

S.N. Misra Vs. State of Rajasthan

S.N. Misra Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/756494

Court : Rajasthan

Decided On : Jul-08-1969

Reported in : 1969WLN293

Judge : Kan Singh, J.

Appeal No. : S.B. Civil Writ Petition No. 1851 of 1969

Appellant : S.N. Misra

Respondent : State of Rajasthan

Judgement :

Kan Singh, J.

1. By this writ petition under Article 226 of the Constitution the petitioner Shri S.N. Misra, who was at the relevant time a member of the Rajasthan Administrative Service, is questioning the validity of the order of his dismissal No. F. 1(25) Appts. (A. III) 63 dated 22-8-1966 passed by the Government and he has prayed for an appropriate writ, direction or order. The relevant facts may briefly be stated as follows.

The petitioner who was a resident of the former State of Jaipur joined the service of that State in the State Army in 1940 as an Officer Cadet. He subsequently came to be promoted as a Major and was eventually transferred on the Civil side. There

after the petitioner came to be posted as an Under Secretary to the Government. On the formation of Rajasthan the petitioner was appointed as Deputy Director of Rehabilitation and when the R.A.S Cadre was formed he was taken on the R.A.S. Cadre, He served on various posts. At the material time relating to which disciplinary proceedings were instituted against the petitioner he was Deputy Commissioner Colonisation Bhakra Project, Hahuman garh. Petitioner, proceeds to say that as Deputy Commissioner Colonisation, it had come to his notice that a number of persons had taken unlawful possession of Government, lands and they had also constructed houses on such lands. The petitioner felt that such persons should be required to pay the price of the land occupied' by them and accordingly he addressed a letter on 4th November 1961 to the Colonisation Commissioner at Bikaner. By this letter he brought it to the notice of the Commissioner as to how a number of persons had trespassed on Government land and taken possession of it and made constructions thereon. He desired the Commissioner to indicate the price of the land in the Municipal limits, not covered by the New Mandi scheme at an early date so that price of the land, occupied by trespassers could be recovered by the petitioner. The petitioner states that in reply to his letter the Commissioner laid down the policy form the auctioning of the Government lands, but in those cases in which the possession was found to be old; it was desired that such possession be regularised and price be charged at rates applicable to low income group together with a penalty equivalent to the price. This course was to be adopted till the Government had finally decided the matter. The case of the petitioner is that in accordance with the instructions of the Colonisation Commissioner he passed orders for realisation of the price of the plots from the occupants of a Government lands. The petitioner maintains that in some cases he did not impose the penalty on account of the particular facts of such cases. The petitioner was, transferred from Hunumangarh after sometime and he was succeeded by one Shri N.C. Bhatnagar. Shri Bhatnagar discovered that the petitioner had no authority or jurisdiction for selling the Government lands as the same could have been sold by the Mandi Development Committee only. Accordingly, Shri Bhatnagar reviewed all the orders passed by the petitioner and cancelled the allotments. The irregularities committed by the petitioner were brought to the notice of the Government and the Government instituted disciplinary

proceeding and served him with a charge sheet together with a statement of allegations according to the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, hereinafter to be referred as the 'Rules'. In all 11 charges were framed against the petitioner. The charges covered almost pages 8 & 1 will not like to burden this judgment by reproducing the charges but the gist of the charges was that the petitioner had made allotments of land which was beyond his powers & in doing so he had completely disregarded the rules on the subject of allotment. A number of charges pertained to the series of allotment made by the petitioner. In charge No 5 it was mentioned that by the undesirable and unauthorised actions the Government had been put to a great loss as the sites were to be sold by public auction as per the Rules. Likewise, in charge No. 9 it was stated that the Government had been put to a considerable loss of income by the irregular act and this had caused illegal gain to all the persons and thus reflected adversely upon the conduct of the officer. The charges were enquired into by Shri R.N. Hawa to start with but later on it appears that the Government appointed Shri V.D. Sharma. Registrar. Co-operative Societies, Rajasthan as the Enquiry Officer. Shri V.D. Sharma conducted the enquiry and exonerated the petitioner of three charges namely charges Nos. 2, 6 and 9, but he held the petitioner guilty of the other charges. The conclusion reached by Shri V.D. Sharma may be put in his own words as follows:

The result is that of the all charges levelled against Shri S.N. Mishra, it has not been possible to record any findings on charge No. 2 and 6 for want of evidence. Charge No. 9 has been held to be 'Not Proved' Charge No. 8 only formally proved and the rest of the charges i.e. Charge Numbers 1, 3, 4, 5, 7, 10 and 11 have been held as proved,

I have indicated at appropriate places in the course of discussion of the above charges that the state of regulation regarding the sale and allotment of land in the Bhakra Area particularly the plots of land falling within the bid Municipal area was vague and it appears that lot of action was being taken according to the discretion of the officers on the spot. Even the Colonisation Commissioner's letter No. F. 6(h) 762/BH/6109, dated 24.11.61 is an example of this discretion and though therefore, in cases in which irregularities have been considered 'proved' against

Shri S.N. Misra, there has been an excessive and Uncontrolled use of that discretion, but the quantum of fault should be considered in the general background of lack of clarity in the matter of rules and regulation, a state of affairs which is natural in organisations in which there is rapid expansion and where regulation does not sometimes keep pace with expansion.

The petitioner thought that Shri V.D. Sharma held him only technically guilty of the charges found proved by him. In other words, according to the petitioner, he was found to have committed mistakes which were not on account of any dishonesty on his part, but were honest mistakes on account of lack of understanding of the rules on his part; more so for the reason that the rules were vague, The petitioner proceeds to say that the case was then referred by Government to the Vigilance Commissioner, Shri Tandon who, according to the petitioner, was not authorised by any rules or regulations to take any action in the matter. The Vigilance Commissioner, according to the petitioner, recommended the penalty of dismissal to be imposed on the petitioner. Accordingly, the Government issued a show cause notice to the petitioner why the petitioner should not be dismissed from service on the basis of the various charges found, proved against him. The petitioner submitted his reply to this notice and on receipt of the petitioner's reply the Government referred the case to the Rajasthan Public Service Commission in accordance with Rule 16(10) of the Rule. The Public Service Commission gave its advice to the Government saying that as the report of the Vigilance Commission had not been supplied to the petitioner a fresh show cause notice be issued to the petitioner and that the report be supplied to him so that he might submit his objections against the report. After the advice of the Public Service Commission was received by them the Govt. issued a fresh show cause notice to the petitioner on 25-1-65 again calling upon him to show cause why the, i.e., penalty of dismissal be not imposed on him. This time, according to the petitioner, the Government incorporated the report of the Vigilance Commissioner in the notice though they did not make any mention of such report. The petitioner again submitted his explanation on 19-2-65. On receipt of petitioner's explanation the Government again referred the case to the Public Service Commission for advice. In their second report the Public Service Commission stated that there were material differences in the findings of the Enquiry Officer and the view expressed by the

Vigilance Commissioner and there was no evidence on record which could even suggest remotely that the petitioner had indulged in corrupt practices or venal activities and that there was no intention on the part of the, petitioner to reap any personal benefits. In other words, though the petitioner was guilty of culpable negligence, there was no corrupt notice on his part. The Commission accordingly recommended that as the punishment of dismissal would be definitely unduly excessive the ends of justice would be met by visiting the petitioner with the penalty of compulsory retirement on proportionate pension. The Government, however, took the stand that the penalty of dismissal was justified in the circumstances. The Government, however, again referred the case to the Commission, but the Commission reiterated its opinion and recommended that the Government should reconsider its decision and looking to the facts and circumstances the order of compulsory retirement of the petitioner should be passed. After receipt of the opinion of the Public Service Commission the Government passed the impugned order dismissing the petitioner.

