CAT/5/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 620/ 1986
~~T.A. No.~~

DATE OF DECISION 14.9.1988.

Dr. Pandurang G. Adyalkar ~~Petitioner~~ Applicant.

Shri Randhir Jain Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri K.C. Mittal Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND—12 CAT/86—3-12-86—15,000

(KAUSHAL KUMAR)
MEMBER (A)

(K. MADHAVA REDDY)
CHAIRMAN

14.9.1988.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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Dr. Pandurang G. Adyalkar .... Applicant.

V/s.

Union of India .... Respondent.

For the Applicant .... Shri Randhir Jain, Counsel.

For the Respondent .... Shri K.C. Mittal, Counsel.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgement of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGEMENT

The applicant who claims that he belongs to a Scheduled Tribe known as 'Halba', was selected by the UPSC for the post of Assistant Geologist and joined the said post on 27.10.1953. He was also confirmed in the said post with effect from 1.7.1957. In response to another advertisement dated 10.12.1955 issued by the UPSC for the posts of Geologists (Junior), the applicant again applied declaring himself as belonging to the Scheduled Tribe community. He was selected by the UPSC and recommended for appointment to the said post which he joined on 3.5.1957. He was subsequently promoted to the post of Director, Central Ground Water Board under the Government of India, Ministry of Agriculture & Irrigation, Department of Agriculture and Cooperation. On 21.1.1980, disciplinary proceedings were initiated

against the applicant under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 for giving a false declaration that he belongs to the 'Halba' Scheduled Tribe. An inquiry was conducted as envisaged under the rules by the Commissioner for Departmental Enquiries, who submitted his report on 2.4.1983. The disciplinary authority after considering the Inquiry Report, dismissed the applicant from service vide order dated 8th July, 1983 which was served on the applicant on 13th July, 1983. The applicant filed a writ petition (C.W.P. No. 434/80) in the Delhi High Court and the High Court vide its judgement dated 24th September, 1984 quashed the dismissal order while observing "For the reasons stated I hold that the impugned order is not legal and valid and it is quashed. The disciplinary authority shall be at liberty to pass a fresh order in conformity with law." The appeal filed by the respondent against the judgment of the Delhi High Court was dismissed on 13.2.1985 in L.P.A. No.3/85 by a Division Bench of the High Court. The respondent filed S.L.P. (Civil) No.7638 of 1985 before the Supreme Court, but the same was dismissed on 8th July, 1985.

2. The applicant retired from service on superannuation on 30.6.1985. The respondents passed an order on 4.10.1985, cancelling the dismissal order dated 8th July, 1983 and reinstating the applicant in service with effect from 13th July, 1983 and continuing him in service upto 30.6.1985. The order further stated that the disciplinary proceedings

earlier initiated against the applicant shall be deemed to be proceedings continued under Rule 9 of the Central Civil Services (Pension) Rules, 1972 (Annexure 'H' to the Amended Petition). The respondent passed another order dated 3rd July, 1986 (Annexure I to the Amended Petition) conveying a decision by order and in the name of the President of India under FR 54-A that the applicant shall be paid from the date of his reinstatement i.e., 14th July, 1983 to the date of his retirement i.e., 30th June, 1985 at the rate of 50% of the amount to which he would have otherwise been entitled had he been in service and not dismissed plus corresponding allowances and further that the period from 14.7.83 to 30.6.85 shall be treated as "Non-Duty". Subsequently an order was passed on 3rd February, 1988 (Annexure A-I) whereby the disciplinary authority held the charges against the applicant as proved and in exercise of powers conferred under Rule 9 of the Central Civil Services (Pension) Rules, 1972 ordered that the entire monthly pension otherwise admissible to the applicant shall be withheld on permanent basis with immediate effect and the death-cum-retirement gratuity admissible to him shall also be withheld.

3. The petitioner in this application filed under Section 19 of the Administrative Tribunals Act, 1985 has prayed for quashing the Inquiry Report dated 2.4.1983 of the Commissioner for Departmental Enquiries holding charge No.1 as proved and for setting aside the orders dated 4.10.85, 3.7.86 and 3.2.88 referred to above.

