order was in force, and that the petitioner failed to show that the said Biswas Ray possessed a license under the Control Order.

Charge No. 8 : This refers to the withdrawal of a sum of Rs. 1500/- on the 18th November, 1954. The petitioner's explanation was that he purchased 38 bags of ragi, 20 bags of Janha and 18 bags of Kulthi for Rs. 1337A from one Narsingh Frasad Sahu. A receipt (Exhibit 21) purporting to contain his signature, as proved by one Haribandhu Biswas Ray (P.W. 75) was produced in support of this explanation. The learned Tribunal however disbelieved this explanation of the petitioner on the ground that without a license such a sale could not have taken place and that the petitioner failed to show that the seller Narsingh Prasad Sahu had a license.

Charge No. 9 : This relates to the withdrawal of Rs. 1000/- from the Treasury which, according to the petitioner, was spent in purchasing 51 bags of paddy from one, Shri P.C. Biswas Ray another brother of Haribandhu Biswas Ray. Vouchers were produced in support of this transaction, but Mr. 'Tilak for reasons similar to those given by him while discussing charges 7 and 8 has disbelieved this story also, on the ground that the petitioner failed to show that the seller was a licensed dealer.

Charge No. 11 : This charge relates to the alleged purchase of some bags of sugar and some quantity of kerosene by the petitioner. One of the reasons given by Sri Tilak for disbelieving the petitioner's explanation on this point was that he did not establish that sales tax was paid for the purchases of these articles.

After the receipt of the notice under Article 311(2) of the Constitution the petitioner appears to have met the Member, Administrative Tribunal and made a grievance of the fact that the contents of the aforesaid secret D.O. letters of the Deputy Secretary, Supply Department had been used against him, behind his back. To that the Member gave the following reply (Annexure L) dated 18th January, 1960:

"You called on me and referred to a statement which occurs in the findings that Shri Bohidar must prove that Sri Biswasrai had a license to sell paddy. It was also

mentioned during the conversation that if you purchase an article like kerosene on which there is sales tax, there should be some evidence found that the seller had paid sales tax if it really existed and if the voucher is genuine. There is no evidence with the Tribunal that the sales of these commodities have been made by people who had a right to sell them and who were in a position to give the bill which can be accepted as genuine. As you made the purchases, you should be in a position to contact the sellers and get the material necessary for you to prove the genuineness of the purchases.'

This comment of the learned member of the Administrative Tribunal betrays a confusion of thought. He, has not only wrongly placed the burden of establishing his innocence on the public servant concerned but he has also omitted to notice that while evidence was being recorded it was not suggested by the prosecution that purchases of these cereals can be made only from licensed vendors and that sales tax was payable in respect of sales of sugar, kerosene etc. The petitioner was not called upon to meet a case that the so-called purchases made by him, in respect of these articles were not genuine and not believable because the sellers had no valid license under the Control Order, or else because they did not pay sales tax on some of the sales.

These were new facts which came to light only on the 6th November, 1959 when Mr. Tilak received the secret letter from the Deputy Secretary, Supply Department, in reply to his telephonic enquiry. If Mr. Tilak wanted to use the information contained in the Deputy Secretary's letter he should have asked the prosecution to show that the persons from whom the petitioner claimed to have made the purchases, did not hold any license under the Control Order then in force, and should have given the petitioner also an opportunity of adducing rebutting evidence to establish the genuineness of the transactions. Thus in respect of four charges namely charges Nos. 7, 8, 9 and 11 on which the petitioner was held guilty, the findings of the Tribunal suffer from the infirmity of having been based merely on evidence taken behind his back, and must be set aside. It is true that the Tribunal has given other reasons also for disbelieving the petitioner's explanation in respect of charges but it will be difficult for this Court to say to what extent the information received by him from the Deputy Secretary, Supply

Department, ultimately influenced his decision.. As observed by their Lordships of the Supreme Court in (S) AIR 1957 SC 882 (885), Union of India v. T.R. Varma 'Rules of natural justice require that a party should have an opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given an opportunity of cross examining the witnesses examined by that party and that no material should be relied on against him, without his being given an opportunity of explaining the same,'

The Tribunal's letter to the petitioner dated 18th January, 1960 cannot be construed as giving the petitioner another opportunity to rebut the information contained in the aforesaid letter. By that time the Government had already accepted the finding of the Tribunal to the effect that the charges were proved, tentatively decided on the proposed punishment and called upon the petitioner to show cause as to why the punishment may not be inflicted. Apart from this circumstance, the Tribunal's action in wrongly casting on the petitioner the burden of showing that his vendors were licensed dealers and that sales-tax was paid in respect of such sales, is itself opposed to the rules of natural justice.

