S. Parthasarathi vs State Of Andhra Pradesh on 20 September, 1973

Equivalent citations: 1973 AIR 2701, 1974 SCR (1) 697, 1974 (1) SCR 697, AIR 1973 SUPREME COURT 2701, 1974 3 SCC 459, 1973 LAB. I. C. 1607, 1974 (1) SERVLR 427, 1973 2 SCWR 464, 1973 2 LABLJ 473

Author: Kuttyil Kurien Mathew

Bench: Kuttyil Kurien Mathew

PETITIONER:
S. PARTHASARATHI

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT20/09/1973

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
MUKHERJEA, B.K.

CITATION:
1973 AIR 2701 1974 SCR (1) 697
1974 SCC (3) 459
CITATOR INFO :
R 1976 SC2428 (11)

ACT:
Hyderabad Civil Services (Classification, Control and Appeal, Rules 1955 Appellant was under direct control of the Enquiring Officer-He was refused access to certain relevant files and documents-Whether the enquiry was vitiated and whether the enquiry officer had Jurisdiction under the Rules.

HEADNOTE:
The appellant, a clerk-cum-typist was under the direct control of one M, the Deputy Director of Information and Public Relations Department in the State of Andhra Pradesh. The appellant's case is that M was inimical towards him and

harassed him in various ways. As Director-in-charge, M caused the appellant to be suspended from service, and thereafter he framed certain charges against the appellant. The appellant protested against M conducting the enquiry. In spite of protest M. conducted the enquiry. The appellant wanted to inspect several files, and documents, but was refused. The appellant, therefore, did not participate in the enquiry. The enquiry was conducted ex-parte and the appellant was found guilty of some of the charges.

On the basis of the Inquiry Report, the Director issued a show cause notice to the appellant. The appellant submitted a written explanation stating that the inquiry was vitiated on account of the bias of the Inquiry Officer, that he was not given reasonable opportunity of defending himself as he was not supplied with the copies of the relevant documents and that the Inquiry Officer had no jurisdiction to conduct the enquiry. The Director however, found the appellant guilty and passed an order removing him from service. Thereafter, on the recommendation of the Public Service Commission, the Government modified the order of removal and ordered the compulsory retirement of the appellant from service.

Thereafter, the appellant filed a suit for declaration that the order of the Director was null and void and asked for consequential reliefs etc. The trial. court decreed the suit, but the High Court allowed the appeal and dismissed the suit. Before this Court the following points were raised by the appellant :(i) the enquiring officer was biased against the appellant; (ii) the Enquiring Officer had no authority to conduct the enquiry (iii) that the appellant was not given a reasonable opportunity to defend himself as he was denied access to several files which had a material bearing upon his defence. Dismissing, the judgment and decree of the High Court, but restoring the decree passed by the trial court,

HELD : (i) The Inquiring Officer was biased and he adopted a procedure which is contrary to the rules of natural justice. Therefore, the order of his compulsory retirement is bad. The cumulative effect of the circumstances, with the exhibits [e.g. Medical Officer's reply (Ex. 8) stating that the appellant was not insane, as suggested by M etc., and other evidence showed that the Inquiring Officer was inimical towards the appellant.

(ii) The test of likelihood of bias which has been applied in a number of cases is based on a "reasonable apprehension" of a reasonable man fully cognizant of the facts. The courts have quashed decisions, on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed.

R. v. Huggins [1895] 1 Q.B. 563, R v. Sussex If., Ex. P. McCarthy, [1924] 1 IC B. 256, Cottle v. Cottle, [1939] 2 AU E.R. 535 and R. v. Abingdon JJ., Ex P. Cousins, [1964] 108

