# H.C. Sarin vs Union Of India (Uoi) And Ors. on 14 April, 1976

## Equivalent citations: AIR1976SC1686, [1976(32)FLR392], 1976LABLC1128, (1976)4SCC765, [1976]SUPPSCR39, AIR 1976 SUPREME COURT 1686, 1976 4 SCC 765, 1976 LAB. I. C. 1128, 1976 2 SCWR 221, 1976 2 LABLN 15, 1976 SERVLJ 455, (1976) 4 S C C 785, (1976) 2 SC W R 422, 1976 2 SERVLR 248, 32 FACLR 392

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## Bench: N.L. Untwalia, V.R. Krishna Iyer, Y.V. Chandrachud

JUDGMENT

N.L. Untwalia, J.

1. This appeal is by certificate granted by the High Court of Delhi under Article 133(1)(a) & (b) of the Constitution of India as it stood prior to the 30th Constitution Amendment Act. No substantial question of law is involved in this appeal. It is to be decided mostly on facts. And since we are in agreement with the judgment of the Division Bench of the High Court given in the Letters Patent appeal, we shall advert only to the necessary facts and the main points argued before us.

2. Sim H.C. Sarin-the appellant was employed in the Indian Railways as Senior Railway Inspector attached to the Office of the India Stores Department at London. He was in that job from the 6th August, 1954. The Government of India placed orders with various firms in the United Kingdom and the continent for supply of rolling stock and other materials for the Indian Railways. In December, 1956 the appellant was deputed to the Essen Area of West Germany as Senior Railway Inspector in which capacity he had to inspect and pass the goods in the first instance at the site. Although this work of inspection in West Germany was entrusted to the German Federal Railway in January 1958, the appellant remained there associated with the work till April or May, 1958. In July, 1956 orders were placed with M/s. Leo Gottwald and Company for supply of several breakdown cranes--both for meter gauge and broad gauge railway tracks in India. This was a family concern of one Dr. Hans Dieter Gottwald. Prior to the appellant's going to the Essen Area of West Germany, there were other Senior Railway Inspectors doing the work of inspection including one S. N. Hussain (since deceased) immediately preceding the appellant. One of the clauses in the contract with Gottwald was that he would be liable to pay liquidated damages in the specified sums if he made delay in the delivery of the cranes. Eventually there being delay, the amount of such damages was quantified at a figure in the neighbourhood of £ 45,000/-.

3. Dr. Gottwald carried on business of his firm at Dusseldorf in West Germany. He came to London

on July 30, 1958 to discuss with Shri L.T. Madnani, Railway Advisor certain technical aspects of the cranes contract. A meeting took place in the morning wherein were present other officers including one Mr. Bayross. In the afternoon, Gottwald saw S. N. Hussain at the India Stores Department when the latter told the former that delay had occurred in the supplies of cranes and consequently the firm of contractors may have to pay liquidated damages. Upon this, Gottwald disclosed that Sarin was responsible for the delay, he had taken money by way of bribes from the firm and in such a situation the firm was not liable it pay any damages. Since the allegation made by Gottwald against Sarin was a serious one S.N. Hussain advised him to inform Madnani about it. He did accordingly. After some preliminary steps Gottwald's statement was recorded on September 8, 1958 at India Stores Department where he gave a detailed account of the allegedly corrupt practices of the appellant. Shri Shukla was the Director General of the India Stores Department at the relevant time. He directed Gottwald to furnish some tentative proof in support of his accusation against Sarin. Gottwald's second statement was recorded on October 21, 1958. One Shri M.A. Hussain, I. C. S. was the Deputy High Commissioner for India stationed in U.K. at the relevant time. On examining the papers and the statements of Dr. Gottwald given before the various officers of the India Stores Department the Deputy High Commissioner formed an opinion that prima facie the accusations against the appellant were such that required to be investigated in a departmental enquiry. He accordingly made a recommendation to that effect to the Government of India. The Government, however, directed a preliminary enquiry to be made by Shri N.S. Pandey, Financial Advisor to the Indian High Commission and then to start a departmental enquiry, if necessary. Accordingly, Pandey went to Gottwald's place in West Germany, made preliminary investigations and submitted a report dated January 19, 1959 finding a prima facie case made out against the delinquent government servant. At the instance of the Government of India, Ministry of Works, Housing and Supply, charges were served upon the appellant on April 7, 1959 along with two Annexures containing various details of the accusations made by Gottwald against him. The appellant was asked to indicate by April 15 the papers which he wanted to inspect and the papers the copies of which he required to enable him to enter his defence. He was asked to submit his written explanation by 30th of April, 1959. In the meantime he was placed under suspension.