6. The learned Advocate General contended that even if the aforesaid four charges are wholly excluded the findings of the Tribunal on the remaining charges were sufficient to justify the order of dismissal and that no serious prejudice was caused to him merely because some of the findings were vitiated by failure to observe the rules of natural justice. This argument goes against some well established principles laid, down by authorities. The ultimate recommendation of the Tribunal to the effect that the petitioner should be dismissed from service was based on the cumulative effect of all the charges which he thought were proved, and it is difficult to say whether he would have recommended the extreme punishment of dismissal or a lesser punishment if the aforesaid four charges had been altogether excluded from consideration. This Court is not a court of appeal and it cannot therefore weigh the residuary evidence and come to its own conclusion as to how far the remaining charges were established and whether the punishment of dismissal was justified on the remaining proved charges alone. This Court cannot speculate as to what view Government would take, if the findings on

the aforesaid charges are struck down as bad.

In AIR 1943 FC 1 (8), *Keshav Talpade v. Emperor*, it was pointed out that if a person is kept under preventive detention by a competent authority for four reasons and it was subsequently found that two or three of the reasons were bad the Court cannot be certain as to extent to which the bad reasons operated on the side of the authority or whether the detention order would have been made at all if only one of the good reasons had been taken before them. The same principle was reiterated in AIR 1954 SC 179, *Shibhanlal v. State of U. P.* where, out of the two original grounds for preventive detention of a person one was found to be untenable and a question arose as to whether the order of detention could be justified on the basis of the remaining ground. Their Lordships of the Supreme Court observed :

'We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground which still remained is quite sufficient to sustain the order, would be to substitute objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases we think the position would be the same as if one of the two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole.'

To a similar effect is the observation of Mahajan C. J. in (S) AIR 1955 SC 271, *Dhiraj Lal v. Commr. of Income-tax* to the following effect:-

'It is well established that when a court of fact acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material, and thereby an issue of law arises.'

7. The next important question for decision is whether the petitioner was denied a 'reasonable opportunity' of defending himself in consequence of the refusal of the Tribunal to allow him to be represented by a legal practitioner. In para 9 of the writ application it was alleged that prior to the commencement of the enquiry before the Tribunal the petitioner orally appealed to the Member to permit him to be represented by a lawyer as he was a layman with no experience but that the Tribunal rejected his prayer. This statement was supported by an affidavit. In the counter-affidavit filed by the Under-Secretary to the Government of Orissa, Shri H. Mohapatra, this averment of fact was not specifically denied but it was stated that there was nothing On record to show that the petitioner made such a prayer to the Member, Administrative Tribunal or that it was rejected.

The learned Advocate General contended that this statement in the counter-affidavit amounted to a denial of the statement contained in the petition and consequently there was a disputed question of fact as to whether the petitioner had, in fact asked for the assistance of a lawyer and such a disputed question of fact cannot be decided in this writ application, and that the petitioner should be directed to file a regular civil suit as suggested in (S) AIR 1957 SC 882. This argument runs counter to the well-known principles relating to rules of pleading as pointed out in AIR 1931 All 423, Lakhmi Chand v. Ram Lal, a mere statement that a fact is 'not known' in the pleading, will not be equivalent to the fact being 'not admitted'. In (S) AIR 1956 Nag 27, Nimar Cotton Press v. Sales Tax Officer it was further pointed out that proceedings under Article 226 of the Constitution are in the nature of Civil proceedings and averments in the petition which have not been traversed must be taken as admitted.

