prayed that these be noticed. We are unable to appreciate the import of this request. As no such contention had been raised, we fail to see what possible notice can we take of the same.

(39) This petition, therefore, fails but in the circumstances of this case we would propose no order as to costs.

HARBANS SINGH, J.—I agree.

D. K. MAHAJAN, J.—I agree.

K. S. K.

FULL BENCH

Before Harbans Singh, D. K. Mahajan and S. S. Sandhawalia, JJ.

MALVINDERJIT SINGH,—*Appellant.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 467 of 1968

in

Civil Writ No. 2719 of 1965

May 15, 1970.

Punjab Civil Services (Punishment and Appeal) Rules (1952)—*Rules* 7, 8 *and* 9—*Proceedings against a public servant under rule* 8—*Before the initiation of such proceedings, punishing authority referring the case to the Vigilance Department to ascertain true facts and to decide if it was a fit case for taking any action—Report of the Department received and action proposed to be taken on the basis thereof—Copy of the report or the substance of the adverse findings and the material on which they are based, not supplied to the public servant—Such public servant—Whether can be said to have "an adequate opportunity to make a representation"—"Adequate opportunity"—Meaning of—Public servant, if not entitled to the report of the Vigilance Department under rule* 8—*Whether entitled to such report or substance thereof under the principles of natural justice.*

Held, per majority (Mahajan and Sandhawalia, JJ., Harbans Singh, J., Contra.), that for the minor punishment to public servants for their misconduct the authorities have designedly provided for a simple and summary procedure of representations only, untrammelled by any furnishing of copies of documents or material on which the allegations are based or the right of cross-examination, or the right of leading defence evidence which are all provided in case of enquiries *qua* major punishments. The furnishing of documents as provided for in rules 7 and 9 of the Punjab

Civil Services (Punishment and Appeal) Rules, 1952, stands excluded under rule 8. Basically the right to secure copies of documents or other specific material is a procedural right which accrues if it is so granted in express terms by a statute. Nobody can be said to have any inherent right to secure copies or to have any access to confidential State records. Such a right can only be a creature of a statute. On an overall view of the specific language of rule 8 of the Rules, its setting in the relevant rules and the scope and ambit thereof, all collectively tend to negative any such procedural right. Hence in the light of the language of rule 8 construed in the established canons of interpretation and on principle a public servant is not entitled to either a copy of the findings of the enquiry report conducted by the Vigilance Department nor is he so entitled to the materials on which this may have been based. No prejudice whatsoever is caused by the non-furnishing of these documents and the public servant must be deemed to have had adequate opportunity to make the representation visualised by rule 8. (Paras 29, 30 & 41)

Held, that the words "adequate opportunity" in the context of rule 8 of the Rules may mean no more than an adequacy of time to make a representation which alone is guaranteed by rule 8. It is possible to place such a limited meaning upon these words, but even if a more liberal construction is placed, these words cannot be elongated enough to create a specific procedural right to secure copies and materials. Moreover, the adequacy of opportunity to make representation under rule 8 cannot possibly imply a larger right than what has been judicially interpreted to be the basic requirements of a reasonable opportunity of being heard or to show cause against specific allegations. (Para 35)

Held, (per Harbans Singh, J. Contra.), that under rule 8 of the Rules, unlike rule 7, the employee has only one opportunity of making a representation. No enquiry need be conducted as under rule 7 and no evidence need be recorded in the presence of the employee. It is open to the punishing authority to collect any material either itself or through any specialised agency like the Vigilance Department to acquaint itself with the real facts in order to take a decision whether any action is to be taken against the employee and, if so, what action is to be taken. But if such an enquiry is made and material is collected on the basis of which a prejudicial view is taken against the employee and he is charge-sheeted under rule 8 with a view to impose one of the three minor punishments, then the employee is entitled to an adequate opportunity to make a representation to show that (1) he is not guilty and (2) that the proposed punishment should not be imposed on him, being excessive. It would be impossible for an employee to make such a representation unless it is made known to him the material on the basis of which it has been decided that he is guilty and that the particular punishment be imposed on him. Hence when an enquiry is conducted by the punishing authority through the Vigilance Department to ascertain the true facts in order to enable the punishing authority to take a decision whether it is a fit case for taking action and if so what action, against the officer concerned, then the report of the enquiry officer and the material collected by the Vigilance Department on the basis of which its findings are based, forms relevant material which an employee is entitled

to know before it can be said that he had an adequate opportunity to make a representation. Without being supplied with such a material he cannot make an effective and real representation. The only case in which the punishing authority would be justified in withholding such a material, would be where under the second proviso to rule 8, sufficient reasons are recorded in writing to the effect that it is not practicable to observe the requirements of the rule and that this can be done without injustice to the officer concerned. (Paras 10 & 17)

Held, that the words "adequate opportunity" in the context of rule 8 of the Rules connote "reasonably sufficient opportunity" in every respect, to make a representation against the action sought to be taken against the employee. Before an employee can be said to have had this "adequate opportunity", the employee has to be told the charges of misconduct and then he must have an opportunity to be heard in answer to those charges. (Para 5)

Held (per Full Bench) that if a public servant is not entitled under rule 8 of the Rules to a copy of the report of the Vigilance Department on the basis of which action is proposed to be taken against him, he is not entitled to such report or the substance thereof under the principles of natural justice, because resort to principles of natural justice has to be taken only where there are no specific rules of procedure provided. The rules of natural justice can operate only in areas not covered by any law validly made. (Para 4)

Case referred by the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice S. S. Sandhawalia on 8th December, 1969, to a Full Bench for decision of an important question of law involved in the case. The case was finally decided by a Full Bench consisting of the Hon'ble Mr. Justice Harbans Singh, the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice S. S. Sandhawalia, on 15th May, 1970.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of the Hon'ble Mr. Justice Prem Chand Pandit passed in Civil Writ No. 2719 of 1965 on 29th July, 1968.

KULDIP SINGH AND R. S. MONGIA, ADVOCATES, for the Appellants.

MELA RAM SHARMA, DEPUTY ADVOCATE-GENERAL (PB.) WITH MOHINDER PAL SINGH GILL, ADVOCATE, for the Respondents.

JUDGMENT

HARBANS SINGH, J.—Malvinderjit Singh, petitioner-appellant (hereinafter referred to as the appellant) was appointed Dietician in the Rajindra Hospital, Patiala and his duties as such are given in "Information for the candidates" issued at the time of his recruitment which is annexure 'A' to the writ. *Inter-alia*, he was to inspect food articles received from the contractor to ensure good

quality; inspection of food served to the patients; checking of the diet prescribed for the patients: supervision of the work performed by the kitchen staff; teaching of nutrition and diet to the student nurses and medical students, etc. The stores were actually under the charge of a store-keeper. The appellant was in the gazetted rank and in the Class II service of the State. Kartar Singh, store-keeper, who was working as such since before the appointment of the appellant, was transferred on 16th of July, 1962, and one Bahadur Singh, who was working in the medical store, was transferred as the store-keeper of the kitchen stores. The appellant was directed to take over the temporary charge of the store before the new man took over. Appellant consequently, took over charge and signed various registers certifying that the charge has been taken over by him. Bahadur Singh, joined on 18th of August, 1962, but he was kept under training till 3rd of November, 1962, when he took over actual charge of the stores. On 22nd of October, 1962, the Medical Superintendent received a complaint that Bahadur Singh has removed a tin of *ghee*. Under the orders of the Medical Superintendent, a Committee of Doctors and others nominated by him, physically checked the stores in the presence of the appellant on the 23rd and 24th October, 1962, and reported excesses and shortages of various items of kitchen stores. Ghee, wheat flour, rice ziri and pulses were found in excess, some of these items by several quintals and basmati rice was found short by nearly four quintals. Apparently, this committee did not actually check the fuel wood stock. On getting this report, Accounts Officer, Mr. Garg was directed to carry out the physical checking and he did the checking between 28th and 30th November, 1962 and apart from the excesses and shortages as mentioned above, he noticed that fuel wood was short by 907 quintals as compared to the quantity on the stock register. The appellant was suspended and was allowed subsistence allowance as admissible under rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I. In order to further probe the matter and reach at the bottom of the whole affair, the matter was referred for inquiry and report to the Vigilance Department. The inquiry was conducted by a Deputy Superintendent of Police, who recorded the statements of a number of employees of the Rajindra Hospital, of the kitchen staff as well as of the contractors, who supplied the fuel wood, though not in the presence of the appellant. The appellant was also asked certain questions by the Deputy Superintendent of Police in answer to which, *inter alia* the appellant stated that he was asked to take over charge temporarily and within a day or so physical checking was not possible and he certified having taken the

charge, on good faith. The report was submitted on 26th November, 1963, about a year after the discovery of the shortages. According to this report, the Deputy Superintendent of Police exonerated both Kartar Singh and Bahadur Singh, store-keepers, and also came to the conclusion that there was no evidence of the appellant being dishonest, but held that "his negligence and lack of supervision in the proper maintenance of his accounts resulting into irregularities remained substantiated against him for which action under rule 8 of the aforesaid rules is warranted."

(2) After this report the appellant was reinstated but it was directed that he will not receive anything more than his subsistence allowance for the period of his suspension. He was served with a notice under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (hereinafter referred to as Service Rules) sometime later in the same month of November, 1963, stating that it was proposed to take action against him (i) to recover the shortage of Rs. 6,582 found in fuel wood and Basmati rice from him as this shortage occurred due to his negligence in supervision and (ii) to stop his next two increments with cumulative effect." (annexure 'H'). In annexure 'I', that is, statement of allegations which was annexed with the notice, all the facts as given above, that is, receipt of the complaint about the removal of the tin of Ghee and the recovery of the same on 23rd October, 1962; formation of the committee which conducted the checking on 24th of October, 1962, and the subsequent physical verification done by Shri J. R. Garg. Accounts Officer, were mentioned and it was stated that by report, dated 3rd of December, 1962, of Mr. Garg, shortages and excesses, detailed therein including the shortage of fuel wood had been noticed. No mention, at all, was made of the inquiry that was got conducted by the Government through the Vigilance Department. The appellant was directed to submit his explanation and the same was submitted by him which is annexure 'J'. In the very second paragraph of the same it was pointedly stated by the appellant as follows: —

> "Moreover, the result of enquiry held by vigilance staff at spot on the basis of the checking report of the Accounts officer has not been communicated nor shown to me. As soon as the result of the enquiry is received by me I will be in a position to submit my further explanation in view of that."

And thereafter he gave his explanation in regard to the various excesses and shortages and the reasons which could have contributed to the same. This explanation was submitted on 13th December,

1963. As the result of the enquiry held by the Vigilance Department was not communicated to the appellant nor was he informed that he could inspect the report at any place specified, the appellant did not submit his further explanation and nearly a year and eight months afterwards, an order, dated 16th August, 1965 (Annexure 'K'), was passed by the Governor imposing the following punishment on the appellant—

(i) recovery of Rs. 6,034, i.e., the cost of fuel wood found short; and

(ii) stoppage of his next two increments with cumulative effect.

The appellant thereafter filed the writ petition challenging, *inter alia*, the order of reinstatement without paying his arrears; the order directing recovery of Rs. 6,034 and stoppage of his two increments. His writ petition was dismissed by the learned Single Judge. In the Letters Patent Appeal, the Division Bench set aside the order directing the non-payment of any further salary except subsistence allowance during the suspension period and that matter is no longer in dispute. With regard to the other matter, viz., whether the order, dated 16th August, 1965, inflicting the above-mentioned punishment on the appellant was valid or not, the main contention of the learned counsel for the appellant was that, inasmuch as, the action is being taken under rule 8 of the Service Rules for inflicting one of the minor punishments, the appellant has no right to claim a regular departmental inquiry which will give him an opportunity not only to cross-examine the witnesses, but also lead evidence in defence and for the same reason it was not obligatory on the authority to hold any enquiry whatever, but if, in fact, some sort of enquiry is held, though the appellant is not associated with the same, and a report is received by the authorities and that report is taken into consideration by the authorities before inflicting the punishment on the appellant, then rules of natural justice as well as the specific rule 8 of the Services Rules, require that a copy of such a report or at least a substance of the findings in the report which are adverse to him and the material on which the same are based, should be either given to him or the inspection of the report allowed to him so as to give him an "adequate opportunity to make a representation" against the action proposed to be taken against him.

