BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT BANGALORE.

DATED THIS THE TWENTY SEVENTH DAY OF MARCH, 1987.

Coram: Hon'ble Mr. Justice K.S. Puttuswamy, Vice-Chairman,
&
Hon'ble Mr. P. Srinivasan, Member (Admn.)

Application No. 1839 of 1986
(W.P. No. 4946 of 1983)

P.K. Shivanand,
S/o P.K. Raman,
aged 51 years,
Inspector of Excise,
r/o Shavanthi Compound,
Opp: Azad Industries,
Jappu,
Mangalore-2, D.K. ....Applicant.

(Shri T.V. Narayana Murthy, Advocate)

vs.

The Collector of Central Excise,
Queens Road,
Bangalore-1. ....Respondent.

(Shri M. Vasudeva Rao, Addl. Central Govt. Standing Counsel)

This application having come up for hearing on 20-2-1987, and having stood over for consideration till this day, the Hon'ble Vice-Chairman made the following:

JUDGMENT

In this transferred application received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act, 1985 ('the Act'), the applicant has challenged Order No. C.II/10A/12/77 A.3 dated 22.2.1983 (Annexure-B) of the Collector, Central Excise & Customs, Bangalore ('the Collector').

2. From 25.3.1974 to 1.7.1977, the applicant was working as Inspector of Central Excise, Kadur, Chickmagalur District ('Inspector'), inter-alia, administering the Gold Control Act of 1968 (45 of 1968) in the territorial area of his office. On 7.6.1977, the Superintendent of Police, Central Bureau of Investigation, Bangalore ('CBI') reported to the Collector that on 4.6.1977, the applicant had demanded and accepted a sum of Rs. 500/- as illegal gratification from one Shri Uttamchand, a partner of a partnership firm called 'Shah Pukraj Jain & Sons', Pawn Brokers of Lakavally for showing official favour. On this basis, the Assistant Collector (Headquarters) of the Office of the Collector ('AC') initiated disciplinary proceedings against the applicant under the Central Civil Services (Classification, Control & Appeal) Rules, 1965('the Rules'), and by his Memorandum No. C.II/10-A/12/77 A.3 dated 28.3.1978 framed an article of charge thereto and served the same on him on 3.4.1978 along with a statement of imputations, lists of documents and witnesses. The Article of charge framed by the AC against the applicant reads thus:

> " That Shri P.K. Shivananda while functioning as Inspector of Central Excise, Kadur, Chickmagalur District during the period from 23.5.74 to 1.7.77 failed to maintain absolute integrity and committed gross misconduct thereby unbecoming of a Government servant inasmuch as he demanded and accepted a sum of Rs. 500/- on 4.6.77 at about 10 A.M. as illegal gratification from Shri Uttamchand, one of the partners of the Shah Pukraj Jain and Sons, Pawn Broker of Lakavally at the Office-cum-residence of the Central Excise Inspector, Kadur, as a motive a reward for forbearing from taking up action against him in the Gold Control case registered by the Central Excise Inspector and thereby contravened Rule 3(1)(i) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

Since the applicant denied this charge, the AC appointed one Shri C.S. Shanmugasundaram working as an Assistant Collector, Central Excise, IDO, Belgaum, as the Inquiry Officer ('IO') to hold a regular inquiry under the Rules and submit his report.

3. In pursuance of the above order, the IO held a regular inquiry and submitted his report on 29.1.1980 to the AC holding that the charge against the applicant had not been proved and he was entitled for benefit of doubt. On an examination of the same and the evidence on record, the AC on 6.6.1980 disagreed with the findings of the IO and held the applicant guilty of the charge levelled against him and imposed on him the penalty of dismissal from service. Aggrieved by this order, the applicant filed an appeal under the Rules before the Collector, who by his order dated 15.11.1980 set aside the said order of the AC and remitted the same to the AC for a de-novo inquiry.

