except action being taken u/s 20 of the Act, as explained above, none of the petitioners shall be transferred to an ordinary jail.

P.C.G.

Before J. V. Gupta, C.J. & R. S. Mongia, J.

THE POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH, CHANDIGARH,— *Appellants.*

versus

J. C. MEHTA,—*Respondent.*

Letters Patent Appeal No. 1150 *of* 1988

7th September, 1990.

Constitution of India, 1950—*Article* 311(2)—*Central Civil Services (Classification, Control and Appeal) Rules*, 1965—*Rls.* 14.(23), 15(4) *and* 17—*The Post Graduate Institute of Medical Education and Research, Chandigarh, Regulations*, 1967—*Regl.* 38(2)—*Central Government Service (Conduct) Rules*, 1964—*Rl.* 3(1) (*i*) & (*ii*)—*Compulsory retirement—Enquiry report need not be supplied earlier than the communication of order imposing punishment—No violation of principles of natural justice by non-supply of the enquiry report before imposition of punishment—However, case remanded to Appellate Authority for fresh decision after affording opportunity of hearing.*

Held, that if the idea of amending Article 311(2) of the Constitution of India was to deprive the delinquent officer of the opportunity to show cause against the punishment, which, according to the Supreme Court also included the opportunity to show that the findings of the Enquiry Officer were wrong, the very idea of amendment would become otiose if again the delinquent officer was to be supplied with a copy of the enquiry report to enable him to show to the disciplinary authority that the findings of the Enquiry Officer were wrong. The same reasoning would apply to Rule 15(4) of the C.C.A. Rules. (Para 13)

Held, that the C.C.A. Rules specifically provide the stage at which the enquiry report is to be supplied. That being the position, we hold that there is no necessity to supply a copy of the enquiry report at any time earlier than the communication of the order imposing punishment. (Para 14)

Held, that Rule 15(4) read with Rule 17 of the C.C.A. Rules, specifically exclude the invocation of the Rules of natural justice for supplying the copy of the enquiry report to the officer concerned to show to the disciplinary authority that the findings of the Enquiry Officer were wrong. He can show this before the Appellate authority. (Para 17)

Letters patent Appeal under clause 10 *of the Letters Patent against the judgment of Hon'ble Mr. Justice D. V. Sehgal, dated* 8*th August*, 1988 *in C.W.P. No.* 3011 *of* 1987.

D. S. Nehra, Sr. Advocate with Arun Nehra, Advocate, *for the Appellants.*

H. L. Sibal, Sr. Advocate with R. S. Rai, Advocate, for the *Respondents.*

JUDGMENT

R. S. Mongia, J.

(1) Shri J. C. Mehta, writ-petitioner, now respondent in the present appeal, was apointed as an Executive Engineer in the Post Graduate Institute of Medical Education and Research, Chandigarh (for short the P.G.I.) on 12th January, 1969. He was promoted to the post of Superintending Engineer by the Governing Body of the P.G.I. in August, 1972. The conditions of service of Shri J. C. Mehta were governed by the Post Graduate Institute of Medical Education and Research, Chandigarh, Regulations, 1967, which were framed under Section 32 of the Parliament Act No. 51 of 1966.

The petitioner was placed under suspension and was served with two charge-sheets dated 5th May, 1983 and 6th June, 1983 (Annexures P-1 and P-2 to the writ petition). Briefly, it may be mentioned that the substance of the allegations in charge-sheet, Annexure P-1 against the respondent was that while functioning as Superintending Hospital Engineer during the year 1978-79, in collusion with Sarvshri P. L. Sodhi, Hospital Engineer, Arun Vohra, Technologist Grade-II, and some others, did not care to observe codal formalities as provided in the Manual of Accounts procedure of the P.G.I. and placed supply orders for 2000 Deodar and 500 Kail-wood sleepers with M/s Hindustan Timber Stores, New Delhi, at a total cost of Rs. 3,81.876-06 P. and subsequently he did not inspect the material, with the result that sub-standard sleepers were accepted by him. He also hurriedly made the payment of 95 per cent of the total cost and also paid illegal overhead charges of Rs. 13,352-34 P. and Sales tax of Rs. 1,335-20 P. on the overhead charges. He also made excess payment of Rs. 4408.00. Thereby he

had committed misconduct and exhibited lack of integrity and devotion to duty and had contravened rule 3(1) (i) and (ii) of the Central Government Service (Conduct) Rules, 1964.