S.J. 840. referred to.
In R. v. Camborne, JJ. Ex. P. Pearce, [1955] 1 Q.B. 41 and 51, the court, after a review of the relevant cases, held that real likelihood of bias was the proper W. and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of hi, inquiries.
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(iii) The question, as to whether a real likelihood of bias existed in a particular case, is to be determined on the probabilities to be inferred from the circumstances by the court objectively, or, upon the basis of the impression that might reasonably be left on the minds of the party aggrieved or She public at large. The tests of "real likelihood", and "reasonable suspicion" are really inconsistent with each other. The reviewing authority, therefore, must make a determination on the basis of the whole evidence before it, whether a reasonable man would, in the circumstances, infer that there is real likelihood of bias. There must exist circumstances from which reasonable men think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced,that is .sufficient to ash the decision Per Lord Denning M.R. in Metropolitan Properties (F.G.C.) Ltd. v. Lanon and Ors. etc., [1968] 3 W.L.R. 694, referred to. In the present case, as there was real likelihood of bias in the sense explained above, the enquiry and the orders based on the inquiry were bad. [702D-703D]
(iv) M was not authorised to conduct the inquiry ordered by the Government after he ceased to be the Director in-charge and became a Deputy Director. The Government wanted the Director to conduct the inquiry. Even assuming that as Director-in-charge, M was authorised to conduct the` inquiry, that authority came to an end when he ceased to be the Director-and became the Deputy Director. Beyond framing the charges, M had taken no steps in the inquiry before he ceased to be the Director-in-charge. All the witnesses were examined by M after he ceased to be the Director-in-charge and after. his reversion as Deputy Director. [704D-E]
Further rule 22 of the Hyderabad Civil Services (Classification, Control and Appeal) Rules, 1955 provides that in every case, where it is proposed to impose on a Government servant any of the penalties mentioned in items (v), (vi) etc. the authority competent to order an inquire an 1 appoint an inquiry officer, shall be, in the case of subordinate services, the head of the office, the appointing authority or the higher authority. When the Government made it clear that the Director should conduct

the inquiry, the Director, as Head of the Department, cannot delegate his power to another person to conduct the inquiry. Therefore, the delegation by the Director to another person the power to inquire into the allegations was contrary to the intention of the Government and therefore was beyond his competence. [705C]

(v) There is no justification for the refusal of the inquiring officer to give access of the files to the appellant and not granting the prayer of the appellant to inspect the files containing the proceedings on the ground that the appellant was appraised of the earlier proceedings especially when it is seen that these proceedings have been relied upon by the inquiry officer in his report to substantiate one of the charges against the appellant. it was too much to assume that the appellant would be remembering the details of the proceedings of 1951 at the time of the inquiry. Therefore, the trial on this score was also vitiated. [706C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 656 of 1971. Appeal by certificate from the judgment and decree dated April 17, 1970 of the High Court of Andhra Pradesh at Hyderabad in, GC.C. Appeal No, 56 of 1966.

B.R.L. Aiyanagar and H.K.Puri, for the appellant. P. Rwn Reddy and P. Parmeswararao, for the respondent. The Judgment of the Court was delivered by MATHEW, J. The appellant filed a suit for quashing the order passed by the Government of Andhra Pradesh on November 10. 1961 retiring him compulsorily on the basis of the finding in a disciplinary proceeding against him. The trial court decreed the suit. The Government of Andhra Pradesh appealed against the decree to the, High Court. The High Court allowed the appeal and dismissed the suit. This appeal, by certificate, is against that decree.

The appellant was appointed in the service of Andhra Pradesh Government in 1940 as Clerk-cum-Typist in the Public Works Department. It is not necessary to trace the subsequent career of the appellant in the service.. Suffice it to say that on June 7, 1952, he was posted as Office Superintendent in the Information and Public Relations Department and was confirmed in the post in 1956. The Deputy Director of Information and Public Relations Department, during the period from 1956, to 1957 was one Narsing Rao Manvi, hereinafter referred to as Manvi The appellant was under his immediate administrative control.

