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rent is payable were let for whatever purpose on or after the 2nd day of June 1944 the standard rent of the premises shall be, so long as the standard rent is not fixed by the Court, the rent at which the premises were first let. It is common ground that the house in question was constructed after the 2nd June, 1944 and that it was let for the first time at the rental of Rs. 64-2-0. This rent must therefore be deemed to be the standard rent in respect of the house in question.

For these reasons I am of the opinion that the decrees passed by the lower Court had been passed in accordance with the provisions of law. The petitions must therefore be dismissed.

In view of the somewhat difficult question of law which has arisen in this case I would leave the parties to bear their own costs.

CIVIL WRIT.

Before Bhandari, C. J. and Khosla, J.

KAPUR SINGH,—*Petitioner.*

versus

THE UNION OF INDIA,—*Respondent.*

Civil Writ No. 322 of 1953

1955

Oct., 7th

Public Servants (Inquiries) Act (XXXVII of 1850)—Sections 2, 16, and 23—Member of Indian Civil Service—Inquiry against—Whether can be ordered by the State Government under which he is serving—Inquiry ordered by State Government, not competent to order inquiry—Whether liable to be quashed—Essentials of a fair hearing—Bias—Proof and basis of—Commissioner, whether competent to refuse or exclude evidence—Constitution of India—Articles 226, 311 and 314—Scope of petition under Article 226—"Reasonable", meaning of—The Prevention of Corruption Act (II

of 1947)—Whether pro tanto *repeals Act XXXVII of 1850 —Code of Criminal Procedure (Act V of 1898)—Whether applicable to inquiries under Act XXXVII of 1850—Joinder of more than three charges in one inquiry—Whether permissible—Suspension of Government servant—Whether previous notice necessary—Orders passed before 26th January, 1950—Whether can be contested in a petition under Article 226.*

Per Bhandari, C. J.

Held, that the expression "appointment" appearing in section 2 of Public Servants (Inquiries) Act, 1850, has been used not in the sense of designation of a person to discharge the duties of a particular office but meaning only the office or post to which one is appointed. It is not synonymous with the expression "service". The petitioner had been appointed Deputy Commissioner by the Punjab Government and, therefore, that Government had full power to order an inquiry into the charges which had been brought against him although its power to award punishment to him was strictly limited by the provisions of rule 52 of the Civil Services (Classification, Control and Appeal) Rules.

Held, that the provisions of the Public Servants (Inquiries) Act and of rule 55 of the Civil Services (Classification, Control and Appeal) Rules are fully satisfied if the officer conducting the removal proceedings observes the fundamental rules of a fair and impartial trial even though he does not comply with the technical rules of evidence and procedure. Proceedings of this kind cannot be rendered void when they are conducted in accordance with the rules of natural justice and they cannot be set aside for non-compliance with the legal formalities unless the failure to observe the said formalities has brought about a miscarriage of justice.

Held, that removal proceedings should ensure a fair hearing to the person sought to be removed. The essentials of a fair hearing are that the course of proceedings should be appropriate to the case and just to the person concerned; that the said person should be notified of the nature of the charge against him in time to meet it; that he should have such opportunity, after all the evidence against him is introduced and known to him, to produce witnesses to refute it; and that the decision should be governed by and based upon the evidence of the hearing.

Held, that the allegations of bias should be supported by an affidavit. An effective showing of bias and prejudice cannot be made out on the basis of unfavourable rulings.

Held, that the responsibility for excluding evidence which is irrelevant or inadmissible or which is sought to be produced at a late stage of the proceedings devolves on the Commissioner and it is for him to decide, in exercise of his discretion, whether it should or should not be called.

Held, that when a person seeks the intervention of the High Court under the provisions of Article 226 on the ground that the rights guaranteed to him by Article 311 have been violated all that the Court is required to see is whether he was afforded a reasonable opportunity of showing cause against the action that was proposed to be taken in regard to him.

Held, that it is not within the competence of the High Court exercising powers under Article 226 of the Constitution to control matters of procedure before a Commissioner or to review the orders passed by him. The High Court can interfere with the procedure adopted by him if it is satisfied that it is not consistent with the essentials of a fair trial. The High Court can review the orders passed by him if it is satisfied that the person charged was prejudiced to the point of having been deprived of a reasonable opportunity of being heard.

Held, that the constitutional guarantee of reasonable opportunity does not require that every request made by a party, whether reasonable or otherwise, must be acceded to. The person who has had ample opportunity to be heard cannot complain of lack of opportunity.

Held, that in most cases a Government servant gets two opportunities to show cause—one after the charge is handed over to him and the other after the report of the inquiring officer is submitted to Government. The provisions of Article 311 come into play at the stage when the inquiring officer submits his report to Government holding that the officer concerned is guilty of any of the charges brought against him and Government come to a provisional decision as to the punishment that should be awarded to the officer concerned. If he had a reasonable opportunity of defending himself at the first stage it is unreasonable

for him to claim that another opportunity should be given to him to examine his witnesses. He cannot be allowed to reopen the case or to cover the same ground in the second stage. If on the other hand no inquiry was held against him either under the provisions of rule 55 or under the provisions of the Act of 1850, or if the inquiry which was held was not held in consonance with the rules of natural justice, he is entitled to claim that a thorough and sifting inquiry should be made into the charges against him and that he be afforded a reasonable opportunity of clearing himself.

Held, that inquiries into the conduct of the members of the Indian Civil Service can be held under the provisions of the Public Servants (Inquiries) Act, 1850. This Act does not give the members of the Indian Civil Service less favourable rights as respects disciplinary matters than the provisions of rule 55 of the Civil Services (Classification, Control and Appeal) Rules. There has thus been no violation of the provisions of Article 314 of the Constitution in this case.

Per Khosla, J.

Held that, (1) "Reasonable" in Article 311 of the Constitution of India means what is considered reasonable by a prudent man. It has reference to the facts of the particular case which is under consideration. What is reasonable in one case may not be reasonable in another case.

(2) Where there is no inquiry the Government servant is entitled to ask for an enquiry upon receiving a show cause notice but where there has been an enquiry, a show cause notice is necessary but no further enquiry need take place.

(3) "Employed under" in section 23 of the Public Servants (Inquiries) Act, 1850, has a wholly different meaning to "appointed by" as used in Article 311 of the Constitution of India. The petitioner was clearly employed under the Punjab Government and an inquiry into his misconduct could have been ordered by the Punjab Government.

(4) There is nothing in the Public Servants (Inquiries) Act, 1850, which offends against the provisions of Article 14 of the Constitution of India.

(5) The Public Servants (Inquiries) Act, 1850, and the Prevention of Corruption Act, 1947, lie in entirely different fields and there is no question of either Act being repealed *pro tanto* by the other. The Act of 1850 merely provides for an inquiry into the conduct of a Government servant and the only thing that can be done as a consequence of the inquiry is the dismissal or removal of the Government servant. Removal or dismissal does not amount to punishment and action can be taken against the Government servant under the Prevention of Corruption Act after his removal.

