B. C. Das Etc vs State Of Assam & Ors on 23 April, 1971

Equivalent citations: 1971 AIR 2004, 1971 SCR 477

Author: I.D. Dua

Bench: I.D. Dua, J.M. Shelat

PETITIONER:
B. C. DAS ETC.

Vs.

RESPONDENT:
STATE OF ASSAM & ORS.

DATE OF JUDGMENT23/04/1971

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
SHELAT, J.M.
BHARGAVA, VISHISHTHA

CITATION:
1971 AIR 2004 1971 SCR 477
1971 SCC (2) 168

ACT:
Constitution of India, Arts. 311(2) (c) and 320 (3) (2)-Governor passing order of dismissal-Order reciting Governor's satisfaction that it was not expedient to give opportunity to show cause against action proposed Recital must be held to imply that Governor was also satisfied that it was not expedient to hold inquiry-Article 311(2) as amended in 1963 only clarifies what was judicially held to be implied in original article-Consultation with Public Service Commission by Governor before passing order of dismissal not necessary-Chief Secretary's authentication of Governor's order does not show that Governor was influenced by Chief Secretary Mala fides not established.

HEADNOTE:
The appellants were dismissed from the service of the Government of Assam by two separate orders passed by the Governor on April 1, 1965. The orders recited that the appellants were unfit to be retained in the public service,

that they ought to be dismissed from service and that the Governor was satisfied in terms of Art. 311(2) (c) of the Constitution that it was not expedient to give them opportunity to show cause against the action proposed to be taken in regard to them as stated above. The appellants challenged the orders of dismissal in writ petitions under Art. 226 of the Constitution which were dismissed by the High Court. In appeals by certificate the contentions of the appellants were: (i) that the impugned orders were not in compliance with the terms of Art. 311(2) as amended by the Constitution Fifteenth Amendment Act which had come into force on October 6, 1963; (ii) that the orders were bad because they were passed without consulting the Public Service Commission ; (iii) that the orders were passed mala fide at the instance of the Chief Secretary and the Finance Minister who were annoyed with the appellants.

HELD: (i) Per Shelat and Dua, JJ. According to the decisions of this Court the expression "reasonable opportunity of showing cause against the action proposed to be taken" in the unamended Art. 311(2) included an opportunity to show cause against the guilt of the government servant concerned. This opportunity to show cause against the guilt seems to correspond to the reasonable opportunity of being heard in respect of the charges in the course of the inquiry contemplated by the amended sub-article. The amendment in 1963 was made principally to put in clearer language the result of the judicial decisions construing s. 240(3) of the Government of India Act, 1935 and unamended Art. 311(2) of the Constitution. It could not be doubted that the Governor in the present case was fully alive to the interest of the security of the State when he expressed his satisfaction about the inexpediency of giving an opportunity to the appellants to show cause against their guilt as contemplated by cl. (2) of Art. 311 and intended that this clause shall not apply to their cases. Merely because the form of the order was expressed in the language used in the unamended Art. 311(2) it did not detract from its effectiveness as operating to exclude the applicability of the amended cl. (2) of Art. 311 as a whole. The use of the words in conformity with the unamended article served to convey the same intention as was contemplated by the

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amended article and the difference in the language which seemed to be inconsequential did not have the effect of nullifying the impugned orders. The words 'as stated above' in the orders did not have the effect of restricting the ambit of the show cause notice to the question of penalty which may be imposed after the inquiry into the unfitness of the appellants to be retained in the public service. [482C-H; 483E-G]

Khem Chand v. Union of India & Ors. [1958] S.C.R. I Secretary of State for India v. I.M. Lal, [1945] F.C.R. 10

and High Commissioner for India v. I.M. Lall, L.R. (1948) 75 I.A. 225, referred to.

