the Central Government to give reasons for its decision. We have also not been shown any other section of the Army Act or any other statutory rule from which the necessary implication can be drawn that such a duty is cast upon the Central Government or upon the confirming authority."

(10) In view of the aforesaid discussion, I hold that before disposing of the petition under section 164(2) of the Act it is not incumbent on the appropriate authority to afford an opportunity of personal hearing even if the same was asked for by the representationist.

The matter shall now go before the learned Single Judge for deciding the same on merits.

Ajit Singh Bains, J.—I agree.

K.T.S.

APPELLATE CIVIL.

Before S. S. Sandhawalia and S. P. Goyal, JJ.

STATE OF PUNJAB,—*Defendant-Appellant.*

versus

SHRI KARTAR SINGH GREWAL,—*Plaintiff-Respondent.*

Regular Second Appeal No. 1863 *of* 1974.

October 21, 1976.

Punjab Civil Services (Punishment and Appeal) Rules 1970—*Rule* 22—*Whether directory—Order passed against a Government servant—Communication thereof—Whether necessary—Communication—When can be said to be complete.*

Held, that rule 22 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 was meant to do no more than provide a broad guideline for the manner in which service of orders and notices etc. was to be made and there could hardly be any intention to preclude all other modes of communication even though they may be equally or indeed more effective. The context in which this rule is placed in and its nature also would negative any assumption that it was meant to be mandatory. Again the rule is of a procedural nature

and procedural rules are not to be raised to such a pedestal that every infraction thereof may vitiate the action taken in non conformity therewith. It has been well settled that procedure is to aid the course of justice rather than impede the same. The importance which the law attaches to substantive law cannot always be attached to mere modes of procedure. The rule is intended to provide a simple mode of communicating the orders and notices etc. which the preceding rules require. If this rule is given mandatory construction, it is plain that the same can indeed defeat the aim and intent of the very object of this set of disciplinary rules. It is the sad experience of the Courts to notice the ease with which service can be evaded by a recalcitrant litigant or a public servant if it is not to his interest to accept the same. Rule 22, therefore, cannot be raised to the pedestal of being mandatory. It is at best a directory provision providing for a convenient mode to communicate the orders, notices and processes under the rules to the public servant. The infraction of such a directory rule cannot *per se* negate the communication or service by other means, of a valid order.

(Paras 9, 10 and 13).

Held, that the communication of an order passed against a Government servant is essential and not its actual receipt by the officer concerned, because till the order is issued and actually sent out to the person concerned the authority making such an order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority and therefore, there would be no chance whatsoever of its changing its mind or modifying it. Held on facts that the order of dismissal stood Communicated to the public servant, prior to his date of superannuation. (Para 14)

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia to a Division Bench on 6th February, 1976 for an Authoritative decision of the legal issues involved in the case. The Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice S. P. Goyal finally decided the case on 21st October, 1976.

Regular Second Appeal from the decree of the Court of Shri Raj Kumar Gupta, Senior Sub Judge, with enhanced appellate powers, Chandigarh dated the 29th July, 1974 affirming with costs that of Shri Niranjan Singh, Sub-Judge First Class, Chandigarh, dated the 7th March, 1974 decreeing the suit of the plaintiff and granting him a declaration that the order dated 28th August, 1972 passed in the name of Governor of Punjab, Chandigarh, dismissing the plaintiff from PCMS (Class I) is in operative with no order as to costs.

D. S. Boparai A.A.G., *for the appellant.*

B. S. Khoji, Advocate, *for the respondent.*

Judgment of the court was delivered by—

S. S. Sandhawalia J.

(1) Whether the provisions of rule 22 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, are mandatory in nature is the primary question which falls for determination in this second appeal which is before us on a reference.

(2) Dr. Kartar Singh Grewal was a member of the P.C.M.S Class I service and was due to superannuate on the 1st of September, 1972. However, long before that, departmental proceedings on six charges of corruption were commenced against him in July, 1968. The Enquiry Officer found him guilty of the following two charges, whilst exonerating him on the remaining four :—

1. That on 1st September, 1967, Dr. Grewal, obtained Rs. 1,000 as illegal gratification from Shri Sukhminder Singh, son of Shri Gurdev Singh resident of village Kot Shamir for the medical treatment and operation of his brother Shri Gurcharan Singh; and

2. That on 25th September, 1967, the said Dr. Grewal obtained Rs. 10 as illegal gratification from Mrs. Savitri Devi, Teacher, for recommending extension of her maternity leave.