(3) On behalf of the State it was contended that the fact that there was no reference in the notice, or the allegations attached

therewith, to the report of the Vigilance Department or the non-supply of the copy or a substance thereof was altogether immaterial. In the first place the position taken up by the State was that full opportunity had, in fact, been given to the appellant to inspect this report if he so desired, secondly it was urged that this enquiry report in fact, did not affect and was not likely to affect prejudicially the mind of the punishing authority and lastly it was contended that the appellant was not entitled under rule 8 to be supplied with a copy or a substance of this report nor was he entitled to its inspection because the report was in the nature of a preliminary enquiry by the department for its own purpose.

(4) The Division Bench after going into the facts of this case repelled the first two arguments and held that in the circumstances of the case, the appellant cannot be said to have been properly informed that he could inspect the report and further that the report was, infact, prejudicial to the interests of the appellant and was taken into consideration by the Government and in any case was likely to prejudicially affect the mind of the authorities. As regards the third point whether under rule 8 the appellant was entitled to a copy of the report or a substance thereof together with the material on which the same is based, or which comes to the same thing, to be allowed to inspect the same, Division Bench considered at length the authorities cited before it but feeling that this matter was of importance and likely to arise in large number of cases, referred the following two questions for decision by a larger Bench: —

"(1) Whether a public servant, who is proceeded against under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, can be said to have had an "adequate opportunity to make a representation" as required under the Rule if he is not supplied with the copy of the report or the substance of the adverse findings and the material on which they are based, of the Vigilance Department to which reference was made by the punishing authority to ascertain the true facts, in order to decide whether it was a fit case for taking any action and, if so, what action against the officer concerned?

(2) If he is not entitled to a copy of such a report or the substance thereof under Rule 8 (*supra*), is he entitled to the same under the principles of natural justice "

That is how the matter is before, us. As detailed above, it is not for this Bench to go into the other two questions (though an effort was made on behalf of the State to reopen the same) whether an offer of inspection of the report was, in fact, conveyed to the appellant and whether the report was likely to prejudicially affect the mind of the authorities. These questions have already been decided by the Division Bench and only the above-mentioned two questions of law are before us. In fact, the main question on which the arguments were addressed by the learned counsel for the appellant is question No. 1 because it was conceded on behalf of the appellant that in the present case if he is not entitled to a copy of the report or a substance thereof, under rule 8 which provides for an "adequate opportunity to make a representation", to be given to him, he would have no right to such a report under rules of natural justice. He conceded that rules of natural justice do not go beyond affording the person concerned such an adequate opportunity. The learned counsel for the State also urged that resort to rules of natural justice have to be taken only where there are no specific rules or procedure provided. Mr. Justice Hegde while delivering the judgment of their Lordships of the Supreme Court in *A. K. Kraipak and others* v. *Union of India* (1), observed as follows :—

> "The aim of the rules of the natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it."

In this respect he also referred to the observations of Lord Parmoor in *Local Government Board* v. *Arlidge* (2). At the bottom of page 140, it is stated as follows :—

> "Where, however, the question of the propriety of procedure is raised in a hearing before some tribunal other than a Court of law there is no obligation to adopt the regular forms of legal procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice."

(1) 1969 S.L.R. 445.
(2) (1915) Appeal Cases 120.

Again at page 141 it was observed as under:—

> "In the present case there are special provisions for procedure, and the Local Government Board have, in my opinion, given the parties a fair opportunity of being heard before them and stating their case and views."

However, in view of the concession made by the learned counsel for the appellant, it is hardly necessary to dilate on this aspect.

(5) The question, therefore, in the present case is as to what can be taken to be an "adequate opportunity to make a representation" in the context of rule 8. According to the learned counsel for the State, word 'adequate' has reference only to adequacy in time. In other words all that the rule requires is that an opportunity should be given to the employee to make representation and the word 'adequate' qualifying the word 'opportunity' signifies that the employee should be given reasonably sufficient time to make his representation. Apart from the fact that even if 'opportunity' had not been qualified by the word 'adequate' such an opportunity must serve the purpose for which it is given, namely, to meet the charges levelled against him, the interpretation put on behalf of the State cannot possibly be accepted. The word 'adequate' is a word of wide meaning. In Shorter Oxford English Dictionary, its meaning is given *inter alia* as 'commensurate in fitness; sufficient, suitable', I am of the view that 'adequate opportunity' connotes "reasonably sufficient opportunity" in every respect, to make a representation against the action sought to be taken against the employee. Before an employee can be said to have had this 'adequate opportunity', it was not disputed that employee has to be told the charges of misconduct and then he must have an opportunity to be heard in answer to those charges. It was then argued that all that is necessary to indicate under rule 8 to the employee is the charges of misconduct against him and to give him an opportunity to make a representation in answer to those charges. This would be the minimum. requirement both under the rules of natural justice and in order to comply with the provisions of rule 8. In *Ridge* v. *Baldwin*, (3), at page 132, it was observed by Lord Hodson:—

> "No one, I think, disputes that three features of natural justice stand out—
>
> (1) the right to be heard by an unbiased tribunal;

(3) (1964) A.C. 41.

(2) the right to have notice of charges of misconduct;

(3) the right to be heard in answer to those charges."

In the light of the above, it was urged that if the charges are indicated, it is not necessary that the material on which charges are based need be indicated and in any case an inquiry which is conducted by the punishing authority in order to acquaint itself as to whether any action against its employee was necessary and, if so, what the action should be, is in the nature of a fact-finding inquiry and the employee is not entitled to seek either inspection or ask for a copy of such a fact-finding inquiry. In order to support this contention, he relied on a number of decided cases under Article 311 of the Constitution and rule 7 or the provisions equivalent thereto. Before noticing these cases, it would be necessary to reproduce the relevant parts of rules 7 and 8 in order to appreciate the difference between the procedure that is to be followed in the two cases. The relevant parts of rules 7 and 8 are as follows:—

"7. (1) * * * * * no order of dimissal * * * * shall be passed against a person to whom these rules are applicable, unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(2) The grounds on which it is proposed to take such action, shall be reduced to the form of a definite charge or charges which shall be communicated in writing to the persons charged, together with a statement of allegations on which each charge is based.

(6) After the enquiry against a Government servant has been completed, and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the accused officer shall, if the penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the report of the enquiring authority and be called upon to show cause within reasonable time, not ordinarily exceeding one month, against the particular penalty proposed to be inflicted upon him. Any representation submitted by the accused in this behalf shall be taken into consideration before final orders are passed:

Provided that if the punishing authority disagrees with any part or whole of the findings of the enquiring authority, the point or points of such disagreement, together with a brief statement of the grounds thereof, shall also be supplied to the Government servant.

8. Without prejudice to the provisions of rule 7, no order under clause (i), (ii) or (iv) or rule 4 shall be passed imposing a penalty on a Government servant, unless he has been given an adequate opportunity of making and representation that he may desire to make, and such representation has been taken into consideration :

"Provided further that the requirements of this rule may, for sufficient reasons to be recorded in writing, be waived where it is not practicable to observe them and there they can be waived without injustice to the officer concerned."

It is clear from the above, that the procedure provided under rule 7 is to be followed where the punishment of reduction in rank, removal or dismissal is to be imposed on Government servant and a shorter and simpler procedure is to be followed where the three so-called minor punishments, as provided in rule 4, i.e. (i) Censure, (ii) withholding of increments or promotion, including stoppage at an efficiency bar, if any, and (iv) recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders, are to be inflicted. It is now well settled that under rule 7 which is in accordance with the provisions of Article 311 of the Constitution,—

(i) The inquiry has to be conducted in the presence of the employee, i.e., the entire evidence has to be examined in his presence and he has to be given full opportunity to cross-examine those witnesses, and

(ii) he can also lead defence evidence.

On the material so brought on the record before the Inquiry Officer, and *on no other*, the Inquiry Officer bases his report and findings, and the proposed action can be determined by the punishing authority on the basis of such material so collected and the report so made. If the punishing authority tentatively takes a decision to impose one

of the punishments mentioned above, then (a) the employee has to be supplied with a copy of the report, and (b) he has to be given an opportunity to show-cause against the punishment proposed. While showing cause, the employee is entitled not only to make a representation against the quantum of the punishment but he can, once again, make a representation *qua* his guilt. In other words, he can cover the whole ground that he had previously covered before the Inquiry Officer, See in this connection *The State of Assam and another* v. *Bimal Kumar Pandit*, (4). It is clear from the above that in a case covered by rule 7, a preliminary enquiry, which may be of a fact-finding nature or otherwise, conducted by the punishing authority or by any other specialized Agency like the Vigilance Department, at its instance behind the back of the employee is aboslutely of no consequence to the employee because no material so collected, behind his back, can be used against him. In fact, if any witness has been examined at such a preliminary inquiry and that witness is again examined before the Inquiry Officer at the time of the departmental inquiry, the employee is even entitled to ask for, and the authorities are bound to supply, a copy of such an earlier statement made by the witness. Be that as it may, one thing is clear that so far as the inquiry or inquiries made by the authorities prior to the initiation of the departmental inquiry are concerned, copies of the reports or the material on which the same are based need not be supplied to the employee for the simple reason that the material in such preliminary inquiries cannot be used against the employee.

The cases decided under Article 311 or under the rules equivalent thereto are, consequently, of no help in deciding whether the material collected in such a preliminary inquiry, where no departmental inquiry is held and action is sought to be taken under rule 8, should or should not be supplied to the employee under rule 8. These cases relied on behalf of the State in this connection are *Champaklal Chimanlal Shah* v. *The Union of India* (5), *Suresh Koshy George* v. *University of Kerala and others* (6), *Sham Lal* v. *Director, Military Farms, Army Headquarters, New Delhi and others* (7) *and Sharmanand* v. *Superintendent, Gun-Carriage Factory, Jabalpur and another* (8).

(4) 1963 S.C. 1612.
(5) A.I.R. 1964 S.C. 1854.
(6) A.I.R 1969 S.C. 198.
(7) 1968 Lab. I.C. 967.
(8) A.I.R.. 1960 M.P. 178.

(6) *Champaklal's case* (5), was a case of a temporary Government servant. There a memorandum was given to the temporary civil servant in which he was informed of certain charges and his explanation was asked for and he was also asked to state 'why disciplinary action should not be taken against him'. Subsequently, however, no regular departmental enquiry was conducted, but his services were terminated under the rules and it was held that the termination could not be challenged on the ground that provisions of Article 311(2) had not been followed. The relevant head-note is as under:—

"It cannot be said that once government issues a memorandum, but later decides not to hold a departmental enquiry for taking punitive action, it can never thereafter proceed to take action against a temporary government servant in the terms of rule 5, even though it is satisfied otherwise that his conduct and work are unsatisfactory."

Again in paragraph 12, it was observed—

"A preliminary enquiry is usually held to determine whether a *prima facie* case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already government does not usually take action of this kind without any reason."