Per Bhargava, J. (dissenting) The "action proposed as stated above" in the impugned orders clearly was the order imposing the penalty of dismissal from service. In the order itself preceding the recording of the satisfaction there was no other action proposed, except the action of dismissal from service. The satisfaction recorded by the Governor, therefore, related to the third step to be taken under cl. (2) of Art. 311 of the Constitution. The Governor confirmed his satisfaction to the inexpediency of giving opportunity to the appellants to show cause against the penalty proposed. No satisfaction was recorded that it was inexpedient to hold the inquiry required by cl. (2) of Art. 311 as amended. Under sub-cl. (c) of the proviso, what was needed was a satisfaction that it was inexpedient to hold the inquiry. No such satisfaction having been recorded it was necessary that the provisions of the principal cl. (2) of Art. 311 should have been complied with before passing an order of dismissal. The order of dismissal was therefore void and liable to be struck down. [489C-E]

Case-law referred to.

(ii) Consultation with the Public Service Commission is not compulsory under r. 10 of the Assam Services Discipline and Appeal Rules, 1964 and regulation 6 of the Assam Public Service Commission (Limitation of Functions) Regulations 1951. The consultation with the Commission is not prescribed either by the Rules or by the Regulations. The consultation is only under Art. 320 (3) (c) of the Constitution. So far as that consultation is concerned this Court has held that it is not mandatory. Nonconsultation with the Public Service Commission could not therefore be held to vitiate the orders impugned. [492C-493D]

State of U.P. v. Manbodhan Lal Srivastava, [1958] S.C.R. 533 and State of Bombay v. D. A. Korgaonkar, C.A. No. 289/1968 dt. 6-5-1960, relied on.

(iii) There was no charge that the Governor had any extraneous reasons for Passing the orders of dismissal. There was nothing on record to show that either the Chief Secretary or the Finance Minister took any Part in the proceedings which led to the orders of dismissal, or that they advised the Governor. The orders were no doubt authenticated by the Chief Secretary in the name of the Governor, but that did not mean that the Governor was in any way influenced by any advice tendered to him by the Chief Secretary. In the circumstances, the plea of mala fide must be rejected. [493E-F]

The appeals. had accordingly to be dismissed:

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1644 and 1645 of 1967.

Appeals from the judgment and order dated July 26, 1967 of the Assam and Nagaland High Court in Civil Rule Nos. 192 and 208 of 1966.

Debabrata Mukherjee, D. N. Mukherjee and S. K. Nandy, for the appellants (in both the appeals).

M. C. Chagla and Naunit Lal, for the respondents (in both the appeals.

The Judgment of J. M. SHELAT and I. D. DUA, J.J. was de- livered by DUA, J. V. BHARGAVA, J., gave a dissenting Opinion.

Dua, J.-We have read the judgment prepared by our learned brother Bhargava, We are in complete agreement with him so far. as decision on points Nos. (2) & (3) is concerned, but with respect we are unable to agree with him on point No. (1).

It is unnecessary to. repeat the relevant facts which have been set out by our learned brother in his judgment. The impugned order dated April 1, 1965, in the case of appellant P. K. Hore may however, be again reproduced :

> "The Governor is satisfied that Shri P. K. Hore, Superintendent, P.W.D.F.C. & I Wing against whom more charges have been received is unfit to be retained in the public service and that he ought to be dismissed from service.
>
> The Governor is further satisfied under sub- clause (c) of the. proviso to clause (2) of Article 311 of the Constitution that in the interest of the security of the State, it is not expedient to give the said Shri P. K. Hore an opportunity to show cause against the action proposed to be taken in regard to him as stated above.
>
> Accordingly, the Governor hereby dismisses the said P. K. Hore, from service with immediate effect."

On the same day an identical order was made with respect to the dismissal of the appellant B. C. Das except that in the order against him there is no mention of more charges having been received against him.

It appears that when the Governor made these two orders his attention was not invited to the amended Art. 311(2) which was in force on that date. The impugned orders were accordingly made in terms of Art. 311(2) as it existed before its amendment by the Fifteenth Amendment Act, 1963, which had come into force on October 6, 1963. The amended Art. 311(2) has been reproduced in the judgment of my learned brother, it is, However, desirable to reproduce both the amended and unamended article 311(2) so as to understand if any substantial or material change in the legal position was intended by the amendment:

Unamended Prior to 6-10-63 (2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of 'showing cause against the action proposed to be taken in regard to him Provided that this clause shall not apply-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give that person such an opportunity. Amended After 6-10-63 (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a responsible opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.