4. The learned counsel for the applicant Shri Jain contended that after the retirement on superannuation of the applicant, proceedings under Rule 9 of the Pension Rules could not be continued without a notice having been given to the applicant and that the order dated 3.2.1988 withholding pension and gratuity of the applicant was not valid inasmuch as no Show Cause Notice had been served on the applicant before withholding the pension and the applicant had not been afforded an opportunity to represent against the proposed action. He also contended that the order dated 3.2.1988 was bad since the Disciplinary Authority did not discuss the evidence produced during the course of the inquiry as envisaged by the High Court judgement while quashing the order of dismissal. The learned counsel for the applicant further argued that the Memorandum dated 3rd July, 1986 treating the period between the date of dismissal from which date the applicant was subsequently reinstated and the date of retirement as non-duty and restricting the pay to 50% was bad since the order of dismissal had been quashed and the applicant immediately after the judgement of the High Court quashing the dismissal order had reported for duty but he was not given any posting or order of reinstatement. Though there was no stay at any point of time, the respondents still did not implement the High Court judgement and reinstate the applicant. The applicant had moved CCP 75/1985 before the High Court of Delhi and the respondents had given an undertaking to implement the High Court judgement within

three months, but they did not do so. Subsequently at a very late stage after the retirement of the applicant, they issued an order dated 4.10.1985 reinstating him but also at the same time continuing the disciplinary proceedings against him under Rule 9 of the Pension Rules.

5. Learned counsel for the respondents Shri Mittal, refuting the contentions advanced on behalf of the applicant, stated that no notice was required to be given for continuation of the proceedings under Rule 9 of the Pension Rules. The disciplinary proceedings had been started while the applicant was still in service and the High Court having quashed only the dismissal order and not the disciplinary proceedings as such, the said proceedings were subsisting on the date of retirement and as such they were deemed to have continued as provided under Rule 9 of the Pension Rules. No notice was required to be given for continuation of the disciplinary proceedings. Such a notice, according to the learned counsel for the respondents is required to be given only where disciplinary proceedings have not been instituted or initiated while the delinquent official is still in service, and the proceedings are instituted after retirement. Even so, in the present case, the respondents had in their order dated 4.10.1985 informed the applicant that the disciplinary proceedings earlier instituted would be deemed to have been continued under Rule 9 of the Central Civil Services (Pension) Rules, 1972.

6. Counsel on both sides, in support of their respective contentions, relied on the rulings of the Supreme Court in

State of Uttar Pradesh v. Brahm Datt Sharma and Another (1987) 2 Supreme Court Cases 179) and the judgement of this Tribunal in R.B. Aggarwala v. Union of India & Ors. (A.T.R. 1987 (2) C.A.T. 434) to which both of us are parties.

7. It would be necessary to refer to the facts giving rise to the judgement of the Supreme Court in the case of State of Uttar Pradesh v. Brahm Datt Sharma and Another. The petitioner therein, who was an employee of the State of Uttar Pradesh was dismissed from service after a departmental inquiry. Having unsuccessfully challenged the validity of the order before the U.P. Public Service Tribunal, he challenged his dismissal before the High Court through a writ petition under Article 226 of the Constitution. A Single Judge of the Allahabad High Court set aside the order of the Tribunal and quashed the order of dismissal on the ground that he had not been afforded reasonable opportunity of defence. The petitioner had also retired from service during the pendency of this petition before the High Court. After attaining the age of superannuation, the disciplinary proceedings could not be taken against him. The State Government, however, issued a notice calling upon him to show cause as to why orders for forfeiture of his pension and gratuity be not issued in accordance with the Civil Service Regulations. He submitted a reply to the show cause notice and also filed an application before the High Court challenging the same. The learned Single Judge of the Allahabad High Court held that since the departmental

proceedings had already been quashed, it was not open to the State Government to issue show cause notice under the Civil Service Regulations on those very allegations which formed the basis of charges in the disciplinary proceedings. He accordingly quashed the show cause notice. The Supreme Court observed as follows: -