It may be mentioned here that to the employees of the P.G.I. Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter called the C.C.A. Rules) are applicable for taking disciplinary action against them. In pursuance of the charge-sheet, Annexure P-1, an enquiry was held against the writ petitioner in accordance with the provisions of C.C.A. Rules, Mr. Ashok Kumar Rastogi, commissioner for Departmental Inquiries, Central Vigilance Commission, who was appointed as the Enquiry Officer,—*vide* his detailed report (Annexure Rule 1/7 with the written statement) found Shri Mehta guilty of the following charges :—

"(a) The charge that Shri Mehta did not follow the codal formalities is proved.

(b) That charge that Shri Mehta did not safeguard the interests of the P.G.I. by allowing favourable terms to the firm and arranging payments thereof is proved.

(c) The charge that Shri Mehta did not inspect timber is not maintainable as he was not required to do so at any stage.

(d) The charge that the timber supplied did not conform to Grade I quality is found utterly baseless."

A separate enquiry was held into the charges contained in Annexure P-2 in accordance with the C.C.A. Rules by Shri P. R. Das Gupta, Joint Secretary, Ministry of Health and Family Welfare, who was appointed as the Inquiry Officer,—*vide* his report (Annexure R-1/6) with the written statement) he summarised his findings as follows :—

Charge	Finding
(a) Has it been established that Shri Mehta was wilfully absent from duty since 11th November, 1983 ?	Yes.
(b) Does it amount to contravention of rule 3(1) (ii) and (iii) of the Central Civil Service Conduct Rules, 1964 ?	No Since this rule is supposed to cover acts of misconduct not covered by other specific provisions of the Rules."

(3) The Governing Body of the P.G.I., which is the appointing and disciplinary authority of Shri Mehta, after taking into consideration both the enquiry reports and the findings recorded therein and other relevant material passed two separate orders on the same date, i.e. 15th November, 1984 (Annexure P-3 and P-3/A), by which punishment of compulsory retirement from service was imposed on respondent Shri Mehta. An appeal was preferred by Shri Mehta against both the aforesaid orders of compulsory retirement, to the Chairman of the Institute Body of the P.G.I., who is the Union Health Minister. This appeal was, however, rejected,—*vide* communication to Shri Mehta,—*vide* Memo. dated 31st March, 1987 (Annexure P-6). Shri Mehta challenged the orders, Annexures P-3, P-3/A and P-6 by way of writ petition in this Court.

(4) Before the learned Single Judge, four points were raised, which have been mentioned by the learned Single Judge and are reproduced below :—

> "(1) The petitioner was entitled to an opportunity of hearing after the Inquiry Officers had submitted their respective reports on the charges. It was only after affording an opportunity on the quantum of punishment that respondent No. 1 could take its decision awarding punishment in accordance with law.
>
> (2) The C.C.A., Rules were made applicable to the employees of the P.G.I. by regulation 38(2) of the Regulations in 1967. The amendment effected by the Government of India in rule 15(4) of the C.C.A. Rules as a result of the amendment of Article 311(2) of the Constitution by the 42nd Amendment in the year 1976 does not *ipso facto* apply to the employees of the P.G.I. as this amendment had not been adopted under Section 32(1) of the Act.
>
> (3) At any rate, it was incumbent on respondent No. 2 to supply copies of the reports of the Inquiry Officers (Annexures R-1/6 and R-1/7) to make available to him an opportunity to address a representation on the reasons advanced by the said authorities for arriving at their findings and also to challenge them. This was the demand of the rules of natural justice before the reports of the Inquiry Officer were adopted, their findings accepted or varied by the disciplinay authority. Since it was not so

done, the impugned orders of punishment were discriminatory and violative of the rules of natural justice.

(4) The Institute Body as the Appellate Authority did not pass a speaking order, nor did it record as to how, it was satisfied that the penalty had been imposed on the petitioner in accordance with the procedure laid down by the rules, that the findings of the disciplinary authority were warranted by the evidence on the record and that the penalty imposed was proper. Further, it was necessary for the Appellate Authority to record reasons why it was rejecting the various contentions raised in his appeal by the petitioner."