Provided that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry : or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

The unamended sub-article except the proviso was a reproduction of s. 240(3) of the Government of India Act, 1935. The proviso to s. 240(3) had only two clauses corresponding to cls. (a) & (b) of the unamended Art. 311(2). A bench of five Judges of this Court in Khem Chand v. The Union of India and Others (1) [1958] S.C.R. 1080.

speaking through Das, C.. J., after referring to the divergent views expressed by Spans, C. J. of the Federal Court for himself and Zafarulla Khan, J., on the one hand, and by Varadachariar, J., on the other in Secretary of State for India v. I. M. Lall(1) and to the decision of the Privy Council on appeal in High Commissioner for India v. I. M. Lall(2) explained the Privy Council decision and clarified the meaning scope and ambit of the unamended Art. 311(2) in these words:

> "In our judgment neither of the two views can be accepted as a completely correct exposition of the intendment of the provisions of s. 240(3) of the Government of India Act, 1935, now embodied in Art. 311(2) of the Constitution. Indeed the learned Solicitor- General does not contend that this provision is confined to guaranteeing to the government servant an opportunity to be given to him only at the later stage of showing cause against the punishment proposed to be imposed on him. We think that the learned Solicitor-General is entirely right in not pressing for such a limited construction of the provisions under consideration. It is true that the provision does not, in terms, refer to different stages at which opportunity is to be given to the officer concerned. All that it says is that the government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. He must not only be given an opportunity but such opportunity must be a reasonable one. In order that the opportunity to show cause against the proposed action may be regarded as a resonable one, it is quite obviously necessary that the government servant should have the opportunity, to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. Both these pleas have a direct bearing on the question of punishment and may well be put forward in showing cause against the proposed punishment."

According to this decision the expression "reasonable opportunity of showing cause against the action proposed to be taken" included an opportunity to show cause against the guilt of the government servant concerned. This opportunity to show cause against the guilt seems to correspond to the reasonable opportunity of being heard in respect of the charges in the course of the (1) [1945] F.C.R. 103. (2) L.R. [1948 75 I.A. 225.

inquiry contemplated by the amended sub-article. The question, therefore, arises if in the present case the Governor when expressing his satisfaction under sub-clause

(c) of the proviso to cl. (2) of Art. 311 of the Constitution in the impugned order, by using the words "it is not expedient to give the said Shri P. K. Hore an opportunity to show cause against the action proposed to be taken in regard to him as stated above", intended to convey his satisfaction that in the interest of the security of the State it was not expedient to give an opportunity to P. K. Hore to show cause only against the penalty proposed to be imposed, and that the Governor's satisfaction did not extend to the inexpediency of giving P. K. Hore an opportunity of showing cause against his unfitness to be retained in service as well. In our opinion the impugned order cannot reasonably be construed to be restricted to the narrow meaning suggested on behalf of the appellant. The words "as stated above" on which great reliance was placed by the learned counsel do not have the effect of restricting the ambit of the show cause notice to the question of penalty which may be imposed after the inquiry into P. K. Hore's unfitness to be retained in the public service. The show cause notice about the inexpediency of which the Governor was satisfied seems to us to extend also to the question of such unfitness of P. K. Hore. To accept the suggestion made by the appellant's learned counsel would impute to the Governor an intention to make what seems to be a meaningless order.