4. Shorn of details which were to be found in the Annexures the Charge-Sheet served on the appellant contained the following three charges :

> CHARGE I. That Shri H. C. Sarin, while functioning as the Senior Railway Inspecting Officer in the India Stores Department, London, during the period between December, 1956 and May, 1958, demanded and obtained illegal gratification from the firm of Messrs. Leo Gottwald of Dussaldorf.
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> CHARGE II.
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> That during the aforesaid period and while functioning as aforesaid, the said Shri H. C. Sarin violated Rule 10 of the Railway Services (Conduct) Rules, 1956 in that he accepted an Opel Car from Messrs. Talbots of Achen as a gift.
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> CHARGE III.

That during the aforesaid period and while functioning as aforesaid, the said Shri Sarin used his official influence for personal advancement.

Time for filing the written defence by the appellant was extended. It was filed on May 27, 1959. The appellant denied all the charges against him. The Board of Enquiry set up by the Government of India consisted of the following :

(1) Shri M.A. Hussain, ICS, Deputy High Commissioner, Chairman.

(2) Col. Hendricks, Deputy Director General (Inspection), I. S. D., London, Member.

(3) Shri T.M. Duraiswamy, Deputy Director General, I. S. D., London, Member.

5. The correspondence which passed between the appellant and the Board in connection with the departmental enquiry instituted against him is top voluminous to be referred to in this judgment. No useful return will be achieved by referring to the correspondence in, any detail. Suffice it to say at this stage that the correspondence does indicate a calculated design and planned attempt on the part of the appellant to non-cooperate with the enquiry and an anxiety and earnestness on the part of the Board to proceed in the matter as fairly as possible in the circumstances of the case. The Board was obliged to go to Dusseldrof, hold an enquiry at the spot by examining as many as 21 witnesses there, some of whom had been cited by the appellant as his defence witnesses and to examine the relevant papers, documents and account books of the contractor's firm. All this proceeded ex-parte between July 14 to July 17, 1959. The Board returned to London on July 19 and examined some witnesses there who had been cited as defence witnesses by the appellant. Almost the entire departmental enquiry had to be conducted ex-parte as the appellant would not participate in it even with a pair of tongs.

6. The appellant had named S/Shri Bhalla, Sharma, Johri and Sen, Railway officers in India as his defence witnesses. He was asked to examine them by quesionnaries as it was not possible to call them to London for the purpose of the enquiry. Nor was their evidence so material as to necessitate their examination viva-voca before the Board. The appellant refused to cooperate and did not submit any questionnaire. The Board, thereupon, sent to all the four officers aforesaid copies of the charges leveled against the appellant and asked them to state if they had anything to say in relation to them. Bayross was examined by the Board in London on September 29, 1959 after copies of the earlier statements of the witnesses and other papers had been supplied to the appellant on September 21, 1959. The appellant was present on September 29 but did not actively participate in the enquiry, in that he did not take any part in it by cross-examining Bayross.