It is true that there is no entry in any document on record to show that the petitioner orally requested the Member to give him legal assistance or else that it was refused. Neither in the lengthy written statement nor in any of his subsequent petitions did he make a grievance of this fact, but once he has stated on affidavit that he did make such a prayer and that it was refused and Government are not in a position to deny the same. I see no reason why this statement should not be taken as correct. It is true that Mr. Tilak has since superannuated but the Government could easily have contacted him and ascertained as to whether the

statement of the petitioner in this respect was true or not. A vague reply to the effect that there is nothing on record to show that the statement of the petitioner is correct will not amount to a denial of the facts alleged in that statement. Hence there is really no disputed question of fact which would justify our directing the petitioner to go to the Civil Court. I would accordingly accept as correct the statement made in paragraph 9 of the petition to the effect that his prayer for legal assistance was refused by the Member, Administrative Tribunal.

8. It is true that the Disciplinary Proceedings [Administrative Tribunal] Rules expressly say (Rule 6 (2)) that neither the prosecution nor the defence shall have the right to be represented by counsel. It is therefore entirely within the discretion of the Tribunal to allow or refuse to allow either party to be represented by counsel. But the provisions of the aforesaid Rules cannot take away the constitutional protection given to public servant by Article 311(2) of the Constitution which says that such a servant shall, not be punished 'until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him'.

In AIR 1958 SC 300, Khemchand v. Union of India their Lordships of the Supreme Court construed this Article and laid down that the 'Reasonable opportunity' envisaged therein would include--

(a) an opportunity to deny his guilt and

establish his innocence which he can only do if he is told what the charges levelled 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

(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.

No provision in any of the Service Rules (like the Disciplinary Proceedings (Administrative Tribunal) Rules) can deprive a public servant of these constitutional safeguards. Hence, it has been laid down in several decisions that notwithstanding the absence of any right with the public servant to be defended by counsel, either on account of the absence of such right under common law or on account of any express provision in the Service Rules, the Courts have jurisdiction to examine whether on the facts and circumstances of a particular case the denial of legal assistance was tantamount to denial of 'reasonable opportunity' of showing cause. The language of Section 240(3) of the Government of India Act 1935 is identical with the language, used in Article 311(2) of the Constitution and hence decisions bearing on the aforesaid provision of the Government of India Act are helpful.

In AIR 1944 FC 72 *Quadrutulla Khan v. NWF Province*, a dismissed Police Officer made a grievance of the fact that he was not permitted to be represented by counsel in the Departmental proceeding. Their Lordships of the Federal Court observed :

"Both the courts below went in detail into the evidence on these matters and were satisfied that the appellant was given a reasonable opportunity of showing cause against his proposed dismissal. Having listened with care to all that was addressed to us by learned counsel we, too are convinced that on this point the courts below came to the right conclusion.'

The necessity for thus scrutinising the evidence to see whether the public servant was given reasonable opportunity of showing cause, notwithstanding the denial of his prayer for legal assistance, arose because even, in the absence of a right to be represented by a counsel there may be special circumstances in a case where, due to the absence of counsel, prejudice might have been caused. This decision was followed in AIR 1948 Mad 379, *Veeraswami v. Provincial Govt. of Madras* and it was further observed that in the case the charges and evidence were simple. The same question arose in AIR 1954 Cal 335, *Lakshmi Narain v. A.N. Puri*,

where the learned Judge observed :

"No special facts or circumstances have been established to show that the petitioner's demand for a lawyer had been unreasonably refused, nor is it shown that the petitioner's case was of such extraordinary nature that the services of a lawyer should have been allowed to him as a special case'

In AIR 1956 Mad 460, Karuppa Udayar v. Madras State a, similar view was expressed in the following terms:

'Neither the nature of the charges framed against the petitioner.....nor the nature of the evidence furnished by some of these persons made it impossible or even difficult for the petitioner to defend himself against these charges by cross-examination of those witnesses without the help of a counsel.'