It may be recalled that the amended Art. 311(2) does not speak of any show cause notice. The language of this sub-article refers to an inquiry in which the delinquent government servant is to be informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where after such inquiry it is proposed to impose on him a penalty he is again to be given a reasonable opportunity of making representation on the penalty proposed. The second stage does not speak of notice to show cause against the action proposed to be taken. The amendment in 1963 was made principally to put in clearer language the result of the judicial decision construing s. 240(3) of the Government of India Act, 1935, and unamended Art. 311(2) of the Constitution. As already noticed, under s. 240(3) of the Act of 1935 and the unamended Art. 311(2) provision was made of giving a reasonable opportunity to the government servant concerned of showing cause against the action proposed to be taken in regard to him. This expression was construed in terms to refer to the stage when, after such inquiry as may be necessary, and after the punishing authority, being satisfied of the guilt of the delinquent government servant, provisionally proposed the action to be taken against him. But in answer to this show cause notice the government servant was held entitled also to show cause against his guilt on the merits. Even though in the earlier inquiry, if any, the government servant had been given an opportunity of showing cause against his guilt, the second opportunity provided by the statute was held to be mandatory. The Privy Council in I. M. Lall's case(1) saw "no difficulty in the statutory opportunity being reasonably afforded at more than one stage". The Privy Council, however, dealt with s. 240(3) of the Act of 1935 and the earlier statutory rule on the subject. This Court in Khem Chand's case(2) after quoting a passage from the judgment of the Privy Council said:

> "Therefore, in a case where there is no rule like 55 the necessity of an enquiry was implicit in s. 240(3) and is so in Art. 311(2) itself. Further their Lordships say that an enquiry under r. 55 "would not exhaust his statutory right and he would still be entitled to make a representation against the punishment proposed as the result of the findings of the enquiry". This clearly pro- ceeds on the basis that the right to defend himself in the ,enquiry and the right to make representation against the proposed punishment are all parts of his "statutory right" and are implicit in the reasonable opportunity provided by the statute itself for the protection of the government servant."

It cannot be doubted that the Governor in the present case was fully alive to the interest of the security of the State when he expressed his satisfaction about the inexpediency of giving an opportunity to P. K. Hore in the one case, and to B. C. Das in the other, to show cause against their guilt as contemplated by cl. (2) of Art. 311 and intended that this clause shall not apply to their cases. Merely because the form of the order was ,expressed in the language used in the unamended Art. 311(2), it does not in our view detract from its effectiveness as operating to exclude the applicability of the amended cl. (2) of Art. 311 as a whole. The use of the words in conformity with the unamended article serves to convey the same intention as is contemplated by the amended article and the difference in the language which seems to be inconsequential does not have the effect of nullifying the impugned order.

No doubt Art. 311(2) is intended to afford a sense of security to government servants covered by sub-art. (1) and the safeguards provided by sub-art. (2) are mandatory. But cl. (c) of the proviso to this sub-article which is designed to safeguard the larger interest of the security of the State cannot be ignored or (1) L.R. [1948] 75 I.A. 225. (2) [1958] S.C.R. 1080.

considered less important,' when construing sub-art. (2). The interest of the security of the State should not be allowed to suffer by invalidating the Governor's order on unsubstantial or hyper-technical grounds which do not have the effect of defeating the essential purpose of the constitutional safeguard of individual government servant. It is nobody's case before us that inquiry into the charges against the two appellants as contemplated by the amended Art. 311(2) had already been held and the question of imposition of penalty alone remained to be finally settled when the impugned order was made. No inquiry of any kind as contemplated by Art. 311(2) was, according to the common case of the parties, held against the appellants when the Governor made the impugned orders under proviso (c) to this sub-article. In these circumstances the impugned orders when they speak of the "action proposed to be taken" must be construed as intended to refer to the action including inquiry into the truth of the charges against them and the proposed penalty to be imposed after such inquiry. The fact that cl. (c) of the proviso to the amended sub-article only speaks of the inquiry and not of imposition of penalty is understandable because in the absence of inquiry the question of penalty cannot arise. It also serves to indicate that the Governor could not have intended by the impugned order to exclude only representation against imposition of penalty, leaving untouched the inquiry land the right of the government servant to the opportunity of hearing with respect to the charges. Once it is borne in mind that the Governor's attention was, for some reason or the other, drawn only to the unamended Art. 311 and not to the amended article, and it is further kept in view that the amendment of Art. 311 in 1963, as already explained, was only designed to clarify and give effect to the judicial decisions interpreting the unamended article, the reason for the form and the language used in the impugned orders becomes clear and there can be no difficulty in understanding their true meaning. Reading the impugned orders in the light of what has just been stated, they quite clearly exclude the applicability of sub-art. (2) of Art. 311 in both cases.