7. The Board submitted its report to the Government of India on November 2, 1959 holding that charges I and III had been proved against the appellant and charge II had neither been proved nor disproved. The Government gave a show-cause notice oh November 4, 1960 to the appellant asking him to show cause against his removal. He filed his reply on January 31, 1961. Later, however, the Government gave another show cause notice dated September 20, 1961 to the appellant to show cause as to why he should not be dismissed from service. In October/November, 1961 the appellant

filed three show cause explanations in writing. He made another representation to the Government on March 4, 1962 for holding a fresh enquiry which naturally was not acceded to. Eventually the appellant was dismissed from service by an order of the Government of India dated September 10, 1962. He filed a writ petition in the High Court on December 6, 1962 to challenge the order of dismissal on several grounds, in nut shell, on the ground of violation of principles of natural justice in the conduct of the enquiry. A learned single Judge of the High Court by his judgment and order dated August 3, 1964 allowed the writ petition and quashed the order of dismissal without any further or consequential order. A Letters Patent appeal was filed by the Government which was disposed of by a Bench of the Delhi High Court on April 25, 1967. The judgment of the single Judge was set aside and the order of dismissal passed against the appellant by the Government was maintained holding that there was no violation of the principles of natural justice in any manner. Since the amount of salary payable to the appellant if the dismissal order could be found to be bad would, indisputably, have been more than Rs. 20,000/- certificate was granted under Article 133(1)(a). & (b), strictly speaking, under Sub-clause (b).' Thus comes this appeal in this Court.

8. Mr. M. N. Phadke, learned counsel for the appellant pressed only the following points in support of the appeal.

(1) That the appellant was not allowed to go to Germany to examine and assess various matters which were necessary for submission and conduct of his defence. It was done so in gross violation of the principles of natural justice and requirement of Article 311 of the Constitution.

(2) That copies and inspection of certain relevant and necessary documents were not allowed to the appellant by the Board. It was not possible for him to cooperate and participate in the enquiry without them.

(3) That no adequate and reasonable opportunity was given to the appellant to defend himself at the enquiry.

(4) That the accusation made by Gottwald against the appellant was maliciously false as it was made with the ulterior motive of saving his firm from the liability of liquidated damages. As a matter of fact the firm was not made to pay any damages in view of Gott-wald's success in his false accusation against the appellant.

(5) That Shri M.A. Hussain. Chairman of the Board of Enquiry was highly biased against the appellant and the enquiry conducted under his stewardship was a farce.

(6) That Shri S.N. Hussain was inimically disposed towards and adversely interested against the appellant.

(7) That the services of a professional lawyer for cross-examining Gottwald and a Railway officer of his choice from India were not made available to the appellant for conducting his defence.

9. Learned Solicitor General appearing for the Union of India--the respondent--refuted all the submissions made on behalf of the appellant. In particular he focussed his submissions on point nos. 1, 5 and 7 as the other four points, counsel submitted, did not require any detailed reply.

Point No. 1-

10. When the appellant was placed under suspension, in accordance with the relevant service rules he was asked not to leave London without permission of the Board. As soon as tha Charge Sheet was served on him by his letter dated the 10th April, 1959 the appellant wanted permission to visit Germany stating in para 6 :

> In order for me to prepare my defence I would request permission to visit Germany to collect essential information required when submitting my written defence, especially as the charges refer to periods two to three years ago.
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> The Chairman of the Board of Enquiry in his reply dated- the 15 April, 1959 stated in para 3 thus :
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> In regard to your request to be permitted to visit Germany, the Board would like to have in writing before April 20, 1959, the purpose for which you wish to visit Germany and the names and addresses of person/persons you wish to contact and the paper/papers you may wish to examine.
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> The appellant sent his letter dated April 20, 1959 stating in para 4 thus :
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> Regarding the visit to Germany and the persons and documents to be interviewed and seen, I thought it was plain that this depended on the inspection of documents referred to in paras 4 and 5 of your letter under reply. Consequently until I have done this properly, I shall not be in a position to know what items or facts I require to investigate or check in Germany. I shall therefore be glad if you will postpone this application of mine so that I may in due course specify the visits, persons and papers.
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> The Chairman, thereupon, by this letter dated April 21, 1959 asked the appellant to supply the information in respect of his visit to Germany by April 30, 1959. In his letter dated April 30, 1959 the appellant stated in para 3 thus :
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> I submit in view of the grave charges, false allegations, it is necessary for me to examine in detail Leo Gottwald's system of accounting, storekeeping, procedure for telephone accounting, mailing letters etc. Likewise the system of telephone connecting, booking, mailing letters etc. at other firms mentioned by Dr. Gottwald. This is absolutely imperative and my defence would be incomplete without this. In the absence of full information, examination of all documents studying systems of working mentioned above, I am not in a position to submit names of persons. I would request early arrangements may please be made for me to study the systems of

