APPELLATE CIVIL.

Before Bhandari, C. J.

THE STATE OF PUNJAB,— *Appellant.*

versus

KARAM CHAND, SON OF ATMT RAM,—*Respondent.*

Regular First Appeal No. 68 of 1954.

1958

April 14th

Constitution of India (1950)—Article 311—Removal proceedings—Whether judicial, quasi-judicial or administrative—Rules of natural justice—Whether apply to such proceedings—Reasonable opportunity—Meaning and essentials of.

Held, per Bhandari, C. J.,—

(1) That Several Courts have taken the view that the removal proceedings under Article 311 of the Constitution are judicial or quasi-judicial in character and that they are subject to the same requirements of fair play as are applicable to proceedings of a judicial character. Even if these proceedings cannot be regarded as judicial proceedings in the real sense of the word and even if they are not to be assimilated to a trial, even then they bear a close resemblance to a judicial decision and rules of natural justice apply to them with as much force as they apply to all judicial proceedings.

(2) That the expression "reasonable opportunity" has not been defined by the framers of the Constitution but there can be little doubt that the expression means opportunity, the vital elements of which are timely notice and full opportunity to the person concerned to present all the evidence and arguments which he deems important for the purpose of his case. The requirements of a reasonable opportunity are satisfied when the person affected is given personal notice of the charges he is called upon to answer; when he is informed of the place where and the time when he shall so answer; when he is afforded an opportunity, if he so chooses, to cross-examine the witnesses produced against him; when he is afforded an opportunity, after all the evidence is produced and known to him, to produce evidence and witnesses to refute it; when the decision is governed by and based upon the evidence at the hearing; when he is afforded an opportunity to make his representations as to why the proposed punishment should not be inflicted upon him; and when the hearing is held before an unbiassed and unprejudiced officer. The enquiry officer must conduct the hearing with open-mindedness, fairness and impartiality and must approach the hearing without bias and without prejudgment of the issues. If the opportunity to be heard is afforded by a biassed or prejudiced officer it cannot be regarded a reasonable opportunity. The opportunity must be a real and adequate opportunity and not merely a nominal or a sham one. If the enquiry officer conducts the proceedings before it in a manner which is contrary to the rules of natural justice or which offends the superior court's sense of fair play, the superior court would

be perfectly justified in exercising the extraordinary powers vested in it by Article 226 of the Constitution.

Held, per Falshaw, J.—

(1) The usual procedure in these matters is that first there is an enquiry in which evidence is led to prove or disprove the charge or charges levelled against the alleged offender, and then, if the enquiry officer reports that the charge is, or any of the charges are proved on the evidence led, the officer who has to pass the order of punishment calls on the offender to show cause against the action proposed to be taken against him. Since the first of these stages involves the framing of charges, the leading of evidence for and against, and the appreciation of the evidence for the purpose of deciding whether the charges are established or not, it seems to be merely idle to argue that this stage is not a quasi-judicial proceedings. Even at the second, or "showing cause" stage, the function of the officer concerned is not purely administrative, or should it be considered to be so even if all he had to do was to consider the nature of the punishment to be imposed on the offender, whether nominal, light or severe, on the assumption that the findings of the enquiry officer are correct. I do not, however, consider that this function is so limited. I am quite sure that in most cases the person called on to show cause challenges the findings of the enquiry officer, and endeavours to show that the evidence does not justify the adverse findings against him, or that the enquiry has not been properly conducted and it is the duty of the officer to devote some consideration to this aspect of the case, as well as deciding what is a suitable punishment. I am, therefore, of the opinion that the quasi-judicial nature of the proceedings extends to the "showing cause" stage as well as the fact-finding enquiry.

(2) That the questions of natural justice do arise in the removal proceedings and the question of bias is highly material. The word "reasonable" was not inserted before the word 'opportunity' in Article 311 without its being intended to have its ordinary meaning. Admittedly what is reasonable in one man's eyes is unreasonable in another's, and its meaning in the particular context in which it occurs has to be determined subjectively. In this context it certainly means that the opportunity given to the person

called on to show cause against a proposed punishment must be a real opportunity, and not an illusory and sham opportunity in which he knows from the start that, whatever force there may be in his representations, they do not stand the slightest chance of being considered.

Held, per Kapur, J.,—

(1) That in taking disciplinary action in regard to an offence coming within the departmental rules the District Superintendent of Police was not acting judicially or quasi-judicially but in his administrative capacity;

(2) That the dismissal is an administrative act and not a judicial act and that merely because Article 311 has been introduced in the Constitution does not change the nature of the action of the authority ordering dismissal;

(3) That even if it is a quasi-judicial act under the rules, it is the District Superintendent of Police who has to take action and the principle that a person cannot be a judge in his own cause has no application.

(4) That no prejudice has been caused as the matter has been reviewed by an officer of the rank of Deputy Inspector-General of Police and also by the Inspector-General of Police; and

(5) That an Assistant Sub-Inspector or Sub-Inspector holds a civil post and is not a member of a service like the Indian Police or Indian Police Service or the Punjab Police and, therefore, dismissal by a District Superintendent is not a contravention of Article 311(1) of the Constitution particularly when the plaintiff was appointed on probation to the post of Assistant Sub-Inspector or the Sub-Inspector by a District Superintendent of Police.

Case referred under section 98(2) of the Code of Civil Procedure to a third Judge on account of the disagreement between Hon'ble Mr. Justice D. Falshaw and Hon'ble Mr. Justice J. L. Kapoor on 30th April, 1956, and later on decided by Hon'ble the Chief Justice Mr. A. N. Bhandari, on 14th April, 1958.

First appeal from the judgment and decree of Shri A. S. Gilani, Senior Sub-Judge, Gurgaon, dated 30th January, 1954; granting the plaintiff a decree for declaration with costs.

D. N. AWASTHY, for Advocate-General, for Appellant.

H. R. SODHI, for Respondent.

JUDGMENT

Kapur, J.—This appeal is brought by the State of the Punjab against a decree of Mr. Gilani, Senior Subordinate Judge, Gurgaon, decreeing the plaintiff's suit for declaration that the order removing the plaintiff from service passed by the District Superintendent of Police on the 12th July, 1950, is ultra vires, illegal and void and that the plaintiff is still an employee of the Punjab Police Service as officiating Sub-Inspector of Police.. Kapur, J.

The plaintiff joined the Police service at Ludhiana as a Foot-Constable in 1927. He had at that time passed the Matriculation Examination of the Punjab University. Sometime in 1930, he was promoted to officiate as a Head Constable and was confirmed in that post in 1935. On the 22nd of October, 1944, he became an officiating Assistant Sub Inspector under the orders of the Deputy Inspector-General of Police, Ambala Range.

On the 28th of May, 1945, the Police Rules were amended and instead of the Deputy Inspector-General being the appointing authority for Assistant Sub-Inspectors and Sub-Inspectors the District Superintendent of Police was substituted and thus a District Superintendent of Police became the appointing authority for officers holding the rank of Assistant Sub-Inspector and Sub-Inspector. On the Ist of March, 1947, the District Superintendent

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of Police, Simla, appointed the plaintiff as Assistant Sub-Inspector of Police on two years' probation and he was appointed officiating Sub-Inspector by the District Superintendent of Police of Simla on the 16th of May, 1948. In April, 1950, he was Station House Officer-in-charge of Nuh Police Station in the Gurgaon district.

On the 20th April, 1950, a first information report was recorded at the Nuh Police Station regarding the murder of one Mst. Mali by her husband Mehtab. One of the alleged eye-witnesses was a Mst. Mehri whose statement was recorded by the plaintiff. On the 24th April, the District Superintendent of Police, Bashambar Das recorded her statement and on the 26th April, her statement was recorded by a Magistrate under section 164 of the Criminal Procedure Code.