4. In compliance with the said order of the Collector, the AC by his order No. C.II/10A/12/77 A.3 dated 5.2.1981 appointed one Shri P.S. Kalve, an Assistant Collector of Customs (Preventive), Mangalore, as the IO to inquire into the charge earlier framed against him and submit his report. In conformity with this order, Shri Kalve held a fresh inquiry against the applicant and submitted his report on 25.6.1982 (Annexure-A) tothe AC expressing that the charge against the applicant had not been conclusively proved and he was entitled for benefit of doubt. On

receipt of this report and the records, the Collector examined as to who should decide the matter and on 11.12.1982 decided that he should do so, instead of the disciplinary authority ('DA'). On that view, the Collector examined Kalve's report and the records and by an order dated 22.2.1983 decided to disagree with the IO's report and impose a penalty against the applicant. In that order, the Collector disagreed with the findings of Shri Kalve and held that the applicant was guilty of the charge levelled against him and imposed the following penalty:

> " But having regard to the fact that the enquiry findings are on events that took place five years back and the affected officer had faced two enquiries, including a spell of dismissal between 4.6.80 and 20.11.80 and not withstanding his reinstatement had definitely suffered considerable mental strain, I am inclined to view that a minor penalty would meet the situation.
>
> I accordingly order withholding of his next increment, till he earns "good" report on his work and conduct. Such a report should cover a full period of 12 months from the date on which this order is communicated to him. This will not, however, affect his future increments after the punishment period, nor will it have cumulative effect."

On 8.3.1983, the applicant approached the High Court under Article 226 of the Constitution in Writ Petition No. 4946 of 1983, inter-alia, contending that the Collector, who was the appellate authority had himself exercised the original power and therefore he had no other alternative and efficacious remedy under the Rules, though in the very preamble of that order, the Collector

had stated that an appeal under the Rules would lie to the Chief Vigilance Officer, Central Board of Excise & Customs, New Delhi. On 20.4.1983, Ramajois, J. before whom the case was posted for preliminery hearing, directed the Standing Counsel for the Central Government to take notice for the respondent. Onthe enforcement of the Act, the said Writ petition has been transferred to this Tribunal without any further orders thereon except an order made on I.A. No.I - application to urge an additional ground and the same has now been registered as A. No. 1839 of 1986.

5. The applicant has challenged the order on a large number of grounds. In his reply filed, the respondent has supported his order.

6. Shri T.V.Narayana Murthy, learned counsel for the applicant, has urged that the Collector, before disagreeing with the finding of the IO and holding his client guilty of the charge levelled against him and then imposing the punishment, should have first disclosed the reasons or grounds on which he had proposed to reach that conclusion on the applicant, afforded him an opportunity to state his case in opposition to the same and then only decided the matter one way or the other as enjoined by the principle of audi alteram partem, a basic component of natural justice and in not doing so, he had acted illegally.

7. Shri M. Vasudeva Rao, learned Additional Central Government Standing Counsel, appearing for the respondent,

refuting the contention of Shri Murthy, has urged that on the terms of Article 311 of the Constitution as amended by the 42nd amendment and Rule 15 of the Rules, the applicant was not entitled for such an opportunity at all. In support of his contention, Shri Rao has strongly relied on the ruling of Jeevan Reddy, J. of Andhra Pradesh High Court in MAHENDRA KUMAR v. UNION OF INDIA AND ANOTHER (1983(3) SLR 319(AP).

8. The concept of natural justice criticised by some as vague and unruly, but referred to as 'ideal justice' by Roscoe Pound in his classic treatise on 'Jurisprudence' (Vol.II)Chapter-13) 'Justice according to Law' (page 359) or 'Fair Play in Action' by Lord Morris of Borth-y-Gest in WISEMAN v. BOREMAN (71 AC 297 at 309) has been evolved by Courts and that operates only in an area where the law is silent and not otherwise is well settled. We must, first, therefore, ascertain whether Article 311 of the Constitution as amended by the 42nd Amendment and the Rules exclude the application of the principle of audi alteram partem to the fact situation here.

9. The disciplinary proceedings had been initiated and completed after Article 311 of the Constitution was amended by the 42nd Amendment and this is not and cannot be disputed also.

10. Article 311 as originally enacted in the Constitution reads thus:

" (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.

Provided that this clause shall not apply---

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, tobe recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

This Article, among other, expressly provided for an opportunity against the proposed punishment or a second opportunity on punishment. Notes on Clause 44 of Bill No. 91 of 1976 placed before the Parliament to amend

Article 311 of the Constitution proposing to take away the second opportunity reads thus:

> "This clause seeks to amend article 311(2) denying the Government servant the opportunity to make a representation at the second stage of the inquiry against the penalty proposed to be imposed on him."