working mentioned above at the respective firms in Germany.

The Chairman in para 4 of his letter dated May 1, 1959 informed the appellant :

> In regard to your request for visiting Germany in order to examine the Leo Gottwald's system of accounting, store-keeping, mailing letters etc., it is felt that it is not necessary for you to visit Germany for the purpose because witnesses pertaining to all these matters will be called by the Board for examination and you will be given full opportunity to elicit all relevant information required by you.

Further correspondence followed in the matter and the appellant was not given permission to visit Germany prior to the visit of the Board of Enquiry.

11. In the light of the relevant correspondence which passed between the appellant and the Chairman of the Board of Enquiry we have come to the conclusion that it was not at all necessary for the appellant to visit Germany for preparing his defence. The Board committed no mistake and violated no principles of natural justice in refusing the permission. No useful purpose would have been served by such a visit in the interest of the appellant's defence, if any. On the other hand his insistence to visit Germany at the earliest opportunity smacks of some ulterior design on his part in regard to his defence.

12. When the Board decided to visit Germany for holding the enquiry, it gave ample opportunity to the appellant to proceed to Germany to take part in it. The main part of the enquiry, rather, the only substratum of the materials was to be done and collected at Dusseldorf hi Germany. Yet on one excuse or the other the appellant, it appears, was advised to adopt an attitude of non-cooperation which was likely to forge a ground of attack on the depart-mental enquiry, thinking that participation in it would, perhaps, worsen his case. It is found more often than not that Government servants who have no real defence to take against the accusations are advised, and sometimes not without success, to non-cooperate with the enquiry. It seems to us this was one such case.

13. The Chairman by his letter dated June 18, 1959 asked the appellant whether he proposed to be present at the enquiry at Dusseldorf and such other places as the Board may determine on the dates to be intimated to him. The appellant was specifically asked this question because he cast some baseless aspertions against the Board in his letter dated the 4th June, 59. The appellant in his letter dated the 14th June had stated in para 14 :

> In the circumstances that I have put into, and hardly been left any choice, I feel no useful purpose can be served by my attending such an enquiry or having anything further to do with such as enquiry.

The appellant's reply dated June 20, 1959 clearly demonstrates the unjustifiably non-cooperative attitude of the appellant. He was running from pillar to post to find out some excuse to justify his non-cooperation at the enquiry. He insisted that Dr. Gottwald's statement recorded in September, 1958 should be got signed by him

> which the Board rightly did not consider it necessary to do. Another wild stand which the appellant had taken was that the contents of his written defence submitted on May 27 were made known to S. N. Hussain by some member of the Board of Enquiry--an allegation which was strongly refuted by the Board. Lastly in the 10th paragraph of his letter dated June 20 the appellant said : "What can I do Mr. Chairman in the position you have placed me, you may proceed in any way you consider reasonable, just and fair.