These appeals accordingly fail and are dismissed, but in the circumstances without costs.

Bhargava, J.-These two appeals by certificate are directed against a common judgment of the High Court of Assam and Nagaland dismissing two writ petitions filed by the two appellants. For purposes of dealing with the case, it is enough to give facts in respect of one of the appellants, as the facts in the case of the other appellant are very similar, and the points arising are common. In Civil Appeal No. 1645 of 1967, the appellant is P. K. Hore who joined service in the Secretariat of the. Assam Government on 1st November, 1946 in the post of a Lower Division Assistant. On 9th December, 1950, he was confirmed in that post. On 1st July, 1957, he was confirmed as an Upper Division Assistant, and on further promotion, on 9th December, 1963, he was confirmed as a Superintendent in the Secretariat with the approval of the State public Service Commission. In the year 1964-65, he was elected as Vice- President of the Assam Secretariat Services' Association. This was at a time when, in the year 1964, the report of the Pay Committee appointed by the Government was published. The employees of the Secretariat were dissatisfied with the recommendations of the Pay Committee and there was an agitation against it in respect of the service conditions. As a result,

the Association took a decision for a pen-down strike. There was also some agitation alleging that the Pay Committee had shown undue favour to the brother of the Finance Minister of the State Government, viz., Fakhruddin Ali Ahmed. Consequently, between 16th and 19th November, 1964, there was a debate in the Legislative Assembly regarding the report where the Finance Minister had to give an explanation on this charge. There was the further allegation that the appellant P. K. Hore had taken special interest in ensuring that undesirable persons did not enter Assam from Pakistan which was resented by the then Chief Secretary of the Government. As a result of the agitation by the Association, of which P. K. Hore was the Vice- President, he was suspended on 12th March, 1965. The other appellant, B. C. Das, was suspended a few days later. In fact, including the latter, 32 other employees were placed under suspension. On 18th March, 1965, inquiry proceedings were drawn up against P. K. Hore and some others to show cause why disciplinary action should not be taken against them for insubordination. P. K. Hore was asked to submit his explanation within five days from the date of receipt of the communication. On 26th March, 1965, he applied for extension of time which request was accepted and time was extended up to 2nd April, 1965. Before he could submit his explanation, however, on 31st March, 1965, P. K. Hore, B. C. Das and three others were placed under detention by the District Magistrate under Rule 30(1) of the Defence of India Rules. Thereafter, in the case of P. K. Hore, the following order was passed on 1st April, 1965 :-

> "The Governor is satisfied that Shri P. K. Hore, Superintendent, P.W.D.F.C. & 1. Wing against whom more charges have been received is unfit to be retained in the public service and that he ought to be dismissed from service.
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> The Governor is further satisfied under sub- clause (C) of the proviso to clause (2) of Article 311 of the Constitution that in the interest of the security of the State. it is not expedient to give the said Shri P. K. Hore an opportunity to show cause against the action proposed to be taken in regard to him as stated above. Accordingly. the Governor hereby dismisses the said P. K. Hore from service with immediate effect."

On these facts, this order, as well as the similar order passed in the case of B. C. Das, were challenged in the High Court of, Assam and Nagaland in petitions under Art. 226 of the Constitution on the following three grounds which have also been urged in these appeals (1) The order of dismissal from service has been passed in violation of Art. 311(2) of the Constitution, as the order of the Governor did--not satisfy the requirements of sub- clause (c) of the proviso to clause (2) of Art. 31 1; (2) The order has been passed without consultation with the State Public Service Commission which was compulsory under rule 10 of the Assam Services Discipline and Appeal Rules, 1964 (hereinafter referred to as "the Rules"), and regulation 6 of the Assam Public Service Commission (Limitation of Functions) Regulations, 1951 (hereinafter referred to as "the Regulations"), (3) The order of dismissal has been passed mala fide. The High Court rejected all these grounds and dismissed both the writ petitions and, consequently, the appellants have come up to this Court in these appeals.

