A.S. Razvi Vs. Divisional Engineer, Telegraphs, Ahmedabad and ors.

A.S. Razvi Vs. Divisional Engineer, Telegraphs, Ahmedabad and ors.

SooperKanoon Citation : sooperkanoon.com/736215

Court : Gujarat

Decided On : Sep-03-1963

Reported in : AIR1964Guj139; (1964)0GLR175

Judge : N.M. Miabhoy and; J.B. Mehta, JJ.

Acts : Constitution of India - Articles 226 and 311

Appeal No. : Special Civil Appln. No. 1017 of 1960

Appellant : A.S. Razvi

Respondent : Divisional Engineer, Telegraphs, Ahmedabad and ors.

Advocate for Def. : H.M. Choksi, Government Pleader

Advocate for Pet/Ap. : C.T. Daru, Adv.

Disposition : Petition allowed

Judgement :

Miabhoy, J.

1. This is a writ petition under Article 226, read with Article 311 of the constitution of India, tiled by one A. S. Razvi, in which he seeks to quash an order of dismissal, dated 9th September 1960, passed by respondent No. 1, who is the Divisional Engineer, Telegraphs, Ahmedabad. Respondents Nos. 2 and 3 are the Post Master General, Bombay, and the Union of India respectively.

2. The facts, leading upto the present petition, may shortly be stated. The petitioner was in the service of the Government of India, Post and Telegraph Department, and, at all material times, was employed as a time-scale permanent clerk in that department. He was working since 1956 at Ahmedabad under the Divisional Engineer, Telegraphs. Respondant No. 1, Shri T. N. Pardasani, took charge of the office of the Divisional Engineer Telegraphs, sometime in July 1958, That officer visited In July 1959 the office in which petitioner was working. On or about 11th July 1959, immediately after this visit, respondent No. 1 made an order, transferring petitioner to Surat, Thereupon, petitioner, on or about 2Ist of July 1959, addressed a letter to the Post Master General, Bombay, In which he prayed for the cancellation ,of the order of transfer and stated, amongst other things, that the transfer order was based on and motivated by extraneous considerations. He also alleged therein that respondent No. 1 was bearing a communal Outlook and that he was trying, to shield his corrupt subordinates. The Post Master-General, Bombay, sent a communication, dated 8th of August 1959, to respondent No. 1, in which he said that he did not see any Justification for Interfering with the order of transfer and told respondent No. 1 to consider the advisability of taking disciplinary action against petitioner 'after full inquiry into the case in question'. Thereupon, respondent No. 1, on 13th of August 1959, issued a notice to petitioner containing a chargesheet. We will mention the contents of this chargesheet just

in a moment. By the notice, respondent No. 1 called upon petitioner to substantiate the allegations which he had chosen to make against him, i.e. respondent No. 1 in his letter, dated 21st of July 1959, addressed to the Post Master General. On receipt of this notice, petitioner, on 11th of September 1959, made a representation to the Post Master General through respondent No. 1, requesting him that respondent No. 1 should not be permitted to institute an inquiry against petitioner and that petitioner should be given a chance to prove the allegations made by him against respondent No. 1 before an independent officer. This representation was returned by respondent No. 1 to petitioner on the ground that the signature there-on did not appear to tally with his usual signature and petitioner was asked to resubmit the same after curing the defect. Petitioner, however, did not resubmit the representation, in the meantime, respondent No. 1 had appointed one Shri G. Rajaram, one of his subordinates, 1o hold an inquiry into they charges framed against petitioner. Petitioner did not attend this inquiry. Thereupon, Rajaram sent the papers back to respondent No. 1, stating that petitioner had remained absent. On this, respondent No. 1 issued a second show cause notice why he should not. be dismissed from Government service. In response to this notice, petitioner explained that he had rot attended the proceedings before Rajaram as tie was ill. Thereupon, respondent No. 1 appointed one Deshmukh, another of his subordinates, to hold an inquiry into the allegations made against petitioner. The inquiry was fixed for hearing on a particular date. According to respondent No. 1, though petitioner was present at the office in which Shri Deshmukh was working, he did not appear before that officer to answer the charge. In the meantime, petitioner made another representation on 11-6-1960 to the Post Master General requesting that officer to let him know whether he should or should not appear before the inquiry officer. Petitioner received no reply to this representation. However, petitioner did not appear before Shri Deshmukh. Therefore, the latter sent the papers back to the respondent No. 1. Thereupon, respondent No. 1 issued on the 6th of August 1960 a second show cause notice, calling upon petitioner to show cause why he should not be dismissed from Government service. Petitioner showed cause on 29th of August 1960. Ultimately, by the impugned order, dated 9th of September 1960, respondent No. 1 dismissed petitioner from Government service. Thereafter, petitioner presented the present petition on 8-11-1960, praying that the aforesaid order, dated 9th September 1960, be brought up before this Court by a writ of certiorari; that the order be quashed and that a further order be passed reinstating him in Government service.