In a case like this there was, in fact, no question of supply of a copy of the preliminary report because action was taken under the rules and it was held that it was not by way of punishment. This case has absolutely no relevance to the present case. *S. K. George's case* (6) was a case where action was taken by the Kerala University against a student for having used unfair means in the examination. In one of the mathematics papers, the Additional Examiner valued the paper and awarded 14 per cent marks, but the Chief Examiner gave 64 per cent marks in that paper. When the matter was referred to the higher authorities, it was suspected that additional books had been inserted after the Additional Examiner had valued the paper and consequently a high powered committee was constituted to go

into the matter. This committee after enquiry in which the Additional Examiner, the Chief Examiner as well as the appellant were examined, came to the conclusion that the appellant was guilty of mal-practice which called for disciplinary action. Thereafter a regular formal inquiry, as required by the rules, was conducted. The charge against the appellant was made known to him before the commencement of the inquiry: the witnesses who gave evidence against him were examined in his presence and he was allowed to cross-examine them and was afforded opportunity to present his case before the Inquiry Officer. The Inquiry Officer made a report and on the basis of his finding that the appellant was guilty, a show-cause notice was issued to the appellant. The appellant submitted his explanation whereafter disciplinary action was taken against the appellant. One of the grounds of attack before the High Court and the Supreme Court was that the impugned order was invalid inasmuch as no copy of the report made by the Inquiry Officer was made available to the appellant before he was called upon to submit his explanation in response to the show-cause notice. In paragraph 11, Mr. Justice Hegde, while delivering the judgment of the Court, after referring to the fact that the charges were indicated to the appellant and witnesses were examined and cross-examined by him, observed as follows:—

> "Hence we see no merit in the contention that there was any breach of the principles of natural justice. It is true that the Vice-Chancellor did not make available to the appellant a copy of the report submitted by the Inquiry Officer. Admittedly the appellant did not ask for a copy of the report. There is no rule requiring the Vice-Chancellor to provide the appellant with a copy of the report of the Inquiry Officer before he was called upon to make his representation against the provisional decision taken by him. If the appellant felt any difficulty in making his representation without looking into the report of the Inquiry Officer, he could have very well asked for a copy of that report. His present grievance appears to be an after-thought and we see no substance in it."

The case of *Surinder Singh Kanda* v. *Government of the Federation of Malaya* (9) was distinguished on the facts. In *Kanda's case* (9), a preliminary inquiry was held by the Commissioner and on the basis of the conclusions reached at this informal enquiry, a formal enquiry

(9) 1962 A.C. 322.

was conducted. on the basis of which he was dismissed. The dismissal was challenged. During the proceedings it came to light that report made by the Board during the preliminary enquiry was placed in the hands of the officer, who held the formal enquiry, but neither a copy of that report nor its findings were made available to the appellant to conduct the case, and that report was likely to have prejudiced the enquiry against his conduct. In view of these facts the Judicial Committee came to the conclusion that the enquiry held was not fair and quashed the order of dismissal. In fact this case of *Kanda* highlights the point that the preliminary enquiry, if any, held by the punishing authority with a view to decide whether to hold a formal departmental enquiry, would be a material thing and has to be supplied to the employee if it is used against him. Cases in which it has been held that copy of the preliminary enquiry need not be given to the employee are cases where such a preliminary enquiry or the material collected thereunder is not used against the employee and only the material that is brought on the record during the departmental enquiry held in his presence, is used. What is further significant is that even in case of action against *S. K. George* (6). in the case before the Supreme Court the observations of their Lordships make it clear that in case a copy of the earlier enquiry had been asked for and refused, the case would have been quite different. It was on the basis that (i) the student was given very fair opportunity of witnesses being examined in his presence and to cross-examine them and also a fair opportunity to present his case and (ii) that he did not mention that he would like to look at the report of the Inquiry Officer before making his representation, that the plea of the student was negatived. In *Sham Lal's case* (supra) (7), some matter was referred to the Full Bench, which it is not necessary to refer here, and after the question had been answered the matter came up before Mr. Justice Narula. The order of dismissal *inter alia* was challenged on the ground that the report of the preliminary enquiry held by the Special Police Establihsment had been illegally withheld from the petitioner. Apart from this, the other objections were that the statements of two prosecution witnesses given by them at the preliminary enquiry were illegally withheld from the petitioner and secondly the complete report of the enquiry officer had not been furnished to him. Both these contentions were held in favour of the petitioner in that case. With regard to the non-supply of the special enquiry report, it was observed as followes:—

> "I do not, however, find any force in the contention of Mr. Gujral, about adequate opportunity having been declined by the non-supply of a copy of the report of the Special

> Police Establishment. There is no doubt that the petitioner asked for the same and his request was declined. But it has been urged that those enquiries were of a preliminary nature and were confidential enquires by the Special Police Establishment. I find great force in the arguments of Dewan Chetan Dass, based on the judgment of the Madhya Pradesh High Court in *Sharmanand* v. *Superintendent, Gun-Carriage Factory, Jabalpur* (8), that the petitioner was not entitled to a copy of the report of the Special Police Establishment. Nor is it shown how the petitioner has been prejudiced by the non-supply of a copy of that report."

These observations in the context in which the same were made, hardly afford any authority for the proposition that even under rule 8 when the facts, as found in the preliminary enquiry report by a specialised agency, are made the basis and are taken into consideration in framing charges against the employee and also in taking a decision as to what action is to be taken against him, need not be supplied. As is clear from the facts of that case, a regular departmental enquiry was conducted. The petitioner was found entitled to get copies of the statements made by the various witnesses, who were examined at the departmental enquiry. Consequently the petitioner was found entitled to be supplied with the material which was collected by the specialised agency during the preliminary enquiry. It is in the light of this that the learned Judge held that the petitioner was not prejudiced by the non-supply of this preliminary report. *Sharmanand* v. *Superintendent, Gun-Carriage Factory, Jabalpur and another* (8), was again a case under Article 311 where a copy of the preliminary enquiry was refused. In view of the above discussion, none of these cases is of any assistance in deciding whether an adequate opportunity required to be afforded under rule 8 can be said to have been given if the fact-finding report and the material on which it is based is not given to the employee, particularly when he asked for it and the same was likely to prejudicially affect his case.

(7) Reference may briefly here be made also to some of the cases of the House of Lords, particularly, *Arlidge's case* (2), support from which was sought for the proposition that any enquiry which is conducted prior to the actual holding of the departmental enquiry, being in the nature of a preliminary fact-finding enquiry to acquaint the punishing authority itself, need not be supplied to the employee.

These have been discussed in the judgment of the Division Bench and may only briefly be noticed. In *Arlidge's case* (supra) (2), under section 17 of the Housing, Town Planning Act, 1909, an order prohibiting the use of certain premises was made by the Hampstead Borough Council. Arlidge filed an appeal to the Local Government Board. Section 39 of the Act provided that the Local Government Board shall, on an appeal being filed, appoint an inspector to hold a public local enquiry. This was held by the Inspectors of the Board and in this enquiry Arlidge took part. The evidence was taken in his presence and he was alowed to cross-examine and he himself led evidence. The Inspectors of Board made a report. The Local Board after considering the report dismissed the appeal. The point before the House of Lords was whether the non-supply of the copy of the report amounted to contravention of rules of natural justice. The House of Lords took the view that Arlidge was not entitled to the disclosure of the views of the inspector. At page 136 of the report Lord Shaw observed that where a public local inquiry is held in compliance with the statute, that the person whose interests are affected takes part in such an enquiry and, therefore, knows all the material that is placed before the inspectors, such a person is not entitled to a disclosure of the views of the inspector written out by him for the consideration of the department in dealing with the case. Lord Shaw observed that the disadvantage in such a disclosure would exceed the advantage of such disclosure. The relevant passages of Lord Shaw at pages 136 and 137 of the report is as follows:—

> "........ the next proposition is this, that when a public local inquiry has been held in compliance with statute, the person whose interests are affected is entitled to something more, namely, a discloure of the views of the inspector written out by him, in jottings or otherwise, for the guidance or consideration of the department in dealing with the case.
>
> .... I incline to hold that the disadvantage in very many cases would exceed the advantage of such discloure. And I feel certain that if it were laid down in Courts of law that such discloure could be compelled, a serious impediment might be placed upon that frankness which ought to obtain among a staff accustomed to elaborately detailed and often most delicate and difficult tasks. The very same argument would lead to the disclosure of the whole file. It may contain, and

frequently does contain, the views of inspectors, secretaries, assistants and consultants of various degrees of experience, many of whose opinions may differ, but all of which form the material for the ultimate decision."

These observations have been approved by the Supreme Court in a number of cases. On behalf of the appellant it was urged that there is no quarrel with the principle, incorporated in the observations, that the administrative authorities, though acting in a quasi-judicial manner, are not bound to observe the detailed procedure prevalent in the judicial courts, and where law provides for an enquiry to be held in the presence of the person affected and provides him with the necessary material likely to be used against him as well as provides him with an opportunity to meet the same, the views of the Inquiry Officer which may be of a confidential nature need not be disclosed to him. It was, however, urged that under rules 7 and 8 of the Punjab Civil Services Rules, the punishing authority has ample power not to supply material of a confidential nature because, for example, proviso to rule 8 specifically lays down that 'the requirements of this rule may, for sufficient reasons to be recorded in writing, be waived where it is not practicable to observe them."

(8) This Arlidge's case *inter alia* was relied upon in *University of Ceylon* v. *Fernando* (10) and was also referred to in *New Parkash Transport Co. Ltd.* v. *New Suwarna Transport Co. Ltd.* (11). In *Fernando's case* the Vice-Chancellor while dealing with the case of the candidate had acted on the statement of one miss Balasingham and acting thereupon, without supplying the copy thereof to the delinquent candidate or affording him opportunity to cross-examine her, suspended the candidate from taking all university examinations. The Supreme Court of Ceylon held that the candidate did not have adequate opportunity to defend himself. This decision was reversed by their Lordships of the Privy Council and it was observed as follows:—

"But, while there was no objection to the Vice-Chancellor informing himself in this way, it was undoubtedly necessary that, before any decision to report the plaintiff was reached, he should have complied with the vital condition postulated by Lord Loreburn, which, adapted to the

(10) (1960) 1 All. E.R. 631.
(11) 1957 S.C.R. 98.

present case, may be stated as being to the effect that a fair opportunity must have been given to the plaintiff to correct or contradict any relevant statement to his prejudice. The university's contention is that this condition, which resolves itself into the two requirements that the plaintiff should be adequately informed of the case he had to meet, and given an adequate oportunity of meeting it, was complied with in its first branch by the letter of May 16, 1952, and what the plaintiff was told at the first interview on May 21, 1952."

Holding that the plaintiff was adequately informed of the case he had to meet and that the interviews which were fairly conducted, gave the plaintiff an adequate opportunity of stating his case. Their Lordship at page 641 of the report observed as follows:—

"But it remains to consider whether, in the course they took, the interviews must be held to have fallen short of the requirements of natural justice on the ground that the plaintiff was given no opportunity of questioning Miss Balasingham. She was the one essential witness against the plaintiff and the charge in the end resolved itself into a matter of her word against his. In their Lordship's view, this might have been a more formidable objection if the plaintiff had asked to be allowed to question Miss Balasingham and his request had been refused. But he never made any such request, although he had ample time to consider his position in the period of ten days or so between the two interviews. There is no ground for supposing that, if the plaintiff had made such a request, it would not have been granted . . . ."

(9) In *New Parkash Transport Co. Ltd.*, v. *New Suwarna Transport Co. Ltd.* (12), the Regional Transport Authority refused to grant permit to the appellant-company in view of the adverse police report. Before the appellate Authority a further report by the police was produced by the appellant-company in which all the material allegations against the appellant-company were withdrawn, but nothing was said against the rival respondent-company.

(12) 1957 S.C.R. 98.

