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Act which applied to the dispute which arose between the appellants and the respondent read together with the relevant provisions in regard to the procedure, penalties, etc., contained in the 1948 Act did give jurisdiction to the Revenue Officer to entertain the dispute between the parties. This contention of the respondent also therefore fails.

We are therefore, of opinion that the judgment of the High Court was clearly wrong and is liable to be set aside.

We accordingly allow the appeal, set aside the order made by the High Court, and restore the orders passed by the Revenue Officer in the O.T.P. Act Cases Nos. 21 to 25 of 1952, 26 to 28 of 1952, 29 to 32 of 1952 and 33 to 41 to 1952. The respondent will pay the appellants' costs of this appeal as also of the writ petition in the High Court. The State of Orissa will, of course, bear and pay its own costs.

Appeal allowed.

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(S. R. DAS C. J., VENKATARAMA AIYAR, S. K. DAS, A. K. SARKAR and VIVIAN BOSE JJ.)

Constitution, Interpretation of—'Reasonable opportunity of showing cause', Meaning of—Punishment of dismissal on Government Servant—Constitutional Protection—Procedure—Constitution of India, Art. 311(2).

'Reasonable opportunity to show cause' in Art. 311(2) of the Constitution contemplates not merely the opportunity to do so at the enquiry stage but also when the competent authority, as a result of the enquiry, proposes to inflict one of the three punishments mentioned in the Article on the delinquent servant. Such reasonable opportunity must, therefore, include,—

(1) opportunity to deny his guilt and establish his innocence, which means that he must be told what the charges

against him are and the allegations on which such charges are based;

(2) opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf and,

(3) opportunity to show that the proposed punishment would not be the proper punishment to inflict, which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him.

High Commissioner for India v. *I.M. Lall*, L.R. (1948) 75 I.A. 225, explained and relied on.

Secretary of State for India v. *I.M. Lall*, (1945) F.C.R. 103, not followed.

Parshotam Lal Dhingra v. *The Union of India*, Civil Appeal No. 65 of 1957, decided on November 1, 1957, and *R. Venkata Rao* v. *Secretary of State for India*, L.R. (1936) 64 I.A. 5, referred to.

The procedure followed in such cases must, therefore, include the giving of two notices to the servant, one at the enquiry stage and the other when the competent authority, as a result of the enquiry, tentatively determines to inflict a particular punishment on him.

Consequently, in a case where the Government Servant sought to be proceeded against for misconduct was served with a charge-sheet and appeared before two officers conducting the enquiry, one after the other, but no notice was served upon him when the competent authority accepted the report and confirmed the opinion that the punishment of dismissal should be inflicted on him, and no cause could, therefore, be shown by him, the provision of Art. 311(2) had not been fully complied with and the order of dismissal passed against him must be declared void and inoperative.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 353 of 1957.

Appeal by special leave from the judgment and decree dated November 1, 1955, of the Punjab High Court (Circuit Bench) at Delhi in Regular Second Appeal No. 28-D of 1955, arising out of the judgment and decree dated December 31, 1954, of the Court of the Senior Subordinate Judge at Delhi in Regular Civil Appeal No. 685 of 1954, affirming the judgment and decree of Subordinate Judge Third Class Delhi in Suit No. 273/213 of 1953.

Janardhan Sharma, for the appellant.

C. K. Daphtary, Solicitor-General of India, R. Ganapathy Iyer and *R. H. Dhebar*, for the respondents.

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1957. December 13. The following Judgment of the Court was delivered by

DAS C. J.—This appeal by special leave granted by this Court to the plaintiff-appellant is directed against the judgment and decree passed on November 1, 1955, by a single Judge of the Punjab High Court sitting in the Circuit Bench at Delhi in regular second appeal No. 28-D of 1955.