Mr. Bashambar Dass, the District Superintendent of Police convened a meeting of the District Police Officers at his office on the 27th April, and in that meeting it is alleged that the plaintiff misbehaved and was rude and used language which was unbecoming a subordinate member of the Police Force. Evidently the District Superintendent of Police took a serious view of the matter. He transferred the plaintiff from Police Station Nuh to the C.I.A. Branch of the Police at Rewari and also made an order the same day suspending the plaintiff with effect from the forenoon of that day. The plaintiff's allegation is that this order was passed later. On the same evening at 9-15 p.m. Assistant Sub-Inspector Banta Singh took charge of Nuh Police Station from the plaintiff who sent a representation on the following morning at 6-30 a.m. through Foot Constable Sainditta Mal in an envelope but it is alleged that this representation contained a defamatory statement about the

District Superintendent of Police. This representation purports to be dated the 27th April, 1950.

Up to the 3rd of May, 1950, the plaintiff does not seem to have received the order of suspension because on that day he attended the police parade and his case is that he came to Gurgaon in connection with his representation to the Inspector-General of Police on the 2nd May. While he was on parade the order of suspension was read out to him and he was asked to leave. Deputy Superintendent of Police Lekh Raj was appointed the enquiry Officer and he made a report on the 19th June, 1950, holding that the charge had been proved. On the 29th June, the plaintiff was called upon by the District Superintendent of Police to show cause why he should not be dismissed or removed from service and a copy of the report was given to the plaintiff. He filed his written statement but on the 12th July, 1950, the District Superintendent of Police dismissed him. He took an appeal to the Deputy Inspector-General of Police Mr. Holliday which was dismissed on the 29th August, 1950, and the petition made to the Inspector-General of Police was dismissed on the 29th November, 1950.

The present suit was filed on the 18th June, 1951, in which after giving his version of what happened at the meeting of the 27th April,1950, the plaintiff has alleged that the District Superintendent of Police was actuated by malice, that the enquiring officer was a subordinate of the District Superintendent of Police and could not act in an impartial manner, that before passing the order of dismissal and removal "the District Superintendent of Police did not frame any regular charge-sheet against the plaintiff," nor did he afford "him any sufficient and reasonable opportunity to prove his innocence." He also alleged that he

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was appointed to the service by the Deputy Inspector-General of Police and, therefore, his dismissal by the District Superintendent of Police was an infringement of his rights under Article 311 of the Constitution as it is not by an authority which appointed him. He then alleged that the enquiring officer being subordinate to the District Superintendent of Police did not give him an impartial and "judicial" hearing, nor did he afford him an opportunity to cross-examine the witness who appeared against the plaintiff, nor did he give him an opportunity to produce defence and he finally alleged that the dismissing authority who was actually a party against the plaintiff ought not to have acted as a judge, and that he did not give him sufficient and reasonable opportunity to show cause against the punishment proposed against him.

The defence was denial of all these allegations and that the plaintiff had no cause of action and could not bring the suit.

Two issues were framed by the learned Judg :—

1. Whether the order of removal and dismissal of the plaintiff from the Police service passed by the Superintendent of Police, Gurgaon, on 12th July, 1950, is *ultra vires*, illegal, malicious and void?

2. If issue No. 1 is proved in favour of the plaintiff, to what relief is the plaintiff entitled ?

It was held that as the District Superintendent of Police was not the appointing authority, the dismissal was an infringement of the constitutional provisions and, therefore, the dismissal was illegal and the trial Court therefore gave the decree prayed for. In coming to this conclusion it held that for purposes of punishment an officer officiating in a higher rank is to be treated as belonging to that rank and he must be deemed to be a Sub-Inspector at the time of his dismissal and as the rule giving authority to District Superintendent of Police to dismiss the Sub-Inspectors and Assistant Sub-Inspectors came into force on the 28th of May, 1945, and the plaintiff was officiating under the orders of the Deputy Inspector-General from the 3rd of October, 1944, he could only be dismissed by the Deputy Inspector-General. The Court relied upon several authorities and those which are relevant will be discussed during the course of this judgment. The State has come up in appeal to this Court.

Before taking up the question as to whether there has or has not been reasonable opportunity for showing cause under Article 311 it is necessary to decide as to whether the plaintiff was dismissed by an authority subordinate to that by which he was appointed and for that purpose it is necessary to decide whether the appointment is to a "service" or the plaintiff held a "civil post" under the State. The plaintiff was appointed to officiate in a vacancy of Assistant Sub-Inspector Pran Nath by the order of Deputy Inspector-General of Ambala Range, Exhibit P.W. 11/1, dated the 18th October, 1944. But after the rules were amended on the 28th day of May, 1945, the plaintiff was appointed an Assistant Sub-Inspector by the District Superintendent of Police,

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Simla, on two years' probation on the Ist March, 1947, and he was appointed officiating Sub-Inspector of Police by the District Superintendent of Police on the 16th May, 1948. So both the appointments as an Assistant Sub-Inspector as well as Sub-Inspector were by a District Superintendent of Police. Therefore, the question for decision is which appointment is to govern this case, the officiating appointment made by the Deputy Inspector-General or the appointment as Assistant Sub-Inspector on two years' probation by the District Superintendent Simla, or the subsequent appointment as Officiating Sub-Inspector also by the same authority.

Assuming, however, that the plaintiff was appointed to the post of Officiating Assistant Sub-Inspector by the Deputy Inspector-General, as he was in this case, still the rule laid down by the Privy Council in *North West Frontier Province* v. *Suraj Narain Anand* (1), is inapplicable. The plaintiff may be a member of the Police Force but it has not been shown that the plaintiff has been appointed to any "service" called the Punjab Police Service. Therefore, the question reduces itself to this, was the plaintiff appointed to the post he was holding at the time of his dismissal by the authority which ordered his dismissal or by a superior authority. In my view, the plaintiff held a "civil post" under the State and was not a member of a "service" and the post that he held at the time he was punished was that of a Sub-Inspector of Police to which he was appointed by the District Superintendent of Police and not by the Deputy Inspector-General. Even to the post of the Assistant sub-Inspector the plaintiff was appointed on probation for two years by the District Superintendent of Police, of Simla. The dismissal by the

(1) A.I.R. 1949 P.C. 112

District Superintendent of Police, therefore, is not hit by Article 311(1) of the Constitution. The Advocate-General submitted that no proof had been adduced or any material placed on the record to show that Assistant Sub-Inspector's cadre or Sub-Inspector's cadre had been incorporated into what may be called the police Service. Nor had he been able to find any order or regulation constituting such a service. On the other hand the Police Act negatived such a contention. Section 2 of the Police Act provides for the constitution of the Police Force which is to consist of a number of officers and men. When quoted it runs as under :—

> "The entire police-establishment under a State Government shall, for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner as shall from time to time be ordered by the State Government."

If the contention of the plaintiff were to be accepted and the whole force were to be taken as if they were members of the Police Service, then the plaintiff must be taken to have joined as a Foot Constable the appointment to which was made by a District Superintendent of Police and his position remains the same and does not change in any manner. In my view, therefore, the learned Senior Subordinate Judge took an erroneous view on this point and I would hold that there has been no infringement of Article 311(1) in regard to the question of dismissal by an authority subordinate to that by which the plaintiff was appinted.