Clause (2) of Art. 311 of the Constitution, as it stands after amendment by the Constitution (Fifteenth Amendment) Act, 1963 reads as follows :-

> "311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry :
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> Provided that this clause shall not apply-
>
> (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
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> (b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
>
> (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

Under this provision, if an order of dismissal or removal or reduction in rank is to be passed in respect of any Government servant, three steps have to be taken. The first step is to direct that an inquiry be held against him; the second is that, in that inquiry he has to be informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges; and, finally, after such inquiry, the third step to be taken is that, if it is proposed to impose on him any penalty of dismissal, removal or reduction in rank, he has to be given a reasonable opportunity of making a representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry. Under the three sub-clauses of the proviso, this principal clause ceases to apply altogether in case the conditions laid down in those sub-clauses are satisfied. Sub-clause (c), which is relevant in this case, lays down that, where the President or the Governor, as the case may be, is satisfied that, in the interest of the security of the State, it is not expedient to hold the inquiry under the principal clause, that clause shall not apply. In order, therefore, to enable the Governor to pass an order of dismissal without holding an inquiry, without informing the government servant of the charges against him and without giving him an opportunity of being heard in respect of those charges, and without giving him a reasonable opportunity of making a representation against the penalty proposed, the Governor must be satisfied that, in the interest of the security of the State, the holding of such an inquiry is not expedient. In the present case, in the impugned order dated 1st April, 1965, the satisfaction of the Governor was recorded in the following words :-

> "It is not expedient to give the said Shri P. K. Hore an opportunity to show cause against the action proposed to be taken in regard to him as stated above."

There was no mention of any inquiry and the Governor did not record any satisfaction that it was not expedient to hold the inquiry envisaged by the principal clause (2) of Art.

311. It is specially to be noted that, in the first paragraph of the order, the Governor's satisfaction is recorded on two points. One is that the Governor is satisfied that P. K. Hore, against whom more charges had been received, is unfit to be retained in the public service, and the second is that he ought to be dismissed from service. Obviously, this paragraph envisaged that the Governor had already formed an opinion that the penalty of dismissal from service should be awarded to P. K. Hore. Having arrived at that opinion, it was expressed in so many words in the first paragraph of the order and, then, in the second paragraph, the Governor's satisfaction is recorded to the effect that it is not expedient to give P. K. Hore an opportunity to show cause against the action proposed as stated above. The "action proposed as stated above" in the order clearly is the order imposing the penalty of dismissal from service. In the order itself preceding the recording of this satisfaction, there is no other action proposed, except the action of dismissal from service. The satisfaction recorded by the Governor, therefore, related to the third step to be taken under clause (2) of Art. 311 as enumerated above. The Governor confined his satisfaction to the inexpediency of giving an opportunity to P. K. Hore to show cause against the penalty proposed. No satisfaction is recorded that it is inexpedient to hold the inquiry required by clause (2) of Art. 31 1. Under sub-clause (c) of the proviso, what was needed was a satisfaction that it was inexpedient to hold the inquiry. No such satisfaction having been recorded, it was necessary that the provisions of the principal clause (2) of Art. 311 should have been complied with before passing an order of dismissal.

Mr. Chagla appearing on behalf of the respondent, however, relied on the fact that the satisfaction of the Governor was recorded in the language in which the provision in Art. 311(2) stood prior to its amendment by the Constitution (Fifteenth Amendment) Act, 1963, and which was as follows "311. (2) No such person as aforesaid shall be dismissed of removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him Provided that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity."

Under the unamended clause (2) of Art. 311, what was required to be done was that a reasonable opportunity of showing cause against the action proposed to be taken in regard to him had to be given to the government servant, and, under the proviso, the Governor's satisfaction required was that in the interest of the security of the State it was not expedient to give that person such an opportunity. The satisfaction under the unamended provision, therefore, that the Governor had to arrive at was that it was not expedient to give the government servant an opportunity of showing cause against the action proposed to be taken in regard to him. This is the language used in the order impugned. The words used in the Article, before the amendment, were interpreted by this

Court in Khem Chand v. The Union of India and Others.(3) Summarising the position, the Court held :-

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

This interpretation was reiterated by the Court in Hukum Chand Malhotra v. Union of India.(1) It was urged by Mr. Chagla that, in interpreting the order of the Governor dated 1st April, 1965, it should be held that, in stating that it is not expedient [1958] S. C. R. 1080. (2) [1959] Suppl. S. C. R.