The report of the Enquiry Officer was accepted by the Government and a notice dated the 15th of September, 1970, was served on the respondent to show cause as to why he should not be dismissed from service. On a consideration of the explanation submitted by the respondent, the Government took the view that some clarification was required on the effect of delay in the lodging of the original complaint against the respondent and further whether the non-performance of the operation for which the respondent is alleged to have taken a bribe of Rs. 1,000, in any way affected the prosecution case. After complying with the necessary formalities a second Enquiry Officer was appointed in order to give his findings on the aforesaid two points. Before him, the respondent on the 23rd of July, 1971, made a prayer that he should be allowed to summon further

evidence but this was declined by the order dated the 26th of July, 1971, on the ground that no amendment of the charge had been made and the relevant witnesses had already been cross-examined at length. As the issue was more or less of a legal nature regarding the effect of delay and the performance of operation by another doctor, the parties were directed to cite law and argue the matter before the Enquiry Officer. Having heard the counsel for the parties on the issues aforesaid, the Enquiry Officer by his order dated the 9th of September, 1971, decided both the issues against the respondent. The Government agreeing with the findings of both the Enquiry Officers served a fresh show cause notice against the respondent for imposing the punishment of dismissal. After considering the reply filed by the respondent in detail, the Governor of Punjab passed the dismissal order on the 28th of August, 1972.

(3) As the date of the superannuation of the respondent was drawing close, the aforementioned order of dismissal was published in a Government Gazette (Extraordinary) on the very date of 28th of August, 1972. It is equally not in dispute that the appellant State further took the precaution of having the order broadcast from the Jullundur All India Radio and further had it published in the 'Tribune' before the 1st of September, 1972.

(4) Meanwhile up to the 22nd of August, 1972, the respondent attended to his duties in the office but apparently having got some wind of the action impending against him he went on a day's casual leave on the date aforementioned. Thereafter he applied for extension of that leave but it is the common case that the sought for extension in leave was never sanctioned by the competent authority. Persistent attempts to personally serve the respondent with the order of dismissal after the 28th August, 1972, forthwith were made on behalf of the appellant State at all his known addresses. A vigorous attempt to trace him was made both at Patiala and Ludhiana but it appears that the respondent managed to evade such service effectively and it was not till the 2nd of September, 1972, that he was served personally. This, however, was obviously after his date of superannuation. Subsequently the order of dismissal was received by the respondent through registered post on the 7th of September, 1972, which in fact had been despatched from office on the 1st of September, 1972.

(5) The respondent challenged his dismissal by way of a suit which was decreed in his favour by the trial Court primarily on the ground that the dismissal order had not been served on him according to the procedure prescribed in Rule 22 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter called the Rules) and in fact had been communicated to him on the 2nd of September, 1972, when he had already supernnuated from service. It was held, therefore, that the order never became operative against the respondent during his continuance in service.

(6) The State of Punjab appealed against the aforesaid judgment but the learned Senior Subordinate Judge, Chandigarh, dismissed this appeal with costs and apart from affirming the findings of the trial Court on the point of non-compliance with rule 22 he further proceeded to hold that no reasonable opportunity to show cause had been allowed to the respondent in the departmental proceedings insofar as he had not been allowed to lead further evidence by the Enquiry Officer:

(7) A perusal of the two judgments of the Courts below makes it plain that the basic infirmity which they found in the order of dismissal was the fact that the same had not been served on the respondent either in person or through registered post before the date of his superannuation. The trial Court held that the mandatory provisions of Rule 22 had been consequently infracted and the first appellate Court affirmed the findings in the following terms :—

> "I, therefore, confirm the finding of the learned trial Judge that the order of dismissal of the respondent from service was not communicated to the respondent in the manner laid down in rule 22 before he retired from service. This ground by itself is sufficient to hold that the impugned order is bad and illegal."

Necessarily, therefore, the issue arises whether Rule 22 is of such a sanctity that any non-compliance with the modes of service provided therein would vitiate an otherwise valid order. To put it in legal terminology the point is whether the same is mandatory or directory in nature.

