merits of the case, but suffice it to say that the investigation has recorded statements of certain persons who have named the accused-petitioners to have entered into a conspiracy with others to commit the crime.

(12) Thus from all angles, no case has been made out for the petitioners to be released on bail. Accordingly, this petition fails and is hereby dismissed.

N. K. S.

Before S. S. Sandhawalia, C.J. and D. S. Tewatia, J.

NOTIFIED AREA COMMITTEE, MAHENDERGARH,—*Appellant.*

versus

MAHAVIR PARSHAD,—*Respondent.*

Regular Second Appeal No. 2114 *of* 1978

July 21, 1983.

Dismissal of Municipal Employees Rules, 1941—*Rule* 3—*Constitution of India* 1950—*Article* 311(2) *as it stood before the Constitution (Forty-Second Amendment) Act,* 1976—*Dismissal of a municipal employee—Show cause notice indicating the proposed punishment along with the charge-sheet—Clause mentioning the proposed punishment—Whether by itself gives rise to bias and vitiates the inquiry proceedings—Second show cause notice regarding the proposed punishment—Whether necessary for an employee dismissed under Rule* 3—*Such notice—Whether necessary under the rules of natural justice.*

Held, that the mere mention of the proposed punishment in the charge-sheet itself is not *per se* indicative of bias of the enquiry officer and the enquiry would be vitiated only if bias was established from other facts *de hors* the indication of the proposed punishment in the charge-sheet. If a provision envisages either expressly or by necessary implication that along with the serving of the charge-sheet the delinquent officer may also be served with a show cause notice regarding the punishment that may be awarded in the event of the establishing of the charges and then if such a show-cause notice is served alongwith the charge-sheet then it certainly would not mean that, because the punishment is indicated in advance, the

charges in question were bound to be held to be established despite whatever the delinquent officer had to say about them; and that he was bound to be awarded the punishment indicated in the show-cause notice, no matter what the delinquent officer had to say in mitigation thereof.

(Paras 25 and 29).

Held, that if neither the provision of Rule 3 of the Dismissal of Municipal Employees Rules, 1941 which incorporates the procedure from the start to the recording of finding regarding each charge nor any other provision in the rules provided for a second show-cause notice regarding the proposed punishment, then it would not be incumbent upon the punishing authority to serve a second show-cause notice regarding the proposed punishment before awarding the punishment. Serving of a second show-cause notice regarding the proposed punishment is not the requirement of the doctrine of principles of natural justice and since the provisions of Article 311(2) of the Constitution are not attracted to the case of a municipal employee, it cannot be said that the punishment awarded to an employee under rule 3 stood vitiated as the same had been imposed without serving upon him a second show-cause notice.

(Paras 34 and 35)

Regular Second appeal from the decree of the Court of the Additional District Judge, Narnaul, dated the 5*th day of October,* 1978, *affirming with costs that of the Sub-Judge 1st Class, Mohindergarh, dated the 27th day of March,* 1978, *passing a decree for declaration to the effect that the orders of termination dated 27th January,* 1975 *passed against the plaintiff Mahavir Parshad by the defendant-committee in the person of Shri Naseem Ahmed, who in those days constituted one man committee are illegal and null and void and that the said order will not effect any break in service of the plaintiff and as such setting aside the same and further ordering that as a consequential relief the plaintiff shall be entitled to have salary for the period his services remained terminated, payable to him under rules prevalent during the said period and leaving the parties to bear their own costs.*

M. R. Agnihotri, Sr. Advocate with V. K. Vashishat, Advocate, *for the Appellant.*

J. L. Gupta, Sr. Advocate with Rakesh Khanna and Rajiv Atma Ram, Advocates, *for the Respondents.*

JUDGMENT

D. S. Tewatia, J.

(1) These two Regular Second Appeals No. 2114 and 2115 of 1978, otherwise disposable by a learned single Judge, were referred

to Division Bench by me as there arose for decision two significant questions of law and the decisions of various High Courts thereon were not uniform. These questions can be formulated thus:—

"(i) Whether in the case of a municipal employee mere serving of a show-cause notice indicating the proposed punishment therein alongwith the charge-sheet would give rise to bias and vitiate the inquiry proceedings and the final order passed against the delinquent officer; and

(ii) Whether in case of municipal employees against whom disciplinary inquiry is conducted in terms of Rule 3 of Dismissal of Municipal Employees Rules, 1941, and where show-cause notice of the proposed punishment had been served alongwith charge-sheet, the second show-cause notice at a stage envisaged under Article 311(2) of the Constitution of India as it existed before the 42nd amendment would be necessary?"