Section 44 of the 42nd Amendment effecting an amendment to

Article 311 reads thus:

> "In article 311 of the Constitution, in clause(2)---
>
> (a) the words "and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry" shall be omitted;
>
> (b) for the words "Provided that this clause shall not apply----", the following shall be substituted, namely:-
>
> "Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:
>
> Provided further that this clause shall not apply------"

Article 311 as amended by this provision reads thus:

> "(1) No person who is a member of a civil service of the Union or an all-India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
>
> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.
>
> Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry, and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:
>
> Provided further that this clause does not apply-----
>
> (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

> justice has undergone a great deal of change in recent years. In the past, it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter, a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years, many more subsidiary rules came to be added to the rules of natural justice. Till very recently, it was of the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative enquiries. Often times, it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more quasi-judicial enquiry. As observed by this Court in SURESH KOSHY GEORGE v. UNIVERSITY OF KERALA, Civil Appeal No. 990 of 1968, D/- 15-7-1968 = (AIR 1969 SC 198), the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

On the requirement of natural justice, Paul Jackson in his treatise 'Natural Justice' in Chapter I 'Introduction and History' had expressed thus:

" The two principles which, pre-eminently, are generally thought to be necessary to guarantee that the law, or any body of rules, is applied impartially and objectively - and hence justly - are that no man should be judged without a hearing and that every judge must be free from bias, or, as they are often cited in the form of latin tags, audi alteram partem and nemo judex in re sua. It is not possible to produce an exhaustive list of the rules of natural justice in this formal sense, or of the requirements of the rules, because the rules of natural justice are means to an end and not an end in themselves; Official Solicitor v. K. (1965) A.C.201. In the words of Tucker L.J.:

> "The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth" (RUSSELL v. DUKE OF NORFOLK (1949) All. E.R. 109, 113)."

The New South Wales Court of Appeal emphasised the flexibility of the phrase when it defined natural justice as 'the basic concepts of justice which in any particular day and age offend the sensibilities of the judges'; Ex. P. BROWN; Re TUNSTALL (1966) 1 N.S.W.R. 770, 775. The defendant, a man of nine stones, with one arm in plaster, was accused of assaulting three policemen, two of whom weighed 12 stones each, the third 20 stones. The Crown refused to produce certain documents, including statements made by the defendant to doctors, although he had been cross-examined on those statements by the prosecution. This refusal was held to a breach of natural justice. In an equally wide ranging approach Bagnall J. was prepared to equate the rules of natural justice with 'the settled practice of the court'; MAYES v. MAYES (1971) 1 W.L.R. 679, 680."

Wade, in his 'Administrative Law' (5th Edition), sums up this position very neatly in the Chapter 13 "Natural Justice and Legal Justice" in these inimitable words:

"Procedural Justice

By developing the principles of natural justice, the courts have devised a kind of code of fair administrative procedure. Just as they can control the substance of what public authorities do by means of the rules relating to reasonableness, improper purposes, and so forth, so through the principles of natural justice they can control the procedure by which they do it. It may seem less obvious that they are entitled to take this further step, thereby imposing a particular procedural technique on government departments and statutory authorities generally. Yet in doing so, they have provided doctrines which are an essential part of any system of administrative justice. Natural justice plays much the same part in British law as does 'due process of law' in the Constitution of the United States. In particular, it has a very wide general application inthe numerous areas of discretionary administrative power. For however wide the powers of the state and however extensive the discretion they confer, it is always possible to require them to be exercised in a manner that is procedurally fair.

Procedure is not a matter of secondary importance. As governmental powers continually grow more drastic, it is only by procedural fairness that they are rendered tolerable. The legislation which controls the use of land, for example, contains a large element of expropriation without compensation, which is for the most part accepted without public complaint. But if there is the least suggestion that a planning appeal has been handled unfairly, public complaint is loud and widespread. A judge of the United States Supreme Court has said:

> 'Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.' (SHAUGHNESSY v. UNITED STATES, 345 U.S. 206 (1953) (Jackson J.)

He went on to say that it might be preferable to live under Russian law applied by common-law procedures than under the common law enforced by Russian procedures. One of his colleagues said:

> 'The history of liberty has largely been the history of the observance of procedural safeguards.' (McNabb v. United States, 318 U.S. 332 (1943) (Frankfurther J.).

The work of British judges in devising procedural safeguards is the theme of this chapter, as also of the following chapter on remedies.

to anybody or even the cause of discipline also. On the other hand, adherence to the requirements of audi alteram partem by the DA which does not definitely contravene the mandate of Article 311 and the Rules, undoubtedly helps or advances the cause of justice only. We are also of the view that such a course, far from doing any injustice to anybody, will do positive justice to one and all.

