various acts of sexual intercourse that took place she appears not to have been an unwilling party and such resistance, if any, as she might have offered seems to have been overcome by the accused. In view of these circumstances the sentence of five years' rigorous imprisonment appear to be excessive. While I maintain the conviction of the accused, I reduce his sentence and direct that he should undergo rigorous imprisonment for two years.

## LETTERS PATENT APPEAL.

*Before Bhandari, C. J., and Gosain, J.*

SHRI JOTI PARSHAD,—*Petitioner*

*versus*

THE SUPERINTENDENT OF POLICE, GURGAON AND OTHERS,—*Respondents.*

**Letters Patent Appeal No. 1 of 1956, in Civil Write No. 375 of 1954.**

1957

Aug., 8th

*Constitution of India—Article 311—Reasonable opportunity—Meaning and scope of—Protection afforded by Article 311, not to be allowed to be rendered nugatory—Order of dismissal illegal—Order confirmed in appeal or revision, effect of—Departmental enquiry—Proceedings in nature of—Rules of natural justice, how far applicable.*

*Held*, that:—

(1) If the safeguards provided by Article 311 of the constitution of India are not to be rendered illusory, the words "reasonable opportunity" must be deemed to mean "a real and adequate opportunity which is not merely norminal or a sham one". If a delinquent is asked to defend himself before a person who is already biased against him or who has already prejudged the issues and who is in no way amenable to consider the matter objectively and dispassionately, it cannot possibly be said that a reasonable or real opportunity to defend has been given to the delinquent.

(2) It is the duty of the Courts to see that the safeguards for public servants provided by the Constitution

are not allowed to be rendered nugatory and the Executive Officers are not allowed to resort to unconstitutional acts and thus unjustly victimise the officials placed in a position subordinate to them . As soon as the Court comes to the conclusion that the order of dismissal has been made without affording adequate opportunity to the delinquent to defend himself, it becomes the imperative duty of the Courts to quash the said order.

(3) An order of dismissal passed in disregard to the Constitutional safeguards cannot acquire any better sanctity by the fact that higher officers had the opportunity to go into the case at a later stage for the purposes of deciding appeal and revision.

(4) The proceedings of Departmental enquiry are not strictly speaking judicial proceedings but it has been repeatedly held that the rules of natural justice do apply to these proceedings with as much force as they apply to all judicial proceedings. The person dealing with an enquiry at any stage is in the position of a judge and the rules of natural justice demand that he must be a person with open mind, a mind which is not biased against the delinquent. He should be open to conviction and must not have prejudged the issues. He must act with the detachment of a Judge since he is professing to exercise that dignified function.

*Letters Patent Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Kholsa, dated the 24th November, 1955, in Civil Writ No: 375 of 1954.*

ABBNASHA SINGH, for Petitioner.

L. D. KAUSHAL, Deputy Advocate-General, for Respondents.

JUDGMENT

Gosain, J.

GOSAIN, J.—This appeal under clause 10 of the Letters Patent arises out of a petition under Article 226 of the Constitution of India by Joti Parshad who was dismissed from the Police Force by an order passed by the Superintendent of Police, Gurgaon, and the sole point which falls for decision is whether

Shri Joti Parshad
*v.*
The Superintendent of Police, Gurgaon

Gosain, J.

provisions of Article 311(2) of the Constitution of India were duly complied with in the matter of dismissal of the petitioner.