3. Tha chargesheet which was tendered against the petitioner by the show cause notice dated the 13th August 1959 was divided into two sections. In the first section, it was stated that the petitioner, in his representation, dated the 21st July 1959, had made, the following allegations viz.:

'(1) The Divisional Engineer Telegraphs, Ahmedabad, is revengeful and communal and this spirit tie expresses at every opportunity served by him to penalise Muslim staff at large.

(2) The Divisional Engineer Telegraphs, Ahmedabad, is either misled or directly otherwise interested in corrupt people and only acts on the advice of such people.

(3) There are several cases of corruption going on in Ahmedabad, Phones Sub-division which have been allowed to be ignored by the Sub-divisional Officer, phones and the Divisional Engineer Telegraphs, Ahmedabad, needs investigation. The responsible officials in such affairs are enjoying because they being in good books with the superiors and when the things are coming to light, they are trying to blame a poor subordinate'.

4. The notice called upon the petitioner to substantiate and prove the aforesaid allegations. The second section of the cnargesheet contained the following allegations.

'In the same representation, he (the petitioner) has stated that the Divisional Engineer Telegraphs, Ahmedabad, is interested in bringing Shri C. N. PateI, the clerk, under Sub-divisional Officer Telegraphs, Surat, for preparing for proper defence of Shri Kuppuswamy under transfer orders to Ahmedabad and thereby helping them including himself to show that he is above all corruptions to which one may not have any objections provided it is not at the cost of innocent personnel.'

The notice called upon the petitioner to prove that the Statement that the transfer of Shri C. H. Patel, clerk from Surat, to Ahmedabad, was motivated for preparing proper defence of Shri Kuppuswamy and was intended to help other persons including the Divisional Engineer Telegraphs, Ahmedabad.

5. Mr. Daru, the learned counsel for the petitioner, made the following submissions in support of the petition :

(1) that the above charges were no charges at all on which any Government servant could be punished;

(2) that respondent No. I had such a bias in the matter of the aforesaid charges that he was disqualified from acting as a quasi-judicial officer to decide the truth or otherwise of those charges;

(3) that the impugned order was perverse as It was passed on no evidence and no material.

6. In our judgment, the second submission of Mr. Oarir is such that, if it is accepted, it will go to the root of the matter, and, if that contention is upheld, then, it will not be necessary for us to consider the correctness or otherwise of the other submissions of Mr. Daru. Therefore, we propose to take up first the second submission of Mr. Daru for decision. Of course, for the purpose of deciding that submission, we will have to assume that the absence of the petitioner at the inquiry before Shri Deshmukh was not justified and that respondent No. 1 was entitled to Issue a second show cause notice against him on the basis of the submission of the papers by Shri Deshmukh to respondent No. 1.