> "5. The question which falls for consideration is whether notice dated January 29, 1986 was invalid and liable to be quashed. The learned Single Judge of the High Court quashed the notice on the sole ground that the allegations specified in the show cause notice were the same which had been the subject matter of departmental inquiry resulting in the respondent's dismissal from service, and since dismissal order had been quashed in the writ petition, it was not open to the State Government to take proceedings for imposing any cut in the respondent's pension on the same set of charges. We do not agree with the view taken by the High Court. While quashing the order of dismissal the learned judge did not quash the proceedings or the charges instead; he had quashed dismissal order merely on the ground that the respondent was not afforded opportunity to show cause against the proposed punishment as the recommendation with regard to the quantum of punishment made by the inquiry officer had not been communicated to him. In fact while allowing the writ petition the learned Single Judge himself observed in his order dated August 10, 1984 that it would be open to the State Government to draw fresh proceedings if it was permissible to do so. The High Court did not enter into the validity of the

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charges or the findings recorded against the respondent during the inquiry held against him. After the decision of the writ petition, it was open to the State Government to have taken up proceedings against the respondent from the stage at which it was found to be vitiated. Had the respondent not retired from service on attaining the age of superannuation it was open to the State Government to pass order awarding punishment to him after issuing a fresh show cause notice and supplying to him a copy of the recommendation made by the inquiry officer. There was no legal bar against the State Government in following such a course of action. There were serious allegations of misconduct against the respondent which had been proceeded against him during inquiry; those charges remained alive even after quashing of the dismissal order and it was therefore open to the State Government to take action against the respondent in accordance with the rules. No disciplinary proceedings could be taken as the respondent had retired from service; the government therefore considered it appropriate to take action against him under Article 370 of Civil Service Regulations. The regulation vests power in the appointing authority to take action for imposing reduction in the pension, as the State Government is the appointing authority it was competent to issue show cause notice to the respondent. The notice specified various acts of omissions and commissions with a view to afford respondent opportunity to show that he had rendered throughout satisfactory service and that the allegations made against him did not justify any reduction

in the amount of pension. If disciplinary proceedings against an employee of the government are initiated in respect of misconduct committed by him and if he retires from service on attaining the age of superannuation, before the completion of the proceedings it is open to the State Government to direct deduction in his pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceedings or if the disciplinary proceedings are quashed it is not permissible to the State Government to direct reduction in the pension on the same allegations, but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established, which may have bearing on the question of rendering efficient and satisfactory service, it would be open to the government to take proceedings against the government servant in accordance with rules for the deduction of pension and gratuity. In this view the High Court committed error in holding that the show cause notice was vitiated."

The Supreme Court further observed:

"The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere

with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature. The High Court in our opinion ought not have interfered with the show cause notice."

(para 9)

The Supreme Court also observed:

"A plain reading of the regulation indicates that full pension is not awarded as a matter of course to a government servant on his retirement instead; it is awarded to him if his satisfactory service is approved. If the service of a government servant has not been thoroughly satisfactory the authority competent to sanction the pension is empowered to make such reduction in the amount of pension as it may think proper. Proviso to the regulation lays down that no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority. Though the Regulations do not expressly provide for affording opportunity to the government servant before order for the reduction in the pension is issued,

but the principles of natural justice ordain that opportunity of hearing must be afforded to the government servant before any order is passed. Article 311(2) is not attracted, nonetheless the government servant is entitled to opportunity of hearing as the order of reduction in pension affects his right to receive full pension."

8. We had occasion to examine Rule 9 of the Pension Rules and the requirements of law for issuing a show cause notice in the context of the Supreme Court judgment referred to above in the case of R.B. Aggarwala v. U.O.I. & others (ATR 1987 (2) CAT 434). Even at the cost of repetition, it would be advantageous to reproduce the following extract from para 3 of our judgement in the said case. Sub-rules (1) and (2) of Rule 9 which are relevant in this behalf read as under: -

"9(1) The President reserves to himself the right to withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

"Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

"Provided further that where a part of

pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem.