The, appellant's case in the plaint was as follows: The Deputy Director was inimical towards him and harassed him in various ways. Manvi was appointed as Director-in-charge, on August 1, 1957. As Director-in-charge, Manvi caused the appellant to be suspended from service and thereafter he framed certain charges against the appellant on May 13, 1959 and they were communicated to the appellant. The appellant protested saying that Manvi should not conduct the enquiry on the basis of

the charges for the reason that Manvi had bias against him and that he was not duly authorised to conduct the enquiry. In spite of the protest Manvi conducted the enquiry. The appellant wanted to inspect several files and documents in the enquiry for the purpose of his defence, but his requests in that behalf were not granted. The appellant, therefore, refused to participate in the enquiry. The enquiry was conducted and the appellant was found guilty of some of the charges. On the basis of the enquiry report, the Director issued a show cause notice to the appellant why he should not be dismissed from service. The appellant submitted a written explanation stating that the enquiry was vitiated on account of the bias of the inquiring officer, that he was not given reasonable opportunity of defending himself in the enquiry as he was not supplied with copies of the relevant documents nor given an opportunity to inspect the. concerned files and that the enquiring officer had no jurisdiction to ?conduct the enquiry.

The Director, however, found the appellant guilty and passed an order removing him from service with effect from April 11 1960. Thereafter, the Government, on the recommendation of the Public Service Commission, modified the order of removal and ordered the compulsory retirement of the appellant from service.

The prayer of the appellant in the suit was for a declaration that the order of the Director of Information and Public Relations dated April 11. 1960 as modified-by the order of the Government compulsorily retiring him from service was null and void and that he was entitled to arrears of salary and damages to the tune of Rs. 65,000/-.

The trial court held that Manvi as Director-in-charge had no jurisdiction to conduct the enquiry and that, at any rate, he had no authority to continue the enquiry after he ceased to be the Director-in-charge, that the enquiry was vitiated as the appellant was not given a reasonable opportunity of defending himself and as the inquiring officer was biased against him. The court therefore passed a decree setting aside the impugned orders and declaring that the appellant must be deemed to have continued in service and that he would be entitled to the arrears of salary claimed in the plaint.

It was against this decree that the State of Andhra Pradesh filed the appeal before the High Court.

The High Court found that there was no material to show that the inquiring officer was biased against the appellant, that the Government had authorised the Director-in-charge to conduct the enquiry, that at any rate, the Director authorized the Deputy Director to conduct the enquiry and that the Government subsequently accepted the suggestion of the Director that the Deputy Director may continue the enquiry and therefore, the inquiring officer had jurisdiction to conduct the enquiry. The court further found that there were no materials from which it could be inferred that the inquiring officer was biased against the appellant and that the appellant was not denied reasonable opportunity of defending himself as he was not denied access to any Me which had a material bearing upon his defence. The. High Court, therefore, reversed the judgment and decree of the trial court and dismissed the suit. In this appeal, counsel for the appellant submitted that the inquiring officer was biased against the appellant, that the inquiring officer had no authority to conduct the enquiry and that the appellant was not given a reasonable he was denied access to

several files which ` on his defence. The trial court had relied upon the following circumstances for its conclusion that the inquiring officer was biased against the appellant. By Ex. A-10 dated 15-10-1955. Manvi who was the Assistant Director at the time, called for the explanation of the Appellant regarding theft of 164 files in the Weeding Section in which the appellant was the Superintendent. The appellant replied by Ex. A-97 dated October 18, 1955 stating that he had no idea of the missing files till his return from privilege leave in the first week of July, 1955. Ex. A-18 dated January 10, 1958 is a Memorandum served on the appellant by Manvi to show cause why disciplinary action should not be taken against him for giving false statement relating to his residence. By Ex. A- 19 the appellant denied that he had given any false statement in the particulars furnished by him. Ex. A-21 dated March 12, 195 8 is a.Memorandum served on the appellant by Manvi threatening disciplinary action for being negligent in his duties. In his reply (EX. A-22) the appellant said that no files were pending with him and that be was not negligent. Ex. A-23 dated March 13, 1958 is a Memo-