This report was read before the appellate authority. No adjournment was asked for by the respondent-company to consider the new report received and after taking into consideration the new report, the appellate authority accepted the appeal. The opposite party went to the High Court and the order was set aside on the ground that although rules did not require that a copy of the report be supplied yet the rules of natural justice were contravened because of the failure on the part of the appellate authority not to adjourn the proceedings *suo motu* in order to afford the rival claimant an opportunity to meet the revised police report. On appeal to the Supreme Court, their Lordships after noticing. with approval, Lord Shaw's observations in *Arlidge's case (supra)* (2) noticed above, came to the conclusion that (i) the rules of natural justice were fully complied with inasmuch as the report was read out at the time of hearing and (ii) no adjournment was asked for by either party and it was not incumbent on the appellate Authority to grant such an adjournment *suo motu* in compliance with the rules of natural justice. The observations made by their Lordships are as follows:—

> In our opinion, therefore, the fact that the appellate Authority had read out the contents of the police report was enough compliance with the rules of natural justice. We have also pointed out that no grievance was made at the time the Appellate Authority was hearing the appeal by any of the parties, particularly by the first respondent, that the second report should not have been considered or that they wished to have a further opportunity of looking into that report and to controvert any matter contained therein. They did not move the Appellate Authority for an adjournment of the hearing in order to enable it to meet any of the statements made in that report.".

Both *Fernando's case* (11) and *New Parkash Transport Co.'s case* (12) are hardly any authority for the proposition that a material statement like that of Balasingham in *Fernando's case* (11) or the material allegations as in the case of New Parkash Transport Company need not be supplied even if asked for. In fact, the observations in *Fernando's case* (11) make it clear that if the delinquent student had asked for a copy of the statement of Balasingham and the same had not been supplied, it could not have been said that "adequate opportunity" had been given. Similarly in *New Parkash Transport Co.'s case* (12) if the party had asked for an adjournment

to consider the revised report of the police and such an adjournment had been refused, it could have been said that there had been a breach of rules of naturnal justice and the opposite party had been deprived of an adequate opportunity, to which it was entitled.

(10) Under rule 8, unlike proceedings under rule 7, the employee has only one opportunity of making a representation. No enquiry need be conducted as under rule 7 and no evidence need be recorded in the presence of the employee. It was conceded that it is open to the punishing authority to collect any material either itself or through any specialised agency like the Vigilance Department to acquaint itself with the real facts in order to take a decision whether any action is to be taken against the employee and, if so, what action is to be taken. But if such an enquiry is made and material is collected on the basis of which a prejudicial view is taken against the employee and he is charge-sheeted under rule 8 with a view to impose one of the three minor punishments, then the employee is entitled to an adequate opportunity to make a representation to show that (1) he is not guilty and (2) that the proposed punishment should not be imposed on him, being excessive. It was rightly urged that it would be impossible for an employee to make such a representation unless it is made known to him the material on the basis of which it has been decided that he is guilty and that the particular punishment be imposed on him. It was not disputed that though the punishment under clause (iv) of Rule 4 is categorized as "minor", yet such a punishment can have very serious consequences for the employee and a number of circumstances and facts may be necessary to be taken into consideration before the authorities can, properly, come to a conclusion whether the employee is to be called upon to reimburse the loss and if so whether he is to reimburse whole or part of the loss. In the present case, for example, the penalty of over 6,000 has been imposed on the employee. It is obvious that the loss of 907 quintals of fuel wood could not have taken place during the short period of a few days during which he was temporarily put in charge, of the kitchen stores and there was no storeman actually working. In fact he is being held liable because he had appended a certificate of having taken over charge, though admittedly without having physically weighed the articles, particularly the fuel wood. Various matters, consequently, must necessarily weigh with the punishing authority in taking a decision whether to make this officer to pay the penalty of making good the loss for the lapse of appending a certificate without physical verification and, if so, to what exact extent he is to

be made so liable. The various matters, which were to influence the decision of the authorities, could not be collected by the Medical Department not well versed in making investigations and the case was rightly entrusted to the specialized agency of the Vigilance Department.

(11) On behalf of the State it was vehemently urged that the employee was informed that there was shortage of stores of which he was in charge and that this was the only material which was necessary to be indicated to him because the inference of negligence, i.e., his guilt, follows as a matter of course. It was further urged that the physical checking was done by Mr. Garg in the presence of the appellant and, therefore, he was fully aware of the process by which the factum of shortage of fuel wood was arrived at, and that it was not necessary for any further material to be supplied to him on the basis of which he was served with the charge of being negligent for which it was proposed to impose a penalty of Rs. 6,000 by way of recovery for the loss occasioned to the Government. The inquiry, it was contended, was entrusted to the Vigilance Department in order to find out whether the shortage was due to the dishonesty or the negligence of the appellant. According to the report, his dishonesty was negatived and consequently he was charged only with negligence.

(12) I am afraid this contention cannot be accepted for the simple reason that all shortages need not necessarily be due to either negligence or dishonesty. The shortage may also occur due to reasons for which the appellant may not have been held responsible. In any case it was urged that the evidence or the material on the basis of which the appellant has been held guilty for the entire shortage was in fact collected during the fact-finding enquiry. As indicated above, the Vigilance Department alone was in position to find out the detailed facts having bearing on the question of taking disciplinary action against the employee and a good deal of evidence was collected by the Deputy Superintendent of Police of the Vigilance Department including that of the contractor, who supplied the fuel wood. That would be the material on the basis of which adverse finding was given by the Deputy Superintendent of Police. Before the appellant can make adequate representation, he has to be supplied with the material or facts collected by the punishing authority on the basis of which it decides to take action against the appellant. No doubt, unlike rule 7, the appellant would not be entitled to ask for an opportunity to cross-examine the witnesses examined and on whose statements the adverse finding was arrived

at, yet it was urged that the appellant was at least entitled to be supplied with the material itself, on the basis of which such findings were given. In *Ramesh Kapur* v. *Punjab Universiy and another* (13), which was a case of a university student, Grover J. (as he then was) delivering the opinion of the Full Bench while dealing with the question as to the extent of opportunity that is to be given to the candidate from the point of view of rules of natural justice and there being no provisions in the rules in the university for any hearing to be given to a candidate, who was found copying in the examination, observed as follows:—

> "If the right of a candidate to be heard is to be a reality, he must know the case which he has to meet and *if he asks the University authorities to supply him with necessary details of such material or evidence on which the case against him is based, any refusal to do so will be* prima facie *violative of* the rule of natural justice." (Underlines mine).

After the case came back from the Full Bench, it was held that where some material was used which was collected by the University after a hearing to the candidate had been given and which material was not conveyed to the candidate and he was not given an opportunity to meet that, there was a failure of rules of natural justice. Applying this principle here, the material collected through the Vigilance Department was material collected by the authorities behind the back of the appellant. No doubt under the rules, he need not be associated with such a collection of material, just as in *Ramesh Kapur's case,* (13), the University was not bound to associate the candidate, while collecting the material, but all the same, when the material has all been collected and that material is prejudicial to the candidate, such a material must be supplied to him, if asked for. In the present case, the appellant made a clear demand for it as has been held by the Division Bench and he was not supplied with the same.

(13) The requirements of rule 8 were directly the subject-matter of two decisions of this Court, namely, *Kalyan Singh* v. *The State of Punjab,* (14), and *R. D. Rawal* v. *State of Punjab,* (15). In *Kalyan Singh's case,* Mr. Justice Narula observed as follows :—

> "... ... non- furnishing of a full copy of the complaint of Karnail Singh and of the absolute withholding of the

(13) I.L.R. (1964) 2 Pb. 955 (F.B.)=A.I.R. 1965 Pb. 120.
(14) 1967 S.L.R. 129.
(15) 1967 S.L.R. 521.

two reports of the Superintending Engineer exonerating the petitioner ... ... show that the respondents have not conformed to judicial norms required of them in departmental proceedings ... ... and this has resulted in denying to the petitioner any adequate and real opportunity of representing against the proposed action to which he was entitled under rule 8 (*supra*)".

According to the learned Judge, not only the full text of the complaint, on the basis of which disciplinary action was initiated, but also the reports of the departmental officers, which were not even prejudicial to him but were favourable, were considered to be the relevant material which has to be supplied to the employee, to enable him to make a proper representation. It is not necessary, in the present case, to express any definite opinion as to whether a report which is not prejudicial to the employee has to be supplied before it can be said that the employee had an adequate opportunity, as contended, but I have no manner of doubt that a report (and the material on which the same is based) which is before the punishing authority and is likely to prejudicially affect the mind of such authority as against the employee, does constitute a material which has to be conveyed to the employee, before it can be said that he had been afforded 'adequate opportunity' of making a representation.

Kalyan Singh's case, (14), was approved in *Rawal's case* (15), by Grover J. (as he then was), who observed as follows :—

"The language of rule 8 of the disciplinary rules shows that the 'adequate opportunity of making any representation' envisaged by that rule, has, in the nature of things, to be real opportunity to represent against the alleged guilt of the official as well as against the quantum of the punishment proposed if any such proposal has been made in the show-cause notice."

Both these cases were referred to with approval by Sodhi, J., in *Sarup Singh* v. *State of Punjab*, (16). The facts of this case were very much similar to those in the present case. On receipt of a complaint against Sarup Singh who was a teacher, the inquiries were conducted through the Deputy Inspector of Schools. The petitioner was supplied a copy of the allegations against him and it was stated that on the basis of those allegations the Deputy Director School

(16) C.W. 2700 of 1964, decided on 16th April, 1969.

Administration was *prima facie* of the opinion that the penalty of withholding petitioner's three grade increments without cumulative effect was called for under rule 8. He was given an opportunity to show cause as to why the proposed action should not be taken against him. When the petitioner asked for the copies of the inquiry reports and the statements of witnesses on which the same were based, he was not supplied the copies asked for, on the ground that he was not entitled to have those copies for purposes of answering the show cause notice. Obviously, the Director of Public Instruction was of the view that only when the inquiry was instituted under rule 7, that the petitioner was entitled to ask for the copy of the report. On behalf of the petitioner in that case, it was contended that the opportunity contemplated by rule 8 "to make a representation against the show cause notice under rule 8 has to be effective and not a mere illusory one." and that unless he is supplied with the material which was before the punishing authority on the basis of which it has arrived at the tentative decision, it is not possible for the employee to effectively make a representation. Relying on *Kalyan Singh,* (14), and *Rawal's case,* (15), the learned Judge agreed with the contention of the learned counsel for the petitioner and came to the conclusion that "there has been no compliance with rule 8 with the result that the impugned order by which the increments of the petitioner were stopped cannot be sustained". In another case *B. D. Gupta* v. *The State of Haryana,* (17), by the same learned Judge, a little earlier, the learned Judge had also approved the view taken by Narula and Grover, JJ. in *Kalyan Singh,* (14), *and Rawal's case,* (15), though on facts it was held by the learned Judge, that no injustice was caused because the report of the enquiry officer, which he was asking for, was already with him.

(14) From the above it is clear that in all the four cases that came to this Court relating to rule 8, the view taken throughout was that an opportunity to make representation as contemplated under rule 8, would neither be effective nor real unless the material, on which the punishing authority has come to the provisional conclusion regarding the guilt of the employee and the punishment that should be imposed on him, is supplied to the employee, I cannot understand how a different view can seriously be canvassed. If the employee is just told that he is guilty of a particular charge, without being supplied with the material to indicate to him how the punishing authority has come to a tentative decision prejudicial to him, it would be almost impossible for him to make an effective representation. As discussed above, under rule 8, he has only one opportunity to show

(17) C.W. 2645 of 1967, decided on 6th September, 1968.

that he is not guilty at all and that, in any case, the punishment proposed is excessive in view of the circumstances of the case. This he can show only if he is provided with the material on which the tentative findings have been arrived at.

(15) There is thus no authority under rule 8, taking a contrary view and as already discussed, cases relied upon on behalf of the State are no authority, at all, for the proposition that in a case in which no regular departmental inquiry, as envisaged under rule 7, is conducted, the employee is not entitled to get the material collected by the punishing authority which is being used against him.