(5) The learned Single Judge negatived the first and the second points mentioned above, but points 3 and 4 found favour with him, and, accordingly, the order of compulsory retirement and order rejecting the appeal were quashed. Dissatisfied with the judgment of the learned Single Judge, the P.G.I. has filed the present Letters Patent Appeal.

(6) The learned Single Judge while deciding point No. 3, quoted above, held that where the disciplinary authority itself is not the enquiring authority. It has to apply its mind to the report of the enquiring authority and it may disagree with the findings recorded by the Inquiry Officer. According to the learned Single Judge, the findings of the Inquiry Officer are tentative in nature and it is the disciplinary authority's decision on the report of the enquiring authority which is ultimately to prevail and effect the rights of the delinquent officer. Therefore, according to the learned Single Judge, if the report of the enquiring authority is not disclosed to the delinquent officer and he is not given an opportunity by the disciplinary authority before accepting the findings of the enquiry authority, it definitely amounts to violation of the rules of natural justice. The sole reliance for coming to this conclusion was placed on the Supreme Court judgment in *Institute of Chartered Accountants of India* v. *L. K. Ratna and others* (1).

(7) 'Mr. D. S. Nehra, Senior Advocate, learned counsel for the appellant—P.G.I., submitted that the learned Single Judge had erred

(1) A.I.R. 1987 S.C. 71.

in relying on *Ratna's case* (supra), as the Rules in the present case are different that the provisions which were under consideration in *Ratna's case* (supra). To appreciate the argument of the learned counsel for the appellant that there is no requirement of the supply of the copy of the report of the Enquiry Officer by the disciplinary authority before it accepts the findings of the Enquiry Officer, it will be apposite to reproduce the relevant C.C.A. Rules, with which we are concerned :—

"Rule 14(23), *inter alia* provides as under :—

(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain—

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and reasons therefore.

Explanation.—If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge.

(8) Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include—

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any submitted by the Government servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the presenting officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry."

Rule 15 is in the following terms :—

"*Action on the inquiry report.*—(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be;

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposed such penalty :

Provided that in every case where it is necessary to consult the commission the record of the Inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of

the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the Inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

Rule 17 is in the following terms :—

"17. Orders made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings on each article of charge, or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority unless they have already been supplied to him and also a copy of the advice, if any, given by the commissioner, and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance."

(9) Mr. D. S. Nehra, Senior Advocate, learned counsel for the appellant, contended that the reading of Rule 14(23) (i) goes to show that the enquiry report has to contain, apart from the articles of charge and the defence of the Government servant, an assessment of the evidence in respect of each article of charge as also the findings on each article of charge and reasons therefor. According to the learned counsel, these findings recorded by the Enquiry Officer are good findings and the disciplinary authority though has a right to differ with the findings of the Enquiry Officer it has to record reasons for such disagreement as is the requirement under Rule

15(2) of the C.C.A. Rules. Under the elaborate procedure envisaged by Rule 14, the delinquent officer is given the fullest opportunity to defend himself and after the close of evidence, the delinquent officer is given opportunity to argue the matter on the basis of the evidence and even give written brief. According to the learned counsel, there is no requirement under any law or rules of natural justice that when the disciplinary authority is accepting the findings of the Enquiry Officer, it must give a copy of the report of the Enquiry Officer to the delinquent officer, so that he may reprent against the same that the findings should not be accepted.

(10) Before we analyse the submissions of the learned counsel, it will be relevant to mention here that sub clause (2) of Article 311 of the Constitution of India, which envisaged giving of show cause notice regarding proposed punishment before its amendment,—*vide* 42nd Amendment Act, 1976, on 3rd January, 1977, reads as under:—

> "*Article* 311(2).—No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed after such enquiry to impose on him any such penalty until he has been given a reasonable opportunity of making representation on the penalty proposed but only on the basis of the evidence adduced during such enquiry."

(11) By 42nd Amendment, the words "and where it is proposed upto during such enquiry" were omitted and following were substituted :—

> "Provided that where it is proposed after such enquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed."

Prior to the amendment of Rule 15(4) of the C.C.A. Rules on 2nd September, 1978, there was a similar provision like the unamended Article 311 of the Constitution, whereby it was necessary to give a

show cause notice against the proposed punishment. The un-amended Rule 15(4) of the C.C.A. Rules is reproduced below :—

"15(4) (i) If the disciplinary authority having read to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall—

(a) furnish to the Government servant a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;

(b) give the Government servant a notice stating the penalty proposed to be imposed on him and calling him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the enquiry held under Rule 14."