The facts leading up to the present appeal are shortly as follows: On April 6, 1943, the appellant was appointed a sub-inspector under the Delhi Audit Fund. In February 1947, he was transferred to the Co-operative Societies Department and posted as sub-inspector in the Milk Scheme. On July 3, 1947, the appellant was confirmed by the then Deputy Commissioner of Delhi who was also the ex-officio Registrar of Co-operative Societies. On August 1, 1948, the appellant was transferred to the Rehabilitation Department of the Co-operative Societies and posted as sub-inspector. On July 1, 1949, the appellant was suspended by the then Deputy Commissioner, Delhi. On July 9, 1949, the appellant was served with a charge sheet under r. 6(1) of the Rules which had been framed by the Chief Commissioner, Delhi to provide for the appointment to the subordinate services under his administrative control and the discipline and rights of appeal of members of those services. After formulating eight several charges the document concluded as follows: "You are, therefore, called upon to show cause why you should not be dismissed from the service. You should also state in your reply whether you wish to be heard in person or whether you will produce defence. The reply should reach the Asst. Registrar, Co-operative Societies, Delhi, within ten days from the receipt of this charge sheet". The charge sheet was signed by Shri Rameshwar Dayal who was at that time the Deputy Commissioner of Delhi and was admittedly the authority competent to dismiss the appellant.

The appellant duly submitted his explanation in writing. One Shri Mahipal Singh, Inspector, Co-operative Societies

was appointed by the Deputy Commissioner, Delhi the officer to hold the enquiry. The appellant attended two sittings before the Enquiry Officer and then applied to the Deputy Commissioner to entrust the enquiry to some Gazetted Officer under him. This request of the appellant was rejected and he was informed accordingly. Indeed, the appellant was warned that the Enquiry Officer had been authorised to proceed with the enquiry *ex parte* if the appellant failed to attend the enquiry. The appellant, however, did not, after October 20, 1949, attend any further sittings before the Enquiry Officer. The Enquiry Officer thereupon framed four additional charges against the appellant, namely, (1) for his refusal to attend the enquiry, (2) for his refusal to accept the service of the order of the Enquiry Officer, (3) for his absence without permission and (4) for his misconduct in snatching away papers from one Mohd. Ishaq and using unparliamentary and threatening language.

It appears that at or about this time the appellant became involved in a criminal case on a charge under s. 307 of the Indian Penal Code and on October 30, 1949, he was actually arrested but was released on bail two or three days later. Eventually on May 20, 1950, the appellant was discharged from the criminal charge.

On November 14, 1951, the appellant was served with a notice signed by one Shri Vasudev Taneja, Superintendent. The notice was in the following terms: "Please note that you are to appear before Shri J. B. Tandon, I.A.S., Additional District Magistrate, on the 24th November, 1951, at 10-30 a.m., in his court room in connection with the departmental enquiry pending against you". The language employed in the notice does lend some support to the contention that the Enquiry Officer, Shri Mahipal Singh, had not concluded the enquiry entrusted to him and that the departmental enquiry was still pending.

Pursuant to the notice the appellant appeared before Shri J. B. Tandon and urged two points, namely, (1) that the

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enquiry of the charges framed against him ought to have been held by a Gazetted Officer of the District Court and (2) that the enquiry should have been held in his presence. It will be noticed that both the points related to the enquiry before Shri Mahipal Singh. On December 13, 1951, Shri J. B. Tandon made a report. After reciting the charge sheet containing the notice calling upon the appellant to show cause why he should not be dismissed from service and setting out the charges contained in the notice and summarising the explanation submitted by the appellant with regard to each of the charges and reciting the prayer of the appellant that the Enquiry Officer should be changed and the rejection thereof and the framing of additional charges and the appellant's absence from the enquiry with effect from October 20, 1949, the report proceeded to set out the actual charges which Shri Mahipal Singh was appointed to enquire into. The report then stated that the enquiry with regard to the first two charges had been held in the presence of the appellant and the rest were enquired into *ex parte* as the appellant had absented himself from the enquiry. Then the report recited that twelve charges had been proved against the appellant and he was given the benefit of doubt in respect of charge No. (iii) and that no charge sheet had been given with regard to charges Nos. (xiii) and (xiv) and that no enquiry had been held on those charges. Out of the twelve charges said to have been proved against the appellant, Shri J. B. Tandon found that no charge had been actually framed in one case and, therefore, he reduced the number of proud charges to eleven and proceeded to base his recommendation on them. After stating that the charges of embezzlement, acceptance of illegal gratification and borrowing of money from societies were so serious that even one of them alone was sufficient to demand the appellant's dismissal and that the entries made in his character roll disclosed that his work and conduct had not been satisfactory and explaining that the enquiry had been held up by reason of the appellant having been challaned under s. 307, Indian Penal Code, Shri J. B. Tan-