(6) Every Court, tribunal or inquiry officer has the discretion of disallowing irrelevant or unnecessary evidence and section 16 of the Public Servants (Inquiries) Act, 1850, does not deprive the Inquiry Commissioner of all authority or discretion in the matter of ruling out irrelevant or unnecessary evidence.

(7) The provisions of the Criminal Procedure Code, relating to the misjoinder of charges do not apply to the Public Servants (Inquiries) Act and the inquiry cannot be held to be bad merely on the ground that more than three charges were made the subject-matter of the inquiry.

(8) It is clear from the Civil Services (Classification, Control and Appeal) Rules that no notice be given to a Government servant before he is suspended.

(9) It is not permissible in a petition under Article 226 of the Constitution of India to contest the legality of an order passed before the 26th of January, 1950.

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari quashing the proceedings and the Cecret Report of the Enquiry Commissioner; and a Writ of Mandamus, or any other approprate Write, Direction or Order, commanding the respondent to reinstate the petitioner to the Indian Civil Service from the date of his suspension, be issued, and the petitioner awarded the costs of this petition.

D. K. MAHAJAN, B. S. CHAWLA and H. S. GUJRAL, for Petitioner.

S. M. SIKRI, Advocate-General and D. K. KAPUR, for Respondent.

ORDER.

Bhandari, C.J.

BHANDARI, C. J.—The principal point for decision, which has been somewhat obscured by the raising of a number of subsidiary issues, is whether the petitioner was denied the constitutional privilege of being heard before the order of dismissal was passed.

The petitioner in this case is one Sardar Kapur Singh who until lately was a member of the Indian Civil Service and employed as a Deputy Commissioner in the Punjab in a substantive permanent capacity. He was placed under suspension on the 13th April, 1949, and a written statement of charges was handed over to him in due course. Mr. Justice Weston, the then Chief Justice of this Court, was requested to hold an inquiry under the Public Servants (Inquiries) Act, 1850, on the 18th May, 1950 and he submitted his report on the 14th May, 1951. He found that the petitioner had misappropriated a sum of Rs. 16,000 and that he had knowingly permitted a certain contractor to cheat Government to the extent of Rs. 30,000. A copy of this report was supplied to the petitioner on the 11th February, 1952, and he was required to show cause why he should not be dismissed from service. The petitioner submitted a long representation to the President of India in which he complained that he had not been afforded a reasonable opportunity of being heard and requested that he should be permitted to call certain witnesses whom he wanted to produce before the Commissioner but who were not permitted to be produced. The President declined to reopen the case and, after ascertaining the views of the Union Public Service Comission, passed an order of dismissal on the 27th July, 1953. The petitioner challenges the validity of this order on the ground that the constitutional rights guaranteed him by Articles 311 and 314 have been violated.

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Three contentions have been placed before us in regard to Article 311 of the Constitution. It is stated in the first place that the Punjab Government had no power to order an inquiry into the conduct of the petitioner who was a member of the Indian Civil Service and that as the inquiry made in consequence of an illegal order is void, and as the report submitted by the Commissioner was void, the order of dismissal which flowed from it is of the same character. Secondly, it is contended that the Commissioner did not afford the petitioner a reasonable opportunity of being heard as several of the witnesses whom he wanted to produce were not examined and several of the documents on which he wanted to rely were not called. Thirdly, it is argued that although the petitioner was entitled to at least two opportunities of being heard—one before the issue of the show cause notice and the other after the issue of the said notice—the President declined to reopen the inquiry after the issue of the notice and denied him his constitutional right of being heard.

There can be no manner of doubt that the Punjab Government had full power to order a public inquiry into the conduct of the petitioner and to ask Mr. Justice Weston to make the inquiry. The statutory provisions are contained in sections 2 and 23 of the Act of 1850. Section 2 runs as follows:—

> "2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the Government not removable from his appointment without the sanction of the Government, it may cause the substance of the imputations to be drawn into distinct articles of charges,

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and may order a formal and public inquiry to be made into the truth thereof."

Section 23 is in the following terms:—

"23. In this Act, 'the Government' means the Central Government in the case of persons employed under that Government and the State Government in the case of persons employed under that Government."

It is contended on behalf of the petitioner that the expression "appointment" appearing in section 2 is synonymous with the expression "service" and that as the petitioner who was a member of the Indian Civil Service could not be removed from his service without the sanction of the Central Government, the Central Government alone and not the State Government had power to hold the inquiry. This argument appears to me to be wholly devoid of force. According to the Oxford Dictionary "appointment" means "the action of nominating to, or placing in, an office; the office itself." The expression "appointment" appearing in section 2 has been used not in the sense of designation of a person to discharge the duties of a particular office but meaning only the office or post to which one is appointed. It is not synonymous with the expression "service". A person may be appointed to a service by the Central Government but if he is employed under a State Government he may be appointed to a post by the State Government. The provisions of section 2 read in conjunction with the provisions of section 23 make it quite clear that a public inquiry into the conduct of an officer holding a particular post can be ordered only by the Government, Central or Provincial, which is clothed with the power of ordering his removal from the said post. As the choice of a particular person to fill a particular post constitutes

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the essence of appointment and as the power of appointment carries with it, as an incident, the corresponding power of removal, the Punjab Government which had power to appoint the petitioner to the post of Deputy Commissioner had power also to order his removal from the said post. It follows as a consequence that, in view of the provisions of section 2 reproduced above, the Punjab Government had full power to order an inquiry into the charges which had been brought against the petitioner although its power to award a punishment to him was strictly limited by the provisions of Rule 52 of the Civil Services (Classification, Control and Appeal) Rules.

Assuming for the sake of argument that the Punjab Government had no power to appoint Mr. Justice Weston to hold an inquiry under the provisions of this Act, the question arises whether that irregularity entitles the petitioner to claim that the entire proceedings should be quashed and that the order which is based on those proceedings should be set aside. The answer is, in my opinion, clearly in the negative. The provisions of the Public Servants (Inquiries) Act, 1850, or of rule 55 of the Civil Services (Classification, Control and Appeal) Rules are fully satisfied if the officer conducting the removal proceedings observes the fundamental rules of a fair and impartial trial even though he does not comply with the technical rules of evidence and procedure. Proceedings of this kind cannot be rendered void when they are conducted in accordance with the rules of natural justice, *P. Joseph John* v. *State of Travancore-Cochin* (1), and they cannot be set aside for non-compliance with the legal formalities unless the failure to observe the said formalities has

(1) A.I.R. 1955 S.C. 160, 166

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brought about a miscarriage of justice, *H. N. Rishbud and another* v. *State of Delhi* (1). When a person seeks the intervention of this Court under the provisions of Article 226 on the ground that the rights guaranteed to him by Article 311 have been violated all that the Court is required to see is whether he was afforded a reasonable opportunity of showing cause against the action that was proposed to be taken in regard to him. No inquiry need be held either under the provisions of rule 55 of the Civil Services (Classification, Control and Appeal) Rules or under the provisions of the Public Servants (Inquiries) Act, 1850, for as pointed out by their Lordships of the Supreme Court in *S. A. Vankataraman* v. *The Union of India* (2),—

> "As the law stands at present the only purpose for which an inquiry under Act XXXVII of 1850 could be made, is to help the Government to come to a definite conclusion regarding the misbehaviour of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him, prior to giving him a reasonable opportunity of showing cause, as is required under Article 31(2) of the Constitution. An inquiry under this Act is not at all compulsory and it is quite open to the Government to adopt any other method if it so chooses. It is a matter of convenience merely and nothing else. * * ".