(8) As the argument must necessarily revolve around its provisions it is first apt to set down Rule 22 of the Rules—

> "*Service of orders, notices, etc.*—Every order, notice and other process made or issued under these rules shall be served in person on the Government employee concerned or communicated to him by registered post."

The sole reliance of Mr. Khoji on behalf of the respondent for his contention that the rule should be construed as mandatory is on the use of the word 'shall' in the Rule. That by itself can hardly aid the case of the respondent. It is more than well-settled that the mere use of the word 'shall' in a provision is not conclusive. It has been held by the highest authority that a provision couched in terms 'mandatory' may in fact be 'directory' in nature. The scope of the enquiry, therefore, is whether the intent of the framers of the Rules was that the same should be observed to the letter and that every infraction thereof should invalidate all actions so taken.

(9) To my mind, as against the solitary reliance on the word 'shall' there appear to be a host of other factors which militate against the construction of the aforementioned Rules as mandatory. Inevitably the first amongst these is the indicia given by the history of this field of statutory rules. The Punjab Civil Services (Punishment and Appeal) Rules, 1952, which now stand repealed by virtue of Rule 29 of the present Rules, held the field for nearly two decades and the significant thing to notice herein is that there was no identical or even corresponding provision of this nature in that set of rules. Obviously the present rule pertains to an area which was thought to be of such little significance that no provision therefor was made at all for nearly 20 years and perhaps even under any earlier rules on the point. Apparently it was thought adequate under those Rules that the mode of communication of orders, notices etc., could best be left to the good sense and discretion of the authorities. It is thus apparent that rule 22 was meant to do no more than provide a broad guideline for the manner in which service of orders and notices etc., was to be made and there could hardly be any intention to preclude all other modes of communication even though they may be equally or indeed more effective. The context in

which this rule is placed in and its nature also would negative any assumption that it was meant to be mandatory. This rule finds a place in part VII of the Rules under the heading 'Miscellaneous'. That in a way may indicate the importance which the framers intended to attach thereto. Again it is obvious that the rule is of a procedural nature. There is high authority for the proposition that procedural rules are not to be raised to such a pedestal that every infraction thereof may vitiate the action taken in non-conformity therewith. It has been well settled that procedure is to aid the course of justice rather than impede the same. The importance which the law attache to substantive law cannot always be attached to mere modes of procedure.

(10) In this context one may also apply the test of Chief Justice Chagla speaking for the Bench in *Ismail Papamia and others* v. *Labour Appellate Tribunal of India and another* (1):—

> "* * *. The other principle which is equally important is that the Court must consider what is the real aim and object of a particular enactment it is construeing, and if in giving to a provision a mandatory construction it is likely to defeat the aim and object of the enactment then the Court should not give such a construction."

It is plain that the rule is intended to provide a simple mode of communicating the orders and notices etc., which the preceding rules require. If this rule is given a mandatory construction, it is plain that the same can indeed defeat the aim and intent of the very object of this set of disciplinary rules. It is the sad experience of the Courts to notice the ease with which service can be evaded by a recalcitrant litigant or a public servant if it is not to his interest to accept the same. What deserves particular highlighting here is the fact that the rules do not provide for any alternative modes of substituted service, as is usually done in many other fields of procedure. The result of giving a mandatory nature to this rule would be that in the absence of any substituted service a dishonest public servant may evade the process of service on him indefinitely and thus set at naught the object of the rules to provide a quick procedure for disciplinary proceedings. Indeed such a construction would place a

(1) AIR 1956 Bombay 584.

premium on absconding and deliberate evasion of the process under the rules. These factors, therefore, also are a pointer to the result that the rule was meant to be directory and no more than a convenient guideline for communicating orders, and notices and other process.

(11) One more test for determining the rather ticklish question whether a provision is mandatory or directory is the presence or absence of penal provision in case of its infraction. It is plain that where the legislature provides certain adequate penal consequences for the violation of a rule, the latter must normally be construed as being mandatory. Where, however, no penal consequences are in terms provided, the rule would not be usually mandatory. In the present case it is the admitted position that the rules do not provide any penal consequences so far as the violation of Rule 22 is concerned. This may also be one of the indications that the rules need not be construed as being mandatory.