"(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

"Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President."

"In view of this Rule, it cannot be disputed that the Disciplinary Proceedings which had been instituted while the Government servant was in office could be continued even after his retirement. Of course, after the Government servant is allowed to retire no question of dismissing, removing or reducing him in rank would arise. If it is decided to continue the proceedings against him, that can be done only under sub-rule (1) of Rule 9 of the Pension Rules. Under that Rule, the President has the right to withhold or withdraw whole pension or a part thereof whether permanently or for a specified period if the pensioner is found guilty of "grave misconduct". If the

decision to continue the proceedings is taken, that rule enjoins such proceedings to be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had been in service. If the applicant had not retired from service, and had continued in service and disciplinary proceedings were to continue, neither Rule 14 of the Central Civil Service (Classification, Control & Appeal) Rules 1965 nor Article 311 of the Constitution required a second show cause notice to be issued before a penalty was imposed. As a logical corollary, when those proceedings are continued under sub-rule (2)(a) of Rule 9 of the Pension Rules against a pensioner, a second show cause notice proposing the quantum of cut in pension cannot be legally insisted upon. The applicant, who ably argued in person, placed strong reliance on the latest judgement of the Supreme Court in the State of U.P. v. Shri Brahm Datt Sharma (1). In that case their lordships, while dealing with a case of cut in pension which was governed by Civil Services Regulations observed "though the Regulations do not expressly provide for affording opportunity to the Government Servant before order for the reduction in the pension is issued, but the principles of natural justice ordain that opportunity of hearing must be afforded to the Government servant before any order is passed. Article 311 (2) is not attracted, nonetheless the Government servant is entitled to opportunity of hearing as the order of reduction in pension affects his right

to receive full pension". This observation made, has to be understood in the context of the facts which led to the filing of the Writ Petition in the Allahabad High Court. That was a case where the previous Disciplinary Proceedings imposing a penalty on the petitioner were quashed by the High Court with the following observations:

> "The petitioner will, however, be entitled to receive all the benefits which he would be entitled treating him as having been in service from the date of dismissal till the date of superannuation. The petitioner will also be entitled to receive the pensionary benefits which will be admissible to him if he continued in service till the date of superannuation. It will be open to the respondents to draw fresh proceedings if it is permissible to do so."

"In view of this order, after the petitioner had retired, a fresh notice was issued to show cause as to why his pension should not be cut. The allegations specified in the said notice which had formed the subject matter of the earlier Departmental Enquiry were quashed by the High Court. As the Disciplinary Proceedings had concluded against the petitioner and there were no proceedings against him, a fresh notice was therefore issued. When this notice was challenged before the High Court, that was allowed and the notice was quashed. The Supreme Court in that context observed that the notice should be issued before the pension is cut and the retired employee must be given an opportunity. The Supreme

Court was not dealing with a case where the Disciplinary Proceedings had continued after retirement as envisaged by sub-rule (2)(a) of Rule 9 of the Pension Rules. The Supreme Court did not hold that a fresh notice or a second notice should be issued calling upon the pensioner to show cause why the whole or part of his pension should not be cut if proceedings are to be continued under sub-rule (2)(a) of Rule 9 of the Pension Rules. When no second show cause notice is required to be issued under law in Disciplinary Proceedings initiated against a public servant before his retirement, in the absence of specific Rule that cannot be insisted upon merely because the proceedings are continued under the Pension Rules. Some of the judgements which related to the Disciplinary Proceedings initiated prior to the amendment of Article 311 were relied upon. But they would be of little help because they lay down that the proceedings would not be valid if a second show cause notice is not issued. Those rulings can have no bearing on the question now before us for the Disciplinary Proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules were initiated and continued under Rule 9(2) (a) of the Pension Rules after the amendment of the Article 311(2) and under Rules which do not require the second show cause notice to be issued in the Disciplinary Proceedings. We are, therefore, of the view that as a proposition of law, any failure to issue a show cause notice proposing a cut in pension or failure to give a fresh opportunity to such a pensioner to

submit his representation against the report of the Enquiry Officer or against the cut in pension does not vitiate the proceedings."