(16) Here another argument urged on behalf of the State may be noticed. It was urged that if it is held that the employee is entitled to the material collected either directly or through a specialised agency by the punishing authority, to be supplied to him (the delinquent employee), then he could as well ask for (a) an opportunity to cross-examine the witnesses so examined; and (b) to see the noting made by the departmental officers on the material collected and the report made. The answer to this argument is very simple. It has been conceded that a right to cross-examine the witnesses and to lead defence evidence is available to the employee only if an inquiry is held under rule 7, and that in case of an inquiry made by the department to acquaint itself with the facts of the case for taking action under rule 8, the employee is not entitled to these privileges and it was categorically stated that no such claim is made in this case. Again, so far as the noting by the departmental or Secretariat officers is concerned, that is not the material on which action is taken. These notings are only by way of a summary made by the Secretariat Officers, of the material collected, for the facility of the authorities who have to take a final decision. These notings are certainly of a confidential nature and concerned only the internal working of the Secretariat Office or the office of the Head of the Department. So long as the employee is furnished the material which forms the foundation of the noting of the officers in the Secretariat, etc., the employee can have no grievance. It is quite a different thing to say, that an employee is not entitled to the noting done in the office, from saying that he is not even entitled to the material on the basis of which it is contemplated to take action against him.

(17) In view of the above, I have no doubt in my mind that where an inquiry is conducted by the punishing authority through

the Vigilance Department to ascertain the true facts in order to enable the punishing authority to take a decision whether it is a fit case for taking action and if so what action, against the officer concerned, then the report of the enquiry officer and the material collected by the Vigilance Department on the basis of which its findings are based, forms relevant material which an employee is entitled to know before it can be said that he had an adequate opportunity to make a representation. Without being supplied with such a material, he cannot make an effective and real representation. The only case in which the punishing authority would be justified in withholding such a material, would be where under the second proviso to rule 8, sufficient reasons are recorded in writing to the effect that it is not practicable to observe the requirements of the rule and that this can be done without injustice to the officer concerned.

(18) The only other case in which possibly the non-supply of the report and the relevant material, may not be considered to have prejudiced the right of the employee, to make a proper representation, is one which came before Sodhi, J., in *B. D. Gupta* v. The State *of Haryana,* (17), where apart from the supply of the aforesaid material, the employee had, in fact, obtained a copy of the report from some other source or otherwise knew the contents thereof. In the present case there is no suggestion that the appellant had a copy of the report or the material on which it was based, from any other source and it is also not the case of the State that it had withheld the report in pursuance of proviso No. 2 of rule 8. In view of the findings of the Division Bench that the inquiry report was taken into consideration and likely to prejudicially affect the case of the employee, there is hardly anything in the contention of the learned counsel for the State that, in fact, this report was not taken into consideration. In fact, on going through the departmental file it is quite clear that reliance was mainly placed on the report and the facts found by the Vigilance Department and this was quite natural because as already discussed above, such matters could be probed in to only by a specialised agency like the Vigilance Department. Memo No. 954-V(I)-63/2497, dated 21st February, 1963, addressed to the Deputy Inspector-General of Police C.I.D., (Vigilance) Punjab, made the request for inquiry in the following words (in para 2) :—

> "It is requested that a thorough probe in the matter may please be made and your report sent to the Government at a very early date."

When the report was received and it was being processed in the Secretariat, it was suggested in the noting dated 8th July, 1963, as follows :—

> "The appropriate and safer course would seem to be to initiate the proceedings under rule 7 ibid .... This would, however, involve certain difficulties and delay. First, we will have to request the Vigilance Department to do all this because the D.R.M.E., has already expressed the view that the officers of the Directorate are not conversant with the technicalities of store accounts and that the inquiry shall be conducted by some P.C.S,, officer. It will be rather difficult to requisition the services of a P.C.S. Officer for this purpose and it was in view of this difficulty that the matter was referred to the Vigilance Department."

All this shows that the department had to depend on the Vigiliance Department for collecting as well as marshalling the material that may be available against the appellant indicating that he was guilty. Then again, when the explanation was sent to the Director Medical Health and Education for favour of his comments, the Director at page 5 of his letter dated 23rd of June, 1964, after giving his comments, in the last paragraph observed as follows :—

> "The enquiry report being with the Government no comments can be offered regarding the enquiry conducted by the Vigilance Department I would request *that Government may take decision in the matter according to the facts made available to them by the Vigilance Department* to whom the enquiry had been entrusted by them."

This hardly leaves any doubt that the facts had been found by the Vigilance Department and the decision with regard to the action to be taken against the appellant was to be in the light of the facts so found.

(19) Though it is hardly necessary for us in the present case to say anything with regard to the prejudice caused to the employee because such an inference has to be presumed and in any case the Division Bench has given its findings, yet it may be, pertinent to note here that one of the witnesses examined by the Vigilance Department was Puran Chand, contractor, who stated (at page 27 of the report), (P. 61 of the file), *inter alia,* that the Dietician and the

Store-keeper actually weighed the firewood supplied by him and in particular 160 quintals of firewood supplied on 16th November, 1962, were got weighed by Malvinderjit Singh. Malvinderjit Singh in his representation has mentioned clearly that between 15th of November, 1962, to 25th of November, 1962, he was on leave. Had he been informed of this statement of Puran Chand, he could have prominently brought out the fact that Puran Chand is not telling the truth when he stated that appellant Malvinderjit Singh had actually weighed this firewood supplied by him on 16th November, 1962, because he was on leave. I have mentioned this only in the passing in order to indicate the danger of the employee not having a fair opportunity to make representation if material on which the proposed action is based, is not supplied to him.

(20) Apart from the peculiar facts of this case, on general principles and on the basis of the decided cases, referred to above, I have no hesitation in returning the reply to question No. 1 in the negative. The reply to question No. 2 will also be in the negative.

SANDHAWALIA, J.—(21) I have the privilege of perusing the exhaustive judgment proposed by my learned brother Harbans Singh, J., and entirely agree with him, that for the reasons so lucidly recorded by him the answer to question No. 2 referred to the Full Bench must be in the negative. However, I must regretfully and with respect record my inability to agree with the answer proposed by my learned brother regarding the first question.

(22) Though the facts appear in remarkable detail in the judgment of Harbans Singh, J., it becomes necessary to notice atleast the salient outlines thereof to maintain the homogeneity of this judgment. The appellant Malvinder Jit Singh at the relevant time was the Dietician of the Rajendra Hospital, Patiala, and had been given the charge of the kitchen stores thereof for some time. On the 22nd of October, 1962 pursuant to a complaint received by the Medical Superintendent a committee of Doctors and others was constituted by the Medical Superintendent which physically checked the stores on the 23rd and 24th of October, 1962 and reported excesses and shortages of various items in the stores. This checking was done in the presence of the appellant. On receipt of this report a detailed physical checking of all items including the fuel wood in stock was then conducted by Mr. J. R. Garg, the Accounts Officer between the 28th and 30th of November, 1962 and apart from

other items he found that fuel wood was short by 907 Quintals as shown in the stock register. Apparently this physical checking was also done after associating the appellant with the same though it had been averred that the appellant was denied the opportunity to cross-examine the witnesses examined in the said checking and enquiry. In a detailed report running into nearly 10 fool scape typed pages Mr. Garg found that appellant was responsible for the shortage and the loss should be recovered from him (vide Annexure 'C' to the writ petition). On receipt of this report the appellant was suspended under rule 7.2 of the Punjab Civil Service Rules, Volume I, Part I. Thereafter in order to further probe into the matter and for the purpose of deciding the nature of the action to be taken against the appellant the authorities referred the matter for enquiry to the Vigiliance Department. This enquiry was conducted by the Deputy Superintendent of Police and it is admitted that on the 18th of April, 1963 the petitioner was associated in the said enquiry and was interrogated fully on the nature of the charges against him and his answers were recorded in the form of a statement which forms Annexure 'G' to this petition. Reference to this statement would show that every conceivable aspect of the facts against him was put to the appellant and his answers thereto run into a detailed statement of more than 12 typed fool-scape pages. The position taken up on behalf of the appellant was that the relevant shortages were not denied but the responsibility thereof was sought to be shifted to Shri Ram Parkash and Bahadur Singh and the contractor who were said to be operating the stores though the charge of the diet store was admittedly with the appellant. The report of this enquiry was submitted on the 26th of November, 1963 and this report exonerated the appellant of the charges of dishonesty or embezzlement but found that there was patent negligence or lack of supervision on his part, and consequently suggested the infliction of a minor punishment after taking action under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. This report having exonerated the appellant of any dishonesty or criminal mis-conduct, he was consequently re-instated; but it was directed that he will not receive anything more than the subsistence allowance for the period of his suspension. Thereafter he was served with a regular notice under-rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules sometime in the month of November, 1963 (Vide Annexure 'H' to the petition). This notice clearly stated in terms the action proposed against the appellant and he was given an opportunity to show

cause against the same by making a representation to be submitted to the Director of Health Services, Punjab, within 21 days of the receipt of the said notice. It was also stated therein that for the purpose of preparing his representations he could have access to the relevant official record by inspecting the same in the office of the Director of Research and Medical Education, after making prior appointment with him and that if he wanted to consult any other relevant record it was for him to undertake its inspection. Annexed to this notice was a detailed statement of allegations against the appellant (Annexure 'I' to the petition) which after referring to the earlier detection of shortages, the enquiries conducted and the physical verification made by Shri J. R. Garg, Accounts Officer specified six items of ghee, wheat atta, rice ziri, dal of all kinds, basmati rice and fuel wood, regarding which excesses and shortages had been discovered. These were given with the greatest precision to the level of every gram and the penultimate paragraph runs as follows:—

> 'Shri Malvinderjit Singh, Dietician, being responsible for the proper maintenance of record and issue of diet articles caused the aforesaid excess in respect of ghee, wheat-flour, rice ziri, pulses and shortages in respect of basmati rice and fuel wood because of his negligence in duty and lack of supervision which amounted to misconduct.''

In reply to the above notice under rule 8 and the detailed statement of allegations the appellant submitted a remarkably exhaustive reply regarding each item running into 12 typed fool-scape pages (vide Annexure 'J'). The gravamen of the case of the appellant was that the said excesses and shortages were not denied and in fact stood in terms admitted, but the responsibility and the liability for the same was sought to be shifted to other's shoulders, Further the factum of the appellant being incharge of the stores and responsibility for the same was also not denied, but the position taken up was that the rush and load of heavy work carried by him did not leave margin for him for strict supervision of seeing weighment, etc., of the said stock. This detailed explanation of the appellant was duly considered by the authorities and it is thereafter that Annexure 'K' which is quoted below was issued under the order of the Governor of Punjab:—

> "ORDER OF THE GOVERNOR OF PUNJAB
>
> Explanation of Shri Malvinderjit Singh, Dietician, V. J. Hospital, Amritsar, regarding the discrepancies in the

Diet Stores of Rajindra Hospital, Patiala was considered and found unsatisfactory. The following punishments are hereby imposed on him:—

(1) Recovery of Rs. 6,034, i.e., the cost of fuel wood found short; and

(ii) Stoppage of his next two increments with cumulative effect.

SERLA GREWAL,
Secretary to Government, Punjab,
Medical and Health Department.

Dated Chandigarh, the 16th
August, 1965.

(23) The appellant challenged the above said order Annexure 'K' and also the order Annexure 'E' to the petition regarding the non-payment of salary to him for the period for which he remained under suspension by way of writ petition in this Court. On behalf of the respondent State on the material point of the report of the Vigilance Department the position taken up was that the same was a preliminary enquiry conducted for the purpose of assisting the authorities for determining the nature of the action to be taken against the appellant. It was averred that in such a preliminary enquiry obviously the appellant had no right of any cross-examination of the witnesses, that it has been expressly averred in para 16 of the report that the appellant's view point was taken and a self-contained statement dated the 18th of April, 1963 (Annexure 'G') already referred to was recorded. It has been then averred that no specific request whatsoever for inspecting the record of the confidential enquiry conducted by the Vigilance Department was ever received from the appellant and similarly no specific request for the supply of the enquiry report of the Vigilance Department was ever made by the appellant.