(12) Lastly it was argued with plausibility on behalf of the appellant that the object of the rule is to communicate to the public servant the order, notice or other process, as the case may be. The prime object is to plant the public servant with knowledge of the process and there is no particular magic in service in person or necessarily by registered post. It was pointed out that if it can be proved or shown *aliende* that the public servant had been fully served by ordinary post or had in fact come to know of the order in terms then merely on the ground that he was not served in person or by registered post would not in any way detract from the fact that he was fully aware of the proceedings. Consequently so long as the spirit of imparting the knowledge of the process to the public servant is satisfied the mere violation of the letter thereof would not in any way be material.

(13) For the aforementioned reasons I am firmly of the view that Rule 22 cannot be raised to the pedestal of being mandatory. It is at best a directory provision providing for a convenient mode to communicate the orders, notices and processes under the rules to the public servant. The infraction of such a directory rule cannot *per se* negate the communication or service by other means of a valid order.

(14) Once the hurdle of rule 22 is out of way of the appellant then it has a relatively straight and easy run. The surviving issue in this context would, therefore, be whether the order of dismissal has been otherwise communicated to the respondent before the date of his retirement. Though there appears to be some variation of judicial opinion on the point in earlier cases, it is clear that the matter now stands concluded in favour of the appellant-State by the decision in *State of Punjab* v. *Khemi Ram* (2). The specific question before the Bench therein was whether an order passed against a Government servant took effect when it was made or when it was actually served on and received by him. After fully adverting to the earlier three cases, *Bachhitar Singh* v. *State of Punjab* (3), *Partap Singh* v *State of Punjab* (4), and *State of Punjab* v. *Amar Singh Harika* (5), in the context, their Lordships have concluded as follows :—

> "* * *. It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his

(2) AIR 1970 S.C. 214.
(3) AIR 1963 S.C. 395.
(4) AIR 1964 S.C. 72.
(5) AIR 1966 S.C. 1313.

retirement even though such an order is passed and despatched to him before such date. An officer, against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'communication' ought not to be given unless the provision in question expressly so provides. Actually knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in *Amar Singh Harika's case* (supras) contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid."

Herein it is the common case that the order of dismissal was broadcast over the All India Radio and also published in the official gazette before the date of the retirement of the respondent. Equally it was published in the press and despatched by ordinary post under postal certificate on the 30th of August, 1972. The order had thus completely passed out of the control of the authority and could not be ordinarily recalled. Applying the ratio of *Khemi Ram's case* (2), it has, therefore, to be held that the order of dismissal in the present case stood communicated to the respondent before the 1st of September, 1972, which was the date of his superannuation.

(15) Apart from the aforementioned legal position, I am also of the view that it is plain as a matter of fact on this record that the respondent had obviously become aware of the adverse orders apparently at the stage of its contemplation and obviously after its passing on the 28th of August, 1972, and was making desparate efforts to avoid the service thereof on him till the date of his retirement. Herein it deserves notice that neither of the two Courts adverted to this aspect of the case at all because of their conclusion that rule 22 was mandatory in nature. It may thus be noticed that on the 22nd of August, 1972, the respondent took casual leave for a day and thereafter sought extension thereof surreptitiously. This extension

was never sanctioned and the respondent virtually absented himself from service without leave thereafter. A reference has already been made to the broadcasting of the order of dismissal as also its publication in the official gazette; in the Tribune and its despatch by post to the respondent. It can hardly be believed that despite all this (particularly in view of the fact that the respondent knew that proceedings of the departmental enquiry were reaching their final culmination) he would not have become aware of the passing of the order of dismissal against him. Nevertheless the testimony of D.W. 1 Shri Narinder Singh and D.W. 2 Shri Kewal Krishan leaves hardly any manner of doubt that the respondent was deliberately avoiding the service of the order on him in person. Immediately on the passing of the order on the 29th of August, Head Constable, Jaggu Ram attempted to serve the respondent at his known address at Patiala. Frustrated in the attempt to do so, the said police officer then located the residential house of the respondent in Chandigarh late in the evening of the 30th of August, 1972, but the respondent apparently made himself scarce. On the following day of the 31st of August, 1972, Jaggu Ram was able to contact the wife of the respondent at this residential house, who again refused to give any certain address but stated that the respondent might be at Ludhiana where his brother was supposedly ill. Thereafter both D. W. Narinder Singh and Head Constable Jaggu Ram made repeated attempts to serve the respondent at Patiala but without success. This, however, was not all. D.W. 2 Shri Kewal Krishan was despatched to serve the respondent, if available, at Ludhiana. After a determined chase he was able to trace the brother of the respondent who informed him that in fact the respondent had not even met him after the 27th of August, 1972. This witness made a report of his attempts to serve the respondent, which was proved on the record as Exhibit D.A. All this evidence leaves no manner of doubt in my mind that the respondent was fully aware of the order of dismissal and was deliberately thwarting the well meaning attempts of the appellant-State to serve him personally before the date of his superannuation.