7. Now, a perusal of the allegations contained in the chargesheet cannot leave any doubt that the allegations made by petitioner in his representation, dated the 21st of July 1959, were all personal allegations against respondent No. 1. There is no doubt whatsoever that those allegations were of a very serious nature. The allegations were of such a type that, if they were true, then, respondent No. 1 would not deserve to remain in Government service. On the other hand, if those allegations were not true, then, the petitioner did not deserve to remain in Government service. Therefore, there is no doubt whatsoever that the inquiry started against petitioner was such that either it may result in the dismissal of petitioner, or It may result in the initiation of an inquiry into the conduct of respondent No. 1 which may end in the letter's dismissal from public service. Petitioner was called upon to prove the truth of these serious personal allegations against respondent No. 1. It is the truth or otherwise of these allegations which respondent No. 1 had undertaken to adjudicate by the issirs of the second show cause notice.

8. The submission of Mr, Daru Is that, having regard to the aforesaid features of the case, respondent No. 1 was highly Interested in the aforesaid cause and that, that being so, the principle of law that no person shall be a judge in his own cause or in a cause in which he is personally interested applies to the facts of the present case.

9. In support of his above submission, Mr. Daru firstly relies upon the decision of Frome United Breweries Co. Ltd. v. Bath Justices, 1926 AC 586. In that case, the licensing Justices of the Bath County Borough referred under Section 19 of the Licensing (Consolidation) Act, 1910, an application for the renewal of an old on-licence to the compensation authority of the borough. They also resolved, at a subsequent meeting, that a solicitor should be instructed to appear on their behalf before the compensation authority to oppose the renewal of the licence. The solicitor appeared and opposed the application for renewal of licence before the compensation authority. Three of the justices, who had decided to oppose the renewal of the licence and who had instructed the clerk of the justices to instruct the solicitor, sat as members of the compensation authority, took part in its deliberations, and votad for rejection of the application for renewal. The question raised for decision was that, because those justices had sat and voted as. members of the compensation authority and because they were parties to the resolution which had authorised the solicitor to appear on their behalf, the whole of the compensation authority was not properly constituted to be a judicial body, and that, therefore, the decision of the whole body was vitiated in law. The House ,of Lords held that the threa jus tices were disqualified from sitting on the compensation tribunal on the ground of bias and that the decision of the tribunal was vitiated because of the violation of that principle. Viscount Cave L. C., in his speech, reported at

page 590, stated the principle underlying the decision in the following words:

'My Lords, if there is one principle which forms an integral part of the English law, it is that every member of a body engaged in a judicial proceeding must be able to act judicially and It has been held over and over again that, if a member of such a body is subject to a bias (whether financial or other) in favour of or against either party to the dispute or Is In such a position that a bias must be assumed, ha ought not to take part in the decision or even to sit upon the tribunal. This rule has been asserted, not only in the case of Courts of Justice and ether judicial tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others'.

At page 591, trie learned Lord Chancellor made the following further observations in the further course of his speech;

'My Lords, ... The Bath justices, when sitting as the compensation authority under the Licensing Act of 1910, may not be a Court; but they are performing a judicial act, for it is their duty after hearing evidence and listening to arguments to pronounce a decision which may vitally affect the interests of the persons appearing before them. This being so, the justices who are members of the authority are bound to act judicially and not to sit if they are subject to that which in Reg. v. Rand, (1866) 1 QB 230 was referred to by Blackburn, J. as a 'real likelihood of bias'; and I cannot doubt that, in the case of those three justices, who tcpk part in instructing a solicitor to oppose the renewal of the licence of the Seven Dials, such a real likelihood of bias existed'.

Still further up, at page 593, the following further observations are to be found:

'..... and in the absence of a clear provision to that effect, I think that the ordinary rule, that no one can be both party and judge in the same cause holds good.'

In the speech delivered by Lord Atkinson, the learned law Lord accepted the test laid down by Vaughan Williams L. J. in (1866) 1 QB 230 referred to in the speech of Viscount Cave, L. C. and made the following further observations :

'Can it be said here that there was nothing more than a mere possibility or suspicion that these justices would be biassed? We must judge of this matter as a reasonable man would judge of any matter in the conduct of his own business. Can one doubt that a reasonable man as a matter of business would, under the circumstances of this case, infallibly draw the inference that the justices who had negotiated and brought about this agreement would have a real bias in favour of granting the licence to Duncan and Dalgleish, Limited, the parties to It?'.