The second question, namely whether Mr. Justice Weston afforded the petitioner a reasonable opportunity of being heard must be answered in the affirmative. The expression "reasonable" is not susceptible of a clear and precise definition, for, as pointed out by an eminent Judge, an attempt to give a

(1) A.I.R. 1955 S.C. 196, 204
(2) 1954 S.C.R. 1150

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specific meaning to the word "reasonable" is trying to count what is not number and measure what is not space. What is reasonable in one case may not be reasonable in another. What is reasonable is not necessarily what is best but what is fairly appropriate to the purpose under all the circumstances, *Bonnet* v. *Vallier* (1). Removal proceedings which are quasi judicial in character must be such as would give the person concerned a reasonable opportunity to be heard and to present his claim or defence due regard being had to the nature of the proceedings and the character of the rights which are likely to be affected by it, *Mississipi Power and Light Company* v. *City of Jackson* (2), To put in a slightly different language removal proceedings should ensure a fair hearing to the person sought to be removed. The essentials of a fair hearing are that the course of proceedings should be appropriate to the case and just to the person concerned; that the said person should be notified of the nature of the charge against him in time to meet it; that he should have such opportunity, after all the evidence against him is introduced and known to him, to produce witnesses to refute it; and that the decision should be governed by and based upon the evidence of the hearing, *Ungar* v. *Seaman* (3).

Let us now consider whether the petitioner was deprived of a full and fair hearing in regard to the allegations which were made against him. It is common ground that a copy of the articles of charges was submitted by the Advocate-General on the 21st June, that the petitioner pleaded not guilty to the charges on the 1st July and that the Advocate-General gave a description of the evidence by which he proposed to establish the charges on the 7th July. The hearing of the evidence began at Dharamsala on

(1) 128 American State Reports 1061
(2) Miss: 9 F: Supplement 564, 568
(3) 4 F. (2d) 80

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the 31st July, and continued till the 21st August. Hearing was resumed at Simla on the 5th September and the prosecution evidence was closed on the 23rd October. The petitioner filed a list of defence witnesses on the 27th October and a lengthy statement filed by him was read on the 27th November. He gave evidence on oath from the 28th November to the 5th December. His defence witnesses were examined from the 5th to 28th December and arguments for the defence were addressed from the 13th March to the 29th March, 1951. The Advocate-General began his arguments on the 30th March and continued till the 17th April. Altogether 125 witnesses were examined for the prosecution, 82 witnesses for the petitioner and a very large mass of documentary evidence was produced by the parties. A very large number of applications were presented to the commissioner during the course of the proceedings in which requests of all kinds were made. He dealt with every request with the utmost despatch and most of the orders passed by him were as fair as they were reasonable. Specific rulings were given on practically every application which was made. After a very careful review of the evidence which was produced in this case the commissioner submitted a detailed report to Government covering 106 printed foolscap pages. A perusal of this report makes it quite clear that the commissioner who was the head of the judicial administration in the State discharged his onerous duties with conspicuous ability and fairness. He examined each charge with the utmost care, analysed the evidence which was produced in support of the charge and in refutation thereof and came to very clear and definite conclusions either in favour of the prosecution or in favour of the petitioner.

Two criticisms have been directed towards the conduct of the commissioner. The first is that it was clear from the very first day that the appointment of

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Mr. Justice Weston had been made after acquainting him with the prosecution case and the likely defence and that the result of this inquiry as far as the commissioner was concerned was a foregone conclusion. He kept it no secret that he was not going to stick at anything in hampering the petitioner's defence at every stage and in any manner, without even keeping up appearances of fairness and impartiality. According to the petitioner the commissioner brought a biassed and prejudiced mind to bear upon the matters in controversy between the parties and rejected several reasonable requests of the petitioner. These serious allegations cannot in my opinion bear a moment's scrutiny. No affidavit has been submitted in support thereof although it has been held repeatedly that allegations of bias should be supported by an affidavit. It may be that he rejected certain requests of the petitioner which he considered to be unreasonable but he gave satisfactory reasons in support of his decisions. An effective showing of bias and prejudice cannot be made out on the basis of unfavourable rulings, *Mc. Grath* v. *Communist Party of the United States*, (1).

The second criticism is that the Commissioner failed to call certain witnesses whom the petitioner wanted to produce and that this failure on his part has gravely prejudiced the petitioner. I regret I am unable to concur in this contention. We have examined with care the several applications which were presented by the petitioner for calling new witnesses and are satisfied that the Commissioner declined to call them because their evidence was incompetent, improper or belated. The responsibility for excluding evidence which is irrelevant or inadmissible or which is sought to be produced at a late stage of the proceedings devolved on the Commissioner and it was for him to decide, in the exercise of his discretion, whether it should or should not be called. It

(1) 1 Pike and Fischer Administrative Law (2d) 651

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has been established to my satisfaction that the evidence which was sought to be produced was no more than cumulative and was not likely to turn the scales in favour of the petitioner. It is not within the competence of this Court exercising powers under Article 226 of the Constitution, to control matters of procedure before a Commissioner or to review the orders passed by him. We can interfere with the procedure adopted by him if we are satisfied that it is not consistent with the essentials of a fair trial and we can review the orders passed by him if we are satisfied that the person charged was prejudiced to the point of having been deprived of a reasonable opportunity of being heard. The learned counsel was unable to invite our attention to a single order passed by the Commissioner which could be regarded as manifestly perverse. In any case, the constitutional guarantee of reasonable opportunity does not require that every request made by a party, whether reasonable or otherwise, must be acceded to.

The petitioner in the present case appears to have had as fair a hearing as the circumstances of the case allowed. He was informed of the charges several days before he was required to plead to them; he was represented throughout by eminent counsel of his own choice; he was confronted with the prosecution witnesses and given a full opportunity to cross-examine them with the help of his legal advisers; he was allowed to prepare his own case, to read out a lengthy statement covering several pages, to produce 82 witnesses in defence and to address lengthy arguments to the Commissioner; he was given every conceivable opportunity to defend himself and he was able to satisfy the Commissioner that some of the charges brought against him had not been substantiated. A person who has had ample opportunity to be heard cannot complain of lack of

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opportunity. There is not an iota of evidence on the file to justify the conclusion that the Commissioner in the present case acted otherwise than as a wholly independent, fair and impartial Tribunal.