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The next question which has been raised is that there was an infringement of clause (2) of Article 311 and that the plaintiff was not given a reasonable opportunity of showing cause against the action proposed to be taken. The order of suspension of the plaintiff was passed by the District Superintendent of Police on the 28th April, 1950. On the 3rd May, 1950, Deputy Superintendent Lekh Raj was appointed an enquiry officer and he held the enquiry. It appears that the plaintiff took objection to the appointment of this gentleman, and he did not seem to be satisfied with the appointment of an officer of the rank of Deputy Superintendent of Police and on the 10th of May, he made a representation to the Deputy Inspector-General of Police, Ambala Range, praying that he should be transferred to some other district and the enquiry should be held immediately and in this representation the plaintiff also submitted that as he had grievances "against the worthy Superintendent of Police, therefore, neither the Superintendent of Police, Gurgaon, nor his subordinate officers can prepare my departmental file legally in this district. * * * * *" He further contended that the enquiry "of the worthy Superintendent of Police is quite against law and policy of the Government". At the enquiry Inspector of Police Bhagat Singh appeared as a witness against the plaintiff. The enquiry officer then called upon the plaintiff to enter on his defence and he put in a long list of witnesses and also stated what they were being produced for. The enquiry officer disallowed all these witnesses excepting one and under the list of his witnesses which is at page 56 of the paper book (Exhibit P.W. 11/6) he has given a note which reads:—

> "All S. H. Os. present in the meeting will be produced as defence witnesses only

when the enquiry will be held by the I.P. Officer or some Magistrate. They are not expected to speak the truth while working under the present S. P. as they are afraid of their career."

Thus in regard to the incident he does not seem to have called any witnesses and was more or less non-co-operative, at the enquiry. It is not that he was not allowed an opportunity to cross-examine the witness but he did not want to cross-examine him. No material has been placed on this record to show that before the enquiring officer he was not given a reasonable opportunity of defending himself.

It is then submitted that as the District Superintendent of Police was himself initiating the proceedings in regard to a matter in which he was interested he could not be a Judge in regard to the punishment to be awarded to the plaintiff. In my opinion, a civil Court is not to sit as a Court of appeal on the proceedings of a police departmental enquiry, nor is it open to a Civil Court to review those proceedings or to constitute itself into a superior Court to review the punishment awarded to any particular member of the Police Force. This would not only be inconvenient but would cause confusion if the Courts were to be interfering with the way the State wishes to manage its services as was pointed out by the Privy Council in *Venkata Rao's case*, (1). According to the Police Act, section 7, the power is given to the District Superintendent of Police to dismiss, suspend or reduce any police officer of the subordinate ranks whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same. Chapter XVI of the Police Rules made under the

(1) I.L.R. 1937 Mad. 532 (P.C.).

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Police Act deals with punishments and methods of punishing police officers. Rule 16-1 enumerates the punishments and the officers who can award the punishment. Rules 16.2 to 16.8 deal with major and minor punishments. Rule 16.9 provides for maintenance of discipline. Rule 16.24 prescribes the procedure to be adopted in departmental enquiries. I quote here the amendment made in rule 16.24 on the 28th May, 1945 :—

"Before an order of dismissal or reduction in rank is passed, the officer to be punished shall be produced before the officer empowered to punish him, and shall be informed of the charges proved against him, and called upon to show cause why an order of dismissal or reduction in rank should not be passed. Any representation that he may make shall be recorded, shall form part of the record of the case, and shall be taken into consideration by the officer empowerd to punish him before the final order is passed:

Provided that if owing to the complicated nature of the case or other sufficient reason to be recorded, the officer empowered to impose the punishment considers this procedure inappropriate, he may inform the officer to be punished in writing of the charges proved against him, and call upon him to show cause in writing why an order of dismissal or reduction in rank should not be passed. Any written representation received shall be placed on the record of the case and taken into consideration before the final order is passed."

It shows that before punishment of dismissal is given the person charged is to be produced before the officer empowered to punish and is to be informed of the charges proved against him and he is to be called upon to show cause and he can put in a written representation. All that has been complied with in the present case.

The case now simply is that because the District Superintendent of Police was himself the person aggrieved any punishment awarded by him cannot be said to be compliance with clause (2) of Article 311 of the Constitution i.e. the plaintiff cannot be said to have been afforded reasonable opportunity of showing cause why action should not be taken. Where the law authorises a parti cular officer to award punishment after certain preliminaries and all those preliminaries have been gone through, can it be said merely on the ground that the punishing authority had a bias that it is an infringement of the constitutional right if that officer inflicts the punishment? It may be that such a thing is improper and should not be done, but can it be said as a matter of law that if it is done it is an infringement of the Constitutional right.

It is to be noted that there are two stages contemplated under Article 311. First is when in order to determine as to what punishment should be proposed, an enquiry is held through an officer appointed for the purpose. Before him, evidence is given for the prosecution and then the evidence, if it is so desired, is to be given by the defendant and on his behalf and after that a report is made. That is the stage when definite conclusions have been come to as to the charges and the actual punishment to follow is provisionally determined. The Government servant then is to be afforded a

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reasonable opportunity at that stage. It was so laid down by the Privy Council in I. M. Lall's case (1), and by the Supreme Court in *Joseph John's case*, (2). In the last case the Supreme Court held that when a full enquiry has been held where opportunity was given to a Government servant and after a show-cause notice has been issued, he has had an opportunity of making a representation in accordance with the rules the requirements of the Constitution are complied with.

A further argument raised now, but which has not been discussed by the trial Court, is that because District Superintendent of Police Bashambar Das was himself the person towards whom the plaintiff is alleged to have used insulting language, he was thereby debarred from making any order of dismissal. Mr. Gosain relied on a passage from Robson's Justice and Administrative Law at page 62 where an observation from the judgment of Lord Atkin in R. v. *Bath Compensation Authority* (3), is quoted. His Lordship observed that "even administrators have to comport within the bounds of decency". Robson has also stated that it is not only holders of judicial offices who are required to be free from bias even administrators have to be, because bias is presumed when a man has personal interest in the subject-matter of a case. The basis of the observation of Lord Atkin was the principle of natural justice. At page 530, however, Robson himself has pointed out that rules of natural justice have become a very frail defence against arbitrary or oppressive action or mistaken judgment. At page 531 he has said:—

> "Natural justice, in short, does not nearly suffice to ensure that the scales of

(1) A.I.R. 1948 P.C. 121.
(2) A.I.R. 1955 S.C. 160.
(3) (1925) 23 L.G.R. 405.

administrative justice are held evenly. The rules it dictates do little to safeguard the proper exercise of judicial power in the complex modern world of public administration. They have indeed, become of historical interest rather than of contemporary significance. The Town and Country Planning Act, 1947, even goes so far as expressly to authorise the Minister to behave in a way which the Courts would in appropriate circumstances regard as a violation of the maxim *audi alteram partem*, which is one of the rules of natural justice."

The reference is to the Stevenage case, *Franklin and others* v. *Minister of Town and Country Planning* (1).

Counsel then relied upon a judgment of the Calcutta High Court in *Suresh Chandra Das Gupta* v. *Himangshu Kumar Roy*, (2), where it was held that proceedings in a departmental enquiry under the Police Rules partake of the character of a quasi-judicial proceeding and are subject to the jurisdiction of the High Court under Article 226 but in this part of the case the plaintiff is not attacking the proceedings before the enquiring officer but the final order passed by the District Superintendent of Police and this case, therefore, is not much assistance in that matter. He then relied on *Frome United Breweries Company, Limited* v. *Keepers of the Peace and Justices for Country Borough of Bath* (3). That case again is not much assistance in the present set of circumstances because as was pointed out at page 591 the

(1) (1947) 2 A.E.R. 289.
(2) 55 C.W.N. 605.
(3) 1926 A.C. 586.

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justices when sitting as a licensing authority may not be a Court but are performing a judicial act for "it is their duty after hearing evidence and listening to arguments to pronounce a decision which may vitally affect the interests of the persons appearing before them" and, therefore, the justices are bound to act judicially and, the question of bias is a very material factor. Similarly, The *Queen* v. *Meyer* (1), was again a case of bias of justices of the peace and this case also has no application to the facts of the present case.