The petitioner was appointed as a Constable on 2nd October, 1939, and was confirmed as such on 2nd October, 1942. He was then promoted as Head Constable in 1944 and later as an Assistant Sub-Inspector on 13th October, 1949. He was some time thereafter reverted back to the post of Head Constable and on 4th April, 1951, he was again promoted as Assistant Sub-Inspector. In January, 1953, he was transferred to Karnal under the orders of the Deputy Inspector-General of Police, Ambala, and in the second week of March, 1953, he was transferred from Karnal to the Recruiting Training Centre in Jahan Khelan in Hoshiarpur District. On 4th April, 1953, he received summonses by a wireless message to appear as witness in a departmental enquiry against one Pt. Ram Saran Das, Head Clerk of the office of the Superintendent of Police, Gurgaon, who had been charged with having received bribe from the petitioner for the purpose of promoting him to the post of an Assistant Sub-Inspector of Police. It appears that the petitioner refused to give evidence incriminating himself as having given bribe to Ram Saran Das and the Superintendent of Police suspended him on 6th April, 1953, and ordering his reversion as Head Constable confined him to the Police Lines, Gurgaon. The petitioner on 11th April, 1953, was ordered to be transferred from Jehan Khelan to Gurgaon. The enquiry against Ram Saran Das having concluded, the Superintendent of Police, Gurgaon, ordered his dismissal from the Police Force somewhere in the first week of May, 1953. On 7th May, 1953, the same Superintendent of Police started an enquiry against the petitioner on the charge of giving bribe to Ram Saran Das. The petitioner represented to the Superintendent of Police

Shri Joti Parshad
*v.*
The Superintendent of Police, Gurgaon

Gosain, J.

that by dismissing Ram Saran Das on the ground that he had received bribe from the petitioner he (the S.P.) had clearly given his verdict regarding the matter which he now wished to enquire into and that it was only fair that the present enquiry should be conducted by the Deputy Inspector-General or some other officer in some neighbouring district. He made a representation on this point also to the D.I.G. by his application to him on 8th May, 1953. The D.I.G., did not send any reply to the representation till the 20th May and the Superintendent of Police turned down the representation there and then on the 8th and proceeded to make the enquiry on the same day. The petitioner naturally felt nervous and perplexed on the enquiry being conducted by an officer having preconceived views and in that state of mind he refused to cross-examine P.W. 2, and also refused to make his own statement. The Superintendent of Police got enraged on this and ordered the Prosecuting Inspector—a subordinate of his—to hold another enquiry against the petitioner on a charge of "refusing to cross-examine P. W. 2, Prakash Lal Katyal and for refusing to answer the questions put to him." On the same day, i.e., 8th May, 1953, the Prosecuting Inspector started the enquiry and after examining a solitary witness who was the Stenographer of the Superintendent of Police recorded his finding on the first charge of giving bribe to Ram Saran Das and found the petitioner guilty of that charge. On the same day the Prosecuting Inspector also recorded his finding on the second charge referred to above and found the petitioner guilty. The petitioner was then given the usual notices in both the cases to show cause on or before the 20th May, 1953, as to why he should not be dismissed. He filed his reply on the 20th May, 1953, and orders of his dismissal were passed the same day in both the cases. The petitioner thereupon filed an

appeal before the Deputy Inspector-General of Police, Ambala, which was rejected on the 23rd February, 1954. He then filed a petition for revision before the Inspector-General of Police, who on the 20th July, 1954, exonerated him of the main charge of giving bribe but maintained the dismissal on the second charge regarding which enquiry had been made by the Prosecuting Inspector. The petitioner then filed a petition under Article 226 of the Constitution of India in this Court. This was heard by a learned Single Judge and was ultimately dismissed on the 24th November, 1955. Before the learned Single Judge as many as eight points were raised, but the learned Single Judge was of the opinion that there was very little force in any of the points with the exception of point No. 6, which related to the enquiry being made by a biased officer. The petitioner has filed the present appeal under clause 10 of the Letters Patent.

Mr. Abnasha Singh appearing for the petitioner strenuously urged only one point, namely, that in the matter of dismissal of his clent the mandatory provisions of Article 311(2) of the Constitution had not been complied with, as no real opportunity had been given to his client to show cause against his dismissal. In my opinion this contention of the learned counsel must prevail and the order of dismissal of the petitioner must be quashed.