The third contention which has been put forward on behalf of the petitioner is that although he was entitled to two separate opportunities for showing cause against the order of dismissal, the President of India afforded him only one opportunity and has thereby violated the provisions of Article 311. It is contended that after the show cause notice had been issued to him in the year 1952 the petitioner submitted a representation to the President in which he stated that he was entitled to recall all or any of the witnesses of the prosecution or defence for the purposes of re-examination or re-cross-examination, and prayed that the witnesses be called and examined afresh. The President unjustly declined to accede to this request and denied him the hearing to which he was entitled under the law.

The view taken by the petitioner that he was entitled to reopen the entire proceedings after he had had full opportunity of having his say before the Commissioner is wholly misconceived. When serious charges of misconduct are brought against an officer it is necessary for Government to embark on an inquiry which is usually completed in two stages. In the first stage the inquiry is held either under the provisions of rule 55 of the Civil Services (Classification, Control and Appeal) Rules or under the provisions of the Public Servants (Inquiries) Act, 1850. The officer concerned is furnished with a written statement of the charges and afforded an opportunity to be heard in defence of the said charges. If after hearing both the parties the inquiring officer comes to the conclusion that the officer concerned is guilty of any of the charges brought against him he submits

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an appropriate report to Government and Government then comes to a provisional decision as to the punishment that should be awarded to the officer concerned. It is at this stage that the provisions of Article 311 come into play and it is at this stage that he is entitled to claim that a reasonable opportunity should be afforded him of showing cause against the punishment which is proposed to be taken in regard to him. In most cases a Government servant gets two opportunities to show cause one after the charges are handed over to him and the other after the report of the inquiring officer is submitted to Government. If he has had a reasonable opportunity of defending himself at the first stage it is obviously unreasonable for him to claim that another opportunity should be given him to examine his witnesses. He cannot be allowed to reopen the case or to cover the same ground in the second stage. If on the other hand no inquiry was held against him either under the provisions of rule 55 or under the provisions of the Act of 1850, or if the inquiry which was held was not held in consonance with the rules of natural justice he is entitled to claim that a thorough and sifting inquiry should be made into the charges against him and that he be afforded a reasonable opportunity of clearing himself. This view was propounded with admirable clarity by their Lordships of the Privy Council who had occasion to deal with *I. M. Lall's case* (1). They observed as follows:—

> "Their Lordships agree with the view taken by the majority of the Federal Court. In their opinion sub-section (3) of section 240 was not intended to be, and was not, a reproduction of rule 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

(1) A.I.R. 1948 P.C. 121

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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 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. Prior to 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-section (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 rule 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".

As the petitioner in the present case had an ample opportunity of defending himself at the first stage his request for another similar inquiry at the second stage could not possibly be entertained and was rightly rejected by the President of India.

The contention put forward on behalf of the petitioner that in ordering an inquiry under the provisions of the Act of 1850 the State Government has

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violated the provisions of Article 314 of the Constitution must be rejected. This Article provides for the protection of officers who are appointed by the Secretary of State and declares that every such officer shall have the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement. Mr. Mahajan contends that the conduct of a member of Indian Civil Service could not be enquired into under the provisions of the Act of 1850 but has not been able to cite any authority in support of this assertion. This Act was admittedly in force immediately before the commencement of the Constitution and inquiries into the conduct of certain members of the Indian Civil Service were admittedly held under the provisions of this Act. In any case this Act does not give the members of the Indian Civil Service less favourable rights as respects disciplinary matters than the provisions of rule 55 of the Civil Services (Classification, Control and Appeal) Rules.

Nor can it be said that the provisions of section 16 of the Act of 1850 have been violated by reason of the fact that certain witnesses whom the petitioner wanted to produce were not called by the inquiring officer. As stated in an earlier paragraph of this judgment every Tribunal has inherent jurisdiction to decline to examine evidence which is irrelevant or inadmissible or is sought to be produced at a late stage of the proceedings.

The contention that the provisions of the Act of 1850 are repugnant to the provisions of Article 14 is too flimsy to merit serious consideration.

The whole edifice which the petitioner has sought to construct is built on foundations of sand and none

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of the arguments which were put forward on his behalf could bear a moment's scrutiny. In the circumstances the only order that can be passed on this application is that it be dismissed with costs. I would order accordingly.

Khosla, J.

KHOSLA, J. The petitioner before us is S. Kapur Singh who was a member of the Indian Civil Service and was dismissed on charges of misconduct by an order of the President of India, dated the 27th July, 1953. He challenges the order of dismissal on a number of grounds which are set out in paragraphs 14 and 15 of his petition.

The relevant facts are these. The petitioner was recruited to the Indian Civil Service on the result of a competitive examination in 1953. He was appointed to serve in the Punjab and continued in service until the 13th April, 1949 when he was suspended while on four months' leave. For several months no further action was taken against the petitioner and on the 5th May, 1950 he sent a lengthy representation to the President of India questioning his suspension. Twelve charges formally drawn up were then handed over to the petitioner. Soon after this and in accordance with the provisions of the Public Servants (Inquiries) Act (Act XXXVII of 1850) Mr. Eric Weston, Chief Justice of the Punjab High Court, was appointed to enquire into these charges. Two of the charges were dropped but enquiry into the remaining ten was held. This enquiry lasted several months. A large number of witness were examined in support of the charges and the petitioner also examined a large number of witnesses in his defence. Hundreds of documents were produced and finally in May, 1951 Mr. Weston submitted his report to Government. This report was treated as a secret document but we have had to refer to it in the course of this case and I may

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therefore mention that Mr. Weston found the petitioner guilty upon many of the charges. A copy of this report was supplied to the petitioner and he was asked to show cause why he should not be dismissed from service. The "show cause" notice is dated the 11th February, 1952, but the petitioner says that it was not received by him until sometime in March or early April, 1952. In April, 1952 the petitioner drew up a long representation or memorandum of over 500 typed foolscap pages which he sent to the President of India. In this memorial he made a number of allegations against the Inquiry Commissioner and the manner in which the enquiry had been conducted. He asked for opportunity to examine witnesses and produce documents which the Inquiry Commissioner had refused to call. On the 27th July, 1953 the President passed an order dismissing the petitioner from service. On the 27th October, 1953 the present petition was filed.

The main contention of the petitioner on facts is that he was not afforded a reasonable opportunity of putting forward his defence before the Inquiry Commissioner. His defence to all the charges was that there was a conspiracy engineered by a number of high officials of the Punjab Government and these persons wanted to remove him (the petitioner) at all cost and they therefore manufactured false charges against him. It was even suggested by him that the Inquiry Commissioner, Mr. Eric Weston, was willing to join this conspiracy. A number of legal points were also raised on his behalf. All the grounds on which this petition is based are set out exhaustively in paragraphs 14 and 15 of the petition. At the commencement of his arguments Mr. Daya Krishan Mahajan, who appeared on behalf of the petitioner, enumerated the points he wished to

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raise before us and I state them below in the order and in the form in which they were given to us—

(i) The order dismissing the petitioner contravenes the provisions of Article 311 of the Constitution inasmuch as the petitioner was not afforded a reasonable opportunity of defending himself.