14. In spite of the unreasonable and unsustainable stand of the appellant, the Board of Enquiry, constituted as it was of high officials of the Government of India headed by the Deputy High Commissioner stationed in London, time and again expressed their anxiety to make the appellant participate in the enquiry. But the appellant under a wrong advice played a game of hide and seek, at times adopted a tantalizing attitude showing his willingness to cooperate, but backed out at the eleventh hour. To justify this comment we just mention some of the letters viz. letter of the Board dated June 22, appellant's reply dated June 23, Board's letter dated June 26, appellant's sticking to his previous stand in his letter dated June 29, Board asking the appellant to proceed to Germany in their letter dated, July 2 and the appellant's reiterating his previous stand in his letter dated July 8. From the report of the Board it would appear that Sarin did not give a categorical answer as to whether or not he would go to Dusseldorf on July 13. On the 10th July, he agreed to go and came to India Stores Department to collect his advance of T. A. But on the evening of July 11, he informed the Secretary to the Board that he would not proceed to Dusseldorf to be present at the oral enquiry. Mr. Phadke drew our attention to Sarin's show cause reply dated January 31, 1961 in which he stated that the Board permitted him to go to Dusseldorf only if he agreed to participate in the oral proceedings there, otherwise not. He therefore, cancelled his reservations to proceed to Dusseldorf. He also referred to the photostat copy of the appellant's letter dated July 24, 1959 and the addendum to this letter. Nothing new; the same stand was taken by the appellant. This, to our mind, makes patent the latent factor in the mental attitude of the appellant. Did he want to go to Dusseldorf without agreeing to take part in the enquiry ? Or did he want to go there to participate in it?

15. Having appreciated all that has been said for the appellant in support of his first point we have come to the conclusion that the appellant was not denied any reasonable opportunity of visiting Germany at the proper time to participate in the enquiry. He has to thank himself for deciding not to go.

Point No. 2.

16. It is not necessary to enter into any detailed discussion of this point. In agreement with the Bench of the High Court we hold that all relevant documents were made available to the appellant either for inspection or for copies. Some file containing the field inspection papers was not traceable. The suspicion of the Board was that the Prosecutor at the departmental enquiry was not to gam anything by making the file untraceable. On the other hand it was the appellant who was to gain by it. The very same letters exchanged between the appellant and the Board in June and July, 1959 dealt with this aspect also. The High Court has extracted passages from the relevant letters in

this connection and has rightly held :

> It appears to us to be clear from this correspondence that all legitimate demands of the respondent for the inspection of papers which were available in the ISD office in London were fulfilled, but the respondent went on making unfounded claims in this behalf without specifying the documents. We therefore, 'hold that all documents which were available in the ISD office in London were made available to the respondent.
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> Point No. 3.

17. In support of the third point arguments were advanced with reference to letters dated July 18, August 6 and October 6, 1959. Notes were handed over to us referring to the other pieces of correspondence. We have studied them but think it unnecessary to increase the bulk of our judgment by referring to the correspondence in any detail. It merely shows that on one ground or the other the appellant was adopting delaying tactics, shifting stands and excuses for not presenting himself at the enquiry either to cross-examine the prosecution witnesses or to examine his defence witnesses. All the time he was reiterating his stand taken in his letters dated June 14, and June 20, 1959.

The detailed report of the Board of Enquiry, apart from the correspondence which preceded it, is a clear proof of the anxiety of the Board to conduct the enquiry as fairly and fully as they could in the circumstances of the case. The submission of the appellant is rejected as being devoid of substance.

18. In view of the attitude taken by the appellant of complete non-cooperation in his letters dated June 14 and June 20, 1959 no useful purpose would have been served by associating him with the examination of the witnesses in London. Madnani and S. N. Hussain were examined in July and August. The appellant never expressed his willingness to cooperate and be present at the examination of the witnesses in London. His presence at the time of the examination of Bayross was a make-believe more of cooperation to colour and cloud his real attitude of non-cooperation. The Board committed no irregularity or illegality in sending a general questionnaire to S/ Shri Bhalla, Sharma, Johri and Sen in India as the appellant had refused to submit a questionnaire. Copies of all the ' relevant statements and papers given to the Board at Dusseldorf were given to the appellant in September, 1959. Although there was some delay in supply of these papers, that did not cause any prejudice to the appellant.