3. In challenging the order of his dismissal the petitioner contends that the order of dismissal was passed in contravention of Rule 16(10) of the Rules and also in violation of the principles of natural justice. It was maintained that Rule 16(10) of the Rules was mandatory and in the event of the Government disagreeing with the opinion expressed by the Public Service Commission it was incumbent on the Government to give a brief statement of its reasons. It was next urged that the Government were also under a statutory obligation to supply the petitioner with the second recommendation of the Public Service Commission and as they had failed to do so, the order of dismissal passed against the petitioner stood vitiated. It was then contended that the mind of the Government had been greatly influenced by the report of the Vigilance Commissioner and as there were no rules or regulation on the subject the Government were not justified in referring the case to the Vigilance Commissioner and there by abdicating their own function In the alternative it was urged that the copy of the report of the Vigilance Commissioner should have been furnished to the petitioner so that he could have an opportunity to submit his objections against the same. In short, the petitioner contends that as the Vigilance Commissioner has given his report behind the back of the petitioner and the petitioner was not afforded any opportunity of the same there has been

violation of the principles of natural justice. As regards the various orders passed by the Government, his stand is that he had acted in the light of the instructions given to him by the Colonisation Commissioner. It was also urged that the Government was acting malafide on account of the petitioner having served in the past the Maharaja of Jaipur with whom the relations of the State Government were not good on account of elections.

4. The writ petition had been opposed by the State. It is denied by that the order of dismissal passed against the petitioner was bad on any of the grounds taken by him. It was pointed out that there was no breach of the statutory rules and nor was there any violation of the principles of natural justice. As regards Rules 16(10) the stand of the state is that the rule regarding giving of reasons was only directory and there was substantial compliance with that rule.

5. The short point that, therefore, arises for my consideration is whether the impugned order was passed in violation of Rules 16(10) or (12) of the Rules or it had been passed in disregard of the rules of natural justice.

6. Learned Counsel for the petitioner at the time of his arguments did not address me on the question of malafides of the Government. Learned Counsel also did not challenge the findings recorded by the Enquiry Officer Shri V.D. Sharma. In other words, he had nothing to say about the mode of enquiry or the conclusion reached by Shri Sharma. His grievance was that although the report of Shri Sharma showed that the petitioner had only acted in breach of the rules there was no finding about the petitioner being animated by any dishonest motive but the Government order as contained in the notice given to the petitioner showed that in the opinion of the Government the petitioner was animated with a dishonest motive and, therefore, it was incumbent on the Government to give the reasons for taking an opinion different from that of the Enquiry Officer. Then it was urged that even where the Government had formed an opinion different from that of the Public Service Commission the Government was under an obligation to give the reasons for their opinion. It short, the argument of learned Counsel for the petitioner was that Rule 16 has been contravened in two ways; firstly, when the Government order did not contain the reasons when the Government differed from

the opinion expressed by the Enquiry Officer and secondly, when they differed from the opinion expressed by the Public Service Commission. Learned Assistant Government Advocate took the stand that the petitioner had not taken any ground in the writ petition regarding the absence of any reasons for the Government taking any opinion at variance from that expressed by the Enquiry Officer and as regards the Government order not giving reasons for dissenting from the Public Service Commission the learned Assistant Government Advocate took the position, as observed already, that the rule was only directory and this also did not involve any violation of the principles of nature justice.

7. It is true, learned Counsel for the petitioner has not taken the specific ground in MO many words that the Government had not given any reasons for dissenting from the Enquiry Officer and this was in contravention of the rules, but I am unable to hold that there is no basis for the submission in the writ petition. Paragraph No. 33(f) of the writ petition runs as follows:

Para 33(f). Because the Government having already framed an opinion on the basis of the report of the Vigilance Commission made it a matter of honour not to change their opinion and to give a proper decision on the basis of the considered reports of the Enquiry Officer and the Public service Commission.