don, in his report, formulated the following points for consideration: namely, (1) what penalty should be imposed on Shri Khem Chand for the eleven charges proved against him? (2) Whether his gun licence should be cancelled and (3) whether the dues of societies, which had been proved, might be realised out of the security deposit furnished by him? Then, after stating that a personal hearing was given to the appellant who raised the two points mentioned above and holding that there was no substance in either of them, paragraph 16 of the report ran as follows:

"The charges of embezzlement, acceptance of illegal gratification, making wrong statement, misbehaviour at the time of enquiry and refusal to receive orders to attend enquiry which had been proved against him are so serious that, I am sorry, I cannot suggest lesser punishment than dismissal from service and he may be dismissed."

The report also recommended that the appellant's gun licence be cancelled and that he be directed to surrender his licence and deposit the gun in the district Malkhana and that the money, which had been proved to have been taken by the appellant from various societies, might also be recovered from the security deposit furnished by him. There is no positive and definite statement in Shri J. B. Tandon's report that Shri Mahipal Singh had concluded the enquiry or submitted a formal report. The general tenor of Shri J. B. Tandon's report, however suggests that Shri Mahipal Singh did arrive at definite findings on twelve charges. The appellant's grievance is that he was not given a copy of the report of Shri Mahipal Singh, if any had been made, and no such report has been exhibited in this case.

At the foot of Shri J. B. Tandon's report the following endorsement appears over the signature of the Deputy Commissioner, Delhi under date December 14, 1951: "The report is approved. Action accordingly." Thereupon on December 17, 1951, a formal order was issued over the signature of the Deputy Commissioner, Delhi. It was in the following terms:—

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"I, the undersigned, do hereby dismiss Shri Khem Chand, sub-inspector, Co-operative Societies Delhi, from the Government Service with effect from the date of this order. He has been found guilty of the charges of embezzlement, acceptance of illegal gratification, making wrong statement, misbehaviour at the time of the enquiry and refusal to receive order to attend the enquiry. I further order that money which has been proved to have been taken by Shri Khem Chand from various societies be recovered from the security deposit furnished by him."

On March 15, 1952, the appellant appealed to the Chief Commissioner, but his appeal was dismissed on December 8, 1952. Thereafter the appellant served a notice of suit on the respondents under s. 80 of the Code of Civil Procedure and on May 21, 1953, filed civil suit No. 213 of 1953 complaining, *inter alia,* that Art. 311(2) had not been complied with. The suit was decreed by the subordinate judge, Delhi on May 31, 1954, declaring that the plaintiff's dismissal was void and inoperative and that the plaintiff continued to be in the service of the State of Delhi at the date of the institution of the suit and awarding costs to the plaintiff. The Union of India preferred an appeal against the judgment of the subordinate judge, Delhi but the appeal was dismissed by the senior subordinate judge, Delhi on December 21, 1954, and the decree of the trial court was confirmed. A second appeal was taken by the defendants to the Punjab High Court. By his judgment dated November 1, 1955, the Single Judge held that there had been a substantial compliance with the provisions of Art. 311 and accordingly accepted the appeal, set aside the decree of the courts below and dismissed the plaintiff's suit. On September 6, 1956, the plaintiff obtained special leave from this Court and has preferred this appeal against the order of the learned Single Judge. The appellant has also been allowed to prosecute the appeal in *forma pauperis.*

In the courts below a point was raised as to whether the appellant was a member of any of the services referred

to in Art. 311. But it was conceded before the High Court and has also been admitted before us that the appellant was such a member and consequently that point does not arise. The only point that has been canvassed before us, as it had been before the High Court, is: Was the appellant given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him?