19. This point mainly concerns the merits of the findings of the Board of Enquiry and their final acceptance by the Government of India. Whether a charge leveled against the appellant was true or false had to be and has been judged in the light of the appellant's stand that Gottwald had a motive to accuse falsely the appellant of having taken bribe from him in order to establish that he was not at fault in the delay which was made in the delivery of the contracted cranes. Without much elaboration we reject this argument. Gottwald was to gain by merely throwing the blame on the shoulders of Sarin. He had nothing to gain and only to lose by making an accusation of having paid bribe to Sarin under his pressure. No person would like to involve himself in the deal of payment of

bribe to a Government servant merely for the purpose of explaining the delay caused in effecting the deliveries. Ordinarily bribe could be paid so that there may not be any delay in inspection. But here was a case where it is said delay was caused in the inspection because there was delay in the payment of the bribe. It is not for us to examine in any detail the correctness of the findings recorded against the appellant at the departmental enquiry; but in, passing, we may just observe that it could not have been possible for Gottwald to make a false accusation against Sarin, and then support it before the Board by examining his father, the bank records, vouchers, account books and a large number of persons working in his firm. There was nothing in the records of this case to show that the claim of liquidated damages against the contractor was given up in view of the finding of guilt of the appellant. We were informed at the Bar by the Solicitor General that the claim was settled and not given up. Be that as it may, we find the fourth submission made on behalf of the appellant unsustainable.

Points 5 and 6

20. These points may be dealt with together as they have got some inter-connection. It could not be substantiated on behalf of the appellant that S. N. Hussain had any animus against him or was adversely interested against him in the matter. Some letters with reference to the work of S. N. Hussain at Barmingham with comments of the appellant thereon were placed before us. Mr. Phadke could not substantiate the point with reference to them. Time and again he laid stress on the fact that Gottwald made this complaint to Madnani on July 30, 1958 on being asked to do so by S.N. Hussain because he had his own axe to grind against Sarin. This argument has been stated merely to be rejected. It was just in the natural course of events that when S.N. Hussain was finding fault with Gottwald for the delay in the execution of the contract the latter became forced by circumstances to blurt out the truth. The accusation against Sarin was too serious to be taken note of by S.N. Hussain alone. Naturally, therefore, he advised him to go and make this complaint to the higher officer Madnani. No connection between M.A. Hussain-the Chairman of the Board and S.N. Hussain-a Senior Inspector who was in Essen Area of West Germany immediately before the appellant, was established. It is an argument of desperation to suggest that M.A. Hussain was biased against the appellant to protect or help S.N. Hussaim The change of being communal leveled against the Chairman by the appellant in his letter dated October 5, 1959 written to the Government of India was obviously made with an ulterior motive after conclusion of the enquiry and sensing that it had gone against the appellant. Great stress was led in court to show M. A. Hussain's bias on the ground that at the earlier stage in the later half of 1958 he had formed his opinion against the appellant and recommended and insisted for the starting of a departmental enquiry against him without any further preliminary enquiry. Mr. Phadke submitted that the Government turned down the proposal of M.A. Hussain and directed a preliminary enquiry to be made by Pandey. We do not appreciate the force of this argument. It would appear from the enquiry report that M.A. Hussain did not want, as he had no time, to be the Chairman of the Board of Enquiry. Being a Deputy High Commissioner he was too busy in other affairs of the State. But since the matter to be enquired into was against a high official of the Government, M.A. Hussain was appointed as the Chairman of the Board. The appellant never objected to his being on the Board, until after the conclusion of the enquiry. We are distressed to find that the appellant was ill-advised to invent at a late stage a crudse and false story that on the 5th October, 1959 Doraiswamy-a member of the Board of Enquiry had shown the secret

file to the appellant which showed the bias of M. A. Hussain as he had dealt with the matter in the latter half of 1958. Although according to the statement in the Writ Petition (vide para 28) he had written his letter dated October 5, 1959 after the alleged showing of the confidential file by Doraiswamy to him, not a word is to be found in the said letter to this effect. Such a story was put forward in the written explanations which the appellant filed in answer to the punishment show cause notices. We reject points 5 and 6 of the appellant.