However, with effect from 2nd September, 1978, Rule 15(4) was amended, which has already been quoted in the earlier part of this judgment. By amending Rule 15(4) of the C.C.A. Rules, it was provided that it would not be necessary to give the Government servant an opportunity of making representation on the penalty proposed to be imposed.

(12) The unamended Article 311 of the constitution of India, which provided for a second show cause notice before imposing a penalty came up for consideration by the Apex Court in *Union of India* v. *H. C. Goel* (2), wherein their Lordships held that the delinquent officer while replying to the show cause notice against the proposed penalty could also show that the findings of the Enquiry

(2) A.I.R. 1964 S.C. 364.

Officer in the enquiry report were wrong. In other words, the delinquent officer could show not only that the proposed punishment was excessive or was not called for at all but could also attack the enquiry report on merits. In para 11 of the report, it has been observed as under :—

> "— —
>
> It would thus be seen that the object of the second notice is to enable the public servant to satisfy the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted upon him is unduly severe."

(13) Now coming back to the arguments of Mr. Nehra, learned counsel for the appellant. He has submitted that the provisions of unamended Rule 15(4) of the C.C.A. Rules were akin to unamended Article 311(2) of the Constitution and the amended provision of Rule 15(4) of the C.C.A. Rules is identical to the amended Article 311(2) of the Constitution. According to the learned counsel, once Article 311(2) was amended to say that there shall be no necessity to give any show cause notice, both the rights of the delinquent officer which were culled out by the Supreme Court in *H. C. Goel's case* (supra) were taken away. In other words, according to the learned counsel, after the amendment of Article 311 of the Constitution, the delinquent officer has no right to show to the disciplinary authority that the findings on merit by the Enquiry Officer were wrong or the punishment was too severe. The learned counsel went on to submit that same thing should apply with equal force to the amended Rule 15(4). Once it has been specifically provided in rule 15(4) of the C.C.A. Rules that it shall not be necessary to give to the Government servant any opportunity of making representation on the penalty proposed to be imposed, it should be taken on the parity of the reasoning in *H. C. Goel's case* (supra) that no opportunity was required to be given to the delinquent officer to show that the enquiry report was wrong on merits. If such an opportunity was not envisaged, the question of supplying the copy of the enquiry report to the deliquent officer to show to the disciplinary authority that the findings of the Enquiry Officer were wrong, did not arise. We find merit in these submissions. If the idea of amending Article 311(2) of the Constitution of India was to deprive the delinquent officer of the opportunity to show cause against the punishment, which, according to the

Supreme Court also included the opportunity to show that the findings of the Enquiry Officer were wrong, the very idea of the amendment would become otiose if again the delinquent officer was to be supplied with a copy of the enquiry report to enable him to show to the disciplinary authority that the findings of the Enquiry Officer were wrong. The same reasoning would apply to Rule 15(4) of the C.C.A. Rules.

(14) Rule 17 of the C.C.A. Rules also gives the indication that it is not necessary to give the copy of the enquiry report to the delinquent officer to show to the disciplinary authority that the findings of the Enquiry Officer are not correct, inasmuch as the said Rule provides that when the order of punishment is communicated to the delinquent officer, the enquiry report to be supplied alongwith that order. If the proposition as held by the learned Single Judge was correct that the delinquent officer was to be supplied the copy of the enquiry report to show to the disciplinary authority that the findings of the Enquiry Officer were not sustainable then Rule 17, which provides for the communication of the order alongwith the copy of the enquiry report, would be become redundent.

The C.C.A. Rules specifically provide the stage at which the enquiry report is to be supplied. That being the position, we hold that there is no necessity to supply a copy of the enquiry report at any time earlier than the communication of the order imposing punishment.