The Advocate-General has raised three contentions (1) that the dismissal of the plaintiff was not a judicial act but an administrative act, (2) that the doctrine of bias does not apply to such acts, and (3) even if it is a quasi-judicial act the relationship is created by statute between the parties and if a duty is imposed upon the District Superintendent of Police to decide upon the charges preferred then the principle that a man cannot be a judge in his own cause is inapplicable.

The question whether when a person is punished in a departmental matter the authority taking disciplinary action and acting within his disciplinary jurisdiction does so administratively or in a judicial capacity must be considered irrespective of Article 311. As far as I know, and no case has been quoted to the contrary, the dismissal of a servant by the Crown and now in India by the State or the Union has never been held to be an act done in a judicial capacity of the person deciding the question of punishment. In the very nature of things it could not be. Crown claimed and it was so accepted that every servant held office during the pleasure of the Crown and that principle by itself has not been given up even in the Constitution of India. It is preserved in Article 310

(1) (1875) 1 Q.B.D. 173.

If Article 311 was not there and the service of a person was governed by the departmental rules which were made even before section 96-B was added to the Government of India Act of 1915, could it be said that Crown was acting in a judicial capacity. It has never been so suggested nor as far as I know so held.

Article 311 has a history. When the first instalment of responsible Government was introduced in India by the Government of India Act of 1919 it was thought that in order to give protection to the services who may be liable to capricious actions by Ministers some kind of safeguard must be provided and that was done under section 96-B of the Government of India Act. But at that time the measure of responsibility of the Ministers was very limited. When greater responsibility was introduced by the Act of 1935 it was considered that to give protection to the civil servants it was more necessary to have a constitutional safeguard than merely a safeguard given by the rules and for that purpose section 240 was introduced into the Government of India Act of 1935. The same protection has been continued under Article 311. It is merely to check capriciousness on the part of ministries and others who have control over services and the power given to Public Service Commissions is a part of this safeguard. Thus Crown before the Constitution imposed upon itself a limitation in regard to its powers of dismissal and what was contained in the rules became a constitutional safeguard because the rules were considered not to be a part of a contract between the Crown and the servant.

If without section 240 of the Government of India Act of 1935 and Article 311 of the Constitution a person imposing punishment was considered

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not to be acting judicially, can it be said that he is acting judicially merely because Article 311 in the Constitution and section 240 in the Government of India Act, 1935, were introduced. The reply would be in the negative. These respective provisions are nothing but introduction into the Constitution or the statute of the rules which were made under section 96-B of the Act and merely by putting them in the Constitution the position of the civil servant does not change so as to make what was an administrative Act, a quasi-judicial act. The act of dismissal is, in my opinion, merely an administrative act. It is neither judicial nor a quasi-judicial act. The learned Advocate-General, in support of his submission that the District Superintendent of Police was acting in an administrative capacity and not in his judicial or quasi-judicial capacity, has relied on *Franklin* v. *Minister of Town and Country Planning* (1). Under the New Towns Act, 1946, the requisites were that (1) the Minister had to prepare a draft order describing the area to be designated as site of the proposed new town, (2) it had to be published in the London Gazette giving various particulars, and (3) if any objection was duly made to the order, the Minister had to cause a public enquiry to be held with respect to the objection and "shall consider the report of the person by whom the enquiry was held" and then he had to make the order. In *Franklin's case* (1), the order was challenged on two grounds:—that the Minister was biased as he did not approach the public enquiry and confirmation of the order with a mind open to conviction and no proper local enquiry was held. Bias, it was submitted, was a state of mind preventing fair consideration of the matter. In this case the House of Lords took into consideration

(1) 1948 A.C. 87.

the State of the law previous to the enactment of the New Towns Act of 1946. I quote from the speech of the learned Lord at page 102:—

> "I am prepared to assume in favour of the appellants that, under the Bill as introduced, it was proposed to impose these duties on the respondent, as Minister of Town and Country Planning, and that these duties presented no material difference from those contained in the Bill when passed into law. It could hardly be suggested that, prior to its enactment, he was subject to any higher duty than is to be found in the statute. In my opinion, no judicial, or quasi-judicial, duty was imposed on the respondent, and any reference to judicial duty, or bias is irrelevant in the present case."

"Bias" was defined by his Lordship at page 103 in the following words:—

> "My Lords, I could wish that the use of the words "bias" should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute."

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In a Ceylon case, *Nakkuda Ali* v. *M. F. DE. Jayaratne*, (1), which went up to the Privy Council, the Controller of Textiles cancelled the textile licence under the Defence Regulations which empowered him to do so "where the Controller has reasonable grounds to believe * * * *". Interpreting these words Lord Radcliffe said at page 77:—

> It is not difficult to think of circumstances in which the Controller might, in any ordinary sense of the words, have reasonable grounds of belief without ever confronted the licence holder with the information which is the source of his belief."

and it was held that the Controller was not acting judicially or quasi-judicially when he acts under the regulation. In *the Province of Bombay* v. *Khushadas S. Advani and others* (2), the question was whether an order of requisition made by a Government was judicial or quasi-judicial, and it was held that the decision as to whether the property was required for a public purpose or not was not a judicial or a quasi-judicial decision but an administrative decision, Kania, C.J., observed at page 633:—

> "Because an executive has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a

(1) 1951 A.C. 66.
(2) 1950 S.C.R. 621.

certain power conferred on it the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari. Observations from different decisions of the English Courts were relied upon to find out whether a particular determination was quasi-judicial or ministerial."

The question whether chief officer of a force which is governed by discipline, such as a fire brigade, acts judicially or quasi-judicially when exercising disciplinary authority was considered by Lord Goddard, C.J. in *Ex parte FRY*, (1) and it was held:—

"It seems to me impossible to say, where a chief officer of a force which is governed by discipline, as is a fire brigade, is exercising disciplinary authority over a member of the force, that he is acting either judicially or or quasi-judicially. It seems to me that he is no more acting judicially or quasi-judicially than a school-master who is exercising disciplinary powers over his pupils."

His Lordship then referred to the Fire Services Act as also to the Queen's Regulations made under the Army Act, and he was of the opinion that the action of a head of a disciplined force when taking action is not a judicial or a quasi-judicial function. The learned Lord Chief Justice expressed the same opinion in *R. v. Metropolitan Police Commissioner Ex parte Parker*, (2). It may be added that the

(1) (1954) 2 A.E.R. 118.
(2) (1953) 2 A.E.R. 717.

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punishment rules and procedure were very much the same as in the Police rules now before us.

In this Court the meaning of the words "reasonable opportunity" has been considered in *Kapur Singh* v. *Union of India*, (1), and in the judgment of Khosla, J., at page 66 "reasonable" has been discussed and defined as follows:—

> "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."

I am in respectful agreement with the learned Judge and I would say that when that has been done then the Government servant is asked as to why he should not be dismissed and what then happens is that he is entitled to say why a particular action should not be taken against him but nothing further.

It is difficult to believe that the intention of the Act was that the person imposing the punishment is to act in what is called a judicial or quasi-judicial manner. It is no doubt true that he has to

(1) A.I.R. 1956 Punj. 58.

take the circumstances into consideration and take a decision as to what punishment should be imposed on a particular Government servant and an enquiry is provided for by a diffierent person which would help him in coming to that decision after taking into consideration anything that the Government servant may have to say. It is a long step from saying that he is acting as if he was a judge of a quasi-judicial Tribunal. That he should not act in a capricious manner has been safeguarded by giving the aggrieved Government servant a right of appeal first to the Deputy Inspector-General of Police and then a right to go in revision to the Inspector-General of Police. Therefore, it cannot be said that there is no safeguard against an unjust action.