Point no. 7

21. The enquiry was being conducted in accordance with Rule 1730 of the Indian Railway Establishment Code, Volume I. In the main body of the rule where a procedure for holding a departmental enquiry has been provided for, there is nothing said in relation to the engagement of a lawyer. Certain notes are appended to the rule. They seem to have been appended not on the basis of the executive instructions but as parts of the rule itself. One such note was appended as note 4, which subsequently became note 3, on September 25, 1956 by the President of India who had framed Rule 1730. This note reads as follows :

> In a departmental enquiry, the accused railway officer may, if he so desires, be accompanied by another railway officer provided that the officer so nominated as the defence counsel is approved by the competent authority to act as such, and provided also that the person so nominated shall not be a professional lawyer. The term 'professional lawyer includes those persons who are competent to practice in a court of law.' In face of the above note, treating it as a part of the rule, the appellant was not entitled to the services of a professional lawyer. Gottwald, as it appears, was a lawyer in name but actively in business. The services of a professional lawyer were not necessary to cross-examine him. The fact was a simple one as to whether he had paid money to the tune of about 24,000 D.M. to the appellant from time to time. Even if we treat the note aforesaid as one based merely on the executive instructions and not a part of the rule itself, we see no reason to say that the authority was obliged not to follow the note but to go against it. At the most it had a discretion in the matter. The question is whether the discretion was rightly exercised or was it exercised so arbitrarily as to lead to the conclusion that principles of natural justice were violated when the services of a professional lawyer were not made available to the appellant. We give the answers against the appellant. Great reliance was placed for the appellant on a decision of this Court in C.L. Subramaniam v. Collector of Customs, Cochin. In this case the argument that, rule or no rule, the services of a professional lawyer should be made available at a departmental enquiry when asked for was not accepted. What was held in that case was that the disciplinary authority brushed aside the request of the appellant before the, Supreme Court on a wrong ground completely ignoring the circumstances which were relevant. It was, therefore, said at page 490:
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> Therefore that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely that the Disciplinary Authority's refusal to permit the appellant

> to engage a legal practitioner in the circumstances mentioned earlier had caused serious prejudice to the appellant and had amounted to a denial of reasonable opportunity to defend himself.

22. In Tar a Singh etc. etc. v. State of Rajasthan and Ors. the importance which is to be attached to the note appended the rule has been emphasized by Ray, C. J. delivering the judgment on behalf of the Division Bench of this Court to which one of us (Krishna lyer, J) is a party, in these terms :

> The notes are promulgated with the rules in exercise of legislative power. The notes are made contemporaneously with the rules. The function of the notes is to provide procedure and to control discretion. The real purpose of the notes is that when rules are silent the notes will fill up gaps.

23. The appellant was not entitled as a matter of right to have the services of any railway officer stationed in India to assist him in the conduct of his defence. He wanted an officer from India especially Shri Bhalla. It was not possible to make available the services of an officer from India. The appellant was given a wide field of choice either to choose any railway official stationed in London or in , the continent or some other personnel of the. Indian High Commission in London. The accusations made against the appellant were not such that required any expert or special skill. The question was a simple one whether he had taken money from Gottwald in, discharge of his official duties. Having appreciated all the facts and circumstances of the case we have come to the conclusion that no principle of natural justice was violated in not making available to the appellant the services of Shri Bhalla or any other railway officer stationed in India for the conduct of his defence.

24. In the entire background of this case we find a passage occuring at page 803 in the Judgment of Lord Denning, Master of the Rolls in the case of R v. Secretary of State for the Home Department ex parte Mughal quite apposite to be quoted. The passage runs, thus :

> The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke 'the rules of natural justice' so as to avoid the consequences.

25. In the result we find no merit in this appeal and dismiss it with costs.