There is no dispute that the appellant was served with a charge sheet on July 9, 1949, as required by r. 6 of the Rules which had been framed by the Chief Commissioner, Delhi and which governed the appellant's conditions of service. It is also conceded that the appellant actually appeared at two hearings before the Enquiry Officer, Shri Mahipal Singh, but that subsequently he wanted a transfer of the enquiry to some other officer and that that the prayer having been refused he did not take any further part in the enquiry before that officer. There is no grievance that no opportunity had been given to him to defend himself against the charges levelled against him in that enquiry. It is also an admitted fact that some time after the appellant was discharged from the criminal case, he received a notice on November 14, 1951, requiring him to appear before Shri J. B. Tandon on November 25, 1951 in connection with the pending enquiry. The appellant did appear on the appointed day, had been given a personal hearing and in fact raised two several objections against the enquiry held by Shri Mahipal Singh. His only grievance is that, after Shri J. B. Tandon had made his report on December 13, 1951, recommending the dismissal of the appellant and the Deputy Commissioner had on the very next day approved of the report and proposed to take action accordingly, the appellant was not given an opportunity to show cause against the action so proposed to be taken in regard to him, as he was entitled to under Art. 311 of the Constitution.

In order to appreciate the arguments advanced by learned counsel for the parties, it is necessary at this stage to set out the provisions of the Constitution bearing on them. The relevant portions of Arts. 310 and 311 of the Constitution,

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which substantially reproduce sub-ss. (1), (2) and (3) of s. 240 of the Government of India Act, 1935, are as follow:—

"310(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) .....

311(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 reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided .....

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be shall be final."

The answer to the question canvassed before us depends on a true construction of the aforesaid provisions and in particular on the view we take as to the meaning, scope and ambit of Art. 311(2). In *Parshotam Lal Dhingra's case*(1) it was said that the word "removed" was not in s. 240(3) but had been introduced in Art. 311(2). It may be mentioned that although the word "removed" was not actually used in s. 240(3), the reference to dismissal, according to s. 277, included a reference to removal.

(1) Civil Appeal, No. 65 of 1957, decided on November 1, 1957.

Article 310(1) no doubt provides that every person falling within it holds office during the pleasure of the President or the Governor, as the case may be. The language of both cls. (1) and (2) of Art. 311 are prohibitory in form and was held by the Judicial Committee in *High Commissioner for India* v. *I. M. Lal*(1) to be inconsistent with their being merely permissive and consequently those provisions have to be read as qualifications or provisos to Art. 310(1) as has been held by the Judicial Committee in that case and recently by this Court in *Parshotam Lal Dhingra* v. *The Union of India*(2) in a judgment pronounced on November 1, 1957. The limitations thus imposed on the exercise of the pleasure of the President or the Governor in the matter of the dismissal, removal or reduction in rank of government servants constitute the measure of the constitutional protection afforded to the government servants by Art. 311(2).

Clause (1) of Art. 311 is quite explicit and protects government servants of the kinds referred to therein by providing that they cannot be dismissed, or removed or reduced in rank by a lesser authority than that which appointed them. Like-wise cl. (2) protects government servants against being dismissed, removed or reduced in rank without being given a reasonable opportunity to show cause against the action proposed to be taken in regard to them. As has been explained by this Court in *Parshotam Lal Dhingra's case*(2), the expressions 'dismissed,' 'removed' and 'reduced in rank' are technical words taken from the service rules where they are used to denote the three major categories of punishments.

In exercise of powers conferred by s. 96-B(2) of the Government of India Act, 1915, the Secretary of State in Council framed Civil Service (Governors Provinces Classification) Rules. Rules (x) and (xiii) of those rules provided that local government might, for good and sufficient reasons, inflict the several punishments therein mentioned on persons therein indicated. Rule (xiv) prescribed the procedure for all cases in which dismissal, removal or reduction in rank of any offi-

(1) L.R. (1948) 75 I.A. 225 at p. 241.
(2) Civil Appeal No. 65 of 1957, decided on November 1, 1957.

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cer, was intended to be ordered. These rules were reproduced with some modifications in the Civil Services (Classification, Control and Appeal) Rules which were, on May 27, 1930, promulgated by the Secretary of State in Council in exercise of the same powers under s. 96-B of the Government of India Act, 1915. Rule 49 of those rules specified seven different kinds of punishments which could, for good and sufficient reasons, be imposed upon the members of the services therein specified. Rule 55 reproduced old r. (xiv) with greater details. It provided:

"Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal court or by a Court Martial) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of my other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heared in person. If he so desires, or if the authority concerned so direct, an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof. This rule shall not apply where the person

concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived, where there is a difficulty in observing exactly the requirements of the rule and those requirements can be waived without injustice to the person charged."