In the present case in his order of dismissal the District Superintendent of Police, Bashambar Das has given the whole history of the case and his findings on various points but whether he has come to a right conclusion or a wrong conclusion, this Court cannot sit in appeal against his decision. All that we are concerned with is as to whether the constitutional safeguard provided has been complied with or not. In the present case, as I have said above, an enquiry was held where witness or witnesses were examined and the plaintiff was given an opportunity to lead evidence which he refused to take advantage of and within the rule laid down by my learned brother Khosla, J., in *Kapur Singh's case* (1), reasonable opportunity has been given and on that ground it cannot be said that there has been any infringement of the Constitutional right.

The plaintiff then went up in appeal against the order of the District Superintendent of Police

(1) A.I.R. 1956 Punj. 58.

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and the Deputy Inspector-General in a long order has considered all the objections which were raised by the plaintiff and his conclusion was:—

> "To sum up, I have considered his case carefully and I see no reason to disbelieve the evidence on the file as to his conduct. He has rightly been held guilty of the charge by the enquiring officer and I consider that in the circumstances, in view of his gross indiscipline and disobedience of orders, S. P. could pass no other punishment than dismissal. I, therefore, uphold S.P's. order dismissing him from service and reject his appeal."

And, therefore, even if there was any bias, he has had the benefit of the matter being reconsidered by a very senior officer of the Indian Police who has concurred with the findings of the District Superintendent of Police and this was upheld by the Inspector-General by his order dated the 29th November, 1950, and I have no doubt that those officers must have considered all the objections raised. Although the ruling may not be strictly applicable but the rule laid down by the Supreme Court in *Messrs Dwarka Prasad Laxmi Narain* v. *The State of Uttar Pradesh* (1), is not wholly irrelevant. The provisions of a Coal Control Order of 1953 were held void as imposing an unreasonable restriction because it gave uncontrolling power to a Controller to suspend a licence and there was no appeal provided. Thus an appeal against an order is a recognised method of controlling the vagaries of individuals.

If the contention of the plaintiff were correct, then in every such case, as the present, either the

(1) 1954 S.C.R. 803.

State must transfer the District Superintendent of Police merely because he has ordered an enquiry against a subordinate for conduct such as the one which the plaintiff was alleged to be guilty of, or the State should have two District Superintendents of Police in a district which perhaps the law may not allow but even if it did, it would be almost ridiculous to have two District Superintendents of Police. The rules give the power of punishment to a District Superintendent of Police and it is a moot point whether this punishment can be given by a District Superintendent of Police of another district. Thus in the words of the Privy Council the course suggested would not only be inconvenient but would be confusing.

Assuming that the District Superintendent of Police was acting in a quasi-judicial capacity, it was contended that, as under the Act, a duty was imposed upon him to decide upon charges preferred, the maxim that no man can be a judge in his own cause does not apply and reference was made to Broom's legal Maxims at page 73 where the law is stated to be:—

> "And if a particular relation be created by statute between A. and B., and a duty be imposed upon A to investigate and decide upon charges preferred against B., the maxim *nemo sibi esse judex vel suis jus dicere debet* would not apply."

I am in agreement with this view supported as it is by a judgment of the Court of Common Pleas, *Wildes* v. *Russell*, (1). In a Bengal case *Tarapada* v. *State of West Bengal*, (2), this very question was raised as to whether the prosecutor himself can be a judge in the case and the validity of departmental

(1) (1866) 1 C.P. 722 at p. 747.
(2) A.I.R. 1951 Cal. 179.

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proceedings was attacked on that ground and the learned Judge said at page 182 that departmental proceedings cannot be declared as illegal on that ground, even though the fundamentals of fair play require that a stranger should act as a judge in the matter. Section 7 of the Police Act and particularly the words "whom they shall think * * * " also seem to support the contention of the State.

I would, therefore, hold that:—

(1) in taking disciplinary action in regard to an offence coming within the departmental rules the District Superintendent of Police was not acting judicially or quasi-judicially but in his administrative capacity.

(2) the dismissal is an administrative act and not a judicial act and that merely because Article 311 has been introduced in the Constitution does not change the nature of of the action of the authority ordering dismissal;

(3) even if it is a quasi-judicial act under the rules, it is the District Superintendent of Police who has to take action and the principle that a person cannot be a judge in his own cause has no application;

(4) no prejudice has been caused as the matter has been reviewed by an officer of the rank of Deputy Inspector-General of Police and also by the Inspector-General of Police; and

(5) an Assistant Sub-Inspector or Sub-Inspector holds a civil post and is not member of a service like the Indian Police or Indian Police Service or the Punjab Police and, therefore, dismissal by a District Superintendent is not a contravention of Article 311(1) of the Constitution particularly when the plaintiff was appointed on probation to the post of Assistant Sub-Inspector or Sub-Inspector by a District Superintendent of Police.

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I would, therefore, allow this appeal and set aside the decree of the trial Court. The appellant will have the costs of this Court and the Court below.

Falshaw, J.—I have had the advantage of reading the judgment of my learned brother and I agree with his conclusion that the District Superintendent of Police was competent to pass the order for the plaintiff's dismissal, and with the reasons he has given therefor.

Falshaw, J.

I regret, however, that I am in profound disagreement with his view that the plaintiff's dismissal from Police service was in accordance with the provisions of Article 311 of the Constitution. Indeed, I would go so far as to say that if the order dismissing the plaintiff fulfils the requirements of Article 311, then the safeguards afforded by this Article are largely illusory and Government servants are afforded vey little protection by it

The Article requires that before a Government servant can be dismissed (or otherwise punished in certain ways) he must be given "a reasonable opportunity" of showing cause against the action

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proposed to be taken against him. Let us see what happened in this case. At a meeting of Police officers, all apparently, or nearly all, Sub-Inspectors, the plaintiff, an officiating Sub-Inspector, resented certain remarks made by the Superintendent of Police while addressing the meeting, which were, or were taken by him, to be unfair criticism of his handling of a certain investigation, and in his efforts to justify himself the plaintiff used language which the Superintendent regarded as rude to the point of insubordination. Without delay the Superintendent removed the plaintiff from his post and placed him under suspension. Soon after that the Superintendent appointed a Deputy Superintendent of Police serving under him in the district to hold an enquiry and report on a charge relating only to the alleged acts of insubordination committed by the plaintiff at the meeting. In the enquiry one officer who was present gave evidence supporting the charge, and another officer was examined as the only defence witness and he did not support the version of the plaintiff regarding what happened. The production of nearly all the witnesses whom the plaintiff wished to call was rightly disallowed, as their evidence was clearly intended to refer to matters outside the scope of the charge, which, as I have said related only to the plaintiff's behaviour in the meeting. He had, however, made efforts to have the enquiry held by some more independent officer than the Deputy Superintendent of Police, and it would seem that he would have liked to produce the rest of the officers who had attended the meeting if, as he desired, the enquiry had been conducted by an officer of the Indian Police service.

On the evidence examined the Deputy Superintendent of Police found the charge proved

against the plaintiff, and reported accordingly, and in accordance with the prescribed procedure the Superintendent then called on the plaintiff to show cause why he should not be dismissed. Whatever cause the plaintiff showed was disregarded, and the Superintendent proceeded to pass the order dismissing him, which I can only regard as an extraordinary document. In the part of it which refers to the events at the meeting there is little reference to the evidence or the report of the Deputy Superintendent of Police and the Superintendent really gives his own version in a rather argumentative way. A considerable part of the report is devoted to refuting allegations made by the plaintiff in a representation submitted by him to the Inspector-General of Police within a day or two of the meeting, and after the plaintiff had been relieved of his post and suspended, although these allegations, like most of the evidence which the plaintiff wished to lead at the enquiry, were outside the scope of the enquiry and irrelevant to the sole charge which was being enquired into. Thereafter the plaintiff's appeals were dismissed successively by the Deputy Inspector-General, Ambala Range, and the Inspector-General.