(24) The writ petition filed by the appellant came up for hearing before Pandit, J., and was dismissed. In the Letters Patent Appeal the Division Bench set aside the orders directing the non-payment of any further salary except subsistence allowance during the suspension period and that matter is no longer in dispute. However, on the issue whether under rule 8, the appellant

was entitled to a copy of the report or a substance thereof together with the material on which the same is based. the following two questions were framed for determination by the Full Bench:—

"(1) Whether a public servant, who is proceeded against under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, can be said to have had an "adequate opportunity to make a representation" as required under the Rule if he is not supplied with the copy of the report or the substance of the adverse findings and the material on which they are based, of the Vigilance Department to which reference was made by the punishing authority to ascertain the true facts, in order to decide whether it was a fit case for taking any action and, if so, what action against the officer concerned ?

(2) If he is not entitled to a copy of such a report or the substance thereof under rule 8 (*supra*), is he entitled to the same under the principles of natural justice?"

As I am agreed with my learned brother Harbans Singh, J., that the answer to question No. 2 must be in the negative as proposed by him, I do not wish to add anything on that point.

(25) As regards question No. 1, it is apparent therefrom that the main controversy revolves around the provisions of rule 8. However to further pin-point the issue the argument is focused primarily on the following words of the said rule:—

"Unless he has been given an adequate opportunity to making any representation that he may desire to make."

In the ultimate analysis, therefore, the question is whether the above-said words grant an inalienable right to a civil servant to secure a copy of the report of the Vigilance Department or the substance of the adverse finding therein and in every case all the materials on which such a finding or report is based.

(26) This issue in my view is of far reaching consequence in the context of the relationship of the State and its employees. It deserves close examination from a variety of facts.

(27) On principle, therefore, the question that has first to be posed is as to the nature of the right of a civil servant in disciplinary proceedings other than those involving the major penalties of dismissal, removal or reduction in rank. It is unnecessary to go into the history of the rule of English Law pithily expressed in the latin words, "duranto bene placito" (during pleasure), nor would I burden this judgment by references to English authorities like *Shenton* v. *Smith* (17) or *Dunn* v. *Queen* (18), which authoritatively recognised this principle. For our purpose it is sufficient to notice that Article 310 enshrines the doctrine of pleasure in the Constitution itself, though it undoubtedly makes the said doctrine subject to the limitations imposed thereon by other provisions thereof. The opening words of Article 310(1) quite clearly refer *inter alia* to Articles 124, 148, 218 and 324 which respectively provide that the Supreme Court Judges, the Auditor-General, the High Court Judges and the Chief Election Commissioner shall not be removed from his office except by an order of the President passed after an address by each House of Parliament with the requisite majority therein. Leaving these cases and specific exceptions apart the doctrine of pleasure is subject to the twin limitation imposed upon it by Article 311 of the Constitution. Those limitations operate in the field of dismissal, removal and reduction in rank of the civil servant only. Admittedly in the area not covered by the above-said three major penalties the doctrine of pleasure, therefore, has free play. As early as 1954 in the *State of Bihar* v. *Abdul Majid* (19), it was noticed that this doctrine of pleasure was adopted by the Constitution with certain limitations thereupon. Again in *Babu Ram Upadhaya's* (20) their Lordships laid down seven propositions of which the following three are relevant for our purpose :—

"The discussion yields the following results; (1) In India every person who is a member of a public service described in Article 310 of the Constitution holds office during the pleasure of the President or the Governor, as the case may be, subject to the express provisions therein; (2) * * *;

(2) * * *;

(3) This tenure is subject to the limitations or qualifications mentioned in Article 311 of the Constitution;

(17) (1895) A.C. 229.
(18) (1896) 1 Q.B. 116.
(19) A.I.R. 1954 S.C. 245.
(20) 1961 S.C. 751.

(4) The Parliament or the Legislatures of the State cannot make a law abrogating or modifying this tenure so as to impugne upon the overriding power conferred upon the President or the Governor under Article 310, as qualified by Article 311."

Subsequently in *Moti Ram Deka* v. *General Manager, North East Frontier Railway* (21), their Lordships noticed the area on which the limitation imposed by Article 311 apply—

"There is no doubt that the pleasure of the President on which the learned Additional Solicitor General so strongly relies has lost some of its majesty and power; because it is clearly controlled by the provisions of Article 311, and so, the field that is covered by Article 311 on a fair and reasonable construction of the relevant words used in that article, would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there, but it has to be exercised in accordance with the requirements of Article 311."

It deserves pointed attention that the admitted position in the present case is that the punishment proposed against the appellant is neither dismissal, nor removal, nor reduction in rank and, therefore, the provisions of Article 311 or any other constitutional provision is not attracted to the present case. It is self evident that in case of punishments other than those referred to in Article 311, the discretion of authorities is untrammelled by any fetter apart from those which may be imposed by an Act or statutory rules duly promulgated.

(28) In the present case such relevant statutory rules are contained in the Punjab Civil Services (Punishment and Appeal) Rules 1952, (hereinafter referred to as the Rules) of which Rule 8 forms a part. I, therefore, propose to examine these from three aspects, namely, the scope and ambit of the rules, the position of Rule 8 therein and the specific language of Rule 8. The Rules aforesaid were framed soon after the coming into force of the Constitution and as expressly mentioned in Rule 3 thereof they are in addition and not in derogation of any rules which may be made by the Governor of Punjab in exercise of the powers conferred by the proviso to Article 309 of the Constitution. Rule 4 provides for

(21) A.I.R. 1964 S.C. 600.

seven penalties of which three minor ones namely, (i), (ii) and (iv) are as follows:—

"(i) Censure;

(ii) Withholding of increments or promotion, including stoppage at any efficiency bar; if any;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders."

These three minor penalties are expressly referred to and apply in the case of any action to be taken under Rule 8, which lies in the middle of the 19 rules above-said and for a true understanding thereof it has to be examined in its proper context. Regarding the major penalties, rule 7 expressly provides for an enquiry before the imposition of those penalties and it becomes necessary to notice fully the relevant provisions of this rule and rules 8 and 9 which immediately follow it:—

"7(1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850, no order of dismissal removal or reduction, shall be passed against a person to whom these rules are applicable, unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(2) The grounds on which it is proposed to take such action, shall be reduced to the form of a definite charge or charges which shall be communicated in writing to the persons charged, together with a statement of allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case, and he shall be required within a reasonable time to state in writing whether he admits the truth of all, or any, of the charges, what explanation or defence, if any, he has to offer and whether he desires to be heard in person. If he so desires, or if the authority empowered to dismiss remove or reduce him so directs, an oral enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted. The person charged shall, subject to the conditions described in sub-rule (3), be

entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses, called as he may wish, provided that the officer conducting the enquiry may, for reasons to be recorded in writing, refuse to call any witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the ground thereof:

Provided * * * *

(4) * * * *

(5) * * * *

(6) After the enquiry against a Government servant has been completed, and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the accused officer shall, if the penalty proposed is dismissal, removal or reduction in rank be supplied with a copy of the report of the enquiring authority and be called upon to show cause within reasonable time, not ordinarily exceeding one month, against the particular penalty proposed to be inflicted upon him. Any representation submitted by the accused in this behalf shall be taken into consideration before final orders are passed:

Provided that if the punishing authority disagrees with any part or whole of the findings of the enquiring authority, the point or points of such disagreement, together with a brief statement of the grounds thereof, shall also be supplied to the Government servant.

(8) Without prejudice to the provisions of rule 7, no order under clause (i), (ii) or (iv) of rule 4 shall be passed imposing a penalty on a Government servant, unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation has been taken into consideration:

Provided * * *

Provided further * *

(9) Where it is proposed to terminate the employment of a probationer, whether during or at the end of the period

> of probation, for any specific fault or on account of the unsatisfactory record or unfavourable reports implying the unsuitability for the service, the probationer shall be apprised of the grounds of such proposal, and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the appointment."

The rules which follow are not relevant to the issue before us and do not deserve any pointed notice.

(29) An analysis of the rules aforesaid brings out two salient features. First is the division of penalties into two categories, of major and minor ones. As regards the major penalties *vide* rule 7, a specific and detailed enquiry is provided for. But as regard the minor penalties, namely, 4(i), (ii) and (iv) of rule 4, the rules expressly limit the right of the public servant to merely that of making a representation under rule 8. Consequently the framers of the rules were fully alive to the requirements of providing necessary documents to the civil servant against whom disciplinary action was envisaged. A reference to the detailed and exhaustive prosions of rule 7 makes it evident that in the case of an enquiry it provided in the minutest detail for each document which is to be supplied to the civil servant and with equal meticulousness for the mode of conducting such an enquiry against him. Specific reference on the point of documents may be made to sub-clauses (2) and (6) of the said rule. Similarly rule 9 also envisages with equal implicitness that the probationer shall be apprised of the grounds of the proposal to terminate his employment and then to give him an opportunity to show cause against the same. In sharp contrast to these provisions of rules 7 and 9 is the absence of any such corresponding provision regarding the furnishing of documents in rule 8 and further the simplicity and the limited nature of the right given to the civil servant in the context of minor punishment deserves notice therein. To my mind the intention of the framers of the rules is clear and explicit. For the minor punishment the authorities had designedly provided for a simple and summary procedure of representations only untrammelled by any furnishing of copies of documents or material on which the allegation was based or the right of cross-examination, or the right of leading defence evidence which were all provided in case of enquiries *qua* major punishment. By necessary implication, therefore, it appears that the

furnishing of documents as provided for in rules 7 and 9 stands excluded under rule 8.

(30) It is then instructive to revert to the specific language of rule 8. Significant is the fact that it does not make even the remotest reference to the furnishing of any copy or the material on which the allegation is based against him to the civil servant. That being so can a specific right to secure the said copies or the relevant materials be spelled therefrom by a process of interpretation? Basically the right to secure copies or documents or other specific material is a procedural right which accrues if it is so granted in express terms by a statute. Nobody can be said to have any inherent right to secure copies or to have any access to confidential State records. Such a right can only be a creature of a Statute. A reference in this particular context may be made to rule 7(2) and (6) which expressly confer such a right while rule 9 provides for apprising the probationer of the grounds of the proposed action. Diverting from the specific rules, by way of analogy reference may be made to section 173(4) of the Criminal Procedure Code, which expressly confers a right on an accused person to secure certain copies of the documents relied upon by the prosecution against him in a criminal trial. Prior to the amendment in 1955 of the Code, no such right vested in an accused person and he could claim none. I am emphasising this to show that a right of this nature is essentially procedural and not of a substantive character. It cannot be raised by way of implication from a provision which is expressly silent regarding the same and by the setting, in which it is placed. seems to negative any such right. Reference may well be made to the observations of Hamilton L. J. (whose judgment was in terms affirmed by the House of Lords in appeal) in the celebrated case of *The King* v. *The Local Government Board Ex-parte Arlidge* (22). In that case too the right being agitated was to get a copy of the report of the Inspector though the relevant statute was wholly silent on the point.

The following was observed in that context:—

> "Two conclusions may I think be drawn from them. It cannot be assumed that the Legislature means all such reports to be communicated to those interested, where it does not say the contrary; indeed, if anything, its practice is the other way, namely, to specify how and

(22) (1914) 1 K.B. 160.

> to whom such reports are to be communicated, when they are intended to be communicated at all."

In the light of the above, therefore, from the mere absence of a prohibition or the mere silence of the statute, one cannot possibly infer a procedural right like securing copies or materials on which the findings of the Vigilance Inspector may have been based. It deserves notice that on behalf of the appellant, it was conceded that in an enquiry under rule 7 a civil servant would not be entitled to get the report or the materials of the preliminary enquiry as claimed in the present case. If that be so, I am of the opinion that under rule 8 which envisages a much more limited and circumscribed right to the civil servant, no such claim to the report and the whole of the material of the Vigilance Enquiry can possibly be claimed.

