sufficient cause for the detention of the person concerned."

It was suggested that the learned Judge indicated that all that was necessary was for the law to provide for an opinion of the Advisory Board as to the justification of the detention itself irrespective of whether it was to be for a period longer than three months. It is clear that here Mahajan, J., was not considering the meaning of the words "such detention". He was not concerned with deciding whether these words meant detention simpliciter or detention for a period longer than three months. His observations in *Gopalan's case* (1), that I have earlier set out, would in my view indicate that the Advisory Board is required to give an opinion as to whether detention for a longer period than three months is justified or not. It cannot, therefore, be said that Mahajan, J., held the view that the words "such detention" in Article 22(4)(a) mean simply preventive detention.

I, therefore, come to the conclusion that there is nothing either in *Makhan Singh's case* (1), or *Dattatreya Moreshwar Pangarkar's case* (2), which takes a view contrary to that which I have taken.

In the result I would allow the appeal.

By the Court.—We dismiss the appeal by a majority of 4 to 1 (A. K. Sarkar, J., dissenting) for reasons to be recorded later.

B.R.T.

LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Gosain, J.

THE STATE OF PUNJAB,—*Appellant.*

versus

KIRPAL SINGH AND HARBANS LAL,—*Respondents.*

1957

August, 6th

Letters Patent Appeal No. 30 of 1956.

Constitution of Innia—Article 311—Delivery of charges—Enquiry against charges when to commence—Whether essential to allow reasonable period to elapse

(1) [1952] S.C.R. 368.
(2) [1952] S.C.R. 612.

between the date of charges and the commencement of the enquiry—Whether it is essential to supply a copy of the report of the enquiry officer forming the basis of the show cause notice.

Held, that the rules require that a reasonable period should elapse between the delivery of the charges and the commencement of the enquiry, the intention being that the officer concerned should have adequate notice of the purpose and scope of the intended investigation. When only few hours' notice is given it must be held to be insufficient though a few days are generally enough.

Held further, that Article 311, imposes a statutory obligation on the punishing authority to afford the Government servant concerned a reasonable opportunity to showing cause against the punishment which is proposed to be awarded to him. It guarantees no particular form of procedure; it protects substantial rights. If the Court is satisfied that this requirement has been complied with in substance it will not concern itself with the form and will not pause to enquire whether a copy of the Enquiry Officer's report was furnished before the order of dismissal, removal or reduction was passed. The supply of a copy is not essential to the validity of an order of punishment and it is possible to visualise cases in which a copy need not be furnished. If, however, the findings of fact and the conclusions of law which are to provide the basis for the propsed punishment are made by a person other than the punishing authority it would be difficult to escape the conclusion that the supply of a copy of the report of the Enquiring Officer would be an essential pre-requisite to provision of the reasonable opportunity which the law contemplates. In that event the failure to supply the copy would not be a slight irregularity which can be easily cured but a vital defect which custs at the root of the entire proceeding.

Letters Patent Appeal under clause 10 of the Letters Patent from the Judgment of Hon'ble Mr. Justice Bishan Narain, dated the 11th January, 1956, passed in Civil Writ No. 309 of 1954—Kirpal Singh, etc *v.* The State of Punjab, etc.

L. D. KAUSHAL, Deputy Advocate-General, for Appellants.

H. S. GUJRAL, for Respondents.

JUDGMENT.

Bhandari, C. J

BHANDARI, C.J.,—This appeal under clause 10 of the Letters Patent raises the question whether a Government servant is entitled to claim that he should be supplied with a copy of the Enquiry Officer's report before an order of dismissal can be passed against him.

There are two respondents in this case, namely Kripal Singh, a Head Constable, and Harbans Lal, a Foot Constable. Both these officials were attached to the Police Station at Ludhiana in the year 1953.

On the evening of the 8th September, 1953 the two respondents, who were deputed on patrol duty to Saharanpur, left Saharanpur for Ludhiana by 333 up train in the Government Railway Police compartment. When the train reached Ambala Cantonment, Sub-Inspector Harbans Lal of the Railway Police searched the compartment and found a considerable quantity of *ban* and rice which were said to belong to Sham Lal and Kapur Chand, who happened to be travelling by the same train. Enquiries made by the Sub-Inspector, revealed the fact that the two respondents had taken an illegal gratification from the two passengers and had allowed them to travel in the police compartment from Saharanpur to Ambala without purchasing any tickets.