On the basis of this finding it was held that the denial of legal help did not offend the rules of natural justice. In (S) AIR 1957 Andh Pra 414, Dr. K.Subba Rao v. State of Hyderabad, it was held, in the peculiar circumstances of the case, that the denial of legal help was equivalent to denial of an opportunity to the public servant to defend himself. In AIR 1958 All 532, R. C. Varma v. Rule D. Varma it was pointed out that:

'It is true that in departmental trials the petitioner (the civil servant involved) is not entitled to claim as a matter of right, facility to legal advice but the refusal to afford a reasonable opportunity to take legal advice when viewed in the light of the other circumstances of the case may legitimately lead to the inference that he was not given a reasonable opportunity to defend himself.'

This Court also, in a Division Bench decision reported in ILR, (1959) Cut 95 : (AIR 1959 Orissa 152), James Bushi v. Collector of Ganjam, held that though the public servant was denied legal assistance nevertheless, in view of his own past experience in the Collectorate and the simple nature of the charge against him, such denial did not amount to denial of 'reasonable opportunity" of defending himself. To a similar effect is the observation of the Assam High Court in AIR 1960 Assam 141, Hargovinda Sarma v. S.C. Kagi:

'Denial of the right to the petitioner to be represented through a counsel 'per se' does not amount to denial of reasonable opportunity."

The latest decision on the subject is A.I.R. 1961 Cal 1 (SB), Nripendra Nath v. Chief Secretary, Govt. of West Bengal. There the public servant concerned was a member of the West Bengal Judicial Service with adequate legal training and ripe experience in the hearing of case. Nevertheless the majority of judges held the denial of legal help to him, even for the limited purpose of taking notes while, the departmental proceedings were going on, was tantamount to denial of an adequate opportunity to defend himself. In coming to this conclusion they were mainly influenced by the volume of the depositions and the number of witnesses and documents in the case. Though the third judge, Bose, J. was not in entire agreement with the other two learned Judges on this point, his view was also based mainly on the fact that the

'petitioner was himself an experienced judicial officer sufficiently conversant with law and the practice and procedure of conducting cases and so he was not as helpless as he represented himself to be'.

From the aforesaid decisions the principle that emerges is this; Though in a departmental enquiry the delinquent public servant may not be entitled as of right to legal assistance to defend himself, nevertheless, there may be special circumstances connected with the case--such as complexity of facts, volumes of evidence, the educational attainments and experience of the public servant etc. which may show that without legal assistance he will not be able to adequately cross-examine the witnesses or to establish his innocence. In such circumstances denial of legal assistance may be equivalent to denial of 'reasonable opportunity' within the meaning of Article 311(2) and the entire proceeding is liable to be quashed.

9. Judged in the light of the aforesaid principle the petitioner's contention must succeed. This case is of unusual complexity. The total number of witnesses examined on the side of the prosecution and defence and Court was 91 (77 plus 10 plus 4). The total number of documents exhibited was 166. The deposition of witnesses alone runs into 437 pages. The written statement of the petitioner

consists of 25 volumes. The report of the Tribunal runs to 139 type written pages. The charges deal with criminal breach of trust, falsification of accounts and forgery which, as is well known, are some of the most difficult offences in the Penal Code.

The petitioner is comparatively a junior officer of the Forest Department who entered service in 1951 and has absolutely no knowledge of law. It is true that as an Assistant Conservator of Forests he might have detected and tried a few minor forest offences, but his intellectual attainments and experience cannot be said to be of that standard as to enable him adequately to cross-examine witnesses in a case of this type. From the volumes of evidence and the complex nature of the facts alleged against the petitioner this case is in no way different from some of the gang cases under Section 400. I P. C. which have come to the notice of this Court in appeals recently. In the peculiar circumstances of this case, therefore, the petitioner should have been permitted to be represented by a lawyer as prayed for by him.

10. In this connection I may refer to the fact that the prosecution was conducted by an experienced Police Officer whose experience was not confined only to investigation of offences but also to work as Court Sub-Inspector at Chatrapur and as Prosecuting Inspector in conducting the Parlakhimedi rioting cases. His experience is thus in no way inferior to that of a Mukhtear practising in subordinate Criminal Courts. A layman like the petitioner was thus pitted against an experienced prosecutor and in the circumstances of the case this would amount to denial of reasonable opportunity to him.