(15) For the above view, we find support from a judgment of Andhra Pradesh High Court, in which similar arguments and similar rule like Rule 17 were under consideration. The Andhra Pradesh High Court in *K. P. Upendra* vs. *The Chief General Manager,* (3) held as under:—

> "After such an order has been made, under Rule 50(5) of the Rules the orders so made shall be communicated to the employee concerned with a copy of the report of Inquiry Officer. It is thereby implicit from the Rules that the need to supply a copy of the report before imposition of any of the penalties adumbrated under Rule 49 of the Rules has been dispensed with. It is no doubt

(3) 1990(2) S.L.R. 552.

true that the petitioner has got a right to supply of the report of the Inquiry Officer if the Disciplinary Authority is not itself the Inquiry Officer. But at what stage the report is to be supplied is a material question. While construing this, this Court has to consider the Rules consistent with the scheme adumbrated thereunder, Rule 50 of the Rules provides the procedure of conducting an inquiry giving reasonable opportunity. If the Disciplinary Authority appoints as Inquiry Officer and on the report submitted by the Inquiry Officer after inquiry, the Disciplinary Authority will consider the entire material on record and then pass appropriate order imposing suitable penalty in terms of misconduct regulated under Rule 49 of the Rules. If it is a major penalty, a copy of the report shall also be supplied to the employee concerned alongwith the order as contemplated under Rule 50(5) of the Rules. In the process of construction of the Rule, the Court cannot reconstruct and hold that there is an obligation to supply a copy of the report of the Enquiry Officer before imposition of punishment when the Rules are explicit. It is a well settled legal position that the principles of natural justice would supplement but would not supplant the law. When the Rules are covering the field, to that extent the rules of principles of natural justice stand excluded and the Rules alone are to be looked into. If the Rules are silent, it is also equally well-settled that the doctrine of principles of natural justice are implicit and should be applied before imposition of any penalty on the employees of the State or of a public Undertaking. Rule 50(5) of the Rules covers that field. Thereby the principles of natural justice by implication stand excluded and Rule 50(5) of the Rules alone operates that field. As it adumbrates the supply of a copy of the report only after imposition of penalty, according to the exigencies by necessary implication the supply of the report before imposition of penalty stands excluded. Admittedly the report was supplied by the Disciplinary Authority alongwith the impugned order removing the petitioner from service. Thereby it is not in violation of Rule 50(5) of the Rules, Shri M. R. K. Choudhary, learned counsel for the petitioner placed reliance on the decision of their

Lordship of the Supreme Court reported in *Union of India* vs. *E. Bashyan,* (4), wherein a Division Bench of two Judges, while referring to a larger Bench the point whether furnishing of a copy of the report before imposition of penalty is a part of principles of natural justice, opined that non-supply of a copy of the report would constitute violation of principles of natural justice, Contrary view was taken by another Division Bench in *Kailash Chander* vs. *State of U.P.* (5). In the light of the latter view, I have no hesitation to hold that the impugned order is not vitiated by violation of principles of natural justice for non-supply of a copy of the report of the Inquiry Officer before imposition of penalty."

(16) The learned counsel for the appellant further submitted that Rules of natural justice can be specifically excluded or these can be deemed to be excluded by necessary intendment by reading some other rules. He further submitted that the delinquent officer in a case where an appeal lies against the order of punishment is not remediless and can raise all the points before the Appellate Authority. For both these arguments, learned counsel drew our attention to paragraphs 101 and 102 of the judgment of the Constitution Bench of the Supreme Court in *Union of India and another* vs. *Tulsiram Patel,* (6) which are reproduced below:—

"101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the *nemo judex in causa sua rule as also to the audi alteram partem* rule. The nemo judex in *causa sua* rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in *J. Mohanpatra and Co. v. State of Orissa* (1985) 1 S.C.R. 322, 344-5; (A.I.R. 1984 S.C. 1572, 1576-7) so far as the *audi alteram partem* rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature

(4) A.I.R. 1988 S.C. 1000.
(5) A.I.R. 1988 S.C. 138.
(6) A.I.R. 1985 S.C. 1416.

of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the *audi alteram partem* rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in *Maneka Gandhi's case* at page 681 (of 1978) 2 SCR 621. AIR 1978 SC 597 at page 629. If legislation and the necessities of a situation can exclude the principles of natural justice including the *audi alteram partem* rule, a fortior so can a provision of the Constitution, for a Constitutional provision has a far greater and all-pervading sanctity than a statutory provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its keywords "this clause shall not apply". As pointed out above, clause (2) of Article 311 embodies in express words the *audi alteram partem* rule. This principle of natural justice having been expressly excluded by a Constitutional provision namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the Constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be *mala fide*, and, therefore, void. In such a case the invalidating factor may be referable to Article 14. This is, however, the only scope which Article 14 can have in relation to the second proviso, but to hold that once the second proviso is properly applied and clause (2) of Article 311 excluded, Article 14 will step in to take the place of Clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution-makers who inserted it in Article 311(2) were the best persons to decide whether such an exclusionary provision should be there and the situation in which this provision should apply.