As soon as the train arrived at Ludhiana at about 11-30 the same evening, the respondents were informed that a telegram had been received from Ambala that they should present themselves before the Assistant Inspector-General of Police at Ambala on the following morning. They appeared in the office of the Assistant Inspector-General as directed and were informed by the Prosecuting Inspector that he proposed starting a departmental enquiry against them. He gave them a summary of the allegations and, without

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affording them an opportunity of collecting their thoughts or of planning their line of defence, asked them to show cause why they should not be dismissed from service. The Prosecuting Inspector then proceeded to record the statements of the respondents and after their statements had been taken down, he proceeded to record the deposition of Sham Lal who was alleged to have given the illegal gratification and who was present in the room of the Prosecuting Inspector. The respondents protested against the haste with which the proceedings were being conducted and requested that they should be given a reasonable opportunity of appreciating the charges which had been brought against them and of preparing the cross-examination of witnesses. The Prosecuting Inspector however declined to adjourn the case and completed the statement of the witness, other witnesses were examined on the 12th, 13th, 18th, 20th and 21st September, 1953. Statements of the respondents were recorded on the 21st September, 1953, charges were framed against them on the 1st October, 1953 and the pleas of the respondents in answer to the charges were recorded the same day. Defence evidence was recorded on the 26th, 27th and 29th October. The respondents filed lengthy written statements on the 5th November, 1953. The Prosecuting Inspector recorded his findings on the 28th November, 1953 and submitted his report to the Assistant Inspector-General of Police the same day. The latter slept over the report for several months and it was not till the 14th March, 1955 that he wrote out a lengthy order holding the respondents guilty of misconduct and without supplying them a copy of the order or explaining the contents thereof, directed them to appear before him on the following day to show cause why their services should not be dispensed with. Kirpal Singh appeared before the Assistant Inspector-General of Police on the 15th March and was asked to show cause why he should not be dismissed. He

replied that he was innocent and the Assistant Inspector-General of Police then and there passed an order dismissing him from the service of the State. Harbans Lal appeared before the Assistant Inspector-General of Police on the 17th March, 1954 and was asked to show cause as to why his services should not be terminated. He also pleaded his innocence and was then and there dismissed. The appeals preferred by the respondents to the higher authorities were dismissed on the 20th April, 1954, and they accordingly presented a petition under Article 226 of the Constitution of India. The learned Single Judge before whom this petition was put up for consideration came to the conclusion that as a copy of the report of the Assistant Inspector-General of Police was not supplied to the respondents, they could not be said to have been afforded a reasonable opportunity of showing cause against the action which was proposed to be taken in regard to them. As the mandatory provisions of Article 311 (2) of the Constitution had not been complied with, the learned Judge expressed the view that the order of dismissal was void and of no effect. The State Government is dissatisfied with the order of the learned Single Judge and has come to this Court in appeal.

Two questions arise for decision in the present case, namely, (1), whether the respondents can be said to have been afforded a reasonable opportunity when they were not allowed any time to think over the explanations that they wanted to give, and (2) whether it was incumbent on the part of the Enquiring Officer to supply a copy of the report submitted by him on the basis of which a show-cause notice was issued to Kirpal Singh on the 15th March, and to Harbans Lal on the 17th March, 1954.

The first question can, in my opinion, be easily answered. The rules require that a reasonable period

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should elapse between the delivery of the charges and the commencement of the enquiry, the intention being that the officer concerned should have adequate notice of the purpose and scope of the intended investigation. When only few hours' notice is given it must be held to be insufficient though a few days are generally enough. It all depends on the circumstances of each individual case. No notice worth the name was given in the present case for immediately after the statement of charges had been supplied to the respondents they were asked to show cause why they should not be dismissed from service. The Prosecuting Inspector, then, proceeded to record the statements of the respondents and immediately thereafter to record the deposition of Sham Lal, the star witness for the prosecution. I am clearly of the opinion that the respondents in the present case were not allowed any time to think over the explanations that they wanted to give or to decide upon the line of cross-examination which would be most favourable to them. They cannot thus be said to have been afforded a reasonable opportunity of showing cause against the action which was proposed to be taken in regard to them.

A question has also been raised whether the respondents were afforded a reasonable opportunity at the second stage. As pointed out in an earlier paragraph a notice was issued by the Assistant Superintendent of Police to Kirpal Singh on the 14th March, to appear before him on the following day. Kirpal Singh appeared before the Assistant Superintendent of Police on the 15th March. He was asked to give his explanation then and there. The only answer that he could give was that he was not guilty. The Assistant Inspector-General of Police thereupon proceeded to order his dismissal. Similar, treatment was accorded to Harbans Lal on the 17th March, 1954.

An opportunity such as was afforded to each of these two respondents cannot be regarded as a reasonable opportunity.

In regard to the second question Mr. Kaushal, who appears for the State has invited our attention to three authorities which appear to propound the proposition that it is not obligatory on the part of an Enquiring Officer to supply a copy of the report submitted by him before a Government servant is asked to show cause against the action which is proposed to be taken in regard to him. The first of these authorities is *Atindra Nath Mukherjee* v. *G. F. Gillit and others* (1). In this case a Division Bench of the Calcutta High Court expressed the view that when a Government servant is given the fullest opportunity of meeting the charges at the stage of the enquiry and when he avails himself of that opportunity he is not entitled to be furnished with a copy of the report of the Court of enquiry when no such report was prepared or submitted. The next decision on which reliance has been placed is 1957, S.C.A. 178. In this case the report submitted by the police in regard to an application for the grant of a licence to a particular transport company was read out to the parties by the Chairman of the Appellate Tribunal at the time of the hearing of the appeal. At the hearing no objection appears to have been raised by any of the parties to the course adopted by the Appellate Authority. The Appellate Authority by its order set aside the order of the Regional Transport Authority, allowed the appeal and ordered the permit to be issued to the appellant. Their Lordships of the Supreme Court held that the fact that the Appellate Authroity had read over the contents of the police report was enough compliance with the rules of natural

(1) A.I.R. 1955 Cal. 543, 547.