Thus, in a general way the petitioner has attacked the Government order based on the report of the Vigilance Commissioner. Apart from this the ground urged before is based on the document on record and for its appreciation the two documents namely, the report of the Enquiry Officer and the relevant Government order have to be interpreted and understood. This submission does not involve any fresh investigation of facts. However, I gave time to learned Assistant Government Advocate to prepare the point as the arguments continued for two or three days. The point, therefore, requires an examination. I have read the report of the Enquiry Officer more than once with the care it deserves and have no doubt in my mind whatsoever that Enquiry Officer as not found the petitioner guilty of any dishonest motive. The Government order is appendix-12 and is available at page 108 of the paper book. The position has been summarised in the following paragraph:

To sum up, in the 38 cases that have been detected and pursued, Shri Misra Passed orders without jurisdiction as authority was not vested in him but in the Bhakra Development Committee. Although he took the stand that he derived his authority from certain Government Notifications and from the Colonisation Commissioner's letter dated 24th November, 1961. It is clear that neither the notification nor the letter conferred any authority on him in specific terms. Moreover, he did not even carry out the terms of the letter dated 24th Nov., 61 on which he had relied. The allegations on the basis of which the charges were framed have been proved viz., that Sri Misra passed orders involving big financial losses to Govt, due to some self interest & to benefit persons of his own choice to whom he arbitrarily made allotments without following the Rules, and, where the question of low income arose, without making any proper enquiries to show that the persons were in fact entitled to the benefit of the low income group rates. The loss to Government would have amounted to well over 1 Lac of rupees even if the lands had been earmarked by the Bhakra Mandi Development Committee for disposal at the applicable reserved price. But in fact the plots had not been so earmarked or demarcated and the loss involved was, therefore, very much higher. The unbuilt lands could well have been auctioned at much more than the reserved price. The orders were all passed within a period of six months and about half of them when he was under orders of transfer and expecting to handover charge at any moment.

8. Learned Assistant Government Advocate submitted that the above passage did not clearly show that the Government have found the petitioner guilty of dishonesty as the word 'dishonesty' has not been used anywhere in the order. It is true, the Government have not used the word 'dishonesty', but to say that the petitioner had passed orders involving big financial losses to the Government due to some self interest and to benefit persons of his own choice to whom he arbitrarily made the allotments without following the rules unmistakably shows that the Government undoubtedly thought the petitioner to be dishonest when he passed the various orders of allotment. It does not require much reasoning to hold that there was a variance between the conclusion reached by the Enquiry Officer about the existence of dishonesty and the findings recorded by the Government. Now what is the position when such a variance is there? Where the Government

expressed an opinion on a certain aspect of the matter which is in consequential the non-giving of reasons will not vitiate the order, but if the variance is on a material point, then it has to be seriously considered whether the non-giving of reasons will vitiate the order or not. Rule 16 lays down the procedure for imposing the major penalties. It provides that for imposition of major penalties the procedure laid down therein shall be followed. Sub-rule (2) provides for framing of definite charges. This Sub-section also provides for the service of charges on the Government servant filing of his written statement. Sub-section (5) provides for the nomination of any person to present the case before the enquiry officer or authority. These rules also lay down how the Enquiry officer shall proceed in the matter, that is, how he will be recording the evidence etc. Then on the conclusion of the enquiry the Enquiry Officer has to prepare a report recording his finding on each of the charges together with reasons therefore. It is then that the matter comes before the Disciplinary authority. Sub-rule (10) lays down how the Disciplinary Authority has to proceed in the matter on receipt of the report of the Enquiry Officer. I may read that sub-rule:

Sub-rule (10)(i): If the Disciplinary Authority, having regard to its finding on the charges is of the opinion that any of the penalties specified in Clauses (iv) to (vii) of rule 14 should be imposed, it shall-

(a) furnish to the Government servant a copy of the report of the Inquiring Authority and, where the Disciplinary Authority is not the Inquiring Authority a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority; and

(b) give him a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make on the proposed penalty, provided that such representation shall be based only on the evidence adduced during the enquiry.