The Superintendent of Police who had started the original enquiry against the petitioner on the charge that the petitioner had given bribe to Ram Saran Das had already found that the bribe had been taken from the petitioner by Ram Saran Das and had dismissed Ram Saran Das on that basis. One would have expected in such circumstances that he would himself have moved to have the subsequent enquiry

Shri Joti Parshad
*v.*
The Superintendent of Police, Gurgaon

Gosain, J.

held by his superior officer the D.I.G. —or by at least an officer of his own rank in another district. He having failed to take this course, a representation was made to him by the petitioner that he should not undertake the enquiry himself but the same was turned down by the Superintendent of Police there and then. It is true that the proceedings of a departmental enquiry are not strictly speaking judicial proceedings but it has been repeatedly held that the rules of natural justice do apply to these proceedings with as much force as they apply to all judicial proceedings. *R. Ananthanarayanan* v. *General Manager Southern Railway* (1), *Mangal Singh* v. *The State* (2), *Andhra Weekly Reports* (3), *Ashutosh Das* v. *State of West Bengal, etc.* (4), *Meghraj and others* v. *State of Rajasthan* (5), *Sobhagmal* v. *State* (6), *Vasantrao Shankerrao* v. *The State of Bombay* (7).

The person dealing with an enquiry at any stage is in the position of a Judge and the rules of natural justice demand that he must be a person with open mind, a mind which is not biased against the delinquent. He should be open to conviction and must not have prejudged the issues. He must act with the detachment of a Judge, since he is professing to exercise that dignified function. Robson on page 62, of his book (Justice and Administrative Law) says:—

> "But it is not only the holders of judicial offices who are required to be free from the sort of bias which is presumed to arise when a man has a personal interest in the subject-matter of a case that he is called upon to decide or otherwise deal with. 'Even

(1) A.I.R. 1956 Mad. 220
(2) A.I.R. 1956 M.B. 257
(3) (1957) 1, Andhra W. Reports 370
(4) A.I.R. 1956 Cal. 278
(5) A.I.R. 1956 Raj. 28
(6) A.I.R. 1954 Raj. 207
(7) A.I.R. 1955 N.U.C. 5552 (Bombay)

administrators', the late Lord Atkin remarked in a modern case, "have to comport themselves within the bounds of decency," and on page 63 says—

> "The courts have shown in recent decades a tendency to apply to administrative authorities the principles designed to eliminate the possibility of bias which are applicable to judicial tribunals."

*In Suba Rao* v. *State of Hyderabad* (1), it is laid down:—

> "It is a fundamental principle of justice that the officer selected to make an enquiry should be a person with open mind and not one who is either biased against the person against whom action is sought to be taken or one who has prejudged the issues. If this fundamental principle is not followed by Government in selecting a person to make an enquiry the enquiry would be a farce and would not in any sense of the term be said to give a reasonable opportunity to the officer concerned to defend himself."

The same view has been taken by Mehrotra, J., in *Darbari Ram* v. *State of Uttar Pradesh* (2), In paragraph 5 of his judgment the learned Judge says:—

> The next point urged by the petitioner is that when the enquiry was being conducted by the Superintendent of Police, an incident happened on the 21st of April, 1952, and as regards that incident a notice under section

(1) 1957 Andhra Law Times 155.
(2) A.I.R. 1956 All. 578.

Shri Joti Parshad
*v.*
The Superintendent of Police, Gurgaon

Gosain, J.

80, C.P.C., was given to the Superintendent of Police. In fact, on the recommendation of the Assistant Superintendent of Police subsequently framed a charge against the petitioner for having sent such a notice and consequently the Superintendent of Police was biased and was disqualified to make an enquiry against the petitioner.

It was strongly urged by the counsel for the State that from the conduct of the Superintendent of Police, it cannot be said that he was prejudiced on account of the notice having been given to him by the petitioner. Whether he was prejudiced or not is not a matter on which this Court will express its opinion but there was a notice given to the Superintendent of Police as regards the incident of the 21st of April, 1952, and on his recommendation charges were framed against the petitioner.

It was against the principles of natural justice that he should have tried the case himself and investigated the charges against the petitioner. The order passed by the Superintendent of Police on the 25th April, 1953, is, therefore, set aside."