(2) The facts relevant to the aforesaid propositions are not in dispute and can be stated thus:—

(3) Mahavir Parshad respondent in R. S. A. No. 2114 of 1978 and Banwari Lal respondent in R. S.A. No. 2115 of 1978 were Octroi Moharrir and Octroi Peon respectively in the Notified Area Committee, Mahendergarh.

(4) Shri Chhaju Ram Octroi Superintendent on 2nd November, 1974 had filed a complaint against the respondents. Sub-Divisional Magistrate constituted one-man committee and after obtaining the advice of the Legal Advisor of the Committee directed the recording of the statements of the Octroi Superintendent and Tonga Driver. On the basis of the said statements, the charge-sheets were served upon the respondents which was accompanied by a show-cause notice regarding the proposed punishment of dismissal. The respondents filed their replies to the charge-sheets served on them. Thereafter, a regular inquiry was conducted by Shri Neseem Ahmed and therein he recorded the statements of many witnesses. After the completion of the inquiry, the order of termination was passed on 27th January, 1975 without issuing a fresh show-cause notice.

(5) Through two civil suits, they challenged the order dated 22nd January, 1975 passed by defendent Notified Area Committee,

Mahendragarh (hereinafter referred to as the Committee) terminating their services. Trial Court decreed the suit and the appellate Court sustained the decree and judgment of the trial Court and dismissed the appeal. On the two crucial issues posed above, both the Courts below pronounced in favour of the respondent employees.

(6) Judicial precedents bearing upon the propositions formulated above that have been cited at the Bar now deserve noticing. Counsel for the respondents has referred *Khem Chand* v. *Union of India* (1); *Sudhir Ranjan* vs. *State of West Bengal* (2); *Manickam* vs. *Supdt. of Police* (3); *Couri Pr. Ghosh* vs. *State of West Bengal* (4); *M. Chinnappa Reddy* vs. *State* (5); *Amar Nath* v. *The Commissioner* (6); *Raj Paul* v. *Administrator M. C.* (7) and *Dr. S. S. Prabbu* vs. *The Haryana Agricultural University* (8) while the counsel for the Notified Area Committee has placed reliance on *Tombi Singh* vs. *Gopal Singh* (9); *Vithal Mahadeo* vs. *Union of India* (10); *Karam Chand Mahto* vs. *State of Bihar* (Patna) (11); *Janardan Kar* vs. *State of Orissa* (12); *Sudhir Chandra* vs. *State of West Bengal* (13) and *Bamashakal* v. *R. P. F. Bombay* (14).

(7) From *Khem Chand's case* (supra) particular emphasis was laid by the counsel for the respondents on the following observations occuring in para 21 of the judgment:—

> "A close perusal of the judgment of the Judicial Committee in I. M. Lall's case (B), will, however, show that the decision in that case did not proceed on the ground that

(1) AIR 1958 S.C. 300.
(2) AIR 1961 Calcutta 626.
(3) AIR 1964 Madras 375.
(4) 1968 S.L.R. 625.
(5) AIR 1969 A.P. 234.
(6) 1969 Cur L. J. 484.
(7) 1970 S.L.R. 494.
(8) 1974 (1) S.L.R. 285.
(9) AIR 1963 Manipur 28.
(10) AIR 1967 Bombay 332.
(11) 1974 (1) S.L.R. 461.
(12) 1974 Lab. I.C. 296.
(13) 1976 (2) S.L.R. 53.
(14) AIR 1967 M.P. 91.

an opportunity had not been given to I. M. Lall against the proposed punishment merely because in the notice several punishments were included, but the decision proceeded really on the ground that this opportunity should have been given after a stage had been reached where the charges had been established and the competent authority had applied its mind to the gravity or otherwise or the proved charge tentatively and proposed a particular punishment. There is as the Solicitor General fairly concedes, no practical difficulty in following this procedure of giving two notices at the two stages. This procedure also has the merit of giving some assurance to the officer concerned that the competent authority maintains an open mind with regard to him. If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the government servant concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the subject matter of the charge, or at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done."