(ii)(a) In every case in which it is necessary to consult the Commission the record of the inquiry together with a copy of the notice given under Clause (i) and the representation made in response to such notice, if any, shall be forwarded by the Disciplinary Authority to the Commission for its advice.

(b) On receipt of the advice of the Commission, the Disciplinary Authority shall consider the representation, if any made by Government servant as aforesaid, and the advice given by the Commission and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders in the case.

(iii) In any case in which it is not necessary to consult the Commission, the Disciplinary Authority shall consider the representation, if any, made by the Government servant in response to the notice under Clause (i) and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders in the case.

9. Sub-rule (11) provides that if the Disciplinary Authority having regard to its findings is of the opinion that any of the penalties specified in Clauses (i) to (iii) of Rule 14 should be imposed, it shall pass appropriate orders in the case. However, before the Disciplinary Authority passes the final order, it has to refer the matter to the Public Service Commission according to the proviso to Rule 11 and it is only after taking into consideration the advice of the Commission that it can pass the orders.

10. Then comes Sub-rule (12) which I may reproduce hereunder:

Sub-rule (12): Orders passed by the Disciplinary Authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the Inquiring Authority and, where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority, unless they have already been supplied to him, and also a copy of the advice, if any, given by the Commission and where the Disciplinary Authority has not accepted the advice of the Commissioner, a brief statement of the reasons for such non-acceptance.

It will however, not be necessary to furnish a copy of the Enquiry Officer in the case where any of the penalties specified in Clauses (i) to (iii) of the Rule 14 is imposed on the Government servant.

11. Sub-rule (10)(1)(a) clearly lays down that the Government will furnish the Government servant the findings of the Enquiry Officer with reasons for the disagreement, if any, with the findings of the Inquiring officer. Rule 16 is, to my mind couched in mandatory form. It uses the word 'shall'. According to the principles of interpretation of the statutes when a statute uses the word 'shall', prima facie it is mandatory though Court may still ascertain the real intention of the legislature by carefully attending to the whole scope of the statute necessary for ascertaining the real intention of the legislature. The Court may consider inter alia the nature and design of the statute and the consequences that will flow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and above all whether the object of the legislation will be defeated or furthered. I may cite state of U.P. v. Babu Ram : 1961 CriLJ773 for these observations.

12. Let me now turn to the scheme of rule 16 itself. This rule lays down the procedure for imposing major penalties. It is thus obvious that the rule had been designed to afford a fair opportunity to the Government servant to meet the charges that are levelled against him as the charges so proved may entail major penalties for him. The rule further envisages a position where the disciplinary authority and the inquiring authority may not be the same. The Government servant is face to face with the inquiring authority, but when the findings of the inquiring authority, are considered by the Government when it is not the inquiring authority, the Government servant may not come face to face with the Government. Where the Government as disciplinary authority accepts the findings of the inquiring officer it is enough if the Government servant is furnished with a copy of the inquiry report and he is apprised of the fact that the Government are in agreement with the conclusions reached by the Enquiry Officer. Where, however, the Government are in disagreement with the findings of the Enquiry Officer in whole or in part, the rule enjoins on the Government to indicate the brief reasons for their disagreement. The giving of reasons has, in my view, been provided with a view to afford an adequate opportunity to the Government servant to explain his

position and try to remove the impression of the Government, if any, that the Government had formed in disagreement with the findings of the Enquiry Officer. This is a right that the legislature has given to the Government servant and to make the exercise of that right effective the Government are required to apprise him of the reasons that are weighing with them to differ from the opinion of the Enquiry Officer. Looking, therefore, to the provisions of Rule 16 and the underlying object and also bearing in mind the serious consequences that the proceedings may entail for the Government servant I am not inclined to view this provision as anything but mandatory.

13. In a very recent case *State of Gujarat v. R.G. Teredeshi and Ors.* Civil Appeal No. 961 of 1966 decided on 10-4-69, their Lordships of the Supreme Court have held that the right of representation under Article 311(2) includes the right to prove that the punishment proposed to be inflicted was unduly severe. It is true, as pointed out by their Lordships the findings of the Enquiry Officer are not binding on the Government & they can very well take a different view, but the right of the Government servant to have his say against the penalty that the Government proposed to inflict on him is well recognised. It is in this context that the importance of giving reasons arises.