19. When an opportunity is provided to a delinquent official and he files his written representations and then represents his case at the oral hearing, the authority which had earlier reached his prima facie, tentative or provisional conclusions, will be in a better position to appreciate his own earlier views and deal with everyone of the contentions urged before him by the delinquent official. Without any doubt, such a decision will be a more fair and just one than the one that is reached without that. Adherence to the principle of audi alteram partem will afford greater sanctity and authority to the ultimate decision reached by the DA also. Whether provisional conclusions should be confirmed or not is a matter for him to decide. But, before so deciding, we see no justification whatsoever for not complying with the audi alteram partem at all.

20. In HILES v. AMALGAMATED SOCIETY OF WOODWORKERS (1968 Ch. 440), the facts in brief were these:

One Hiles, a member and an officer of the defendant Labour Union had been acquitted of being in

breach of a union rule by a disciplinary committee of that union. A member of the committee who disagreed with the decision appealed to the executive committee which reversed the decision of the disciplinary authority without notice and affording an opportunity of hearing to Hiles. Hiles challenged the decision of the Executive Committee before the Chancery Division of the High Court of England inter-alia on the ground that the same contravened the principle of audi alteram partem. Stamp,J. in granting an interlocutory injunction to Hiles, which was later made a final order/decree, expressed thus:

> " If, on the other hand, I am wrong in thinking that Mr. Boulter's appeal was misconceived, not in accordance with the Rules and a nullity, then in my judgment the plaintiff makes out a prima facie case that the hearing of the appeal in the absence of the plaintiff was against natural justice.
>
> Reliance was placed on MACLEAN v. WORKERS' UNION (1929) 1 Ch. 602; 45 TLR, as authority for the view that if the rules are complied with, this court cannot interfere. As at present advised, and the matter will have, no doubt, to be further ventilated and considered at the trial, I make the view that where natural justice has been involved, MACLEAN v. WORKERS' UNION has no application. The paragraphs in the judgment of Maugham,J. where he quotes from the Court of Appeal in LEESON v. GENERAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION (1889) 43 Ch.D.366; 35 T.L.R. 385, C.A., I think supports this view. There is in this case, in fact, nothing in the rules to preclude the executive council from giving anyone they think fit an opportunityof being heard on an appeal, and if Mr. Boulter's appeal was in accordance with the rules, then justice required that the plaintiff, the person whose livelihood and membership of the union was at risk, should have been called to attend before it."

We are of the view that these principles correctly express the legal position and we are in respectful agreement with the same.

21. In MAHENDRA KUMAR v. UNION OF INDIA (1983(3) SLR A.P. page 319), on a similar fact situation as in the present case that had arisen under the Rules, a similar contention was urged before Jeevan Reddy, J. On noticing Rules 15(2) and 4 of the Rules and Article 311 (2) of the Constitution as amended by the 42nd Amendment, His Lordship rejected the same in these words:

> "5. It is thus clear that, after the 42nd amendment to the Constitution, the opportunity to show cause against the proposed penalty has been taken away. Formerly, it was obligatory upon the disciplinary authority to hear the accused-officer on the question of penalty also; but that is no longer necessary now. The CCS (CCA) Rules have also been amended to bring them in accord with the amended clause (2) of Art.311. The complaint of the petitioner has to be understood in the context of this legal position. After receipt of the enquiry report, the disciplinary authority did not issue any notice to the petitioner enclosing the report of the Enquiry Officer, calling upon the petitioner to make his representation against the penalty proposed. What happened inthis case was that, after receipt of the Enquiry Officer's report the disciplinary authority perused the enquiry report and, for the reasons recorded by him, disagreed with the Enquiry Officer's findings, and imposed the penalty of dismissal and ~~imposed the penalty of~~ communicated the same to the petitioner. In the state of the law aforesaid, it cannot be said that there has been a violation of any constitutional guarantee in this case, or that any of the Rules have been violated. In view of the 42nd Amendment, whichhave been left untouched even by the 44th Amendment, it is not possible for this Court to say that, notwithstanding the constitutional provision or the rule position, it was obligatory upon the disciplinary authority to apprise the accused officer of the grounds upon which he was disagreeing with the findings of the Enquiry Officer and that, the failure to give such an opportunity renders his order bad. It is not disputed in this case that the enquiry commenced in this case after the 42nd Amendment, as well as after the Amendment of Rule 15(4). For the above reasons, the second contention urged by Mr. Waghray is also rejected."

the findings of the Inquiry Officer in their entirety, the audi alteram partem principle remains unaffected. If the disciplinary authority absolves the delinquent Government servant of the offence he was charged with, disagreeing with the Inquiry Officer in this regard, the Government servant concerned will have no grievance.