11. The learned Advocate-General then contended that the records show that there was lengthy cross-examination of prosecution witnesses, that the petitioner was given innumerable adjournments for the purpose of each cross-examination and that his own written statement shows that he was able to marshal facts against him carefully and give his explanation in respect of every charge. In my opinion, this does not make any difference to the position. "Reasonable opportunity' for a public servant to defend himself cannot be judged from the number of questions put by the public servant (unaided by a lawyer) while cross-examining the prosecution witnesses. It may be that he got adequate time for the

purposes of preparing for such cross-examination and may have consulted a lawyer at his residence and prepared notes for the purpose. But no amount of preparation at home would be a proper substitute for the legal help rendered by a lawyer, at the time, of cross-examination of witnesses. It is also likely that if a competent lawyer had been engaged by the petitioner, the cross-examination might have been briefer but more effective.

In the Calcutta case referred to above AIR 1961 Cal 1 (SB), the number of witnesses examined by the prosecution was only 30, by the defence 13 and by the Court 2. Here, as already pointed out, the number of witnesses¹ examined is more than double the above number. It will be unreasonable to hold that the petitioner could have properly marshalled and sifted the mass of evidence against him and cross-examined the prosecution witnesses effectively. I must therefore hold that the denial of legal help to the petitioner amounted to contravention of the safeguards provided to a public servant by Article 311(2) of the Constitution.

12. I should further observe that if the petitioner had been given legal assistance, the, learned Member, Administrative Tribunal, would also not have committed the mistake referred to in the earlier paragraph of this judgment. The lawyer for the petitioner would have pointed out to the Member that he should not have entered into secret consultation with the Deputy Secretary, Supply Department after the close of the enquiry and that if he wanted to use the information furnished by the Deputy Secretary as a result of such consultations, the petitioner should have been given a further opportunity to meet the same.

Again when the Member, Administrative Tribunal, in his letter addressed to the petitioner on the 18th January, 1960 (already quoted) cast on the petitioner the burden of establishing his innocence the lawyer would have immediately pointed out that this was against the rules of natural justice and that it was not the duty of the petitioner to establish affirmatively that the persons from whom he was alleged to have purchased the goods held licenses, or to show the special circumstances under which sales tax was not charged in respect of some of the transactions. There is also a probability that if the correct approach, to the entire question had been properly explained to the Member, Administrative Tribunal, by the legal

practitioner, having regard to the principles of natural justice relating to departmental proceedings laid down by the Supreme Court and by the High Courts, the findings of the Member in respect of some of the charges, at any rate, might have been different. The prejudice caused to the petitioner is thus well established.

13. Mr. G.K. Misra, also contended that the denial of legal assistance to the petitioner amounted to contravention of Article 14 of the Constitution. Rule 6 (2) of the Disciplinary Proceedings, (Administrative Tribunal) Rules expressly says that neither the prosecution nor the defence is entitled to be assisted by counsel in a departmental proceeding. But the Tribunal being a quasi-judicial authority has a duty to see that there is no unfair discrimination in favour of either party and that both are placed on same footing. The aforesaid Rule is a 'law' as defined in Article 13(3)(a) of the Constitution and by virtue of Art, 14 the petitioner is entitled to equal protection of this law.

According to Mr. Misra the petitioner and the Prosecuting Inspector were not placed on the same footing as far as the applicability of Rule 6 (2) of the Disciplinary Proceeding (Administrative Tribunal) Rules were concerned. He further contended that the word 'counsel' occurring in Rule 6 (2) should not be given a narrow meaning so as to restrict it to legal practitioners practising in law courts but that it should be construed in a liberal sense to include all those persons who by virtue of their experience and attainments are in no way inferior to legal practitioners. In view of my finding in respect of the other arguments it is unnecessary to decide this question in this application.

14. For the aforesaid reasons, the petition is allowed with costs, and the entire proceedings against the petitioner, before the Tribunal, and the final order of Government dismissing him from service, are quashed.

Hearing fee is assessed at Rs. 200/- (Rupees two hundred).

R.K. Das, J.

15. I agree.

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