14. It appears from the Government order extracted above that in spite of the findings of the Enquiry Officer they were led to believe that the action of the petitioner was animated with biased motive of causing a personal gain to him or benefit persons of his choice. The petitioner, therefore, was entitled to get an adequate opportunity of trying to clear this factor operating on the mind of the Government. This the petitioner could have done, if he were told on what basis the Government had reached the conclusion adverse to the petitioner about his motive. The Government order does not give any indication of the kind. Then the Public Service Commission had clearly opined in their reply available at page 129 of the paper book and which is marked appendix-14, that the manner in which the cases had been decided by the petitioner seriously suggest a deficiency in the mental equipment of the charged officer to handle efficiently such an intricate job demanding constant application and the study of the Rules, but according to the Commission, another, factor which was to be examined in the context was that

there was no evidence on record which could even suggest remotely that the charged officer indulged in 'corrupt' practices or venal activities'. The conclusions of the Commission are summarised at page 165 of the paper book and may be quoted:

As a result of the above it would be thus evident that the charged officer committed the delinquencies attributed to him from culpable negligence. He was bound to study the relevant Rules and Regulations on the subject. He should have decided these cases after acquainting himself thoroughly with all the legal intricacies involved in them. In fairness to him, however it should be observed that corrupt motives do not appear to have been responsible in his negligent working.

Rule 16(12) comes into play after the orders have been passed by the disciplinary authority. After the orders are passed they are required to be communicated to the Government servant who is to be supplied with a copy of the report of the Inquiring Authority and where the Disciplinary Authority is not the Inquiring Authority a statement of findings together with brief reasons for disagreement, any, with the finding of the Inquiring Authority, unless they have already been supplied to him, have to be supplied. Then further a copy of the advice given by the Commission and, where the Disciplinary Authority has not accepted the advice of the Commission, a brief statement of the reasons for such disagreement has also to be supplied to the officer. Sub-rule 12, as I have already observed, comes into play after the order has been passed by the Disciplinary Authority and its non-compliance may not always invalidate the order passed by the Disciplinary Authority. The purpose of this sub-rule is to enable the Government servant to pursue his remedy of appeal but where the Government is itself the Disciplinary Authority, there is no remedy of an appeal under the Rules. All the same the rule making authority has made this rule in a mandatory form and the purpose is to enable the Government servant to pursue his remedy elsewhere. In an appropriate case the Government servant can approach the High Court and the Supreme Court. All the tribunals including the domestic tribunal like the Government in dealing with such matters are subject to the supervisory control of the High Court and the Supreme Courts. Therefore, even if, the rule as such is not there, in the order of the Government there should be the recording of reasons when they take

an opinion different from that expressed by the Public Service Commission. All the same, looking to the nature of the proceedings as they are undoubtedly quasi judicial in character reasons have to be there so that the High Court or the Supreme Court in cases coming before them may be able to appreciate as to what had operated on the mind of the Government to take an opinion different from that of the Public Service Commission. It cannot be gain said that the Commission has been assigned the function of consultation on all disciplinary matters affecting a public servant. These provisions are designed to give an assurance to the Services that a wholly independent body not directly concerned with the making of the orders adversely affecting the public servant has considered the action proposed to be taken against a particular public servant with an open mind and secondly, to afford the Government unbiased advice and opinion on matters vitally affecting the morale of public services. It is therefore, incumbent upon the Executive Government when it proposes to take any disciplinary action against a public servant, to consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirements of the situation (vide AIR. 1957 S.C. 912). Giving of reasons when it has been insisted in the scheme of things brought about by rule 16 is, to my mind, with a view to ensure objectivity of approach on the part of the domestic tribunal namely, the disciplinary authority and to culminate arbitrariness in dealing with the case. Therefore, the giving of reasons is very significant and its absence may very well lead to the inference that the matter has not been examined with objectivity as is envisaged in the Rules. The trend of opinion both in our country and in England is to ensure objectivity of approach and the administrative authorities are required to give reasons so that it may be possible to judge that they are acting according to the scheme of the law which gives them a discretion in a particular matter. There is a land mark in the matter of administrative law in England in the shape of a recent decision of the House of Lords in *Padfield v. Minister of Agriculture etc.* 1968 All E.R. 694. This decision has been examined in July. 1968 Issue of the Modern Law Review. This is a major stride in the administrative system. The reasoning is that the Parliament is omnipotent & all the creatures of legislature derive all their power from it. Therefore, if the legislature has not empowered a Minister, a Board of a Local Authority to act in a certain manner that Minister or Agent is powerless. Two

