Wharton's Law Lexicon, in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy or commorancy, is sometimes called his domicile. In a strict and legal sense, that is properly the domicile of a person where he has his true fixed permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. When understood in its strict legal sense all citizens of India have only one domicile, that is, Indian domicile and none can be said to have a domicile in any particular State. It is, therefore, obvious that the word, domicile has been used in the letter to connote the actual residence of a person in the State of Haryana. In *D. P. Joshi* v. *State of Madhya Bharat and another*, (2) the word, 'domicile' used in the rules relating to the admission to Mahatma Gandhi Memorial Medical College Indore was also said to have been used in its popular sense conveying the idea of residence. If that is so, then only those persons can be considered as resident/domicile of Haryana who either actually have permanent residence in the State or had a permanent residence at the relevant time and are for the time being temporarily residing outside the State. We have refrained from considering the validity of each clause of the said letter because of lack of proper challenge but we have no doubt that the State Government would reframe those clauses keeping in view the observations made above.

(8) In the result these petitions fail and are hereby dismissed. In the circumstances of the case the parties are left to bear their own costs.

D. V. Sehgal, J—I agree.

N. K. S.

Before: *S. S. Sodhi, J.*

PREM KUMAR,—*Appellant.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Regular Second Appeal No. 813 of 1985

January 21, 1986.

Punjab Civil Services (Punishment & Appeal) Rules, 1970—*Rules* 5 *and* 9—*Departmental enquiry held against the delinquent*

(2) A.I.R. 1955 S.C. 334.

official—Charges levelled against the official proved—Notice to show cause against the punishment proposed mentioning all the punishments, major and minor, contained in the service rules—Such a notice—Whether denotes denial of reasonable opportunity as envisaged by the rules—Order of dismissal based on such a notice—Whether vitiated.

Held, that it is imperative upon the punishing authority to apply its mind to the gravity of the charges proved and to thereafter propose what it considers to be the suitable punishment to be imposed . Merely listing out all the punishments as contained in the service rules without application of mind to this aspect of the matter, cannot but be construed as prejudice to the deliquent official in enabling him to show cause against the proposed punishment. Such a show cause notice cannot also avoid the charge of vagueness too. In such a situation the order of dismissal passed against the delinquent official cannot indeed be sustained.

(Para 6)

Regular Second Appeal from the decree of the Court of the District Judge, Ropar, dated the 17th day of November, 1984, affirming that of the Sub-Judge, 1st Class, Rupnagar, dated the 11th day of April, 1983, dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

JUDGMENT

S. S. Sodhi, J.

(1) Where in a regular departmental enquiry, the notice to show cause against the punishment proposed to be imposed upon the delinquent official, lists out all the punishments, major and minor, as contained in the relevant service rules, is such notice to be taken to denote, denial of reasonable opportunity as envisaged by the Punjab Civil Services (Punishment and Appeal) Rules, 1970, (hereinafter referred to as 'Service Rules'), thereby vitiating the order of dismissal from service. Herein lies the controversy in appeal.

(2) Prem Kumar the plaintiff here, joined service on May 2, 1962 as leave reserve clerk in the court of the District Judge, Ropar. Later he was posted as *ahlmad* in the court of the judicial Magistrate, Ropar and in due course came to be promoted as Assistant. On September 26, 1975, there was a complaint by one Sarmukh Singh relating to the loss of some papers from the judicial record of a case decided by the Judicial Magistrate, Ropar. The plaintiff was the

ahlmad in that court during that time. A preliminary enquiry was held into the matter and on April 2, 1976, a charge-sheet in respect thereof was served upon the plaintiff. The plaintiff denied the charges and submitted his explanation which the District Judge did not find to be satisfactory. The Senior Sub-Judge was then appointed the Enquiry Officer, who, by his report of May 27, 1976 found against the plaintiff, on all the charges, and thereafter on September 16, 1976, the plaintiff was served with a show-cause notice of the proposed punishment to be imposed upon him. As upon this notice. hinges the legality of the impugned order of dismissal, it deserves to be reproduced *in extenso*. It reads as under:—

> "Enquiry report from Shri P. C. Singal Senior Subordinate Judge Rupnagar (Enquiry Officer) has been received in this office in which you have been held responsible for the loss of documents in case *Sarmukh Singh* v. *Surta Singh*. One of the below noted penalties can be imposed upon you:—
>
> 1. Censure :
> 2. Fine of an amount not exceeding one month's salary for his conduct or negligent in the performance of duties.
> 3. Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.
> 4. Withholding of increments or promotion including stoppage at an efficiency bar;
> 5. Reduction to lower post or time scale or to a lower stage in time scale.
> 6. Suspension.
> 7. Removal and
> 8. Dismissal.
>
> You are directed to show cause as to why any one of the above noted penalties may not be imposed upon you. Your explanation should reach this office within two days from the receipts of this show-cause notice.