(16) In the light of the aforementioned discussion, it is plain that the order of dismissal does not suffer from any infirmity whatsoever regarding the communication of the same to the respondent before the date of his superannuation.

(17) All that now remains is to examine the rather sketchy finding of the first appellate Court that a reasonable opportunity to show cause was not afforded to the respondent in the enquiry proceeding and they thus stand vitiated. However, the sole ground for this finding appears to be that the respondent was not allowed to lead evidence afresh before the second Enquiry Officer when the matter was remitted to him to opine on two limited points.

(18) It is worth recalling that the enquiry proceedings herein were originally initiated as early as in July, 1968. A perusal of the enquiry report, Exhibit P. 16 would show that the fullest and the amplest opportunity was afforded to the respondent to defend himself. Indeed no grievance in this regard had been and perhaps could be made. As many as 12 witnesses were examined by the respondent in his defence and it is further plain from the enquiry report, Exhibit P. 16 which runs into 45 typed pages that he also adduced documentary evidence and had full access thereto. The Government had agreed with the fiindings arrived at by the Enquiry Officer and issued a show cause notice regarding the quantum of punishment to the respondent. On considering his explanation in all fairness to him,—*vide* Exhibit P. 18, only two limited matters were required to be examined afresh. These in terms were whether the delay in lodging the complaint would in law affect the proceedings and consequently whether the admitted position of another doctor having performed the operation in place of the respondent in any way weakened the prosecution case. It is plain that these were not matters which required any further evidence. Nevertheless the respondent in an apparent attempt to further prolong the proceedings wanted to recall some of the prosecution witnesses who had been already examined and cross-examined at great length in the earlier proceedings. This request, in my view, was rightly declined by a short fit reasoned order of the Enquiry Officer, Exhibit P. 20. She rightly took the view that the matter was more or less legal and the parties might cite law and argue the point and there was no justification for recalling witnesses. No further grievance seems to have been made and subsequently the respondent who was represented by a counsel had the matter fully canvassed before the second Enquiry Officer on the two points which were disposed of by the order Exhibit P. 22 on the 9th of September, 1971. In this context one fails to see how there has been any denial of reasonable opportunity to the

respondent to defend himself. In passing I may mention that this grievance was also sought to be agitated before the trial Court, and which after consideration was categorically rejected. The reasoning of the trial Court is unexceptionable and I find that the appellate Court misdirected itself in reversing that finding. Accordingly this finding of the first appellate Court is hereby set aside.

(19) No other point has been raised on behalf of the respondent. As both the contentions of the appellant are meritorious, the appeal succeeds and is hereby allowed. The suit of the respondent shall stand dismissed. However, there will be no order as to costs.

K.T.S.

CIVIL MISCELLANEOUS

Before O. Chinnappa Reddy Acting C. J. and M. R. Sharma, J.

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—*Appellant.*

versus

M/S. GHERU LAL BAL CHAND, ABOHAR,—*Respondent.*

Income Tax Reference Nos. 96 and 97 of 1974.

October 28, 1976.

Income Tax Act (XLIII of 1961)—Sections 2(24) and 37(2A)—Meals served to an assessee's constituents—Expenses incurred on running a kitchen therefor—Whether "in the nature of entertainment expenditure"—Limits laid down in section 37(2A)—Whether applicable—Receipts on account of Gaushala and Dharmada—Whether constitute income.

Held, that the words "in the nature of entertainment expenditure" in section 37(2A) of the Income Tax Act 1961 are of wide import and embrace in their ambit an expenditure which may be similar to entertainment expenditure, even though it does not strictly fall within the meaning of this expression. The reason is obvious. The legislature intended to curb the expenditure of providing hospitality of any kind at the cost of public exchequer. Even if it is regarded that according to strict dictionary meaning of the word "entertainment" the kitchen expenses incurred by an assessee do