Similar rules were framed and are to be found in the Indian Railway Establishment Code which governs the railway servants. Rule 6 of the Rules framed by the Chief Commissioner, Delhi, referred to above, is more or less on the same lines.

In *R. Venkata Rao* v. *Secretary of State for India*(1) it was held, with reference to the rules made under s. 96-B of the Government of India Act, 1915, that while that section assured that the tenure of office, though at pleasure, would not be subject to capricious and arbitrary action, but would be regulated by the rules, it gave no right to the appellant, enforceable by action, to hold his office in accordance with those rules. It was held that s. 96-B and the rules made thereunder only made provisions for the redress of grievances by administrative process. The position of the Government servant was, therefore, rather insecure, for his office being held during the pleasure of the Crown under the Government of India Act, 1915, the rules could not over-ride or derogate from the statute and the protection of the rules could not be enforced by action so as to nullify the statute itself. The only protection that the Government servants had was that, by virtue of s. 96-B(1), they could not be dismissed by an authority subordinate to that by which they were appointed. The position, however, improved to some extent under the 1935 Act which, by s. 240(3), gave a further protection, in addition to that provided in s. 240(2) which reproduced the protection of s. 96-B(1) of the Government of India Act, 1915. We have, therefore, to determine the true meaning, scope and ambit of

(1) L.R. (1936) 64 I.A. 55.

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this new protection given by s. 240(3) of the Government of India Act, 1935, which has been reproduced in Art. 311(2).

The majority of the Judges of the Federal Court (Spens, C.J., and Zafarulla Khan, J.) in *I. M. Lall's case*(1) took the view that in sub-s. (3) of s. 240 there had been enacted provisions of a very limited scope in permanent statutory form as compared with the provisions under the rules considered in *Venkata Rao's case*(2). Further down, after referring to the fact that prior to 1935 a sort of protection for the servants of the Crown provided by sub-s. (3) was merely to be found in the rules, many and various and liable to change, their Lordships proceeded to state that from those rules had been picked out and enacted in the section itself certain limited specific provisions only. The majority of the Federal Court at page 138 construed s. 240(3) as follows:

"In our judgment the words "against the action proposed to be taken in regard to him" require that there should be a definite proposal by some authority either to dismiss a civil servant or to reduce him in rank or alternatively to dismiss or reduce him in rank as and when final action may be determined upon. It should be noted that the sub-section does not require any inquiry, any formulation of charges, or any opportunity of defence against those charges. All that it expressly requires is that where it is proposed to dismiss or reduce in rank a civil servant he should be given reasonable opportunity of showing cause against the proposal to dismiss or reduce him. It is also significant that there is no indication as to the authority by whom the action is to be proposed. It does, however, seem to us that the sub-section requires that as and when an authority is definitely proposing to dismiss or to reduce in rank a member of the civil service he shall be so told and he shall be given an opportunity of putting his case against the proposed action and as that opportunity has to be a reasonable opportunity, it seems to us that the section requires not only notification of the action proposed but of the grounds on which the authority is proposing that the

(1) (1945) F.C.R. 103, 136. (2) L.R. (1936) 64 I.A. 55.

action should be taken, and that the person concerned must then be given reasonable time to make his representations against the proposed action and the grounds on which it is proposed to be taken. It is suggested that in some cases it will be sufficient to indicate the charges, the evidence on which those charges are put forward and to make it clear that unless the person can on that information show good cause against being dismissed or reduced if all or any of the charges are proved, dismissal or reduction in rank will follow. This may indeed be sufficient in some cases. In our judgment each case will have to turn on its own facts, but the real point of the sub-section is in our judgment that the person who is to be dismissed or reduced must know that that punishment is proposed as the punishment for certain acts or omissions on his part and must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed. That in our judgment involves in all cases where there is an enquiry and as a result thereof some authority definitely proposes dismissal or reduction in rank, that the person concerned shall be told in full, or adequately summarised form, the results of that enquiry, and the findings of the enquiring officer and be given an opportunity of showing cause with that information why he should not suffer the proposed dismissal or reduction of rank."