(31) On an overall view, therefore, of the specific language of rule 8, its setting in the relevant rules and the scope and ambit thereof, all collectively tend to negative any such procedural right. If that is so, would this Court be justified by a process of strained interpretation to read into this provision not merely the right to copies and findings of a confidential enquiry, but also of the material on which such findings or report may be based. To my mind this involves reading something into the provisions of rule 8 which does not exist there and particularly so when the framers of the provisions who were alive to this aspect of furnishing copies to the civil servant did not expressly include the same in rule 8 whilst doing so in rules 7 and 9.

(32) I would refrain from further elaborating the point on principle because to my mind the matter appears to be covered by the binding authorities of the Supreme Court and also by a string of persuasive authorities of this and other High Courts. Undoubtedly in the present case the Vigilance enquiry was a confidential proceeding intended to probe into the matter solely for the purpose of enabling the authority to determine whether they should take any action against the appellant at all and if so, the nature of any such action. Equally evident is the fact that the same was a confidential enquiry as all such enquiries by the Vigilance Department have to be and it is even expressly so stated as follows in paragraph 17 of the writ petition itself:—

> "The petitioner was not permitted to inspect the record of the confidential enquiry conducted by the Punjab Vigilance Department."

In reply thereto the respondent-State : stated as follows:—

> "That para 17 is admitted except that no specific request for inspecting the record of the confidential enquiry conducted by the Vigilance Department was received from the petitioner."

It was conceded before us that the record of such Vigilance Enquiries are confidential and unless the authority expressly waives its right to disclose it, the settled practice was that the civil servant had no access to the same. It is patent that this preliminary and confidential enquiry was merely one step in the process of determining the nature of action to be envisaged against the appellant after admittedly the shortages in the store had been detected. The regular disciplinary proceedings, therefore, begins against the appellant only after the authority on a consideration of this preliminary report had made up its mind to abandon the idea of either a criminal prosecution or the imposition of a major penalty and decided to proceed against him under rule 8 for imposing a minor penalty (in fact on a consideration of the report of the Vigilance Enquiry, the petitioner was reinstated in his service). This regular disciplinary proceeding very sharply begins from the stage of the service of a notice on the appellant (annexure 'H') informing him of the proposed action against him under rule 8 along with a full and precise statement of allegations (annexure 'I'). There is thus a sharp and clear line which divides the regular disciplinary proceedings against the appellant from the preliminary and antecedent proceedings like the Vigilance report, the Committee constituted by the Medical Superintendent and the proceedings taken by Shri J. R. Garg, which were steps preceding the same. In this situation whatever is done prior to the service of the notice (Annexure 'H') is merely of an antecedent and preliminary nature being one of the numerous steps leading towards actual initiation of proceedings against him. If at all it is necessary to draw a sharp dividing line, it appears that the stage of service of notice accompanied by the statement of allegation is such a line. Whatever precedes this notice is merely for the purpose of the satisfaction of the authority and for aiding it in arriving at a decision for taking action or to put it in other words is merely a motive for the initiation of the proceedings. That this is so stands sharply pointed out in three authorities of the Supreme Court to which I will advert in their chronological order.

(33) Reference may first be made to *New Parkash Transport Co. Ltd.* v. *New Suwarna Transport Co. Ltd.* (12). In this case a copy of

a police report submitted to the Regional Transport Authority in the context of the grant of licences was claimed on behalf of one of the applicants for the issuance of such a licence. Negativing any such right to secure this copy, their Lordships observed as follows:—

> "Such a report is meant more for the use of the authority in making or refusing a grant than for the use of the several applicants or any one of them. In other words, it is in the nature of information supplied by the police in order to assist the authority in making up its mind."

After an exhaustive consideration of the principles of natural justice, it was held that these were not violated at all by the non-furnishing of the police report in the case. *S. K. George* v. *University of Kerala and others* (6), was a case of the use of unfair means in a University examination. A regular enquiry was conducted by an Enquiry Officer appointed by the Vice-Chancellor to enquire into the conduct of the delinquent student. However, the copy of the report of this Enquiry Officer was not furnished to the student by the authorities. Negativing the claim to secure a copy of this Enquiry Report, their Lordships in categorical terms observed as follows:—

> "There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Article 311 of the Constitution particularly as they stood before the amendment of that Article that every disciplinary proceeding must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. *Even if a show cause notice is provided by law, from that it does not follow that a copy of the report on the basis of which the show cause notice is issued should be made available to the person proceeded against or that another inquiry should be held thereafter.*"

In *Champaklal Chimanlal Shah* v. *The Union of India* (5), which was a case of disciplinary proceedings against the civil servant, their Lordships exhaustively considered the distinction between the preliminary enquiry or what was termed as the motive for initiating the disciplinary proceedings. It is observed as follows therein:—

> "Generally, therefore, a preliminary enquiry is usually held to determine whether a *prima facie* case for a formal department enquiry is made out, and it is very necessary that the

two should not be confused. Even where Government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy govern- that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already government does not usually take action of this kind without any reason. * * * In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held *ex parte*, for it is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government and it is only when the government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the government servant gets the protection of Article 311 and all the rights that that protection implies as already indicated above. There must, therefore, be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that Article. That is why this Court emphasised in *Parshotam Lal Dhingra's case*, (23) and in *Shyam Lal* v. *State of Uttar Pradesh* (24), that the motive or the inducing factor which influences the government to take action under the terms of the contract of employment or the specific service rule is irrelevant."

The observations of their Lordships in the abovesaid three Supreme Court cases, therefore, clearly elucidates the distinction between

(23) A.I.R. 1958 S.C. 36.
(24) A.I.R. 1954 S.C. 369.

what is a preliminary fact finding enquiry which may furnish the motive for initiation of disciplinary proceeding and the regular disciplinary proceedings that may follow thereafter. The line between the two is sharply drawn and as their Lordships observed it should not be confused. These decisions also negative the right of the civil servant to have copies or access to the proceedings of such a preliminary enquiry. My learned brother Harbans Singh J., has sought to distinguish some of the authorities cited on behalf of the respondents on the ground that these relate to cases under Article 311 of the Constitution. Limiting myself to the abovesaid three Supreme Court cases it deserves notice that neither *Parkash Transport case* nor *S. K. George's case* are cases under Article 311 of the Constitution. Even *Champaklal's case* is not in terms one under Article 311 though it is undisputed that their Lordships were enunciating the principle broadly with reference to the said Article. A close analysis of the ratio of their Lordships' observations in *Champaklal's case*, however, tends to show that the principle enunciated by them is of universal and unrestricted application. With great respect, in my opinion, it cannot be confined merely to proceedings under Article 311 of the Constitution. The principle, reasoning and the ratio of the abovesaid three authorities are, therefore, fully attracted equally to proceedings under the present rule 8 as well which is under consideration. It equally deserves notice that Article 311 relates to major punishment of dismissal, removal and reduction in rank. If in the case of major punishment the civil servant is not entitled access to the proceedings of the preliminary enquiry, can it be said that he has a larger right to get the copies of the documents and whole of the material in the preliminary enquiry in regard to a minor punishment which may involve no more than censure and the stoppage of an increment. On a parity of reasoning, therefore, the principle in *Champaklal's case*, even if it is stated to be laid down in the context of Article 311 is of equal applicability in the context of the present rule 8.

(34) Two authorities which bear directly on the point may also be briefly noticed. In *Sham Lal* v. *Director, Military Farms, Army H.Q.* (25), which is not a case under Article 311 of the Constitution a similar demand of the copy of the report of the Special Police Establishment was made by the civil servant. Negativing this in categorical terms Narula J., observed as follows: —

> "I do not, however, find any force in the contention of Mr. Gujral about adequate opportunity having been declined

(25) A.I.R. 1968 Pb. 312.

> by the non-supply of a copy of the report of the Special Police Establishment. There is no doubt that the petitioner asked for the same and his request was declined. But it has been urged that those enquiries were of a preliminary nature and were confidential enquiries by the Special Police Establishment."

It is patent from the observations above that no material distinction can be drawn between a preliminary enquiry by the Special Police Establishment or as in the present case one conducted by what is termed as the Vigilance Department. In the abovesaid case Narula, J., had placed specific reliance on the observations of the Division Bench in *Sharmanand* v. *Superintendent Gun-Carriage Factory, Jabalpur and others* (8). Therein Shrivastava J., with whom G. P. Bhutt C.J., agreed had observed as follows:—

> "The demand of the reports of officers who have made preliminary enquiries may, in our opinion, well be refused. These enquiries are merely for the satisfaction of the authorities to find out what charges should be enquired into. They are not considered at the time of the departmental enquiry and cannot be used by the opposite party for any purpose. The petitioner cannot, therefore, make a grievance of the fact that such reports were not supplied. Further, copies of these reports can also be refused if they are confidential and their disclosure would be against public interest. In *Punit Lal* v. *State of Bihar* (26), the refusal to supply the report of the Anti-Corruption Officer was held justified."

(35) Apart from the language of rule 8 and the authorities noticed above, the matter is equally deserving of consideration in a slightly larger perspective and there appear weighty nay unanswerable reasons for denying such a right to obtain copies and access to materials of a confidential record unless the said right is given in express and categorical terms by a statute. At the cost of repetition it may be noticed that rule 8 does not give such a right and in fact by necessary implication seems to negative it. At its highest it gives a limited right of adequate opportunity of making a representation. It has been argued on behalf of the respondents that "adequate opportunity" in this context may well mean no more than an adequacy of time to make a representation which alone is guaranteed by rule 8.

(26) A.I.R. 1957 Pat. 357.

It may well be possible to place such a limited meaning upon these words, but even if the more liberal construction pleaded for and on behalf of the appellant and accepted by my learned brother Harbans Singh, J., is taken, these words cannot in my opinion be elongated enough to create a specific procedural right to secure copies and materials. It deserves notice that what is provided for by rule 8 is not an adequate opportunity of being heard in respect of charges levelled against him or an adequate opportunity to show cause but merely an adequate opportunity to make a representation. Obviously, therefore, this right under rule 8 is much more limited and restricted right than that given by Article 311 or under rule 7. In effect, therefore, we have to see what "adequacy of opportunity to make a representation" might at its highest include. As the learned counsel for the appellant has abandoned any claim to get the copies or materials on the principle of natural justice and pins himself down to the language of rule 8 only, it is unnecessary to go to a host of authorities cited in the context of natural justice before us. It is. therefore, that the adequacy of opportunity to make a representation cannot possibly imply a larger right than what has been judicially interpreted to be the basic requirements of a reasonable opportunity of being heard or to show cause against specific allegations. In *University of Ceylon* v. *Fernando* (10), their Lordships of the Privy Council culled the necessary requirements of such an opportunity from a host of citations and ultimately affirmed the concise statement of law by Harman J., in *Byrne* v. *Kinematograph Renters Society Ltd.* (27), in the following words:—

> "What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more."

The above-quoted passage has received the specific approval of their Lordships of the Supreme Court in *S. K. George's case*. It is patent; therefore, that even the larger right is limited to the above-said three things and nothing more. Can it be said that in the present case these three tests are not satisfied? The appellant had the completest notice of the action proposed against him,—(*vide* annexure

(27) (1958) 2 All. E.R. 579.

'H') accompanied by the fullest statement of allegations (annexure 'I'). Against these he had the fullest opportunity to state his case in a detailed and exhaustive representation (annexure 'J'). This representation was duly considered by the authority and there is not the slightest hint of any allegation that such a authority did not act in good faith in arriving at a decision which it did. In such a situation can the appellant claim anything more? In my opinion, the answer must be in a categorical negative.