9. Even though holding that as a proposition of law, any failure to issue a show cause notice proposing a cut in pension does not vitiate the proceedings under Rule 9 of the Pension Rules, we had in the case of R.B. Aggarwala quashed the order directing a cut in the pension on the ground that the disciplinary authority having himself decided in that case to issue a show cause notice and call for a representation against the proposed cut was clearly in error in drawing an adverse inference when there was no proof to show that the show cause notice had in fact been served on the applicant in that case. We had observed:

> "When it is established that the notice itself was not served on the applicant, it must follow that if it had been served and a representation filed, the Respondents would have certainly taken that into consideration. We cannot presume as to what would have been the final order if the applicant's representation was filed and it was taken into account."

10. Since the case of R.B. Aggarwala was decided in the light of the facts and circumstances peculiar to that case and since a show cause notice had in fact been issued by the Disciplinary Authority proposing a cut in pension and inviting a representation thereon, it was not necessary for us to go into the question whether a show cause notice proposing to continue the proceedings for ordering a cut in the pension

was required to be issued on principles of natural justice. It may be noticed that in Brahma Datt Sharma's case a notice was held to be necessary on principles of natural justice. Nor is it necessary to go into the said question keeping in view the facts of the present case for giving a decision on the reliefs claimed, since this is a case where disciplinary proceedings were not initiated after retirement but had been instituted while the petitioner was still in service. The High Court, vide its judgement dated 24.9.1984 had quashed the dismissal order and not the disciplinary proceedings as such. In fact, the High Court had given liberty to the Respondents to pass a fresh order. Therefore, the disciplinary proceedings had neither been quashed by the High Court nor were they dropped by the disciplinary authority before the applicant retired from service. Therefore, in view of the provision of Rule 9(2) of the Pension Rules, the departmental proceedings in the present case were rightly deemed to be continued after retirement and the respondents in their order dated 4th October, 1985 had also made the position clear in the concluding sub-para (iii) which reads as follows: -

> "that disciplinary proceeding initiated against Dr. Adyalkar under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 when he was in service and which remained inconclusive till his date of superannuation on 30.6.1985 because of High Court's order dated 24.9.1984 shall be deemed to be proceedings continued under Rule 9 of the Central Civil Services (Pension) Rules, 1972."

A copy of this order was duly endorsed to the applicant and he could make a representation against it. Therefore, the contention of the learned counsel for the applicant that the principle of natural justice was violated and another show cause notice was required to be given before continuation of the proceedings which had been instituted earlier while the applicant was in service, cannot be sustained and is accordingly rejected.

11. The next question which arises for our consideration is whether before passing the impugned order dated 3.2.1988 withholding pension and gratuity of the applicant, another show cause notice was required to be issued as contended by the learned counsel for the applicant relying on the observations of the Supreme Court in the case of State of U.P. v. Brahm Datt Sharma. The legal position has been made clear in our judgement in the case of R.B. Aggarwala Vs. U.O.I. & others as stated above. However, the impugned order dated 3.2.1988 suffers from the vice of having been passed without a copy of the Inquiry Report having been furnished to the applicant before passing of the said order.

12. A Full Bench of this Tribunal in Shri Premnath K. Sharma v. Union of India and others (1988) 6 Administrative Tribunals Cases 904) to which one of us (Mr. Justice K. Madhava Reddy) was a party held as follows: -

> "While we agree that the Disciplinary Authority need not furnish the reasons or grounds on which he proposes to disagree with the Enquiry Officer, we

are clearly of the view that it would not merely be a violative of principles of natural justice but also denial of reasonable opportunity to the charged officer, envisaged by Article 311(2) itself if the report itself is not supplied to him and he is not given an opportunity to make a representation against the report for the Disciplinary Authority is required to take that report into consideration in coming to the conclusion on the charges. The distinction between giving a show cause notice in regard to the proposed punishment and giving a reasonable opportunity to the charged officer in the enquiry, by furnishing the report cannot be lost sight of. We are, therefore, unable to agree with the said view. The enquiry does not terminate until all the material is placed before the Disciplinary Authority after the charged officer is given an opportunity to challenge that material (which includes the enquiry report) and the Disciplinary Authority reserves the matter for recording his findings on the charges and imposing the penalty he chooses.