There is no doubt, as my learned brother has said, that the letter of the relevant Police rules was followed in the proceedings which led to the passing of the order of dismissal, and the Superintendent acted within his authority under these rules in appointing a Deputy Superintendent of Police working under him in the district to hold the enquiry, and also in passing the order of dismissal after receiving the report and calling on the plaintiff to show cause why he should not be dismissed, and in an ordinary case, this would be sufficient. But this is not an ordinary case, since the

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Superintendent was himself the aggrieved party, having been personally insulted, and one would expect in such circumstances that he would himself have moved to have the enquiry held either by his superior officer, the Deputy Inspector-General, or at least by an officer of not less rank than himself from another district, and that he himself would have appeared as the chief witness against the plaintiff. I am not aware of anything in the Police rules which would have precluded such a course. Instead of this, we find the complainant acting as judge and executioner and even, without appearing as a witness, introducing his own testimony into his report.

I can only say that the manner of the dismissal of the plaintiff in this case shocks my sense of justice and fair play. My learned brother is of the opinion that the proceedings leading to the dismissal of a Government servant are not judicial or even quasi-judicial, but purely administrative, that as long as the letter of the procedural rules is followed it is wholly ~~immaterial~~ in what spirit this is done, and in short that in matters of this kind no question arises of the application of the principles of natural justice, such as that no man shall be a judge in his own cause. Here, I fear, I am compelled to disagree.

The usual procedure in these matters, and that which has nominally been followed in this case, is that first there is an enquiry in which evidence is led to prove or disprove the charge or charges levelled against the alleged offender (I almost used the term "accused"), and then, if the enquiry officer reports that the charge is, or any of the charges are, proved on the evidence led, the officer who has to pass the order of punishment calls on the offender to show cause against the

action proposed to be taken against him. Since the first of these stages involves the framing of charges, the leading of evidence for and against, and the appreciation of the evidence for the purpose of deciding whether the charges are established or not, it seems to me to be merely idle to argue that this stage is not a quasi-judicial proceeding. Even at the second, or "showing cause" stage, I do not consider that the function of the officer concerned is purly administrative. I should not consider it to be so even if all he had to do was to consider the nature of the punishment to be imposed on the offender, whether nominal, light or severe, on the assumption that the findings of the enquiry officer are correct. I do not, however, consider that this function is so limited. I am quite sure that in most cases the person called on to show cause challenges the findings of the enquiry officer, and endeavours to show that the evidence does not justify the adverse findings against him, or that the enquiry has not been properly conducted, and in my opinion it is the duty of the officer to devote some consideration to this aspect of the case, (as the Superintendent has done in this case in his own peculiar way), as well as deciding what is a suitable punishment. It has cometo my notice, in fact, in some cases which have come before this Court, that the merits of the case are considered at the 'showing cause' stage in case referred to the Union Public Service Commission, and charges which have been held by the enquiring officer to be substantiated have been found by that body not to have been proved. I am, therefore, of the opinion that the quasi-judicial nature of the Proceedings extends to the "showing cause" stage as well as the fact-finding enquiry.

In these circumstances I consider that questions of natural justice do arise in these proceedings and that the question of bias is highly

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material. The word 'reasonable' was not inserted before the word 'opportunity' in Article 311 without its being intended to have its ordinary meaning. Admittedly what is reasonable in one man's eyes is unreasonable in another's and its meaning in the particular context in which it occurs has to be determined subjectively. In this context it certainly means that the opportunity given to the person called on to show cause against a proposed punishment must be a real opportunity, and not an illusory and sham opportunity in which he knows from the start that, whatever force there may be in his representations, they do not stand the slightest chance of being considered. I regard the proceedings which led to the passing of the order of the plaintiff's dismissal by the Superintendent as a travesty of justice, and in my opinion the opportunity which was given to the plaintiff to show cause against his being dismissed from service was as 'reasonable' as the opportunity enjoyed by a sheep, which has been led to the slaughter-house, of showing cause against its being converted into mutton.

One reason given by my learned brother for dismissing the suit is that no prejudice has been caused to the plaintiff by reason of the fact that in appeal the Deputy Inspector-General and Inspector-General refused to set aside the order of dismissal. I consider, however, that the order of dismissal remains that of the Superintendent, and that the plaintiff was entitled to succeed because that order contravened the provisions of Article 311. For these reasons, I am of the opinion that the appeal ought to be dismissed with costs.

As there is disagreement between the Judges constituting the Bench this case has to be referred to a third Judge under proviso to section 98(2) of

the Code of Civil Procedure. We have disagreed as to the meaning of the word "reasonable opportunity" the following question will be referred to a Bench:—

> "Whether in the circumstances of this case the plaintiff had had sufficient opportunity within Article 311 of the Constitution of India.

Papers may be submitted to the Hon'ble the Chief Justice for referring it to a third Judge.

Bhandari, C.J.—This Regular First Appeal has been referred to me under the provisions of section 98 of the Code of Civil Procedure as a difference of opinion has arisen between two learned Judges of this Court.

Bhandari, C. J.

On the 27th of April, 1950, the plaintiff, an officiating Sub-Inspector of Police, was present at a meeting of Police Officers of the Gurgaon District when the Superintendent of Police made certain deprecatory remarks in regard to his handling of a certain case under section 302 of the Penal Code.. The plaintiff who considered these remarks to constitute a personal reflection on his own conduct answered back in a language which the Superintendent of Police cosidered rude to the point of insubordination. The latter took a serious view of the matter, transferred the plaintiff from Police Station Nuh to the C. I. A. Branch of the Police at Rewari, placed him under suspension with effect from the 28th April, 1950 framed charges against him and entrusted the enquiry to Shri Lekh Raj, Deputy Superintendent of Police, Gurgaon, a subordinate of the Superintendent of Police. The latter submitted his report on the

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19th June, to the effect that the charge of insubordination had been established. The Superintendent of Police sent for the plaintiff on the 29th of June, and asked him to show cause why he should not be dismissed or removed from the service of the State. The Superintendent of Police ordered his dismissal on the 12th July and his order was upheld by the Deputy Inspector-General of Police and later by the Inspector-General of of Police.

Having failed to obtain redress at the hands of his Departmental superiors the plaintiff brought the suit out of which this appeal has arisen with the object of securing a declaration that the order of removal passed against him was void and of no effect (1) because the order of dismissal was passed by an authority subordinate to the one by whom he was appointed and (2) because the plaintiff had not been afforded a reasonable opportunity of showing cause against the action which was proposed to be taken in regard to him. It was alleged that the Superintendent of Police was actuated of malice, that the enquiry officer being a subordinate of the Superintendent of Police could not act impartially and that the Superintendent of Police who was himself the prosecutor and who had actually initiated the proceedings should not have assumed the role of a judge. The trial Court decreed the plaintiff's suit holding that the order of suspension was arbitrary and malicious, that it was passed by an authority subordinate to the one by whom the plaintiff was appointed and that it was passed in contravention of the provisions of Article 311 of the Constitution. The State preferred an appeal to this Court which came up for hearing before a Division Bench consisting of my learned brothers Falshaw, J. and Kapur, J. They came to the conclusion that the

Superintendent of Police was competent to order the dismissal of the plaintiff, that the plaintiff was non-co-operative tnroughout the proceedings and that he was prepared to call in witnesses only when the case was heard by an Officer of the Indian Police. The learned Judges were unable, however, to agree whetner the provisions of Article 311 had or had not been violated. Kapur, J. was of the opinion tnat a reasonable opportunity was given to the plaintiff to show cause against the order of dismissal but Falshaw, J. expressed the view that no such opportunity can be said to have been afforded. In dealing with this aspect of the matter Falshaw, J. observed as follows:—