(36) The dangers inherent in adopting a construction which would throw open to public scrutiny the proceedings, the documents and the opinions in a confidential enquiry directed by the State were voiced eloquently by the House of Lords in the celebrated case of *Local Government Board* v. *Arlidge* (2). This judgment remains the *locus classicus* on the subject and stands affirmed for more than half a century and bears the stamp of repeated approval of their Lordships of the Supreme Court. Particularly in *Parkash Transport Co.'s case* copious quotations therefrom have been expressly incorporated and approved in the judgments of their Lordships. It is thus necessary to hearken to these words of warning in the language of Lord Shaw:—

> "* * *, the next proposition is this, that when a public local inquiry has ben held in compliance with statute, the person whose interests are affected is entitled to something more, namely, a disclosure of the views of the inspector written out by him, in jottings or otherwise, for the guidance or consideration of the department in dealing with the case.
>
> My Lords, it is here (and the matter is not a strictly legal one) that I venture to hold an opinion somewhat different from that of Lord Sumner. I incline to hold that the disadvantage in very many cases would exceed the advantage of such disclosure And I feel certain that if it were laid down in Courts of law, that such disclosure could be compelled, a serious impediment might be placed upon that frankness which ought to obtain among a staff accustomed to elaborately detailed and often most delicate and difficult tasks. *The very same argument would lead to the disclosure of the whole file. It may contain, and frequently does contain the views of inspectors, secretaries, assistants, and consultants of various degrees of experience,*

> *many of whose opinions may differ, but all of which form the material for the ultimate decision.* To set up any rule that that decision must on demand, and as matter of right, be accompanied by a disclosure of what went before, so that it may be weakened or strengthened or judged thereby, would be inconsistent, as I say, with efficiency, with practice, and with the true theory of complete parliamentary responsibility for departmental action. This is, in my opinion, implied as the legitimate and proper consequence of any department being vested by statute with authority to make determinations.
>
> * * * The judgments of the majority of the Court below appear to me, if I may say so with respect, to be dominated by the idea that the analogy of judicial methods or procedure should apply to departmental action. Judicial methods may, in many points of administration, be entirely unsuitable, and produce delays, expense, and public and private injury. The department must obey the statute.

and again in the words of Lord Moulton—

> * * * but there is one point which needs notice, namely, the claim that the respondent was entitled as of right to see the report of the inspector who held the public inquiry.
>
> No such right is given by statute or by an established custom of the department. Like every administrative body, the Local Government Board must derive its knowledge from its agents, and I am unable to see any reason why the reports which they make to the department should be made public. It would, in my opinion, cripple the usefulness of these inquiries. It is not for me to express my opinion of the desirability of an administrative department taking any particular course in such matters, but *I entirely disassociate myself from the remarks which have been made in this case in favour of a department making reports of this kind public. Such a practice would, in my opinion, be decidely mischievous.*"

(37) Once the adequacy of opportunity to make a representation is held to include a right to secure the copies of the confidential

vigilance enquiry, I fail to see on what principle possibly can the appellant be denied the claim to further rights which must necessarily flow therefrom. If the appellant is entitled to the materials of the report of the vigilance enquiry, he is equally entitled to all the materials of the earlier proceedings of the Departmental Committee of doctors constituted by the Medical Superintendent. More so he would be entitled to all the proceedings before the Auditor Mr. J. R. Garg. At that the material prior to the preceding of the enquiry may not be documentary, but may well be in the shape of oral complaints, the appellant may then well claim notice and details of these as well. There is no magic in merely securing the copies or material of a document. If once he has such a right he equally may claim the right to show that the material on which the finding or the report has been based is either incorrect factually, biased or based on the opinions of persons hostile to him. Adequacy of opportunity would, therefore, on a parity of reasoning would have to include the right to show even by way of cross-examination the hostility of persons making allegations against him, to show the incorrectness of the material which may have been before the preliminary fact finding proceedings and to negative all that by a right to lead evidence in defence. It would follow as a matter of course then that each trifling enquiry regarding the censure or the stoppage of a small increment may thus assume the proportions and the trappings of a full-dress trial. This is exactly what was cautioned against by Lord Loreburn in his celebrated judgment in *Board of Education* v. *Rice and others* (28)—

> "* * * In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decide anything. But I do not think they are bound to treat such a question as though it were a trial."

It is in this context that one may again go back to the observations of Lord Shaw in *Arlidge's case.*

"If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find special favour from lawyers. But that the judiciary should presume to impose its own methods on administrative

(28) 1911 A.C. 179.

or executive officers is a usurpation. And the assumption that the methods of natural justice are ex-necessitate those of Courts of justice is wholly unfounded."

(38) It remains to notice three Single Bench decisions of this Court which were relied upon on behalf of the appellant. Though it involves a slight deviation from their chronological order, I would first refer to *R. D. Rawal* v. *State of Punjab and others* (15). It deserves notice that in this case the proceedings against the public servant were started under rule 7 and a full fledged enquiry was conducted therein and the Enquiry Officer exonerated the civil servant on those charges. Subsequently in proceedings under rule 8, charge No. 2 on which the civil servant had been exonerated was not specifically brought to the notice of the civil servant and on the particular facts, Grover J. (as he then was) found as follows:—

> "To my mind the petitioner could never have, and in fact never had, any opportunity to put forward his case against such an allegation. I find it, therefore, difficult to hold that he had been afforded an adequate opportunity to make a proper representation as required by rule 8."

and it was in this context that the learned Judge affirmed the unexceptionable rule in the earlier case of *Kalyan Singh* v. *The State of Punjab* (14), that the opportunity under rule 8 must be a real opportunity and should not be an illusory one. It is thus patent that R. D. Rawal's case does not even remotely lay down any right to secure copies or material, etc.. under rule 8 and is not attracted to the issue in the present case. In Kalyan Singh's case, four specific contentions were raised in support of the civil servant before Narula J. The learned Judge sustained the first contention that the impugned order had been passed by the Chief Engineer on the same complaint on which the civil servant had been finally exonerated by the Head of his Department on an earlier occasion and was, therefore, completely without jurisdiction. The learned Judge found as follows:—

> "It has been recognised as a principle of natural justice, equity and good conscience that once a public servant has been enquired against and exonerated of the charge levelled against him, he should not, in the absence of any statutory rules to that effect be allowed to be vexed and harrassed again on the same charges by an officer who is not even

> superior in rank to the one, who originally exonerated him. In this view of the matter, the impugned order cannot be sustained and on the impliedly admitted factual aspect, the subsequent order of punishment passed by respondent No. 2 has to be set aside."

It is patent from the above that the primary ground for allowing the petition was the abovesaid one, but the learned Judge proceeded to add an additional ground thereto on three factors, namely, the non-furnishing of a full copy of the complaint against the civil servant; of the absolute withholding of the two reports of the Superintending Engineering exonerating the petitioner and denying him a personal hearing specifically asked for by him. As a collective result of these three factors, the learned Judge found that it appeared that the proceedings against the petitioner had not conformed to the judicial norm required in Departmental proceedings which are of a quasi-judicial nature and held—

> "On this additional ground I hold that the impugned orders are liable to be set aside."

From the above, it is patent that the case above-said is clearly distinguishable both on facts and the reasoning thereof. In this case no claim of any copy of a confidential enquiry or the report and the materials before it were claimed. Proceedings had already been taken in that case repeatedly earlier and the reports exonerating the civil servant on identical charges were withheld. Taking into consideration the peculiar facts and the cumulative effect of a number of factors, the learned Judge found an additional ground to the primary one on which the writ petition was allowed. I am, therefore, of the view that this case is distinguishable, but in case it is deemed to lay down that in proceedings under rule 8, the civil servant is as of right entitled to a personal hearing or copy of all materials preceding the show cause notice then I would respectfully but regretfully differ from such a conclusion. Lastly reference may be made on an unreported judgment, dated the 16th April, 1969, in *Sarup Singh* v. *State of Punjab* (16). In that case also the proceedings were commenced against the petitioner under rule 7 of the (Punishment and Appeals) Rules in which evidence was recorded and a report submitted on the basis of which the services of the petitioner were terminated. These proceedings were presumably found to be not in order and the termination of the services of the petitioner was cancelled and he was reinstated. A second enquiry was then commenced

after his reinstatement in which he was duly associated. After that a notice under rule 8 was given to the petitioner on the 28th of February, 1963. The petitioner at that stage sought the copies of the enquiry report and the statement of witnesses which were denied to him. Consequently before he could even render any explanation or make a representation against the above-said show cause notice, the authority proceeded to pass the impugned order stopping three annual increments to the petitioner with cumulative effect. Setting aside the above-said order, Sodhi J., upheld the contentions on behalf of the petitioner that the opportunity given to him to make a representation was not an effective one, but was illusory. After making reference to *Kalyan Singh's case* (14) and *R. D. Rawal's case* (15) and the earlier case of *B. D. Gupta* v. *State of Haryana* (17), it was held that there was insufficient compliance with the rule 8 and allowed the petition accordingly. The distinguishing feature on facts are thus patent. In this case no question of any confidential vigilance enquiry preceding the notice under rule 8 was under issue nor the copy or materials thereof were being claimed. Enquiry was held under rule 7 and the nature of the second enquiry which was held is not clear at all. The case is thus distinguishable on facts and it is otherwise noticeable that the point now in issue was not all seriously canvassed before the learned Judge. I am of the view that the two cases decided by Sodhi J., do not lay down any absolute proposition that the civil servant under rule 8 is entitled to all the materials or reports of the preliminary facts finding enquiry held for the purpose of determining the nature of action against him. If the said two judgments are capable of any such construction, I would regretfully record by inability to agree with them.

(39) In elucidation of what has been stated above, I would wish to make it clear that it is not to be understood that the Vigilance Enquiry is sacrosanct and absolutely barred from disclosure even if the State authority may wish to hold it otherwise. All that I am inclined to hold is that the civil servant has no inalienable right of access to the reports, findings or materials of such a preliminary enquiry. It is, of course, open for the State to waive its right and allow access to those proceedings either wholly or any part thereof in a specific case if the facts may so warrant.

(40) My learned brother Harbans Singh. J., has made detailed references to the records produced by the respondent-State in the present case and also to the heavy punishment of directing the recovery of Rs. 6,034 apart from the stoppage of two increments imposed upon the appellant. Two factors deserve patent notice in this

context. The factum of the alleged shortages of fuel wood and materials is not denied. That the appellant was in charge of the store when these shortages occurred and were detected is also admitted. The issuance of a certificate by the appellant under his signatures of having taken over charge of the store is also not in doubt. It is in such a situation that the responsibility for the admitted loss has been affixed to him by the authorities. The responsibility of a superior officer in charge of a Department though administered through subordinates is not an unusual incident of Government service. However, the quantum of punishment is entirely the jurisdiction of the punishing authority alone and in my humble view it is a factor which cannot be allowed to enter the field or influence the construction to be placed on a statutory provision. The issue before the Full Bench is entirely one of law. Even if it be considered that the present is a hard case against the appellant, it is well to guard against the truism that hard cases tend to make bad law. It is thus that neither the punishment imposed nor the details of the proceedings in the enquiry with the greatest respect can be allowed to cloud the task of interpretation of a statutory provision or the larger perspectives of public policy.

(41) With the greatest respect to my learned brother Harbans Singh, J., I am of the opinion that in the light of the language of rule 8 construed in the established canons of interpretation; the setting of the said rule in the body of the Punishment and Appeal Rules; the authorities noticed above; and on principle the appellant is not entitled to either a copy of the findings of the enquiry report conducted by the Vigilance Department nor is he so entitled to the materials on which this may have been based. No prejudice whatsoever is caused by the non-furnishing of these documents and the public servant must be deemed to have had adequate opportunity to make the representation visualised by rule 8. The answer to question No. 1 is, therefore, returned in the affrmative.

(42) MAHAJAN, J.—I have had the advantage of reading the judgments prepared by my learned brothers Harbans Singh, J.. and Sandhawalia J., with utmost respect to my learned brother Harbans Singh J., I am unable to agree with his decision so far as question No. 1, is concerned. I entirely agree with Sandhawalia J., in regard to that question. I have nothing more to add.

ORDER OF FULL BENCH

(43) By majority the answer to question No. 1, is returned in the affirmative and of No. 2 in the negative unanimously. The appeal will now go back to the Division Bench for decision.

R. N. M.

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