(ii) The conduct of the enquiry and the subsequent dismissal of the petitioner contravene the provisions of Article 314 of the Constitution inasmuch as—

(a) The Public Servants (Inquiries) Act does not apply to members of the Indian Civil Service.

(b) The mandatory provisions of section 16 of the Act had not been complied with because the Inquiry Commissioner had refused to examine some of the evidence cited by the petitioner.

(c) The petitioner was deprived of rights guaranteed to him as a member of the Indian Civil Service.

(iii) The order of dismissal was based on the report of the Inquiry Commissioner and this order was bad because the enquiry itself was bad for the following reasons—

(a) Act XXXVII of 1850 was *ultra vires* the Constitution because it offended against the provisions of Article 14 of the Constitution.

(b) Act XXXVII of 1850 stood repealed *pro tanto* by the Prevention of Corruption Act (Act II of 1947).

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(c) Mr. Weston was a Judge of the High Court and he had no jurisdiction to hold the enquiry inasmuch as he was not acting at the request of the President as contemplated by paragraph 11(b) (i) of Part D of the Second Schedule of the Constitution.

(d) The enquiry was ordered by the Punjab State and in the case of an I. C. S. officer only the Central Government can order the enquiry.

(e) The report offended against the provisions of section 16 of the Act. [This is merely a repetition of point (ii) (b)].

(f) The petitioner had to face as many as ten charges in the course of one enquiry and there had been misjoinder of charges and the petitioner had in consequence been prejudiced.

(g) The enquiry was held contrary to the principles of natural justice.

(iv) The suspension of the petitioner was illegal inasmuch as he was not given opportunity to show cause against it and therefore all the proceedings that followed it, culminating in his dismissal were bad in law.

I now take up these points one by one. With regard to the provisions of Article 311 of the Constitution the contention of Mr. Mahajan is that when the Inquiry Commissioner had given his report and when the petitioner was asked to show cause against his dismissal he had a right to call for the witnesses and to reopen the entire enquiry. This right was

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given to him by the Constitution and he could not be denied it. Mr. Mahajan relied upon the following cases: *The High Commissioner for India* v. *I. M. Lall* (1), *S. A. Venkataraman* v. *The Union of India* (2), *Ravi Partab Narain Singh* v. *The State of Uttar Pradesh* (3), *Shyam Lal* v. *State of U. P.*, (4), and *Naubat Rai* v. *Union of India* (5).

I can find nothing whatsoever in any of these rulings which would support the argument of Mr. Mahajan. All that Article 311 of the Constitution requires is that before a member in the civil service of a State or holding a civil post under the Union or a State can be dismissed, he should be given "a reasonable opportunity of showing cause against" the order of his dismissal. The framers of the Constitution advisedly chose to express "reasonable opportunity." "Reasonable" here means what is considered reasonable by a prudent man. It is clear that "reasonable" has reference to the facts of the particular case which is under consideration. What is reasonable in one case may not be reasonable in another instance. Before a Government servant is dismissed there is usually a departmental or other enquiry in which the reasons for his dismissal are gone into, evidence is taken, sometime formal charges are drawn up and the Government servant is asked to defend himself. He is even allowed to cross-examine the witnesses produced against him with the assistance of a legal adviser and to have his case argued by a competent person. When this has been done it will be deemed that he has had a reasonable opportunity of defending himself and of showing cause against the proposed order of dismissal, but there may be a case in which no such enquiry is

(1) A.I.R. 1948 P.C. 121
(2) 1954 S.C.R. 1150
(3) A.I.R. 1952 All. 99
(4) A.I.R. 1954 All. 235
(5) A.I.R. 1953 Punjab 137

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held and the Government servant is peremptorily asked to show cause why he should not be dismissed. In that case the Government servant will be entitled to demand a thorough enquiry and will say that he is entitled to produce evidence to disprove the charge of misconduct, and in that case the enquiry will follow the show cause notice rather than precede it. What these rulings consistently lay down is that where there is no enquiry the Government servant is entitled to ask for an enquiry upon receiving a show cause notice, but where there has been an enquiry, a show cause notice is necessary but no further enquiry need take place. In *I. M. Lall's case* (1), a commissioner was appointed to enquire into certain charges under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. The commissioner made a report adverse to Lall and upon receiving this report the Government dismissed him. No show cause notice, as required by section 240, subsection (3) of the Government of India Act of 1935 was served upon Lall. Lall's contention was that such notice should have been served upon him. As against this the Government argued that the charges furnished to Lall at the commencement of the enquiry constituted the show cause notice. The Federal Court took the view that the contention of the petitioner was just and that he should have been given another show cause notice after the report of the commissioner had been received. An appeal was taken to the Privy Council against this decision of the Federal Court and while dealing with this matter their Lordships of the Privy Council observed as follows—

> "Their Lordships agree with the view taken by the majority of the Federal Court. In their opinion, subsection (3) of section 240

(1) A.I.R. 1948 P.C. 121

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was not intended to be, and was not, a reproduction of Rule 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 him.' In the opinion of their Lordships, no action is proposed within the meaning of the subsection until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Prior to 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 subsection (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 enquiry under Rule 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 enquiry."

I have quoted a somewhat lengthy passage from the judgment of their Lordships of the Privy Council because Mr. Mahajan pressed that this passage supports his contention. He relied upon it in order to claim a

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second enquiry following upon the show cause notice. It is to be observed that the provisions of Article 311 of the Constitution are an almost exact reproduction of section 240, subsection (3), of the Government of India Act, 1935. Therefore the principle laid down by their Lordships of the Privy Council in reference to section 240, subsection (3) applies with equal force to a case under Article 311 of the Constitution. This decision lays down that where a full enquiry, duly carried out, has taken place, it would not be reasonable for the Government servant to ask for further evidence or for a repetition of the enquiry although he is entitled to show cause against the punishment proposed. Therefore, if Mr. Weston's enquiry was duly carried out, all that the petitioner can ask for is a show cause notice and the right to make a representation against the proposed order of dismissal. He cannot reasonably ask for a further enquiry or for a *de novo* enquiry. He has had reasonable opportunity of defending himself and all that remains to do is to give him a reasonable opportunity of showing cause why upon the charges proved the punishment of dismissal should not be meted out to him. It seems to me that there are six distinct stages when a Government servant is dismissed for misconduct. They are—

(1) The stage when misconduct or misdemeanour is committed by the Government servant.