4. The problem arises onlyif the finding of the Inquiry Officer is in favour of the delinquent and the disciplinary authority still holds him guilty and visits punishment on him. The decision of the disciplinary authority in such a case is given without hearing the delinquent and therefore offends the principle of audi alteram partem. In such a case, the disciplinary authority reappraises the evidence and comes to a conclusion different from that reached by the Inquiry Officer; in effect, he acts as an appellate authority. The ruling in RAMCHANDRA v. UNION OF INDIA (AIR 1986 SC 1173) would squarely apply to such a case. Now, the rules do not say anywhere whether the disciplinary authority differing from the Inquiry Officer and holding the Government servant guilty, should or should not hear the delinquent Government servant again. If there is no provision for hearing the delinquent Government servant, there is also no provision specifically or by necessary implication, preventing him from doing so. Thus, there is no statutory exclusion of the principles of natural justice. On the other hand, as pointed out in J.N. SINHA's case, there is a presumption

The first reason given by His Lordship is that Article 311(2) dispensing with the requirement of giving an opportunity on the proposed punishment, was relevant to decide the question. We have earlier seen that to decide the question the approach must be whether Article 311 and the Rules made had expressly denied the requirement of audi alteram partem before the disciplinary authority disagrees with the findings of the IO who had held in favour of the delinquent official. The second reason given by His Lordship is that after the amendment of Article 311 by the 42nd Amendment, the requirements of the principle of audi alteram partem before disagreeing with the findings of the IO have been dispensed with. With great respect to His Lordship, both the conclusions reached do not flow from the language of Article 311 or the Rules and are not sound. In reaching his conclusions, His Lordship had also not noticed the true requirements of natural justice and its development noticed by us earlier. For all these reasons, with great respect, we regret our inability to subscribe to the views expressed by Jeevan Reddy, J. in MAHENDRA KUMAR's case.

22. On facts, there is no dispute that the DA did not afford an opportunity of hearing to the applicant. If that was so, then we have necessarily to hold that the order made by the DA was in contravention of the principles of audi alteram partem and illegal.

23. As to how the matter should now be regulated is the next question that calls for our examination.

24. We have noticed that the DA had recorded his reasons for disagreement and had faithfully conveyed them in the impugned order to the applicant. We must, therefore, treat them as provisional and permit the applicant to make his representations and appear before the DA on a date to be fixed by him.

25. After all, the applicant who has challenged the order, to which exception is taken by us and remitted to the DA for fresh disposal, cannot be placed in a worse position than he is now placed on the punishment already imposed on him by the DA. We are, therefore, of the view that even if the DA were to hold that what had been earlier expressed by him was correct and the grounds to be urged by the applicant were all unmerited, in such an event also, the DA should not be allowed to impose a higher penalty than the one he had already imposed in the impugned order.

26. In the light of our above discussion, we make the following orders and directions:

(1) We quash the order No. C.II/10A/12/77 A.3 dated 22.2.1983 (Annexure-B) of the Collector.

(2) We declare that the impugned order made by the Collector was a provisional one in which he had given notice of the reasons on which

he proposed to disagree with the IO, and hold ~~that~~ the applicant guilty of the charge levelled against him and that it was open to the applicant to file his written representation and objections to the same before the Collector within one month from this day.

(3) We direct the Collector to consider the written representations, if any, to be filed by the applicant within the time permitted by us, then afford an opportunity of oral hearing on such date as he may find it convenient thereafter and then decide the matter afresh. But, in so doing, he shall not award a higher penalty than the one he had awarded in the impugned order against the applicant.

27. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs.

28. Let this order be communicated to the parties within a week from this day.

(VICE CHAIRMAN) 27/3/1982

(Per Hon'ble Mr. P. Srinivasan, Member(JM))

I am entirely in agreement with the view taken by His Lordship, the Vice-Chairman, that the disciplinary

authority should have given an opportunity of being heard to the applicant before he reversed the finding of not guilty returned by the Inquiry Officer. However, since this issue has come before us for the first time, and is not res integra, I would like to add a few observations.