I feel that the petitioner's refusal to cross-examine the prosecution witnesses and to make a statement before the Superintendent of Police was perfectly justified in the circumstances of the case. It may have been open to the Superintendent of Police to draw any inferences from the same so far as the main charge was concerned, but an enquiry on the second charge should not at all have been started and should in no way have been entrusted by the Superintendent of Police to one of his subordinates. This enquiry, in my opinion, was altogether a farce and no real or reasonable opportunity was ever afforded to the petitioner

Shri Joti Parshad
*v.*
The Superintendent of Police, Gurgaon

Gosain, J.

to defend himself. The Enquiry Officer there and then called upon the petitioner to defend himself and after examining a solitary witness, the Stenographer of the Superintendent of Police, closed the enquiry. At the second stage of it also, the petitioner had really no opportunity. He showed cause on the 20th May, 1953, and the orders of dismissal (which possibly were already in existence) were immediately announced. Although notices had been served upon the petitioner on the 15th May to show cause against his dismissal by the 20th May, 1953, he was not allowed to leave the Police Lines (where he was confined) till as late as the 19th evening and as a necessary consequence of this, he could not obtain proper and adequate legal assistance. In view of the fact that the public servant concerned was under a reasonable apprehension that the entire proceedings against him were the result of a preconceived plan on the part of the Superintendent of Police, the Head of the Department in the District, he should have been given a better opportunity of defence than the one given to him in this case. If the safeguards provided by Article 311 of the Constitution of India are not to be rendered illusory, the words "reasonable opportunity" must be deemed to mean "a real and adequate opportunity which is not merely nominal or a sham one". If a delinquent is asked to defend himself before a person who is already biased against him or who has already prejudged the issues and who is in no way amenable to consider the matter objectively and dispassionately, it cannot possibly be said that a reasonable or real opportunity to defend has been given to the delinquent. As shown above, it is otherwise also clear that in this case no real opportunity to defend was ever given to the petitioner.

The learned Single Judge has remarked in his judgment:—

> "It is significant that the petitioner was acquitted of the charge of giving a bribe to Ram

Shri Joti Parshad
*v.*
The Superintendent of Police, Gurgaon

Gosain, J.

Saran Das and it is somewhat regrettable that he should have been dismissed for the minor offence of refusing to answer questions, and had the petitioner not been a member of the Police Force I might have been inclined to allow this petition and quash the order of his dismissal but after giving the matter my very careful consideration I feel that this Court should not interfere with the internal working of a department except in very extreme cases."

With great respect to the learned Judge I feel I cannot subscribe to the proposition as laid down by him. It is true that the petitioner is a member of the Police Force and that the rules of discipline should be enforced against him rather rigorously. This does not, however, necessarily lead to the conclusion that in a serious matter like his dismissal from service he should be deprived of the constitutional rights. I think, it is the duty of the Courts to see that the safeguards for public servants provided by the Constitution are not allowed to be rendered nugatory and the Executive Officers are not allowed to resort to unconstitutional acts and thus unjustly victimise the officials placed in a position subordinate to them. As soon as the Court comes to the conclusion that the order of dismissal has been made without affording adequate opportunity to the delinquent to defend himself, it becomes the imperative duty of the Courts to quash the said order.

The learned Single Judge also remarked in his judgment:—

> "I confess that in the present case I find it extremely difficult to stay my hand and I should have been willing to quash the orders of the Superintendent of Police,

whose conduct I do not find wholly commendable, were it not for the fact that the petitioner's case was carefully examined by the Deputy Inspector-General of Police and also by the Inspector-General of Police."

In my opinion, however, the real order of the dismissal still remains that of the Superintendent of Police and the mere fact that the Deputy Inspector-General or the Inspector-General of Police had an opportunity to go into the case at a later stage for the purposes of deciding appeal and revision cannot alter the position materially and cannot bestow upon the order of dismissal any better sanctity. Once it is found that the order of dismissal was passed in disregard of the constitutional safeguards provided by the Constitution, the said order must evidently be quashed.

I would, therefore, accept this appeal and quash the order of dismissal. No order as to costs.

BHANDARI, C.J.—I agree.

Bhandari, C. J.

REVISIONAL CRIMINAL.

*Before Falshaw, J.*

SHRI RAM KRISHANA DALMIA,—*Petitioner*

*versus*

STATE,—*Respondent.*

**Criminal Revision No. 601(C) 1957.**

1957

Aug., 27th

*Code of Criminal Procedure (V of 1898)—Sections 155, 173, 207-A and 208—Report regarding commission of cognizable offence—Non-cognizable offence found during investigation—Section 155(f)—Applicability of—Police Officer, whether debarred from investigating such an offence—Section*