(2) When the misconduct comes to the knowledge of Government and Government decides to enquire further into the matter, the second stage begins. Action at this stage is normally taken either under Rule 55 or under Act XXXVII of 1850. Charges

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are drawn up and handed over to the Government servant. He is asked to reply to them and to state if he wants an oral hearing and if he wishes to examine witnesses.

(3) The third stage is reached when the Inquiry Commissioner is appointed and the enquiry is entrusted to him. The enquiry is held and the findings are given. (It is no part of the Commissioner's function to award punishment or even to suggest it though in the charges a reference is made to what punishment may be awarded. There is a difference between telling a Government servant what punishment is proposed and to what penalties he is liable if the charges are proved. At stage (3) he is merely told that he is liable to punishment in certain manner).

(4) The report of the Commissioner is considered by Government and the decision is taken as to whether the findings should be accepted or ignored. If the Commissioner has found the charges proved and the Government accepts this finding, a punishment may be proposed.

(5) It is now that the fifth stage contemplated by section 240 of the Government of India Act and Article 311 of the Constitution is reached. The Government servant is served with a show cause notice and he is told what punishment the Government proposes to inflict upon him. He may choose to give no reply or he may choose to make a representation, ask for more evidence or re-examine the witnesses already examined. If there has been a full and proper enquiry

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the Government will not entertain his request for re-examination of witnesses or for the production of more evidence and they may summarily reject the explanation.

(6) And now comes the final stage when upon consideration of the explanation given by the Government servant final orders are passed. If the representation is rejected wholly, the Government servant may be dismissed. If it is accepted in part some lesser penalty may be proposed or the Government may decide not to take any action whatsoever.

The stage mentioned in *I. M. Lall's case* (1), is clearly stage (5), and when their Lordships said "prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical", they meant that before stage (5) mentioned above is reached, the Government has not yet made up its mind about the correctness of the charges and no definite punishment has been proposed. They did not mean that no enquiry had taken place and that no report had been submitted by the Commissioner. I have stressed this point at the risk of repetition because Mr. Mahajan contended that the stage meant some stage before the enquiry was held.

The Supreme Court considered Venkatraman's case in 1954 S. C. R. 1150. An enquiry was made against Venkataraman, who was also a member of the Indian Civil Service, under the Public Servants (Inquiries) Act, 1850. This enquiry was conducted by Sir Arthur Trevor Harries, an ex-Chief Justice of the Calcutta High Court, and the charges which he was

(1) A.I.R. 1948 P.C. 121

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called upon to consider were six in number. Venkataraman was later prosecuted under section 5(2) of the Prevention of Corruption Act. The subject-matter of the charges in the criminal prosecution had been the subject-matter of the six charges under the enquiry held by Sir Trevor Harries. Venkataraman moved a petition under Article 32 of the Constitution and it was contended on his behalf that the prosecution offended against Article 32. While dealing with this matter Mukherjea, J. observed—

> "An enquiry under this Act (ACT XXXVII of 1850) is not at all compulsory and it is quite open to the Government to adopt any other method if it so chooses. It is a matter of convenience merely and nothing else."

The matter under consideration in that case was wholly different and we can derive no assistance from an examination of that case.

The expression "opportunity of showing cause" was considered by the Allahabad High Court in reference to the U. P. Court of Wards Act. There is no analogy whatsoever between the facts of that case and the petitioner's case. In *Shyam Lal's case* (1), a Government servant was compulsorily retired under Rule 465A(2). The argument raised was that this retirement amounted to removal. The argument was repelled by the Allahabad High Court who took the view that it was not removal. This decision was later upheld by the Supreme Court. Agrawala, J. in the course of his judgment considered the application of Article 311 on the hypothesis that compulsory retirement could be construed as removal. He quoted a passage from *I. M. Lall's case* in the Privy

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Council decision to which I have referred above. In that case there had been no proper enquiry because Shyam Lal was compulsorily retired and so Agarwala, J. observed that he would have been given a reasonable opportunity to show cause, had his retirement amounted to removal. His reason for saying so was that there had been no enquiry duly carried out. In the present case a full enquiry was held. A Division Bench of this Court held in *Naubat Rai* v. *Union of India* (1), that where an enquiry is held, and opportunity is given to the Government servant to recall and examine such witnesses as he desired and a show cause notice is later given to him and he is removed from service after his explanation had been considered, there has been no irregularity and sufficient opportunity, as required by Article 311 of the Constitution, had been given to him.

It is therefore clear that the question of reasonable opportunity has to be considered in the context of the circumstances of each individual case. What is reasonable opportunity in one case may not be so in another. This Court is entitled to go into the facts and examine whether a Government servant has or has not had reasonable opportunity within the meaning of Article 311. The facts of the present case are that Mr. Justice Weston was appointed to hold the inquiry on the 18th of May, 1950. A copy of the charges was submitted by the Advocate-General on the 21st of June, 1950. The petitioner appeared before Mr. Weston on the 26th of June, 1950 and applied for the stay of all proceedings pending the result of a representation which he had submitted to the President against the order of his suspension. This application was refused on the 1st of July and the Advocate-General read out the twelve charges which were

(1) A.I.R. 1953 Punjab 137

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originally drawn up to the petitioner. The petitioner pleaded not guilty to all of them. I have already stated that two of the charges namely Nos. 11 and 12 were later dropped.

The inquiry opened on the 7th of July, 1950 and the Advocate-General addressed the Inquiry Officer generally upon the case against the petitioner. The hearing of the evidence began at Dharamsala on the 31st of July and continued till the 21st of August. It was resumed on the 5th of September at Simla. On the 23rd of October the evidence in support of the charges, or as the Inquiry Commissioner has called it the prosecution evidence, was concluded. On the 27th of October the petitioner filed a list of defence witnesses. The petitioner filed a long written statement which was read out on the 27th of November. From the 28th of November to the 5th of December the petitioner gave his own evidence on oath, and the defence witnesses were examined from the 5th to the 28th of December. The hearing was then adjourned to after the High Court vacation which took place in winter in those days. On the 13th of March, 1951 two witnesses were examined. Defence arguments were then heard and continued up to the 29th of March. The Advocate-General addressed the Court from the 30th of March to the 17th of April. Altogether the Inquiry Commissioner recorded the evidence of 125 witnesses for the prosecution and 82 witnesses for the defence. A large quantity of documents called both by the prosecution and the defence was also produced. The petitioner in the course of the inquiry made several requests for calling evidence of which some were rejected. Each individual rejection was made by a distinct order of the Inquiry Commissioner and in the majority of cases he gave detailed reasons for refusing to accede to the petitioner's request. The inquiry therefore lasted over a period of several months