2. In UNION OF INDIA v. COL. J.N. SINHA (AIR 1971 SC 40), their Lordships of the Supreme Court had occasion to consider the applicability of the principles of natural justice to the facts of the case before them. In doing so, the Court set out both the amplitude of operation of these principles as well as the limits to their application. We may here extract the relevant paragraph in the Judgment to advantage:

> "Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in KRAIPAK AND ORS. v. UNION OF INDIA, 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law but supplement it.' It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice, then the court cannot ignore the mandate of the legislature or the statutory authority

> and read into the concerned provision, the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purposes for which it is conferred and the effect of the exercise of that power." (Para 7 of the Judgment).

Two propositions emerge from the observations extracted above:

(1) If a statutory provision specifically or by necessary implication excludes the application of any or all of the principles of natural justice, the court cannot read those principles into the concerned provision. This indicates the limits to the application of the said principles.

(2) Where there is no statutory exclusion as above, it must be presumed that the legislature and the authorities intend to act in accordance with the principles of natural justice.

3. The CCS (CCA) Rules provide for the appointment of an Inquiry Officer by the disciplinary authority. The Inquiry Officer hears the parties and records his finding about the guilt or otherwise of the delinquent Government servant. He, therefore, strictly functions according to the principle of audi alteram partem. The penalty is, however, imposable by the disciplinary authority only. If the disciplinary authority accepts

> Lawyers are a procedurally minded race, and it is natural that administrators should be tempted to regard procedural restrictions, invented by lawyers, as an obstacle to efficiency. It is true that the rules of natural justice restrict the freedom of administrative action and that their observance costs a certain amount of time and money. But time and moeny are likely to be well spent if they reduce friction in the machinery of government; and it is because they are essentially rules for upholding fairness and so reducing grievances that the rules of natural justice can be said to promote efficiency rather than impede it. Provided that the courts do not let them run rot, and keep them in touch with the standards, which good administration demands in any case, they should be regarded as a protection not only to citizens but also to officials. A decision which is made without bias, will not only be more acceptable: it will also be of better quality. Justice and efficiency go hand in hand, so long at least as the law does not impose excessive refinements."

In Chapter III, 'The Right to be heard', Paul Jackson had expressed thus:

> "Although it has been said that 'in the quest for justice under the Rule of Law, there has been no more spontaneously acceptable idea than the principle embodied inthe maxim audi alteram partem', it is no more settled what this right entails than where it applies."

Bearing these principles, we must now examine the precise question.

15. When an IO after holding a regular inquiry submits his report to the DA exonerating the civil servant, there is nothing strange if he expects that the same would be accepted by the DA and a consequential order will be made in his favour thereto. Likewise, there is nothing strange if the DA disagrees

with the IO and holds otherwise also. But, before doing that, the short question is only on the modality or the procedure to be followed which ensures obedience to law, justice and fair play to one and all.

16. We consider it profitable to examine as to how the situation is dealt in the Civil Procedure Code and Criminal Procedure Code first.

17. In cases regulated by C.P.C. or Cr.P.C., the successful party has a right to be heard before a judgment/order in his favour is reversed by the superior Court in an appeal or revision as the case may be. We need hardly say that that is only a recognition of the principle of audi alteram partem. We also recognise that the elaborate rules of procedure, provided in the C.P.C. or Cr.P.C. on these aspects are not applicable to departmental proceedings governed by Article 311, the Rules and the principles of natural justice.

18. We must first ascertain whether the DA in disclosing the reasons and grounds on which he proposes to differ from the IO and affording an opportunity of hearing on them and then deciding the matter objectively does any illegality or injustice to Government, cause of discipline and the delinquent official. We are firmly of the view that adopting the above course or adhering to audi alteram partem, the authority commits no illegality and does not occasion any injustice

that the legislature and the statutory authorities intend to act in accordance with the principles of natural justice. Translated into concrete terms, the presumption is that the disciplinary authority before coming to a conclusion adverse to the delinquent Government servant, over-ruling the findings of the Inquiry Officer, has, in his turn, to act in accordance with the principles of natural justice,i.e., hearing the delinquent Government servant before holding him guilty. This presumption gains further strength in the present case, when two separate Inquiry Officers found in favour of the applicant, and yet the disciplinary authority held him guilty and imposed a penalty. For these reasons, I respectfully concur with the main judgment delivered by the Hon'ble Vice-Chairman.

MEMBER (A) 27/3/87

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