At page 609, the speech of Lord Atkin contains the following further observations:

'They thus became at once to a certain extent prosecutors and judges in the same cause, and by their action gave to any reasonable man with knowledge of the facts grounds for the Inference that they were, in what they did, not actuated by a sincere desire to secure the Impartial administration of the law in the matter of the renewal of these licences, but were for some cause or other, biased in their efforts to defeat ihe appellant's applications.'

10. Mr. Daru also places reliance upon the case of State of U. P. v. Mohammad Noon, AIR 1958 SC 86. In that case, a departmental inquiry was held against a constable in the Uttar Pradesh Police Force on the allegation that he was a party to the forgery of a letter which was produced before a certain authority. The inquiry was undertaken with a view to. If the charge was proved, dismiss the constable from the Police Force. The Inquiry was entrusted to one B. N. Bhalla, a Deputy Superintendent of Police. One of the facts on which the department relied for establishing the charge against the const able was that the constable was on friendly terms with one Shariful Ha sari and, in support of that fact, the department placed reliance upon the evidence of one Mohammad Khalil, a head constable. However, in the course of the departmental proceedings, this

Mohammad Khalil did not support the aforesaid fact. Shri B. N. Bhalla, the inquiry officer, claimed that, on a former occasion, that Mohammad Khalil had admitted in .his presence that Shariful Hasan was on friendly terms with the aforesaid constable. That admission was put to Mohamed Khalil, but he denied the same. Thereupon, Shri Bhalla thought that he should enter into the witness box to prove the former statement of Mohammad Khalil. Shri Bhalla sent the papers of the ease to some other officers so that his own evidence might be recorded in the case. Before those officers, Bhalla appeared as a witness and proved the previous statement of Mohamed Khalil. Thereafter, Bhalla proceeded further with the inquiry and held the constable guilty of the charge. On these facts, the question was raised whether the ultimate order of dismissal which was passed as a result of the report made by Shri Bhalla was or was not vitiated by reason of the breach ot the aforesaid fundamental principle of law that no person shall be a judge in a cause in which he is interested. Their Lordships of the Supreme Court made the following observations in connection with the above principle:

'The point In Issue was whether. Shariful Hasan was in friendly relationship with the respondent. Mohammad Khalil had in his evidence at the trial denied having made any statement to this effect. Shri B. N. Bhalla gave evidence that Mohammad Khalil had in his presence admitted this friendship of Shariful Hasan with the respondent. Which of the two witnesses, Mohammad Khalil and Shri B. N. Bhalla, was to be believed was the duty of the person presiding ovar the trial to determine. Shri B. H. Bhalla was obviously most ill-suited to undertake that task. Having pitted his evidence against that of Mohammad Khalil, Shri B. N. Bhalla vacated the Judge's seat and entered the arena as a witness. The two roles could not obviously be played by one and the same person. Indeed Shri B. N. Bhalla himself realised It and, accordingly, had his own evidence recorded on both the occasions by other high officers. It is futile to expect that he could, in the circumstances, hold the scale even.'

Their Lordships then dealt with the argument that, though Shri Bhalla did appear as a witness in support of the alleged admission of Mohammad Khalil, there was other evidence on the basis of which Shri Bhalla could have reached the conclusion that the Head Constable was on friendly terms with Shariful Hasan. In repelling this argument, their Lordships observed as follows:

'It is suggested that there might have been other evidence establishing the friendship between Shariful Hasan and the respondent and that the evidence of Shri B. N. Bhalla might not have been relied on or might not have been the deciding factor. There is nothing on the record before us to support this suggestion. But assuming that Shri B. N. Bhalla did not rely on his own evidence in preference to that of Mohammad Khalil -- a fact which is hard to believe, especially in the face of his own affidavit quoted above -- the act of Shri B. N. Bhalla In having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses onsiderable bias against the respondent If it shocks our notions of judicial propriety and fair play, as indeed it does, it was bound to make a deeper impression on the mind of the respondent as to the unreality and futility of the proceedings conducted in this fashion. We find ourselves in agreement with the High Court that the rules of' natural justice were completely discarded and all canons of fair play were grievously violated by Shri B. N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding'.