"26. We may, in this context, refer to the judgment of the Supreme Court in Satyavir Singh v. Union of India (ATR 1986 SC 78: (1985) 4 SCC 252: 1986 SCC (L & S). Summarising the principles laid down in Tulsiram Patel case, Justice Madon speaking for the Court recorded under points 16 to 19 as under:

Clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice and the audi alteram partem rule by providing that a civil servant shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges. The nature of this inquiry has been elaborately set out by this Court in Khem Chand v. Union of India (1958 SCR 1080, 1095-97: AIR 1958 SC 300) and even after the Constitution (Forty-second Amendment) Act, 1976, the inquiry required by clause (2) of Article 311 would be the same except that it would not be necessary to give to a civil servant an opportunity to make a representation with respect to the penalty proposed to be imposed. (Emphasis supplied) As held in Suresh Koshy George v. University of Kerala (1969) 1 SCR 317, 326-7 : AIR 1969 SC 198) and Associated Cement Companies Ltd. v. T.C. Shrivastava (1984) 3 SCR 361, 369 : 1984 Supp SCC 87 : 1984 SCC (L & S) 488 : AIR 1984 SC 1227 :

.....apart from Article 311 prior to its amendment by the Constitution (Forty-second Amendment) Act, 1976, it is not necessary either under the ordinary law of the land or under industrial law to give a second opportunity to show cause against the penalty proposed to be imposed upon an employee. If an inquiry held against a civil servant under Article 311(2) is unfair

or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, the principles of natural justice would be violated; but in such a case the order of dismissal, removal or reduction in rank would be bad as contravening the express provisions of Article 311(2) and there is no scope for having recourse to Article 14 for the purpose of invalidating it.

"It would be seen from the above, the limited departure made by the Forty-second Amendment Act, 1976 is that no second show cause is necessary with respect to the penalty proposed to be imposed. But the obligation to afford a reasonable opportunity to defend himself and to observe the principles of natural justice by supplying all the material sought to be put against the charged officer which includes the enquiry report is not in any way whittled down. The denial of a copy of the enquiry report and an opportunity to make representation against it offends the principles of natural justice and violates the provisions of Article 311(2) itself.

"27. It was also argued that since the appellant has an opportunity to make the representation with regard to the report in the appeal, that amounts to affording a reasonable opportunity to him and constitutes sufficient compliance of the principles of natural justice. But in our view, what Article 311 (2) still envisages in a case where the second proviso thereto is not

attracted, is giving an opportunity during the course of the enquiry into the charges even though a second show cause notice is no longer required to be issued qua the penalty proposed to be imposed.

"28. For the aforesaid reasons, we hold that the findings of the Disciplinary Authority are bad in law because the applicant was not given a copy of the report of the Enquiry Officer and was not heard(given an opportunity of making his representation) before arriving at the finding."

13. Rule 9(2)(a) of the Pension Rules envisages that the disciplinary proceedings instituted while the Government servant was in service shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service; (emphasis supplied).

14. In view of the Full Bench judgement of this Tribunal referred to above which envisages furnishing a copy of the inquiry report to the delinquent official before the disciplinary authority passes an order and since Rule 9(2)(a) envisages that in case of proceedings for withholding pension, the proceedings shall be continued and concluded in the same manner as if the Government servant had continued in service, it becomes a requirement of law that a copy of the inquiry report should be furnished to the concerned official and his representation called for before the disciplinary authority passes an order withholding the pension.