102. In this connection, it must be remembered that a government servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that Article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the president or the Governor of State because they being the highest Constitutional functionaries, there can be no higher authority to which an appeal can be lie from an order passed by one of them. Thus, where the second proviso applies, though there is no prior opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice. In *Maneka Gandhi's case* and in *Liberty Oil Mills* v. *Union of India,* the right to make a representation after an action was taken was held to be a sufficient remedy, and an appeal is a much wider and more effective remedy than a right of making a representation."

(17) Following the above-mentioned dictum, we are of the view that Rule 15(4) read with Rule 17 of the C.C.A. Rules, specifically exclude the invocation of the Rules of natural justice for supplying the copy of the enquiry report to the officer concerned to show to the disciplinary authority that the findings of the Inquiry Officer were wrong. He can show this before the Appellate authority.

(18) Mr. H. L. Sibal, Senior Advocate, learned counsel for the respondent Shri J. C. Mehta, vehemently contended that the present case was fully covered by the judgment of the Supreme Court in *Ratna's case* (supra), and the learned Single Judge had rightly quashed the orders of punishment, Annexures P-3 and P-3/A, by relying on *Ratna's case* (supra). He further submitted that the Supreme Court in *Union of India and others* v. *E. Bashyan*, (7) A.I.R. 1988 Supreme Court 1000, had made observations, which support his contentions that the delinquent officer has a right to be supplied with a copy of the enquiry report to show to the disciplinary authority that the findings of the Enquiry Officer are not correct. We have

(7) A.I.R. 1988, S.C. 1000.

carefully considered the argument of learned counsel for the respondent and have gone through the judgment in *Ratna's case* (supra). In *Ratna's case* (supra), the provisions were different than the C.C.A. Rules.

Section 21 of the Chartered Accountants Act, 1949, (relevant extract) which was under consideration before the Supreme Court in *Ratna's case* (supra), is quoted below :—

"Section 21 *Procedure in inquiries relating to misconduct of members of Institute* :—

"(1) Where on receipt of information by, or of a complaint made to it, the Council is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its findings accordingly and direct that the proceedings shall be filed or the compliant shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely :—

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit :

Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b) but shall forward the case to the High Court with its recommendations thereon."

(19) It would be seen from the perusal of Section 21, quoted above, that the real Authority to give findings of guilty or not guilty is not the Disciplinary Committee but it is the Council which under Sections 21(2) and 21(3) finds whether the delinquent officer is guilty or not guilty. Of course, the Disciplinary Committee reports the matter to the Council, but it is the Council which is the Authority to give finding of guilty or not guilty on the charges. On the other hand under Rule 14(23) (i) (c) and (d) of the C.C.A. Rules, the Enquiry Officer is to assess the evidence in respect of each article of charge and then record a finding on each article of charge and reasons therefor. Under Rule 15 of the C.A.A. Rules, the Disciplinary Authority can differ with the findings of the Enquiry Officer, but then it has to record its own reasons and if it agrees with the report of the Enquiry Officer, it is not necessary to record any reasons. In other words, it means that in a way the report of the Enquiry Officer can only be tinkered with by the Disciplinary Authority if the Disciplinary Authority record its own reasons for differing with reasons recorded by the Enquiry Officer. So far as the delinquent officer is concerned, the enquiry report by the Enquiry Officer is in a way final. There is, however, power with the Disciplinary Authority to differ with the same, but it has to record reasons for differing with the findings of the Enquiry Officer. If another opportunity was to be given to the delinquent officer after the writing of the report by the Enquiry Officer and before it was accepted by the Disciplinary Authority, then the very idea of amending Rule 15(4) of the C.C.A. Rules would become meaningless and the Disciplinary Authority would have to write another judgment/report dealing with all the points which may be raised by the delinquent officer against the enquiry report. This cannot be said to be envisaged by the rules of natural justice which were duly complied with when an opportunity was given to the delinquent

officer before the enquiring authority. We hold that the learned Single Judge was not right in relying on *Ratna's case* (supra) in view of the provisions of the C.C.A. Rules.