> "I can only say that the manner of the dismissal of the plaintiff in this case shocks my sense of justice and fair play. My learned brother is of the opinion that the proceedings leading to the dismissal of a Government servant are not judicial or even quasi-judicial. but purely administrative, that as long as the latter of the procedural rules is followed it is wholly inmaterial in what spirit this is done, and in short that in matters of this kind no question arises of the application of the principles of natural justice, such as that no man shall be a judge in his own cause. Hear, I fear, I am compelled to disagree.
>
> The usual procedure in these matters, and that which has nominally been followed in this case, is that first there is an enquiry in which evidence is led to prove or disprove the charge or charges levelled against the alleged offender (I

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almost used the term "accused"), and then, if the enquiry officer reports that the charge is, or any of the charges are, proved on the evidence led, the officer who has to pass the order of punishment calls on the offender to show cause against the action proposed to be taken against him, Since the first of these stages involves the framing of charges, the leading of evidence for and against, and the appreciation of the evidence for the purpose of deciding whether the charges are established or not, it seems to me to be merely idle to argue that this stage is not a quasi-judicial proceeding. Even at the second, or "showing cause" stage, I do not consider that the function of the officer concerned is purely administrative. I should not consider it to be so even if all he had to do was to consider the nature of the punishment to be imposed on the offender, whether nominal, light or severe, on the assumption that the findings of the enquiry officer are correct. I do not, however, consider that his function is so limited. I am quite sure that in most cases the person called on to show cause challenges the findings of the enquiry officer and endeavours to show that the evidence does not justify the adverse findings against him, or that the enquiry has not been properly conducted, and in my opinion it is the duty of the officer to devote some consideration to this aspect of the case (as the Superintendent has done in this case in his own peculiar way), as well as deciding what is a suitable

punishment. It has come to my notice, in fact, in some cases which have come before this Court, that the merits of the case are considered at the 'showing cause' stage in cases referred to the Union Public Service Commission, and charges which have been held by the enquiry officer to be substantiated have been found by that body not to have been proved. I am, therefore, of the opinion that the quasi-judicial nature of the proceedings extends to the "showing cause" stage as well as the fact-finding enquiry.

In these circumstances I consider that questions of natural justice do arise in these proceedings and that the question of bias is highly material. The word 'reasonable' was not inserted before the word 'opportunity' in Article 311 without its being intended to have its ordinary meaning. Admittedly what is reasonable in one man's eyes is unreasonable in another's and its meaning in the particular context in which it occurs has to be determined subjectively. In this context it certainly means that the opportunity given to the person called on to show cause against a proposed punishment must be a real opportunity, and not an illusory and sham opportunity in which he knows from the start that, whatever force there may be in his representations, they do not stand the slightest chance of being considered. I regard the proceedings which led to the passing of the order of the plaintiff's dismissal by

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the Superintendent as a travesty of justice, and in my opinion the opportunity which was given to the plaintiff to show cause against his being dismissed from service was as "reasonable' as the opportunity enjoyed by a sheep, which has been led to the slaughter-house, of showing cause against its being converted into mutton."

In view of the difference of opinion which has risen the learned Judges have recorded the following order:—

> "As there is disagreement between the Judges constituting the Bench this case has to be referred to a third Judge under proviso to section 98(2) of the Code of Civil Procedure. We have disagreed as to the meaning of the words 'reasonable opportunity'; the following question will be referred to a Bench:—
>
> "Whether in the circumstances of this case the plaintiff had had sufficient opportunity within Article 311 of the Constitution of India?"
>
> The papers may be submitted to the Hon'ble the Chief Justice for referring it to a third Judge."

Section 98 of the Code of Civil Procedure is in the following terms:—

> "98. (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the

opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.....".

Mr. Sodhi, who appears for the plaintiff raises a preliminary objection that as the Judges were equally divided and as there was no majority which concured in a judgment varying or reversing the decree appealed from the decree granted by the trial Court should be confirmed in accordance with the provisions of subsection (2) of section 98 Mr. Awasthy on the other hand contends that a point of law has arisen and that this point must be decided in accordance with the opinion of the majority of the judges who have heard the appeal, including those who first heard it.

A perusal of the order passed by the Division Bench makes it quite clear that the learned Judges have disagreed as to the meaning of the words

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"reasonable opportunity" and have referred to me the question of law whether in the circumstances of this case the plaintiff had had sufficient opportunity within Article 311 of the Constitution. As a question of law has been stated by the learned Judges a duty devolves upon me to decide the said question in accordance with the provisions of the proviso to subsection (2).

It is in evidence that immediately after the conclusion of the meeting on the 27th April, the plaintiff returned to Nuh and addressed a representation to the Inspector-General of Police expressing his resentment over the conduct of the Superintendent of Police and a letter to the Superintendent of Police in which he asked for permission to appear before the Inspector-General of Police. The trial Court has held, and held as it seems to me on ample evidence, that the Superintendent of Police ordered the suspension of the plaintiff on the 29th April, when he came to know about these two communications although the order of suspension purports to have been passed on the forenoon of the 28th April.

As soon as Shri Lekh Raj commenced the departmental enquiry against the plaintiff on the 3rd May, 1950, the latter took objection to his appointment and on the 10th May, submitted a lengthy representation to the Deputy Inspector-General of Police in which he stated that he had certain grievances against the Superintendent of Police and that neither the Superintendent of Police nor his subordinate officers could be entrusted to deal with the departmental enquiry pending against him. He accordingly prayed that he should be transferred to another district so that the enquiry could be held by an impartial and

unprejudiced officer. The Deputy Inspector-General of Police does not appear to have acceded to his request.

After the prosecution witnesses had been examined by the enquiry officer the plaintiff entered upon his defence, put in a long list of witnesses and stated the nature of the evidence that was likely to be given by each. Under the list of witnesses the plaintiff recorded the following note:—

> "All S.H.O.s present in the meeting will be produced as defence witnesses only when the enquiry will be held by the I.P. Officer or some Magistrate. They are not expected to speak the truth while working under the present S.P. as they are afraid of their career."

The enquiry officer declined to summon any of these witnesses except one.

A question at once arises whether a person can be said to have been afforded a reasonable opportunity of being heard when an enquiry into his conduct is held by or under the orders of a prejudiced officer who is himself the prosecutor and judge.

Mr. Awasthy who appears for the State contends that the Superintendent of Police was not biassed against him, that even if he was biassed, the bias cannot invalidate the order of dismissal and that in any case the enquiry in the present case was held not by the Superintendent but by the Deputy Superitendent of Police who had no prejudice against the plaintiff. My attention has also been

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invited to two English cases in support of the proposition that interest or bias mean nothing and that when an administrative tribunal is constituted to hear and determine a charge, the decision of the tribunal is final and cannot be called into question by a Court of law. In *Wildes* v. *Russell*, (1), a clerk of the peace having received fees to which the justices thought he was not entitled, they withheld a portion of his salary, and upon a mandamus unsuccessfully resisted his claim, and thereby incurred costs, for the payment of which the quarter sessions made an order, which it was the duty of the clerk of the peace to enter on the records of the Court and certify to the country treasurer for settlement. The clerk of the peace conceiving that the order was illegal, because no full bill of costs had been brought before the Court, and also because he thought the costs were not such as ought properly to be charged upon the country-rate, but should have been paid by the justices who by disputing his claim had improperly incurred them, declined to record the order or to give the necessary cartificate. They preferred a charge against the clerk of the peace of having misdemeaned himself in the execution of his office. The matter was heard before the justices at the next court of quarter sessions, and they unanimously found that the clerk of the peace had been guilty of the offence charged against him, and adjudged him to be dismissed from his office, and appointed the defendant to succeed him. In an action by the clerk of the peace, for money had and received, to try the defendant's right to the fees of the office the Court of Common Pleas held that the justices in quarter sessions, being a competent tribunal to hear and determine the charge, and having determined it, this Court could not

(1) (1866) 1 L.R.C.P. 722.

question the propriety of their decision; and that no such interest appeared in the justices, or in any of them, as to disqualify them from acting as Judges in the matter. It was argued before the Court of Common Pleas that there was an interest as prosecutors in those of the justices who directed the treasurer to prosecute the inquiry. They observed, however, as follows:—

> "It may or may not have been more wise if those of the justices who had caused those costs to be incurred had abstained from being present at the investigation. But they were the best judges of the propriety of their conduct upon the occasion. That their presence was lawful, is all that we have to deal with. I have heard nothing to satisfy me that they had any such pecuniary interest as to disqualify them. As to the other point, that they were both prosecutors and judges, I cannot bring myself to feel any doubt. As well might it be said that a judge who sees an offence committed before him, and directs a bill to be sent up to the grand jury, ought to withdraw from the bench when the charge comes to be tried. I cannot regard the justices who, so to speak, took notice of the alleged contumacy, and complained of it and suggested the prosecution, as parties to the proceedings."