and a large number of witnesses called by the petitioner were examined. The Inquiry Commissioner was the Chief Justice of this Court. He had considerable experience in dealing with judicial matters and the suggestion that he had made up his mind to fall in with the wishes of the Punjab Government seems to me utterly preposterous. There is no basis whatsoever for this allegation. The report is a carefully drawn up document covering 106 printed pages of the foolscap size. The Commissioner has dealt with the charges exhaustively and in my opinion he dealt with the whole inquiry in a most just and judicial manner. An inquiry commissioner and indeed any tribunal entrusted with an inquiry has an inherent right to refuse to call irrelevant evidence. The contention of Mr. Mahajan that Mr. Weston had no choice in the matter and that he was bound to call every witness cited by the petitioner has only to be heard to be rejected. If this were the law the Inquiry Commissioner's task could be completely frustrated by a person who wanted to obstruct the proceedings and the passing of final orders by calling an absurdly large number of witnesses. I have examined the matter very carefully and I do not find any substance whatsoever in the argument that the petitioner was not given a fair hearing or that his evidence was shut out. Indeed, in one or two instances we found that Mr. Bhagat Singh Chawla's arguments proceeded on entirely erroneous premises. For instance, he argued before us that the petitioner had summoned the minutes of a meeting of the Deputy Commissioners held at Jullundur in 1947. This meeting was presided over by the Governor and it was argued before us that one of the decisions taken at this meeting was that the Deputy Commissioners should not obtain receipts for money which they disbursed among needy refugees. Mr. Chawla argued that Mr. Weston had refused to

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call for the minutes. His attention was then drawn to the following passage which appears at page 56 of the printed report :—

> "The official minutes of the meeting were called for by the respondent and have been produced. They do not support the contention that the assurances mentioned above were given."

Mr. Chawla at once retorted by saying that this was a completely false statement made by the Inquiry Commissioner and that the minutes had in fact not been called. The Advocate-General then showed us a copy of the minutes which had been produced from the files of the Governor. Mr. Chawla countered this by saying that the document had not been proved. On this the Advocate-General drew our attention to the statement of the witness who had brought the document and proved it. The defence did not cross-examine the witness in order to show that the copy brought by him was not a correct copy or that it did not contain a correct report of what took place at the meeting of the Deputy Commissioners. The minutes were seen by us and we found that the contention of Mr. Chawla was not borne out. These minutes do not mention that Deputy Commissioners were enjoined to abstain from taking receipts for payments made to refugees. I regret to have to record that many of the arguments addressed before us in this case were based on wild and false premises somewhat similar to the one mentioned by me. The suggestion that the Inquiry Commissioner played into the hands of those officials of the Punjab Government who had conspired to "liquidate" (I use the petitioner's own expression) the petitioner is merely one manifestation of his obsession that he is being prosecuted. I may quote a short

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passage from the report of the Inquiry Commissioner—

> "According to the respondent himself therefore he had become an officer of Government by no means in harmony with the machinery of which he formed a part. This he attributes to his training in philosophy. I am inclined to think that there is something inherent in his temperament which tends to make him out of accord with his environment. Like Omar he has heard great argument, but this training seems to have created a capacity and a "passion for dialectics, an intellectual vanity with intolerance of any point of view not in accord with his own, and a conception of his position and powers as Deputy Commissioner which, I think, is unusual."

The Commissioner has then given several instances of the petitioner's "peculiar temperament". It is scarcely within the scope of this enquiry to go into the enormity of the charges upon which the petitioner has been held guilty. I am only concerned here with whether he was given a fair hearing and after considering the matter from all aspects I have no hesitation whatsoever in saying that the petitioner received as fair a hearing as any one can possibly receive.

The next point argued on behalf of the petitioner was that the enquiry offended against the provisions of Article 314 of the Constitution inasmuch as Act XXXVII of 1850 did not apply to members of the Indian Civil Service. Mr. Mahajan contended that no member of the Indian Civil Service had been ever dealt with under this Act before the Constitution came into force. Mr. Sikri informed us that an enquiry into the conduct of Lobo Prabhu who is a member of the

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Indian Civil Service was conducted under the same Act and after the coming into force of the Constitution a similar enquiry was held into the conduct of Venkataraman.

The main argument of Mr. Mahajan depends upon the wording of section 2 read with section 23. These two sections are as follows—

> "2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the Government not removable from his appointment without the sanction of the Government, it may cause the substance of the imputations to be drawn into distinct articles of charge, and may order a formal and public inquiry to be made into the truth thereof."
>
> "23. In this Act, 'the Government' means the Central Government in the case of persons employed under that Government and the State Government in the case of persons employed under that Government."

Mr. Mahajan's argument may be put as follows. A member of the Indian Civil Service being a member of a central service appointed by the Secretary of State is employed under the Central Government and therefore only the Central Government can, under the provisions of section 2, order the inquiry. In this case the inquiry against the petitioner was ordered by the Government of the State of Punjab and not by the Central Government.

Now, it seems to me that "employed under" has not the same meaning as "appointed by". A Government officer cannot be dismissed by an authority inferior to the one which appointed him, and the petitioner could not have been dismissed or removed

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from service by the State Government and the order dismissing him was in fact passed by the President. The ordering of the inquiry, however, is a wholly different matter. The inquiry is ordered by the Government under which the Government servant is employed for the time being. If he is a member, say, of the Central Secretariat the Central Government alone can order the inquiry but if he is assigned to a State and is serving under that State, it is clear that he is employed under the Government of that State and the inquiry can therefore be ordered by the State Government. This is the only way in which the Act can be read consistently. The expression used in section 23 is "employed under" whereas the expression used in Article 311 of the Constitution is "appointed by." An examination of the phraseology used in the Civil Services (Classification, Control and Appeal) Rules leads us to the same conclusion. For instance, in Rule 23 it is stated that "all first appointments to an All-India Service shall be made by the Secretary of State in Council." Rule 50 deals with the question of the removal or dismissal of a member of the All-India Service. It is provided that only the Secretary of State in Council can pass an order of removal or dismissal. There is nothing whatsoever in these Rules which precludes the State Government from ordering an inquiry under Rule 55 against a member of the Indian Civil Service, and indeed it was conceded before us that had action been taken against the petitioner under Rule 55, he would have no grievance. The important point, however, is that a member of the Indian Civil Service cannot be dismissed or removed from service by the State Government because of the provisions of Article 311 and also because of the Civil Services (Classification, Control and Appeal) Rules. The ordering of the inquiry is a different matter altogether. This can be done by the State Government both under the Civil Services (Classification,

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Control and Appeal) Rules and under Act XXXVII of 1850. "Employed under" has a wholly different meaning to "appointed by". The petitioner was clearly employed under the Punjab Government and an inquiry into his misconduct could have been properly ordered by the Punjab Government.

That being so, it is clear that the provisions of Article 311 have not been contravened in any way because the petitioner has not been deprived of any rights which he enjoyed as a member of the Indian Civil Service before the coming into operation of the Constitution. There are instances of a member of the Indian Civil Service having been subjected to an inquiry under this Act both before and after the Constitution.

The third main argument addressed before us was that the report of the Inquiry Commissioner was bad for a number of reasons. I shall take these reasons seriatim.