(8) Khem Chand was a Sub Inspector under the Delhi Audit Fund. He was dismissed after an inquiry. The point raised by him against his dismissal was that he was not given an opportunity to show-cause against the action proposed to be taken in regard to him which he was entitled under Article 311 of the Constitution. Their Lordships observed that answer to the question posed on behalf of the delinquent officer would depend upon true construction of provision of Article 311(2). Their Lordhsips while interpreting the expression 'reasonable opportunity' occurring in subclause (2) of Article 311 were of the view that reasonable opportunity was not confined to the inquiry part of the proceedings but also envisaged a second opportunity of showing-cause against the proposed punishment.

(9) The observations in the paragraph quoted above in *Khem Chand's case* (supra) that the fundamental principle of jurisprudence that justice must not only be done but must also be seen to

ve been done which were in consonance with the construction t they had put on the expression 'reasonable opportunity'; were e in the context of the requirement of the provisions of Article (2) and not by way of laying down a general proposition of ersal application. No where in the judgment their Lordships been indirectly indicated that the said approach would be niversal application even where provisions of Article 311(2) not attracted nor provisions akin to them in the inquiry rules ed.

(10) In *Suhdhir Ranjan's case* (supra), the provisions applie were those of Section 240 of the Government of India Act, 5 and Banerjee, J. who delivered the opinion for the Bench had *ter alia* relied upon the observations of their Lordships in *Khem Chand's case* (supra) regarding the interpretation of the expression 'reasonable opportunity' occurring both in Section 240 of the Government of India Act and Article 311(2) of the Constitution and held that the combined notice sent to the appellant asking him to show cause against the charge as well as the proposed punishment of dismissal was not in compliance with Section 240 of the Government of India Act, 1935 and therefore, the punishment inflicted without a second opportunity to show cause against the proposed punishment after the charges were taken to have been established was bad, inoperative and void in the eye of law. What is more, in this case notice of only one day to show cause was given and that too to a person residing abroad. To some extent that fact appeared to reflect bias against the delinquent officer and when judged against that one could read in the notice to show cause regarding the proposed punishment alongwith the charge-sheet itself some inkling that the concerned authority was predisposed to punish the delinquent officer.

(11) *Manickam's case* (supra) was a case to which provisions of Article 311 (2) were attracted. In that case after setting out the charge, the memo of charges proceeded as follows:—

> "Show cause why you should not be dismissed from the force or otherwise punished for the above gross indisciplinary conduct".

(12) The learned Judge held that the said method of framing the charge was not in consonance with Article 311. At the stage

of the charge, no question of punishment arose, that the fact th the proposed punishment was mentioned in the charge could c show that even before the charges were enquired into and a ' ing arrived at on the basis of the enquiry, the petitioner had prejudged.

(13) Apparently in that case second opportunity of s' cause to the proposed punishment was not given which clau of Article 311 mandatorily envisaged.

(14) In *Gouri Pr. Ghosh's case* (supra) not only a show regarding the proposed punishment notice was served upor delinquent officer alongwith the charge sheet but after the co sion of inquiry too, a second show-cause notice proposing penalty of dismissal was also served. Mitra J. held that the s vice of first show-cause notice alongwith the charges gave a impression of a closed mind while an open mind must be kept not only on the question of guilt of a Government servant, but also on the question of the punishment to be imposed, if the charges were proved and that the doctrine of keeping an open mind stands violated if a show-cause notice in which not only the charge, but also the punishment proposed to be given is mentioned.

(15) Admittedly, the provisions of Article 311 were held to be attracted to the case which provision envisaged a show-cause notice to the proposed punishment only after the conclusion of the inquiry and not prior thereto. Mitra, J. could not consider the first show-cause notice against proposed punishment as a mere superfluity for allegations of *mala fide* had been made and no affidavit was filed by those against whom such allegations were made and it was observed that the inquiry officer should have allowed the delinquent officer to adduce evidence in support of the allegations.

(16) Mitra J., with respect, appears to have stated the proposition too widely for *Khem Chand's case* (supra) on which the reliance has mainly been placed by the learned Judge, does not lay down any such proposition of law and therefore, the said decision did not warrant the evolving of a doctrine of universal application to the effect that if a show cause notice regarding proposed punishment is given alongwith the charge-sheet, then that by itself shows a close mind and pre-judging of the case.

(17) In *M. Chinnappa Reddy's case* (supra) the learned Judge followed the ratio of *Manickem's case* (supra) as also that of an earlier decision of Andhra Pradesh High Court reported as *Mohan Das* v. *Supdt of Police Khammaneth,* (15).

(18) Here again, the view that the learned Judge had taken in that case was in the context of Article 311(2) of the Constitution of India.