The above passage indicates that in the view of the majority of the judges of the Federal Court s. 240(3) corresponding now to art. 311(2) does not "require any inquiry, any formulation of charges or any opportunity to defend against those charges." According to them "all that it expressly requires is that where it is proposed to dismiss or reduce in rank a civil servant he should be given reasonable opportunity of showing cause against the proposal to dismiss or reduce him". Their Lordships added that as that opportunity had to be a reasonable opportunity the section must be taken to require "not only notification of the action proposed but of the grounds on which the authority is proposing that the action should be taken and

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that the person concerned must then be given reasonable time to make his representations against the proposed action and the grounds on which it is proposed to be taken". It is quite clear that the majority of the Federal Court put a somewhat narrow interpretation on the relevant provision in that they considered that the requirement of reasonable opportunity contemplated by it arose only at a later stage when the competent authority definitely proposed to take a particular action and that this opportunity did not cover the earlier stage where charges were formulated and enquired into.

Varadachariar, J., in his dissenting judgment took much the same view on this point as did the High Court. The High Court observed as follows:

"The plaintiff's contention is that this opportunity should have been afforded to him after the finding of the enquiring officer had been considered and the punishment decided upon. With this contention we are unable to agree. Eight charges were served on the plaintiff and at the end he was asked to show cause why he should not be dismissed, removed or reduced or subjected to such other disciplinary action as the competent authority may think fit to enforce for breach of Government Rules and conduct unbecoming to the Indian Civil Service. He was aware from the very start of the enquiry against him that removal from service was one of the various actions that could have been taken against him in the event of some or all the charges being established, and in this sense he was showing cause during the course of the inquiry against the action proposed. The plaintiff's contention that there should be two enquiries the first to establish that he had been guilty and the second to determine what should be the appropriate punishment, and that in each stage he should have reasonable and independent opportunities to defend and show cause does not appear to be correct or intended by the Legislature(1)."

In agreement with the High Court Varadachariar J. held that the requirements of sub-s. (3) of s. 240 demanded nothing be-

(1) (1944) I.L.R. 25 Lah. 325, 347, 348.

yond what was required for compliance with the provisions of r. 55 of the Civil Services (Classification, Control and Appeal) Rules. His Lordship found nothing in the language of cl. (3) to indicate that anything more or anything different was contemplated or to suggest that a further opportunity was to be given after the enquiry had been completed in the presence of the officer charged and the enquiring officer had made his report. The learned Judge was unable to accept the suggestion that the words of the statute were appropriate only to the stage when the authorities would be in a position to indicate definitely what action they intended to take, namely, whether it was to be one of dismissal or one of reduction and that this could be predicated only after the Enquiring Officer had made his report.

In our judgment neither of the two views can be accepted as a completely correct exposition of the intendment of the provisions of s. 240(3) of the Government of India Act, 1935, now embodied in Art. 311(2) of the Constitution. Indeed the learned Solicitor-General does not contend that this provision is confined to guaranteeing to the government servant an opportunity to be given to him only at the later stage of showing cause against the punishment proposed to be imposed on him. We think that the learned Solicitor-General is entirely right in not pressing for such a limited construction of the provisions under consideration. It is true that the provision does not, in terms, refer to different stages at which opportunity is to be given to the officer concerned. All that it says that the government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. He must not only be given an opportunity but such opportunity must be a reasonable one. In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite obviously necessary that the government servant should have the opportunity, to say, if that be this case, that he has not been guilty of any misconduct to merit any punishment at all and also that the

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particular punishment proposed to be given is much more drastic and severe than he deserves. Both these pleas have a direct bearing on the question of punishment and may well be put forward in showing cause against the proposed punishment. If this is the correct meaning of the clause, as we think it is, what consequences follow? If it is open to the government servant under this provision to contend, if that be the fact, that he is not guilty of any misconduct then how can he take that plea unless he is told what misconduct is alleged against him? If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case.