It was contended that Act XXXVII of 1850 was *ultra vires* the Constitution because it offended against the provisions of Article 14 of the Constitution inasmuch as the State Government was at liberty to apply either Rule 55 or the Act. Our attention was drawn to the word "may" occurring in section 2. It was argued that the Government was at liberty to choose one or two dishonest Government servants and order an inquiry into their conduct without taking any action whatsoever against the others. Now this is an argument which it is difficult to understand. The Act is an empowering Act and it vests the Government with power to proceed against a Government servant who has been guilty of misconduct. The fact that it is not obligatory on the Government to proceed against every Government servant against whom an imputation may be made is

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scarcely a violation of the provisions of Article 14, otherwise it might be argued that wherever there is a discretion vesting in authority, the law vesting that discretion is illegal and the right of a Court to refuse bail, to impose a lesser penalty than the maximum permissible under law, the right to grant a number of discretionary reliefs such as a relief for injunction, a prohibitory order or a writ could all be questioned on the same ground. There is no question here of any classification. Section 2 empowers the Government to take action against an officer who has misconducted himself and the Government will examine the case of any particular officer and come to a decision whether to order an inquiry or not and to give such discretion is not only lawful but essential. There is therefore nothing in this Act which offends against the provisions of Article 14.

The next argument advanced was that the Act stood repealed *pro tanto* by the Prevention of Corruption Act (Act II of 1947). This argument assumes that Act XXXVII of 1850 is a penal Act and that its object is to provide punishment for an officer guilty of misconduct. This is a clearly erroneous supposition. The Act merely provides for an inquiry into the conduct of a Government servant and the only thing that can be done as a consequence of the inquiry is the dismissal or removal of the Government servant. It has been held that removal or dismissal does not amount to punishment and that action can be taken against the Government servant under the Prevention of Corruption Act after his removal. The matter was considered by the Supreme Court in *S. A. Venkataraman* v. *The Union of India* (1), and in view of this decision the argument falls to the ground. I

(1) 1954 S.C.R. 1150

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may refer to the following passage from the judgment of Mukherjea, J.—

> "As the law stands at present, the only purpose, for which an enquiry under Act XXXVII of 1850 could be made, is to help the Government to come to a definite conclusion regarding the misbehaviour of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him, prior to giving him a reasonable opportunity of showing cause, as is required under Article 311(2) of the Constitution. An enquiry under this Act is not at all compulsory and it is quite open to the Government to adopt any other method if it so chooses. It is a matter of convenience merely and nothing else. It is against this background that we will have to examine the material provisions of the Public Servants (Inquiries) Act of 1850 and see whether from the nature and result of the enquiry which the Act contemplates it is at all possible to say that the proceedings taken or concluded under the Act amount to prosecution and punishment for a criminal offence".

The decision on this point was stated in the following words:—

> "In our opinion, therefore, in an enquiry under the Public Servants (Inquiries) Act of 1850, there is neither any question of investigating an offence in the sense of an act or omission punishable by any law for the time being in force, nor is there any question of imposing punishment prescribed by the law which makes that act or omission an offence."

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Act XXXVII of 1850 and the Prevention of Corruption Act lie in entirely different fields and there is no question of either Act being repealed *pro tanto* by the other.

The next argument advanced was that the Inquiry Commissioner being a Judge of the High Court could not hold the inquiry unless he did so at the request of the President. Our attention was drawn to Paragraph 11(b)(i) of Part D of the Second Schedule. This deals merely with the remuneration of Judges. There is nothing to preclude a Judge from undertaking an inquiry of this kind and the inquiry does not become invalid merely because it was not undertaken at the request of the President. Under the provisions of Act XXXVII of 1850 anyone could have been appointed to hold the inquiry. An argument might have been raised under Part D of the Second Schedule that Mr. Weston was not entitled to draw his salary for the period during which the inquiry into the petitioner's conduct was proceeding because he was not on duty as a Judge and he was not performing the function of the Inquiry Commissioner at the request of the President, but I can find nothing in any law or enactment or anything in the Constitution which renders the inquiry invalid merely because it was undertaken at the request of the State Government and not at the request of the President.

The third argument falling under head (d) has already been disposed of while dealing with point (ii).

The next argument was that the report offended against the provisions of section 16 of Act XXXVII of 1850 because Mr. Weston had declined to summon some witnesses and some documents called by the petitioner. Mr. Mahajan's argument is that under the provisions of section 16, the Inquiry Commissioner has no choice in the matter and he is obliged to

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examine every item of evidence which the defence wishes to call. There is nothing in the wording of section 16 to warrant such an assumption. Every Court, tribunal or inquiry officer has the discretion of disallowing irrelevant or unnecessary evidence. We find that in the present case Mr. Weston passed detailed orders on all applications for summoning witnesses or documents and he acted entirely within the powers given to him by the Act. It is impossible to imagine that the Act envisages a situation whereby a Government servant, against whom an inquiry is being held, can frustrate and stultify the entire proceedings by merely summoning an impossible number of witnesses. If he were, for instance, to cite two million witnesses the inquiry against him could never be completed, and I am not prepared to concede that section 16 deprives the Inquiry Commissioner of all authority or discretion in the matter of ruling out irrelevant or unnecessary evidence.

Another argument raised was that there was misjoinder of charges inasmuch as the petitioner has had to face ten charges in the course of one inquiry. The provisions of the Criminal Procedure Code relating to the misjoinder of charges do not apply to the Public Servants (Inquiries) Act and the inquiry cannot be held to be bad merely on the ground that more than three charges were made the subject-matter of one inquiry.

The last argument under this head (iii)(g) was that the inquiry was held contrary to the principles of natural justice inasmuch as the petitioner was not given an adequate opportunity of calling his witnesses. I have already dealt with this matter at considerable length and I find that every latitude and every opportunity was allowed to the petitioner.

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The final argument advanced before us was that the order suspending the petitioner was illegal and therefore everything which followed it was illegal. The legality of the order of suspension was challenged on the ground that the petitioner was not given a show cause notice in respect of it. Our attention was drawn to the fact that suspension is punishment within the meaning of the Civil Services (Classification, Control and Appeal) Rules, but it is clear from the Rules that no notice need be given to a Government servant before he is suspended. But apart from this, the petitioner cannot challenge the order of suspension in the present petition because this order was passed before the Constitution came into force and he cannot in a petition under Article 226 contest the legality of an order passed before the 26th of January, 1950.

For the reasons given above, there is no force in this petition and I would dismiss it with costs which I assess at Rs. 250|-|-.

REVISIONAL CIVIL.

Before Falshaw, J.

ABDUL GHANI,—*Petitioner*.

versus

KHARAITI RAM,—*Respondent*.

Civil Revision No. 211-D/53

1955

Nov., 16th

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 8—Standard Rent of premises first let after 2nd June, 1944, fixed under Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947)—Whether bars the fixation of reasonable standard rent under the new Act.

Held, that the only standard rent of premises let for the first time after the 2nd of June, 1944, which are still maintained by the Act of 1952 as inviolable are the standard