(19) *Amar Nath's case* (supra) was a case in which witnesses were not examined in the presence of the Government servant nor any opportunity was given to cross-examine those witnesses. The Inquiry Officer had taken into consideration the previous record of the Government servant while imposing the sentence without disclosing the same in the notice and without framing any charge on the basis of previous record. This was a case where show-cause notice regarding punishment was served alongwith the charge-sheet. Tuli, J., following the decision in *Gouri Pr. Ghosh's case* (supra), held that the inquiry was vitiated as the doctrine of natural justice stood violated by serving the show-cause notice regarding the proposed punishment alongwith the charge-sheet which reflected a closed mind. This was a case to which the Punjab Civil Services (Punishment and Appeal) Rules, 1952 were admittedly held to be applicable and procedure prescribed under Rule 7 sub-rule (2) regarding the mode of inquiry had not been followed.

(20) *Raj Paul's case* (supra) again is a case pertaining to an employee of Municipal Committee. In this case the learned Judge had followed his earlier decisions given in *Amar Nath's case* (supra) as also in *Gouri Pr. Ghosh's case* (supra) which in turn had relied upon *Khem Chand's case* (supra). In this case the learned Judge expressed the opinion that the entire procedure adopted by the President of the Municipal Committee in suspending the petitioner, serving a charge-sheet on him, holding an inquiry and making a report was against the provisions of the Act and the rules on the subject. Thereafter, the learned Judge observed that the charge-sheet served upon the delinquent employee was also required to be quashed on the ground that the proposed punishment was mentioned therein.

(15) 1967 1 Andh. W. R. 156.

(21) In *Dr. S. S. Pabhu's case* (supra), Tuli, J. merely followed his earlier decisions in *Amar Nath's case* (supra) and *Gouri Pr. Ghosh's case* (supra) and held that the charge-sheet additionally requiring the delinquent officer to show-cause against the proposed punishment was illegal and had to be quashed.

(22) Tarakunde, J. in *Vithal Mahadeo's case* (supra), in our opinion, struck the right note while opining that the balanced approach in a case where charge-sheet sent to the delinquent officer also contained a clause calling upon him to show-cause why the given punishment should note be awarded to him, was that the said clause by itself would not be indicative of any bias on the part of the concerned authority. The learned Judge observed that if in *Manickem's case* (supra), the learned Judge who decided that case intended to lay down as a general proposition that a charge-sheet which incidentally called upon the delinquent to show-cause why he should not be awarded the proposed punishment for the alleged delinquency, was necessarily violative of Article 311 of the Constitution, then with respect he differed from that view.

(23) In *Ramshakal Yadav's case* (supra), Dixit, C.J. before whom reliance was placed on *Khem Chand's case* (supra) and *Ramnetra* v. *D. S. of Police* (16), in support of the submission that if alongwith the charge-sheet itself the punishment was proposed, then the inquiry stood vitiated, also struck the same balanced note as did Tarakunde, J. and observed as follows:—

> "But the mention of the proposed punishment in the charge-sheet did not vitiate the departmental enquiry and cannot in any way be taken as indicative of a bias against the petitioner. It had not the effect of debarring the Enquiry Officer from finding after the enquiry that the charge against the applicant was not proved or preventing the Assistant Security Officer from absolving the petitioner or proposing another punishment in the notice to show cause.
>
> The decision of the Supreme Court in *Khem Chand's case* (supra) does not support the contention put forward by the learned counsel for the applicant. The observation in that case that the delinquent officer must be given

(16) AIR 1966 M. P. 58.

an opportunity to make his representation as to why the proposed punishment should not be inflicted on him and the proper stage for giving this opportunity is after the enquiry is over and after the disciplinary authority has, applying its mind to the gravity or otherwise of the charges proved against the Government servant, tentatively proposes to inflict one of the three punishments, that is the punishment of dismissal, or removal from service, or reduction in rank, cannot be read as implying that even if this opportunity is given, if in the charge-sheet the proposed punishment was inidcated, then it must be held that the Government servant had no reasonable opportunity of defending himself as contemplated by Article 311 (2) of the Constitution."