To summarise: the reasonable opportunity envisaged by the provision under consideration includes—

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges

levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally;

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant. In short the substance of the protection provided by rules, like r. 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in s. 240(3) of the Government of India Act, 1935 so as to give a statutory protection to the Government servants and has now been incorporated in Art. 311 (2) so as to convert the protection into a constitutional safeguard.

We find support for our abovementioned conclusion in the judgment of the Judicial Committee in *I. M. Lall's case*(1). It is true that after quoting a portion of the passage from the judgment of the majority of the Federal Court set out above their Lordships at page 242 stated that they agreed with the view taken by the majority of the Federal Court, but their Lordships did not stop there and went on to say:

"In their opinion, sub-s. 3 of s. 240 was not intended to be, and was not, a reproduction of r. 55, which was left unaffected as an administrative rule. Rule 55 is concerned that the civil servant shall be informed "of the grounds on which it is proposed to take action", and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked contrast to the statutory provision of "a reasonable opportunity of showing cause against the action proposed to be taken in regard to

(1) L.R. (1948) 75 I.A. 225 at 241.

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him". In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Before that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which sub-s. 3 makes provision. Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an inquiry under r. 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry."

The above passage quite clearly explains that the point on which their Lordships of the Judicial Committee agreed with the majority of the Federal Court is that a further opportunity is to be given to the government servant after the charges have been established against him and a particular punishment is proposed to be meted out to him. The opening sentence in the above passage, namely, that s. 240(3) was not a reproduction of r. 55 and that r. 55 was left unaffected as an administrative rule does seem to suggest that s. 240(3) is not at all concerned with the enquiry into the charges which comes at the earlier stage, but a close reading of the rest of that passage will indicate that in their Lordships' view the substance of the protection of r. 55 is also included in s. 240 (3) and to that is superadded, by way of further protection, the necessity of giving yet another opportunity to the government servant at the stage where the charges are proved against him and a particular punishment is tentatively proposed to be inflicted on him. Their Lordships referred to "statutory opportunity being reasonably afforded at more than one stage", that is to say, that the opportunities at more stages than one are comprised within the opportunity contemplated by the statute itself. Of

course if the government servant has been through the enquiry under r. 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, which implies that if no enquiry has been held under r. 55 or any analogous rule applicable to the particular servant then it will be quite reasonable for him to ask for an enquiry. Therefore, in a case where there is no rule like r. 55 the necessity of an enquiry was implicit in s. 240 (3) and is so in Art. 311(2) itself. Further their Lordships say that an enquiry under r. 55 "would not exhaust his statutory right and he would still be entitled to make a representation against the punishment proposed as the result of the findings of the enquiry". This clearly proceeds on the basis that the right to defend himself in the enquiry and the right to make representation against the proposed punishment are all parts of his "statutory right" and are implicit in the reasonable opportunity provided by the statute itself for the protection of the government servant.

The learned Solicitor General appearing for the Union of India, then, contends that assuming that the government servant is entitled to have an opportunity not only to show cause against his guilt but also an opportunity to show cause against the punishment proposed to be inflicted on him, the appellant in the present case has had both such opportunities, for by the notice served on him on July 9, 1949, the appellant was called upon to show cause against the charges as well as against the punishment of dismissal in case the charges were established. He points out that in *I. M. Lall's case*(1) the notice given to I. M. Lall did not specify dismissal as the only and particular punishment proposed to be imposed on him, but called upon him to show cause why he should not be dismissed, removed or reduced or subjected to such other disciplinary action as the competent authority might think fit to enforce, whereas in the present case the notice referred to above clearly indicated that the punishment of dismissal alone was proposed to be inflicted. The learned Solicitor-General

(1)L.R. (1948) 75 I.A. 225, 140.