892. to give P. K. Hore an opportunity to show cause against the action proposed to be taken in regard to him, he must have used these words in the sense in which they were used in the Constitution prior to its amendment and in the light of the interpretation placed on those words by this Court in the two decisions cited above. For two reasons, this submission made by Mr. Chagla appears to be unacceptable. The first reason is that it is too much to hold that the Governor, while passing an order under the amended Art. 311(2), would be consciously thinking of and basing his order on the language which was used earlier in the unamended Article and on the interpretation placed on that unamended article by this Court. In fact, in the counter-affidavit filed on behalf of the State, the assertion made by the Chief Secretary again is "that the Governor of Assam was satisfied on the basis of materials before him that in the interest of security of the State, it was not expedient to give the petitioner to show cause against the order of dismissal." He, thus, reiterates that the Governor's satisfaction was confined to the inexpediency of permitting the petitioner to show cause against the proposed order of dismissal which was the proposed penalty. This statement in the affidavit gains importance when reference is made to a subsequent paragraph in it in which the Chief Secretary puts forward his submissions. It is in the submissions that the Chief Secretary says that the Governor was satisfied that it was not expedient to hold the inquiry. If, in fact, the Governor was so satisfied, there is no reason why the Chief Secretary should not have stated it on oath in the earlier paragraph, instead of merely making a submission of his in a subsequent paragraph. The second reason is that in the order, when recording his satisfaction, the Governor has stated that it is not expedient to give P. K. Hore an opportunity to show cause against the action proposed to be

taken in regard to him as stated above. The last three words "as stated above" have great significance. As has been mentioned earlier, the only action proposed to be taken, which was stated earlier in that order, was the action of dismissal from service. Obviously, therefore, the language used can bear no other interpretation except that the Governor, in recording the satisfaction, confined it to the inexpediency of giving an opportunity to P. K. Hore to show cause against dismissal from service which would be an opportunity to show cause against the penalty proposed only. No satisfaction was recorded with regard to the inexpediency of holding an inquiry.

It was argued that this interpretation, which is being placed on the order of the Governor, is too strict and technical, and it should be held that, in fact, the Governor intended to record his satisfaction on the question of inexpediency of holding the inquiry as required by the amended Art. 311(2). It has to be remembered that the satisfaction of the Governor under sub- clause (c) of the proviso has the effect of depriving a government servant of a very valuable right of ;having an opportunity to prove his innocence as well as opportunity to make a representation against the penalty proposed to be inflicted on him. The effect of such satisfaction is that the government servant is dismissed without even being told of the charges against him. When such serious consequences follow, it is necessary that the precondition laid down by sub-clause (c) of the proviso to Art. 311 (2) is strictly satisfied so as to justify deprivation of the valuable right of the government servant mentioned above. I do not think, therefore, that it would be enough merely to infer the intention of the Governor and, thereupon, take away the right. There having been no proper compliance with the requirements of subclause (c) of the proviso to Art. 311(2), the order of dismissal passed against P. K. Hore is void and must be struck down. It may be mentioned that the same High Court in a later case of Zatia v. The State of Assam and Others(1) has arrived at the same decision, though on a different reasoning which does not appear to be sound. This decision applies equally to the case of B. C. Das, as, in his case also, the order passed by the Governor for his dismissal is exactly similar and was made in exactly similar circumstances as in the case of P. K. Hore.

In view of the decision on the first point raised in these appeals, it is not necessary to deal with the other two points. However, since they were argued in detail by both parties, I may indicate that, in my opinion, there is no force in either of them.