(3) The reasonable opportunity envisaged by the Service Rules is *pari materia* with what was required to be afforded under Article

311(2) of the Constitution of India, as it stood before the Forty-Second Amendment of the Constitution. This, as laid down by the Supreme Court in *Khem Chand* v. *Union of India*, (1) includes:—

> "(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
>
> (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally;
>
> (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant."

Later, in *Hukum Chand Malhotra* v. *Union of India*, (2) the Supreme Court had occasion to consider this matter again in the context of facts resembling the case in hand. The show-cause notice there served upon the delinquent official mentioned three punishments, namely, dismissal, removal or reduction in rank. The contention was raised that this notice did not comply with the essential requirements of Article 311(2) of the Constitution of India, in-as-much as it did not particularise the actual or exact punishment proposed to be imposed. The Court negatived this argument with observations:—

> "——We see nothing wrong in principle in the punishing authority tentatively forming the opinion that the charges proved merit any one of the three major penalties and on that footing asking the Government servant concerned to show cause against the punishment proposed to be taken in the alternative in regard to him. To specify more than

(1) A.I.R. 1958 S.C. 300
(2) A.I.R. 1959 S.C. 536.

one punishment in the alternative does not necessarily make the proposed action any the less definite; on the contrary, it gives the Government servant better opportunity to show cause against each of those punishments being inflicted on him, which he would not have had if only the severest punishment had been mentioned and a lesser punishment not mentioned in the notice had been inflicted on him."

(4) To distinguish these observations from the present case, Mr. Sarup Singh, counsel for the appellant laid great stress upon the fact that the punishing authority there had tentatively come to the conclusion that the charges proved warranted a major punishment and it then called upon the government servant concerned to show cause why one of the three major punishments be not imposed upon him, whereas here, all the penalties that could possibly be imposed, major and minor, was set out in the show-cause notice. Counsel thus argued that if the punishing authority had at all considered the matter, surely it could have tentatively decided, at least this much, whether a major or minor punishment was called for. pressed in aid here was again *Hukum' Chand's case* (supra) with attention being drawn to the observations preceding those quoted, namely, : "We desire to emphasise here that the case before us is not one in which the show-cause notice was vague or of such a character as to lead to the interence that the punishing authority did not apply its mind to the question of punishment to be imposed on the government servant." It was, accordingly aruged that it was apparent that the punishing authority had not applied its mind to the nature and gravity of the charges proved against the appellant and what consequently should be the proper punishment to be proposed to be imposed upon him.

(5) Counsel also put forth the contention that vagueness in the show-case notice was inherent in both major and minor penalties being mentioned therein.

(6) There can be no manner of doubt that it is imperative upon the punishing authority to apply its mind to the gravity of the charges proved and to thereafter propose what it considers to be the suitable punishment to be imposed. Merely listing out all the punishments as contained in the service rules without application of mind to this aspect of the matter, cannot but be construed as prejudice to the

delinquent official in enabling him to show-cause against the proposed punishment. Such a show-cause notice cannot also avoid the charge of vagueness too. Such being the situation here, the impugned order of the District Judge, Ropar of November 18, 1976, dismissing the plaintiff from service cannot indeed be sustained. The plaintiff must acordingly be held entitled to and is hereby granted a decree for declaration and injunction as prayed for. It is, however, clarified that it would be open to the punishing authority to consider the report of the enquiry officer and the gravity of the charges proved against the plaintiff, afresh and to take such further action in accordance with law as it may deem appropriate.

(7) The judgments and decrees of the courts below are accordingly hereby set aside. This appeal is accepted with costs.

N.K.S.

Before S P. Goyal and Gokal Chand Mital, JJ.

COMMISSIONER OF INCOME-TAX,—*Appellant.*

versus

SURINDER SINGH,—*Respondent.*

Income Tax Reference No. 36 of 1978.

January 22, 1986.

Income Tax Act (XLIII of 1961) as amended by Finance Act V of 1964—Sections 271(1)(c) and 279-A—Currency notes seized in a search—Assessment proceedings initiated by the income-tax officer —Part of the money seized treated as income of the assesseee from undisclosed sources and his explanation for the rest of the money accepted—Penalty proceedings also initiated—Onus to prove that *receipt of disputed amount constituted income of the assessee— Change in law after the amendment of* 1964—*Stated.*

Held, that before the income Tax Act, 1961 was amended by the Finance Act 5 of 1964, it was for the revenue to establish that the receipt of the amount in dispute constituted income of the assessee since penalty proceedings were penal in character. According to the law before amendment, apart from the falsity of the explanation given by the assessee, the department was required to have before it, before levying penalty, cogent material or evidence from