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in support of his contention relies on the observations of the majority of the Federal Court quoted above and in particular on the passage where their Lordships stated "that in some cases it would be quite sufficient to indicate the charges, the evidence on which those charges are put forward and to make it clear that unless the person can on that information show good cause against being dismissed or reduced in rank if all or any of the charges are proved, dismissal or reduction in rank would follow and that this would be sufficient in some cases:" He also strongly relies on the circumstance that their Lordships of the Judicial Committee, after quoting the above passage, stated that they agreed with the view taken by the majority of the Federal Court. But as we have already explained, the other observations of their Lordships of the Judicial Committee, which follow immediately, quite clearly indicate that what they agreed with was that a second opportunity was to be given to the government servant concerned after the charges had been brought home to him as a result of the enquiry. Their Lordships made it clear that no action could, in their view, be said to be proposed within the meaning of the section until a definite conclusion had been come to on the charges and the actual punishment to follow was provisionally determined on, for before that stage the charges remained unproved and the sugested punishments were merely hypothetical and that it was on that stage being reached that the statute gave the civil servant the opportunity for which sub-s. (3) made provision. A close perusal of the judgment of the Judicial Committee in I. M. Lall's case will, however, show that the decision in that case did not proceed on the ground that an opportunity had not been given to I. M. Lall against the proposed punishment merely because in the notice several punishments were included, but the decision proceeded really on the ground that this opportunity should have been given after a stage had been reached where the charges had been established and the competent authority had applied its mind to the gravity or otherwise of the proved charge tentatively and proposed

a particular punishment. There is as the Solicitor-General fairly concedes, no practical difficulty in following this procedure of giving two notices at the two stages. This procedure also has the merit of giving some assurance to the officer concerned that the competent authority maintains an open mind with regard to him. If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the government servant concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the subject matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done.

It is on the facts quite clear that when Shri J. B. Tandon concluded his enquiry and definitely found the appellant guilty of practically all the charges he for the first time suggested that the punishment of dismissal should be the proper form of punishment in this case. Shri J. B. Tandon was not, however, the competent authority to dismiss the appellant and, therefore, he could only make a report to the Deputy Commissioner who was the person competent to dismiss the appellant. When the Deputy Commissioner accepted the report and confirmed the opinion that the punishment of dismissal should be inflicted on the appellant, it was on that stage being reached that the appellant was entitled to have a further opportunity given to him to show cause why that particular punishment should not be inflicted on him. There is, therefore, no getting away from the fact that Art. 311(2) has not been fully complied with and the appellant has not had the benefit of all the constitutional protection and accordingly his dismissal cannot be supported. We, therefore, accept this appeal and set aside the order of the Single Judge and decreee the appellant's suit by making a declaration that the order of dismissal passed by the Deputy Commissioner on December

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17, 1951, purporting to dismiss the appellant from service was inoperative and that the appellant was a member of the service at the date of the institution of the suit out of which this appeal has arisen. The appellant will get costs throughout in all courts. He must pay all court fees that may be due from him. Under order XIV, Rule 7 of the Supreme Court Rules were direct that the appellants could be paid his fees which we assess at Rs. 250.

Appeal allowed.

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December, 18

THE CENTRAL INDIA SPINNING AND WEAVING AND MANUFACTURING COMPANY, LIMITED, THE EMPRESS MILLS, NAGPUR

v.

THE MUNICIPAL COMMITTEE, WARDHA

(BHAGWATI, B. P. SINHA, JAFER IMAM, J. L. KAPUR and GAJENDRAGADKAR JJ.)

Terminal tax—Goods in transit passing through Municipal limits—If can be taxed—Imported into and exported from—Connotation of—C. P. & Berar Municipalities Act, 1922 (C.P. II of 1922), s. 66(I)(o).

Section 66(I)(o) of the C.P. and Berar Municipalities Act, 1922, empowered the municipalities to impose "a terminal tax on goods or animals imported into or exported from the limits of a municipality". The respondent framed rules for the imposition of terminal tax. The appellant transported bales of cotton from Yeotmal to Nagpur by road and the vehicles carrying the goods passed through the limits of respondent municipality. The goods were neither unloaded nor reloaded at Wardha but were merely carried across through the municipal area. The respondent collected terminal tax on these goods on the ground that they were exported by the appellant from the limits of the respondent municipality. The appellant disputed his liability to pay terminal tax, and claimed a refund:

Held, that the goods which were in transit and were merely carried across the limits of the municipality were not liable to terminal tax. Terminal tax on goods imported into or exported from the limits of a municipality was payable on goods on their journey ending within the municipal limits or commencing therefrom and not where the goods were merely