questions of interest have been discussed in the House of Lords' case. I am not concerned with the first question namely, whether a mandamus would be issued against a Minister. The second question that has been discussed in the case is whether a Minister is bound to give his reasons. Lord Pearce said at page 714 of this case that if the Minister gives no reason for taking a certain course, the Court may say that he had no good reasons and that he is not using the power given by Parliament to carry out its intentions.

15. In *Bhagat Raja v. Union of India* : [1967]3SCR302 it has been laid down by their Lordships of the Supreme Court that the decisions of Tribunals in India are subject to the supervisory powers of the High Court under Article 227 of the Constitution and of appellate powers of the Supreme Court under Article 136. It therefore, goes without saying that both the High Court and the Supreme Court are placed under a great disadvantage if no reasons are given. The case that their Lordships were dealing was one under the Mines and Minerals (Regulation and Development) Act, 1957, in which while rejecting a revision application the Central Government had not given any reason. Their Lordships observed that where the Central Government adopts the reasoning of the State Government, the Supreme Court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, the Supreme Court in appeal may have to examine the case *do novo* without being the wiser for the review by the Central Government.

16. The present case stands on a much higher footing as the statutory rule itself requires the disciplinary authority to give reasons when it disagrees in some important respects with the findings or conclusions of the Enquiry Officer. I have not been able to understand as to what was the basis for the State Government in coming to the conclusion that the petitioner was animated with dishonest motives and what was the evidence for the same. In these circumstances I have no doubt that the State Government are in breach of both the statutory provisions as well as the rules of natural justice. The Public Service Commission has referred to the fact that the Vigilance Commissioner had been consulted and he had given his

opinion. Though there is no rule or regulation laying down that the Vigilance Commissioner may be consulted on any matter, at the same time I do not find any prohibition either. The purpose of such consultation when it is not provided by any statutory rule could only be a limited one namely, that of better informing the mind of the State Government. Normally when the State Government is consulting the Vigilance Commissioner after the Enquiry Officer has submitted his report, the opinion of the Vigilance Commissioner is nothing but supplementary to the report of the Enquiry Officer and I do not understand on what logic the Government can decline to furnish a copy of the report of the Vigilance Commissioner to the Government servant. Even granting that for some reason they may not like to disclose the report as such to the Government servant, they must disclose the reasons that are contained in such report and which have appealed to the Government and which they are accepting in disagreement with the report of the Enquiry Officer. Without this being told to him the Government servant is not in a position to clear the position regarding factors that may be operating on the mind of the Government. This has obviously not been done. I am, therefore, satisfied, having considered the matter., that so far as the question of determination of penalty is concerned the petitioner had not been apprised of the facts and the reasons that have weighed with the Government. The order of the petitioner's dismissal is, therefore, one which is not according to law. The petitioner has, however, admitted before me that he has already passed the age of superannuation. In the circumstances there is no use ordering the reinstatement of the petitioner. The Government shall be at liberty to proceed in the matter according to law in the light of the observations made by me.

17. The result is that I hereby set aside the petitioner's order of dismissal. The parties are left to bear their own costs of this writ petition.