(24) In *Karam Chand's case* (supra), Sharma, J. expressed his respectful disagreement with the view taken in *Gouri Prasad Ghosh's case* (supra), *M. Chinnappa Reddy's case* (supra) and *Raj Paul's case* (supra), in the following words:—

"It is not correct to say, as has been contended by Mr. Mukherjee that on account of the solitary fact that the charge sheet served on a delinquent servant mentions punishment also, which could be inflicted on him in case he was found guilty on enquiry, unconnected with other circumstances, renders the proceedings null and void. The question whether a punishing authority has suffered in a particular case from any bias or that it has prejudged an issue in the proceedings is essentially a question of fact and has to be decided on the basis of facts and circumstances in every case. A general rule cannot be laid down that divorced from the evidence, facts and circumstances, in such cases, an inference of bias is irresistible. If the above mentioned three cases be interpreted to hold otherwise, as suggested by Mr. Mukherjee, I am with great respect to the learned Judges who decided the said cases, not in agreement with that view."

(25) In *Janardan Kar's case* (supra), a Division Bench of Orissa High Court, also took the same view and held that the mere mention of the proposed punishment in the charge-sheet itself is not *per se* indicative of bias of the enquiry officer, the enquiry

would be vitiated if bias was established from other facts *de hors* the indication of the proposed punishment in the charge-sheet. Misra, C.J. who delivered the opinion for the Bench took notice of the following passage from *Khem Chand's case* (supra):—

> "If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the Government sevant concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the subject matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also seem to have been done."

and after adverting to the contention of the learned counsel who sought to infer from the said passage that wherever the proposed punishment was indicated in the charge-sheet the ultimate punishment was void and was liable to be quashed even though the principles of natural justice had been followed at all stages and second show-cause notice had been given, explained the ratio of *Khem Chand's case* (supra) in the following words:—

> "The aforesaid passage cannot be construed in that manner. It is to be remembered that what their Lordships were considering in that case was an argument by the learned Solicitor General that as the proposed punishment had been indicated in the charge-sheet the delinquent was in no way prejudiced on account of non-service of the second show-cause notice. That argument was repelled. Their Lordships clearly pointed out that service of second show-cause notice was fundamental and paramount as the proposed punishment at that stage would emanate only after a conclusion is reached on the basis of the evidence in relation to the charges and the indication of the punishment in the charge-sheet would be no substitute for it. On the other hand, the indication of the proposed punishment in the charge-sheet is likely to create a feeling in the mind of the delinquent that the decision had already been taken before the enquiry was made. This is not to say that the indication of the proposed punishment in the charge-sheet by itself establishes

that the conclusion had already been reached and subsequent enquiry was merely a camouflage. If it were so, there was no necessity for elaborate discussion regarding the illegality of the punishment imposed on account of non-issue of a second show-cause notice. Their Lordships could have easily said that as the charge-sheet indicated the punishment the entire proceeding was invalid. *Khem Chand's case* is, therefore, an authoritative pronouncement against any contention that indication of the punishment in the charge-sheet establishes bias and absence of an open mind and consequently vitiates the entire proceeding.

(26) In *Sudhir Chandra's case* (supra), Datta, J. who delivered the opinion for the Bench, to which Chief Justice Mitra was a party explained the decision of *State of West Bengal* versus *Satiprasad Roy* (16-A) by observing that in those cases the inquiry stood vitiated on the basis of consideration of various circumstances and the decision was based on the cumulative effect of all such factors.

(27) Admittedly, provisions of Article 311 are not attracted to the case of a municipal employee. Giving of second show-cause notice formed part of reasonable opportunity as interpreted by their Lordships in *Khem Chand's case* (supra) and other cases and thus was considered mandatory requirement of Article 311. The serving of second show cause notice cannot be elevated to the level of requirement of principles of natural justice. Had it been so, the Parliament which for the purpose of clarification by the Constitution (Fifteenth Amendment) Act, 1963 had in sub-clause (2) envisaged the serving of second show-cause notice regarding the tentative punishment after the conclusion of the inquiry would not have taken off the said requirement altogether by 42nd amendment of the Constitution of India, with the result that the serving of second show-cause notice remained no longer the constitutional requirement.

(28) If such be the case, then the question would arise as to at what stage the delinquent officer is to be apprised of the proposed punishment, if he is not to be intimated of the proposed punishment at the very start of the inquiry at the time of serving of the charge-sheet.

(16-A) 79 CWN 38.

(29) Surely, if a provision envisages either expressly or by necessary implication that along with the serving of the charge-sheet the delinquent officer may also be served with a show-cause notice regarding the punishment that may be awarded in the event of the establishing of the charges, and then if such a show-cause notice is served along with the charge-sheet then it certainly would not mean that, because the punishment is indicated in advance then the charges in question were bound to be held to be established despite whatever the delinquent officer had to say about them; and that he was bound to be awarded the punishment indicated in the show-cause notice again whatever the delinquent officer had to say in mitigation thereof.