15. Learned counsel for the respondents Shri Mittal vehemently argued that in this case a copy of the inquiry report had been furnished to the delinquent official at the

time when the disciplinary authority had passed the order of dismissal on 8th July, 1983 which was served on the applicant on 13th July, 1983 and the applicant having been supplied a copy of the Enquiry Report in July, 1983 had sufficient opportunity to make representation, if any, against it to the disciplinary authority which had passed the order withholding the pension only in February, 1988. We are afraid that this plea of the respondents cannot be sustained. A copy of the inquiry report given by the disciplinary authority in July, 1983 was for the purpose of preferring an appeal against the order of dismissal which was subsequently quashed by the High Court. It was in a different context and not in the context of action under Rule 9 of the Pension Rules. Judgement of the Full Bench in the case of Premnath K. Sharma v. Union of India lays down that not only a copy of the inquiry report should be furnished to the delinquent official, but he should be given an opportunity to make a representation, if any, against it before the disciplinary authority passes the order. Admittedly, even though a copy of the inquiry report might be in the possession of the applicant, no opportunity was given to him to make a representation against it before the impugned order dated 3.2.1988 was passed withholding the pension. Accordingly, the said order cannot be sustained and is liable to be set aside.

16. We also see no justification for the period between the date of reinstatement and retirement being treated as 'non-duty' and the pay of the applicant being restricted to 50%. The order of dismissal had been set aside by the High Court and there was no stay order against the same. In fact, the order quashing the dismissal was sustained when the LPA filed in the High Court and the SLP filed by the respondents in the Supreme Court were dismissed. As such, the applicant was entitled to be reinstated from

the date he was dismissed and the applicant had also reported for duty immediately after the order of dismissal was quashed. However, he was not taken on duty for no fault of his. The respondents ultimately did reinstate him from the date of his dismissal, but this order was passed only on 4th October, 1985 after his retirement. The order dated 3rd July, 1986 is purported to have been passed under Fundamental Rule 54-A after a show cause notice had been issued to the applicant and his representation had been duly considered. We feel that the said order suffers from the vice of arbitrariness inasmuch as the competent authority acted on the presumption that the applicant was guilty even before such a finding had been arrived at by the disciplinary authority after the proceedings were deemed to have continued under the Pension Rules. F.R. 54-A sub-rule (2)(i) envisages that "Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.."

17. It is true that the applicant had not been exonerated by the High Court on merits, but the respondents would have

been justified in passing the order under F.R. 54 A if the disciplinary proceedings had been closed and not continued after the retirement under Rule 9. There is a presumption of guilt where the exoneration is not on merits entitling the respondents to reduce the pay and allowances but where the disciplinary authority does not drop or close the proceedings and allows them to continue as provided under Rule 9 (2)(a) of the Pension Rules, such a presumption of guilt would be unwarranted before the disciplinary proceedings are concluded. Where the proceedings are continued under Rule 9 of the Pension Rules, passing of an order under F.R. 54-A before conclusion of the proceedings under Rule 9 would amount not only to double jeopardy but also be an indicative of a preconceived mind and a foregone conclusion having been arrived at even before the disciplinary authority had passed the order under Rule 9 of the Pension Rules after conclusion of the proceedings.

18. Normally an order under FR 54-A sub-rule 2(i) is passed after a Government servant is reinstated in service in compliance with the Court's order even though he is not exonerated on merits. It is a moot point whether such an order under FR 54A can be passed after conclusion of proceedings under Rule 9 of the Pension Rules since there is no reinstatement in service after the passing of an order under the said rules, the person having already retired from service. It is argued for the applicant that since he had been allowed to retire on attaining the age of superannuation he is entitled to full salary and allowances for the entire period. We would not like to go into this question at present; that question is left open.

19. In view of the above discussion, the impugned orders dated 3.7.1986 and 3.2.1988 are hereby quashed. The respondents shall, however, be at liberty to pass a fresh order under Rule 9 of the Central Civil Services (Pension) Rules, 1972 after furnishing a copy of the inquiry report to the applicant and giving him an opportunity for making a representation thereon, but in the meantime the applicant shall be paid provisional pension as admissible under the Rules.

20. There shall be no order as to costs.

(KAUSHAL KUMAR)
MEMBER(A)
14.9.88.

(K. MADHAVA REDDY)
CHAIRMAN.
14.9.88.