Then, Mr. Daru relies upon another decision of the Supreme Court reported in G. Nageswara Rao v. Andhra Pradesh state Road Transport Corporation, (1959) Supp (1) SCR 319 s (AIR 1959 SC 308). In that case, an crdar was passed by the Andhra Pradesh State Transport authority which was under the State Transport Department of which the Secretary, Home Department, was the head. Before passing that order, objections had been invited and an inquiry had been held. The Secretary aforesaid was one of the two persons who received objections and heard them. Among other grounds, the order was impugned on the ground that the Secretary of the Department was subject to a bias and that, therefore the proceedings, which ultimately culminated in the order, were vitiated. Their Lordships considered this contention at pages 354 to 357 of the report. After quoting the law on the subject from some English decisions, their Lordships have summarised the law in the following words:

'The aforesaid decisions accept the fundamental principle of natural justice that, in the case of quasi-Judicial proceedings, the authority 'empowered to decide the dispute between opposing parties must be one without bias towards one side or ether In the dispute. It Is also a matter of fundamental Importance that a person interested in one party or the other .should not, even formally, take part in the proceedings though, in fact, he does not influence the mind of the person, who finally decides, the case. This Is on the principles that justice should not only be done, but, should manifestly and undoubtedly be seem to be done. The hearing given by the Secretary, Transport Department, certainly offends the said principle of natural justice and the proceeding and the hearing given, in violation of that principle, are bad.'

11. The cases cited by Mr. Daru and those referred to in those cases show that the cardinal principle of administration of justice is that no person shall be a Judge in his own cause. The principle applies not only to the regular Courts which administer justice, but, it applies also to quasi judicial tribunals which are also required to act judicially. The principle applies not only In a ca.se where the Judge or the adjudicator Is himself the prosecutor or the suitor, but it applies also to all those cases where the Judge or the adjudicator is so situated with referance to the lis that Ihere is a real likelihood of bias taking place in the final decision of the case. The principle extends even to those cases where, though the Judge or the adjudicator is not personally Interested In the matter, he is so situated with reference to the matter or any of the parties to the dispute that a reasoneble apprehension Is likely to arise In the mind of any one- of the' disputants that he is not likely to get Justice at the hands, of the Judge or the adjudicator. Thus, where the Judge or the adjudicator appears as a witness In the cause, this principle has been applied. The principle emerges from the fact that the Judge or the adjudicator has a dirty to act judicially. In the eye of law, a person cannot act judicially unless and until the person is qualified to be a Judge or an adjudicator and a person is disqualified from being a judge or an adjudicator if he has a bias in the dispute which he is called upon to adjudicate. The seat of a Judge or an adjudicator is held so sacrosanct that it cannot be allowed to be occupied by any one unless and until he-is qualified to be a Judge or an adjudicator and a person, who has a bias in the lis, is totally disqualified and is incompetent to occupy such a sacred seat. The principle is of such vital and fundamental importance that, in cases where the judicial tribunal consists of more than one individual, if the vice of bias attaches to any one of them, it attaches to the tribunal as a whole and the-whole of the proceeding is vitiated. Such Is the conclusion of law even in those cases where it can be established that, though the member of the Tribunal had sat in the tribunal, he had not taken any part in its deliberations, or, if he had taken any such part, he had not participated in the voting. The principle applies even it it can be demonstrated that the person suffering from bias was in a hopeless minority and could not have influenced the view of the majority. This principle emerges from the fact that the disqualification of a Judge or an adjudicator results in the vitiation of the whole proceeding before him and demands that his orders should be quashed or set aside. The proceeding being void, the Court does not pause to enquire whether the order passed or decision arrived at is right, nor does it pause to consider whether a qualified Judge or an adjudicator would have passed the same order or come to the same decision. The decision having been arrived at by a disqualified person is no decision in the eye of law and even If it happens to be a correct decision in the opinion of the Court before which the decision is brought, the same deserves . to be set aside because a disqualified person has no jurisdiction to pass even a correct order or record a right decision. The law does not cast any aspersion on the disqualified person, nor does it enquire whether the dis-qualified person was so mentally outfitted that, though he possessed a bias, ha was capable of reaching the right' or correct decision. Theoretically, It is possible to say that holiness, piety or a high sense of duty may endow a person with the rare gift of deciding correctly a case even against himself. But, the aforesaid principle does not take into account such rare gifts. The law views the matter entirely on the footing that no average individual is subject to human frailties, and it bases itself on the fact that a person, endowed with ordinary qualities and subject to human weaknesses, to which human flesh is heir to, Is not likely io maintain that mental equipoise, open mindedness and fair play, which are the true badges of a Judge or an adjudicator. The mind of a Judge or an adjudicator must always be pure so that the moment the law feels that a Judge or adjudicator is so situated with reference to a cause that the stream of his thought is likely to be polluted by personal or extraneous considerations and, as stated by Lord Cranworth, L. C. in Ranger v. Great Western Railway Co., (1854) 5 H.L.C. 72, a Judge or the adjudicator is not