(20) As far as *E. Bashyan's case* (supra) is concerned, which is a judgment of two Judge Bench of the Supreme Court, it has been observed that the Enquiry Officer acts as a delegate of the Disciplinary Authority, and, therefore, the rules of natural justice require that before the enquiry report is accepted by the Disciplinary Authority, the concerned officer should be heard. It may be noticed that specifically C.C.A. Rules were not under consideration at all matter and rather referred the matter to a larger Bench. Therefore, and even otherwise the learned Judges did not finally opine on the this authority is of no assistance to the learned counsel for the respondent.

(21) As far as the 4th point, referred to above, which was argued before the learned Single Judge, is concerned, i.e. that the order of the Appellate Authority should be a speaking order, the learned counsel for the appellant fairly conceded that he will not be in a position to argue that the appellate order (Annexure P-6) is sustainable, as even according to him it was a non-speaking order. He, however, submitted that the learned Single Judge for quashing the appellate order on the ground that the same was a non-speaking order, had relied on *R. P. Bhatt* v. *Union of India and others,* (8). According to the counsel, the learned Single Judge should have remanded the case to the Appellate Authority to pass a speaking order in accordance with law, as was done in *R. P. Bhatt's case* (supra). We are of the opinion that since the learned Single Judge had quashed the orders Annexures P-3 and P-3/A, the question of remanding the case to the Appellate Authority did not arise. However, if the orders of compulsory retirement of the respondent (Annexures P-3 and P-3/A) had not been quashed, the learned Single Judge would have perhaps remanded the case to the Appellate Authority.

(22) For the reasons we have given above, we find that the learned Single Judge was not correct in law to quash the orders of compulsory retirement of respondent Shri J. C. Mehta, Annexures P-3 and P-3/A. To that extent, we reverse the judgment of the learned Single Judge and hold that the orders of compulsory retirement of the respondent Shri J. C. Mehta, are perfectly legal. The

(8) 1986(1) S.L.R. 775.

Letters Patent Appeal is allowed to that extent. However, we uphold the judgment of the learned Single Judge to the extent it quashed the appellate order (Annexure P-6), but remand the case to the Appellate Authority to decide the appeal afresh and pass a speaking order after affording opportunity to respondent Shri J. C. Mehta. The appeal may be decided within six months from the receipt of this order. We may clarify that it will be open to Shri J. C. Mehta to raise all the points before the Appellate Authority that the findings of the Enquiry Officer were not correct, and no punishment was called for. We leave the parties to bear their own costs.

R.N. R.

Before G. R. Majithia, J.

TELU RAM JAIN,—*Appellant.*

versus

M/S. AGGARWAL SONS,—*Respondent.*

Regular Second Appeal No. 1687 *of* 1978

11th September, 1990.

Sale of Goods Act, 1930—*S.* 61—*Price of goods sold not paid—Liability of buyer to pay interest—Powers of the Court to grant such interest.*

Held, that if there was no contract between the parties for the payment of interest, the provisions of sub-section (2) will come into play and be attracted. Sub-section (2) of Section 61 gives wide discretion to the Court to award interest as it thinks fit on the amount of the price from the date on which the payment was to be made. The seller would be entitled to interest from the date of delivery of goods upto the date of payment even in the absence of any contract for a payment of interest. (Para 5)

Regular Second Appeal from the decree of the Court of Shri H. L. Randev, Additional District Judge, Chandigarh, dated 3rd day of February, 1978 *reversing that of the Court of Shri B. R. Gupta HCS, Judge 1st Class, Chandigarh dated the 17th January,* 1977 *and passing a decree for Rs.* 6,500 *with costs and ordering that the costs of Rs.* 100 *imposed regarding the additional evidence shall be liable to be adjusted against the same.*

Claim : Suit for recovery of Rs. 6,500.

Claim in Appeal : For reversal of the order of Lower Appellate Court.

Balwant Singh Gupta Sr. Advocate with Satya Parkash Jain, Advocate, *for the Appellant.*

Nemo *for the Respondent.*