So far as non-compliance with rule 10 of the Rules and regulation 6 of the Regulations is concerned, I am unable to accept the submission put forward by counsel for the appellants that the rule or the regulation lays down any requirement that the Public Service Commission must be consulted before a government servant is dismissed. Rule 10 is as follows :-

> "Special procedure in certain cases.-Notwith- standing anything contained in Rule 9-
>
> (i) where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or
>
> (ii) were the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said

rule; or (1) [1969] Vol. I Pt. VI Assam Law Reports

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(iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure,-

the Disciplinary Authority may consider the circumstances of the case and pass such orders thereon as it deems fit :

Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary." The main part of this rule only enumerates cases where orders can be passed without consulting the Public Service Commission. It is only the proviso that mentions consultation; but it does not make it compulsory for the Commission to be consulted. All it says is that the Commission shall be consulted in any case in which such consultation is necessary. This clearly envisages that the necessity for consultation must be found in some other provision. This rule itself does not lay down that in all cases, other than those mentioned in the principal clause or in rule 9, consultation with the Public Service Commission is made mandatory. Similarly, regulation 6 only enumerates cases where it is not necessary to consult the Commission. It is true that consultation with the Commission, in cases where the Governor himself passes an original order imposing the penalty of dismissal on a, government servant, is not dispensed with. This regulation has obviously been made by the Governor in exercise of his power under the proviso to Art. 320(3) of the Constitution. It is the principal clause of Art. 320(3) which lays down when the Public Service Commission shall be consulted. Sub-clause (c) of clause (3) of Art. 320 is the relevant provision under which consultation with the Public Service Commission is required on all disciplinary matters affecting a person serving under the Government of a State. The regulations, as indicated above, do not dispense with this requirement of Art. 320(3)(c) in cases where the Governor is himself the original dismissing authority. The argument of learned counsel that regulation 6 itself lays down by implication that there must be consultation with the Public Service Commission in such cases cannot, therefore, be accepted. Regulation 6 not having exempted consultation with the Public Service Commission in such cases, all that can be held is that the consultation required by Art. 320(3)(c) continues to be in force and applicable. Counsel also drew attention to illustration (4) in regulation 6 which is as follows :-

"It is proposed to dismiss a State Service Officer or to reduce his pension. The Commission must be consulted before an order is passed by the Governor."

This illustration again merely indicates the correct legal position that the Commission must be consulted as required by Art. 320(3)(c). The illustration by itself cannot be read as a statutory rule laying down that there must be consultation with the Commission. The illustration is to the main

provisions of regulation 6 which only lay down cases in which consultation with the Commission is dispensed with and this illustration has been put down as one of the examples where the consultation has not been dispensed with. The consultation, therefore, with the Commission is not prescribed either by the Rules or by the Regulations. The consultation is only under Art. 320(3)(c) of the Constitution. So far as that consultation is concerned, this Court has already held that it is not mandatory and that this Article does not confer any rights on a public servant, so that the absence of consultation or any irregularity in consultation does not afford him a cause of action in a court of law, vide State of U. P. v. Manbodhan Lal Srivastava.(1) That decision was further affirmed in the State of Bombay v. D. A. Korgaonkar.(2) Non-consultation with the Public Service Commission cannot, therefore, be held to vitiate the orders impugned.

The third ground of mala fides has, on the face of it, no force at all, because it is based on allegations that the Chief Secretary and the Finance Minister were annoyed with the appellants. But there was no charge that the Governor bad any extraneous reasons for passing the orders of dismissal. There is nothing on the record also to show that either the Chief Secretary or the Finance Minister took any part in the proceedings which led to the orders of dismissal, or that they advised the Governor. The orders are, no doubt, authenticated by the Chief Secretary in the name of the Governor; but that does not mean that the Governor was in any way influenced by any advice tendered to him by the Chief Secretary. In the circumstances, the plea of mala fide must also be rejected.

As a result, the appeals are allowed with cost and the orders of dismissal in both the cases are quashed as having been passed in violation of Art. 311(2) of the Constitution.

ORDER In accordance with the majority judgment, the appeals fail and are dismissed but in the circumstances of the case without costs.

G.C. (1) [1958] S. C. R. 533.

(2) Civil Appeal No. 289 of 1958 decided on 6th May, 1960.