likely to be indifferent, it concludes that the cause is one which cannot be entrusted to the person suffering from such a disqualification. The above principle has been enunciated to uphold the purity of administration of justice, it forms the very bed-rock of judicial administration in the law of England and in the law of this country. In English jurisprudence, the principle has been applied since ancient times. In Broom's Legal Maxims, Ninth Edition, at page 81, it is stated that as far back as in the reign of James I, the Judges have solemnly ad-judged that the King cannot take any causa, whether civil or criminal, out of any of his Courts and give judgment upon it himself. In England, the principle is of such vital importance that the decrees passed by the highest judicial authority were set aside on the basis of that principle, in the case of Dimes v. Grand Junction, and Canal Co., (1852) 3 HLC 759, decrees passed by Lord Tottenham, L. C., in regard to a canal company were set aside by the House of Lords on the ground that the learned Lord was a shareholder in the company. In doing so, Their Lordships made the following observations which are well worth quoting:-

'It is of the last importance, that the maxim that 'no man is to be a fudge in his own cause' should be field sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest..... We have again and again set aside proceedings in inferior tribunals, because an individual, who had an interest in a cause, took a part in a decision. And it will have a most salutary effect on these tribunals when it is known that this High Court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decree was on that account a decree not according to law, and should be set aside'.

12. Bearing the aforesaid principles in mind, we have to consider whether, on the facts of the present case, all or any of the aforesaid principles has been violated. Respondent No. 1 undoubtedly cannot be put in the position of either a prosecutor or a suitor in the matter of the departmental proceeding started against petitioner. However, having regard to the fact that the Divisional Engineer had taken upon himself and was required to determine the truth or otherwise of allegations which were made against himself, there cannot be any doubt that the Divisional Engineer was so situated with reference to the departmental enquiry that he forfeited his qualification to be an adjudicator therein. Without meaning any disrespect to respondent No. 1, it is safe to say that he will be unable to hold the scales even, or, as Lord Cranworth L. C., In (1854) 5 H. L. C. 72, staled, that he will not be so indifferent to the cause that he will be able to give a just decision on petitioner's allegations, In order to decide the dispute, it is quite clear that respondent No. 1 will have to consider whether the allegations of petitioner that he was corrupt and that he was corrupt minded were true or not, and, knowing as we do the human nature, an ordinary person cannot be expected to reach a just conclusion on such a subject if he himself has to decide such a question which affects his ovjn character. In our judgment, there is no doubt whatsoever that respondent No. 1 is so situated with reference to the dispute raised by petitioner that there was a real likelihood of bias being exhibited by respondent No. 1. Therefore, in our judgment, in the present case, respondent No. 1 was disqualified to held tha enquiry and the order passed by him deserves to be set aside on that ground.