(30) Now the stage is set to have a look at the relevant rule dealing with the procedural aspect of the enquiry which may result in the dismissal of a Municipal employee.

(31) Section 240(1)(n) of the Punjab Municipal Act envisages framing of the rules by the Government *inter alia* regulating the procedure for the employment, punishment, suspension or removal of officers and servants of the committee as also appeals from orders of punishment or removal. The State Government framed Dismissal of Municipal Employees Rules, 1941 (hereinafter referred to as the Dismissal Rules), rule 3 whereof which alone is relevant is in the following terms:—

> "3. *Procedure on dismissal.*—A definite charge shall be framed in writing in respect of each offence alleged against the officer or servant sought to be dismissed. The charge shall be explained to the accused and the evidence in support of it and any evidence that the accused may adduce in his defence shall be recorded in his presence and his defence taken down in writing. Each of the charges framed shall be discussed and a finding shall be recorded on each charge."

(32) The very name of the rules is indicative of the fact that a person tried in accordance with the procedure laid down in these rules may be liable to be dismissed if the charge for which he is tried is established. Rule 3 *inter alia* when it says that a definite charge shall be framed in writing in respect of each offence alleged against the officer or servant sought to be dismissed also rings a

clear notice to the delinquent officer that in case the charge is proved, he may be liable to be dismissed.

(33) If such be the nature of the statutory provisions, then serving of notice along with charge-sheet requiring the delinquent officer to show-cause why the punishment that might be awarded in the event of the establishment of the charges in question, cannot *per se* snack of a bias." If the doctrine allegedly evolved in *Gouri Pr. Ghosh's case* (supra) and later on applied by some of the High Courts is considered inflexible then even in a case where during an inquiry the delinquent officer was to make a clean breast of the whole thing and confesses his guilt and then a punishment is imposed commensurate with the gravity of the charge, the inquiry and the punishment would stand vitiated because of the fact that along with the charge-sheet a notice to show-cause against the proposed punishment in the event of the establishment of the charges had been served. In our opinion, such an approach would certainly not serve any principles of natural justice, but the same on the contrary would rather lead to miscarriage of justice.

(34) If neither the provision of Rule 3 which incorporates the procedure from the start to the recording of finding regarding each charge nor any other provision in the rules provided for a second show-cause notice regarding the proposed punishment, then would it still be incumbent upon the punishing authority to serve a second show-cause notice regarding the proposed punishment before awarding the punishment?

(35) As already observed, serving of the second show-cause notice regarding the proposed punishment not being the requirement of the doctrine of principles of natural justice and the provisions of the Constitution of Article 311(2) not being attracted to the case of a municipal employee, it cannot be said that the punishment awarded to the respondents stood vitiated as the same had been imposed without serving upon them a second show-cause notice.

(36) The respondents having been put on notice regarding the likely punishment if the charge against them came to be established, they could, therefore, avail the opportunity to show that either the charges were not that grave or there existed sufficient

mitigating circumstances requiring imposition of punishment lesser than the one proposed in the show-cause notice.

(37) In the light of the above discussion, we answer both the propositions in the negative and against the respondent-employees.

(38) For the reasons aforementioned, we set aside the judgment and decree of the Courts below and dismiss the suit and allow the appeals with no order as to costs.

S. S. Sandhawalia, CJ—I agree.

N. K. S.

Before S. S. Sandhawalia, C.J. and I. S. Tiwana, J.

BATA INDIA LIMITED,—*Petitioner.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 5503 *of* 1982.

August 2, 1983.

Haryana General Sales Tax Act (XX of 1973) as amended by Haryana Act 3 of 1983—Section 9—Constitution of India 1950 as amended by the Constitution (Forty-sixth Amendment) Act, 1982—Article 269 and Seventh Schedule List I entry 92 B and List II entry 54—Despatch of manufactured goods by a dealer to his own depot or agent outside the State—Such despatch—Whether amounts to 'consignment of goods in the course of inter-State trade or commerce' as envisaged in entry 92 B of List I—Section 9(1)(b) of the Haryana Act taxing despatch of manufactured goods to a place outside the State otherwise than by way of sale—Whether unconstitutional—State Legislature—Whether competent to enact such a provision—Parliament—Whether has exclusive power to legislate in regard thereto.

Held, that a bare reference to the heading of Article 269 of the Constitution would make it plain that the taxes enumerated in clause (1) thereof are those which are both levied and collected by the Union of India. These are areas of legislation which are