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justice. This decision appears to propound the proposition that the contents of a report submitted by an Enquiring Officer should be communicated to the parties concerned unless the contentions are clearly defind and the parties are otherwise fully advised of them. The third case which has been cited by the learned counsel for the State is reported as A.I.R. 1955, Assam, 171. In this case the action proposed to be taken against the officer was his removal from service and he had sufficient notice about it. In these circumstances, it was held that it was not necessary, that there should have been two notices, one asking him to show cause in answer to the charges framed against him and the second asking for a fresh explanation as to why he should not be removed from service, if Government so decides.

Mr. Gujral, on the other hand has relied upon two decisions, one reported as *Hiro Lilaram Chablani* v. *State of Hyderabad* (1), and the other as *M. V. Joga Rao* v. *State of Madras* (now Andhra) (2). In the first of these two decisions, a Division Bench of the Hyderabad High Court held that the failure to supply the applicant with a copy of the charges and the findings of the enquiry is not a mere technical defect. A similar, view was taken by a Division Bench of the Andhra Pradesh High Court and it was held that the authority should necessarily, in its order requiring the civil servant to show cause, indicate not only the punishment proposed to be inflicted on him but also the reasons for coming to that conclusion. The civil servant can show cause by pleading that the tribunal's report is vitiated by gross irregularities committed by it or by violating the principles of

(1) A.I.R. 1955 Hyd. 48.
(2) A.I.R. 1957 Audhra Pradesh 197.

natural justice such as preventing him from examining his witnesses or cross-examining the witnesses who spoke against him or similar others. If the finding of the tribunal is the basis for the proposed punishment, he can also attack the correctness of the finding by showing that the finding was not based on evidence or is not supported by evidence.

The legal position as I see it is fairly simple. Article 311 imposes a statutory obligation on the punishing authority to afford the Government servant concerned a reasonable opportunity of showing, cause against the punishment which is proposed to be awarded to him. It guarantees no particular form of procedure; it protects substantial rights. If the Court is satisfied that this requirement has been complied with in substance, it will not concern itself with the form and will not pause to enquire whether a copy of the Enquiring Officer's report was furnished before the order of dismissal, removal or reduction was passed. The supply of a copy is not essential to the validity of an order of punishment and it is possible to visualise cases in which a copy need not be furnished. A copy need not be supplied if, for example, the punishing authority has himself recorded all the evidence and has himself heard the arguments of the parties and has recorded his findings at the spot. Nor need a copy be supplied when the evidence has been recorded by an Enquiry Officer but arguments have been heard by the punishing authority, for in that case the Government servant concerned has a full opportunity of pointing out the flaws in the prosecution story and of establishing his own innocence. Nor need a copy be supplied if the Enquiring Officer has read out the contents of the report or has otherwise informed the parties fully of the contentions and the findings. If, however,

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the findings of fact and the conclusions of law which are to provide the basis for the proposed punishment are made by a person other than the punishing authority, it would be difficult to escape the conclusion that the supply of a copy of the report of the Enquiring Officer would be an essential pre-requisite to provision of the reasonable opportunity which the law contemplates. In that event, the failure to supply the copy would not be a slight irregularity which can be easily cured but a vital defect which cuts at the root of the entire proceeding.

The evidence in the present case was recorded by the Prosecuting Inspector who submitted his report to the Assistant Inspector-General of Police. A copy of this report was not supplied to the respondents and they were deprived of the opportunity of showing that the findings of fact at which the Enquiring Officer arrived were not justified.

For these reasons, I would uphold the order of the learned Single Judge and dismiss the appeal. Ordered accordingly.

Gosain, J.

GOSAIN, J.—I agree.

D. K. M.

FULL BENCH.

Civil Miscellaneous.

Before Bhandari, C. J., Gurnam Singh and Tek Chand, JJ.

MESSRS. JAWAHAR SINGH AND OTHERS,—*Plaintiff-Appellants.*

versus

UNION OF INDIA, (2) PUNJAB STATE, (BHARAT), (3) PROVINCE OF PUNJAB (PAKISTAN),—*Defendants-Respondents.*

Civil Miscellaneous No. 353 of 1956.

in

Letters Patent Appeal No. 38 of 1952.

1957

August, 14th

Court Fees Act (VII of 1870)—Sections 10, 13, 14, 15 and 19A—Refund of Court Fee legally paid—Court, whether