13. In our judgment, the present case is more vicious than any of the cases on which Mr. Daru relies. In 1926 AC 536, tha licensing justices were not personally interested in tha question of the renewal of the licences. They opposed the renewal and decided to appear through their solicitors because they felt in their capacity as the justices that the licences should not be renewed. In Mohammad Noon's case, AIR 195 SC 86 also, Shri Bhalla was not personally interested. He appeared only as a witness in the case and that too for the purpose of proving only one of the points which had a bearing on the ultimate decision to be arrived at in the case. In Gullapali's case, (1959) Suop, (1) SCR 319: (AIR 1959 SC 308) also, the Secy, was not personally Interested. In all the aforesaid three cases, the tribunal was Interested in the result of the case in a limited way and more or less as an officer of the department concerned. In two of the above cases, the Tribunal or some members thereof took up a certain position in its or their capacity as officials vis-a-vis the dispute which it or they were called upon to decide. However, in the present case, respcndent No. 1 was called upon to decide a matter Which was absolutely personal to him. Respondent Mo. 1 was so situated in the enquiry that it was highly improbable that he would decide the case on its merits against himself and thus commit official suicide or

mar his official career.

14. The matter can be looked at from another stand-point. Article 311 of the Constitution requires that before a Government servant is dismissed, removed or reduced in rank, he should be given a reasonable opportunity to show cause against the action to be taken against him. Thus, the Constitution requires not merely that an opportunity should be given to the delinquent, but that the opportunity must be reasonable. From the facts of the case, it is easy to see that, if petitioner was called upon to prove the allegations which he had made against respondent Ho. 1 before respondent No. 1 himself, though he will have an opportunity to show cause, the opportunity wilt not be reasonable. Having regard to the personal allegations against respondent No. 1, when petitioner enters the hall of enquiry, It is clear that he would be entering into.not a, temple of justice, but into hotbed of hostility, where, not only petitioner will be embarrassed, but, even his witnesses may expect to Incur the wrath or hostility of the tribunal. Moreover, under the aforesaid circumstances, if petitioner has the feeling that, whatever may be the amount of proof that he will adduce, it will be Impossible for him to convince respondent No. 1 about the truth of his allegations, the feeling is one which Is natural and which no Court should disrespect.

15. Having regard to the aforesaid considerations, we must hold that tha decision recorded by respondent Mo. 1 against petitioner violated the fundamental principle of natural justice and that that decision must be quashed and set aside.

16. In view of our aforesaid finding, it Is not necessary to consider the correctness or otherwise of the other two submissions made by Mr. Daru.

17. Then only remains to be considered a submission made by the learned Government Pleader, and that is that, no relief should be granted to petitioner because he had not availed himself of the alternative remedy of preferring an appeal to the highest authority which he was competent to do. In our judgment, there is no substance in this contention. The short answer to that contention rs to be found In Muhammad Noon's case, AIR 1953 SC 86 already referred to. At page 34 of the report,' their Lordships Have laid down the following principles :--

'On the authorities referred to above, it appears to us that there may conceivably be cases -- and the in-tant case is in point -- where the error, irregularity or Illegality touching jurisdiction or procedure committed by an inferior Court, or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an Inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction er manifestly conducts the proceedings before It in a manner which Is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play, the superior Court may,' we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, It confirmed what ex fade was a nullity x x x x x'.

From this and several other cases, it appears that, though ordinarily the High Court, when it exercises its extraordinary jurisdiction, does not grant a relief when an alternative remedy Is available to a petitioner, there are wed known exceptions to that rule and one of the exceptions is that, when an order or a proceeding violates a rule of natural justice, then, the Court entertains the petition and sets aside the order or quashes the proceeding which violates such a rule of natural justice. In our judgment, as a rule of natural justice is violated, the ordinary principle of law that the extraordinary relief should not be granted when an alternative relief is available cannot be applied to the facts of the present case.

18. For the aforesaid reasons, in our judgment, the petition must be allowed. We direct that a writ of certiorari should Issue against respondent No. 1 and order that his order, dated 9th September 1960, be quashed. We also further declare that petitioner continues to be In Government service. Subject to the latter modification, we make the rule absolute. Respondent No. 1 shall pay the costs of petitioner and respondents Nos. 2 and 3

shall bear their own costs.