In a later part of the judgment the learned Judges observed:—

> The magistrates had no such interest as would make them judges in their own cause unless it be that they may be said

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to have been interested in getting rid of an obnoxious person. That, however, is an interest which such a tribunal must always have. The statute which gives them jurisdiction to remove the officer confers upon them that interest. In all cases of contumacy or contempt committed against a court of justice, the proper tribunal to proceed to punishment is the Court itself."

Montague Smith, J., further observed that the maxim "*Nemo sibi esse judex vel suis jus dicere debet*" cannot have any reference to a state of things like this, here the relation is created by statute, and the judges have a duty imposed upon them to investigate and decide.

The facts of this case which was decided as long ago as the year 1866 are in my opinion completely distinguishable from the facts of the case which is now under appeal. In any case during the many years that have gone by the Courts have evolved the doctrine of natural justice and one of the rules of natural justice is that there must be no real bias in favour of or against one of the parties.

The next case cited by the learned counsel for the State was that of *Franklin* v. *Minister of Town and Country Planning* (1). In this case a Minister made an order under the New Town Act, 1946, the validity of which was challenged on two grounds one of which was that the Minister was biassed. The House of Lords examined the history of legislation prior to the enactment of the Act of 1946 and observed:—

"My Lords, I could wish that the use of the word 'bias' should be confined to its

(1) 1948 A.C. 87, 102 and 103.

proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute. As Lord Granworth L. C says in *Ranger* v. *Great Western Ry. Co.*, (1). A judge ought to be, and is supposed to be, indifferent between the parties. He has, or is supposed to have, no bias including him to lean to the one side rather than to the other. In ordinary cases it is a just ground of exception to a judge that he is not indifferent, and the fact that he is himself a party, or interested as a party, affords the strongest proof that he cannot be indifferent."

Their Lordships held however that no judicial or quasi-judicial duty is imposed upon the respondent, and any reference to judicial duty, or his bias, is irrelevant. This case was, however, one under the Town and Country Planning Act, and it was this case which evoked the criticism that the rules of natural justice have become a very frail defence against arbitrary actions. At page 531 of Robson's Justice and Administrative Law the learned Author observes:—

"Natural justice, in short, does not nearly suffice to ensure that the scales of

(1) 5 H.L.C. 72, 89.

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administrative justice are held evenly. The rules it dictates do little to safeguard the proper exercise of judicial power in the complex modern world of public administration. They have indeed, become of historical interest rather than of contemporary significance. The Town and Country Planning Act, 1947, even goes so far as expressly to authorise the Minister to behave in a way which the Courts would in appropriate circumstances regard as a violation of the maxim *audi alteram partem* which is one of the rules of natural justice."

In the Judicial Control of Public Authorities by Galeotti the learned Author observes as follows:-

> "How far does 'bias' provide a ground for the judicial control over administrative action ?
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> Looking through the reasons given for these decisions, it will be found that the question whether or not certiorari or prohibition lie in respect of acts of this character was largely dealt with by the Judges. It will be found also that the common assumption upon which judicial control was affirmed is the quasi-judicial character of the decision. Though the decision is said to be not of a judicial body, in the real sense of the word, nevertheless it was felt that it bore a close resemblance to a judicial decision and it was, therefore, represented as a quasi-judicial one."

Several courts have taken the view that removal proceedings under Article 311 of the Constitution are judicial or quasi-judicial in character and that they are subject to the same requirements of fair play as are applicable to proceedings of a judicial character. *Suresh Chndra Gupta* v. *Himangeshor Kumar Roy and others* (1). Even if these proceedings cannot be regarded as judicial proceedings in the real sense of the word and even if they are not to be assimilated to a trial, even then it seems to me that they bear a close resemblance to a judicial decision and rules of natural justice apply to them with as much force as they apply to all judicial proceedings. [*Shiva Nandan Sinha* v. *State of West Bengal and others* (2) and *Joti Parshad* v. *The Superintendent of Police* (3)].

The expression "reasonable opportunity" has not been defined by the framers of the Constitution but there can be little doubt that the expression means opportunity, the vital elements of which are timely notice and full opportunity to the person concerned to present all the evidence and arguments which he deems important for the purpose of his case. The requirements of a reasonable opportunity are satisfied when the person affected is given personal notice of the charges he is called upon to answer; when he is informed of the place where and the time when he shall so answer; when he is afforded an opportunity, if he so chooses, to cross-examine the witnesses produced against him; when he is afforded an opportunity after all the evidence is produced and known to him to produce evidence and witnesses to refute it; when the decision is governed by and based upon the evidence at the hearing; when he is afforded an opportunity to make his representations as to why the proposed punishment should not be inflicted upon him; and when the hearing is had before an

(1) 55 C.W.N. 605.
(2) LIX C.W.N. 794.
(3) 1957 P.L.R. 532.

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unbiassed and unprejudiced officer. The enquiry officer must conduct the hearing with open mindedness, fairness and impartiality and must approach the hearing without bias and without prejudgment of the issues. If the opportunity to be heard is afforded by a biassed or prejudiced officer it cannot be regarded a reasonable opportunity. *Joti Parshad* v. *The Superintendent of Police* (1). The opportunity must be a real and adequate opportunity and not merely a nominal or a sham one. If the enquiry officer conducts the proceedings before it in a manner which is contrary to the rules of natural justice or which offends the superior court's sense of fair play the superior court would be prefectly justified in exercising the extraordinary powers vested in it by Article 226 of the Constitution *State of U. P.* v. *Mohd. Nooh* (2).

The facts of the case make it quite clear that the Superintendent of Police deprecated the conduct of the plaintiff in a meeting in which most of the police officers of the Gurgaon district were present. The plaintiff resented the aspersions which were cast upon him and replied back in a language which was probably not appropriate to the occasion. The Superintendent of Police lost control over himself and directed the plaintiff to leave the room. The Superintendent of Police took no action against the plaintiff that day and allowed the plaintiff to resume his duty as Station House Officer in charge of the police station at Nuh. The plaintiff, however, resented the remarks of the Superintendent of Police and addressed a representation to the Inspector-General of Police wherein he detailed the incidents which had taken place in the meeting. At the same time he addressed a communication to the Superintendent of Police asking for permission to see the Inspector-General. As soon as these documents came to the notice of

(1) 1957 P.L.R. 532.
(2) A.I.R. 1958 S.C. 86.

As soon as these documents came to the notice of the Superintendent of Police he passed an order placing the plaintiff under suspension and entrusting the enquiry to one of his own subordinates. When the report of the enquiry officer was received he proceeded to pass the order with which the plaintiff is aggrieved. Falshaw, J., has expressed the view, with which I find myself in complete agreement, that as the Superintendent of Police was himself the aggrieved party having been personally insulted he would have been well advised to have the enquiry held by an officer who was not subordinate to him. The conduct of the Superintendent of Police in assuming the role of a prosecutor and a Judge cannot be said to be consistent with the rules of natural justice.

For these reasons, I would uphold the order of the trial Court and dismiss the appeal with costs. Ordered accordingly.

B.R.T.