random served upon the appellant by manvi, again threatening him with disciplinary action for negligence of duties. By Ex. A-24 the appellant denied the charge of negligence. Manvi as Deputy Director overlooked the claim of the appellant for promotion. The appellant complained about it to higher authorities. Ex. A-33 is a letter addressed to the inquiring officer on 3-11-1958 informing him that he was never absent without leave and without prior application and requesting the Director-in-charge that deductions made by him from the salary may be paid to him. Ex. A-34 shows that his explanation was accepted by the Director-in-charge. Ex. A-36 is a Memorandum served on the appellant on November 20, 1958 to show cause why disciplinary action should not be taken against him for accumulation of arrears of work. Ex. A-37 is the reply of the appellant wherein he has protested against the attitude of the Director-in-charge towards him. By Ex. A-41 order dated December 1, 1958 and signed by the Assistant Director, the appellant was asked to take charge of the Weeding Section. The appellant complained against that posting by Ex. A-42 and in that he said that if the Record Keeper of the Weeding Section Sri Kazim Ali is required to hand over charge of the ,several thousand files, and registers, all of them being very old and mainly- in Urdu, two clerks, knowing English and Urdu should be posted to the Weeding Section to check each file in a manner prescribed by Government. By Ex. A-13 the Assistant Director ordered that the appellant should take charge immediately and comply with the earlier order in Ex. A-41. By Ex. A-47 the appellant was threatened with disciplinary action unless he took charge in compliance with the order. By Ex. A-49 the Director-in-charge said that the appellant should take charge of the entire files in the Weeding Section and that no further arrangement is possible, apparently referring to the requirement of two clerks for taking charge.

Besides the circumstances relied on by the trial court, the appellant urged the following circumstances to support his case that the inquiring officer was biased. Manvi had written on April 29, 1959, a letter enclosing certain documents requesting for an opinion from Dr. R. Natarajan, Superintendent, Hospital for Mental Diseases, Hyderabad, about the mental condition of the appellant. This letter was not produced in court. We are left to gather the contents of the letter from the reply of Dr. Natarajan (Ex. B-8). It would seem from the reply that Manvi wanted to get rid of the services of the appellant without taking any disciplinary action- against him and without holding an enquiry, for the reason that he was mentally unsound. In his "reply, Dr. Natarajan said :

> "Unfortunately, I cannot, on medical grounds, advice his, retrenchment or removal and, therefore, I would suggest you .to deal with him departmentally and take appropriate action according to the seriousness of the offenses he has committed in the office' This is a case that would be dealt with departmentally and disciplinary and I am sorry I will not be able to help you further as he cannot be termed insane in the spirit of which it is understood".

It was after this letter was received by Manvi, the Director-in-charge, ,that he started the disciplinary proceedings against the appellant.

According to the High Court, none of the circumstances relied on by the appellant was sufficient to establish bias on the part of the .inquiring officer. The High Court said that it was because various ,officers had complained to Manvi while he was the Director-in-charge ,about the conduct and behavior of the appellant that he wanted a medical opinion as to his mental condition and that as the letter written by Manvi to the Medical Officer was not produced before the ,court nor the Medical Officer examined, no inference of bias could be made.

The letter written by the Medical Officer (Ex. B-8) would indicate that Manvi wanted to get rid of the services of the appellant on the ground of his mental imbalance and it was for that purpose that he tried to get a certificate to the effect that the appellant was mentally unsound. We are of the opinion that the cumulative effect of the circumstances stated above was sufficient to create in the mind of a reasonable man the impression that there was a real likelihood of bias in the inquiring officer. There must be a "real likelihood" of bias and that means there must be a substantial possibility of bias. The court will have to judge of the matter as a reasonable man would judge of any matter in the conduct of as own business (see R. v. Sunderland JJ.)(1).

The test of likelihood of bias which has been applied in a number of cases is based on the "reasonable apprehension" of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the ,strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed [see R. v. Huggins(2)]; R. v. Sussex JJ., ex. p. McCarthy(3); Cottle v. Cottle(4); R. v. Abingdon JJ. ex. p. Cousins(5). But in R. v. Camborne ff., ex. p. Pearce(6), the Court, after a review of the relevant cases held that real likelihood of bias was the proper test and, that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.

The question then is : whether a real likelihood "of bias existed is to be determined on the probabilities to be inferred from the circumstances by court objectively, or, upon the basis of the impressions that might reasonably be left on the minds of the party aggrieved or the public at large.

The tests of "real likelihood" and "reasonable suspicion"

> are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before (1) [1901] 2 K. B. 357

at 373.

(2) [1895] 1 Q. B. 563.

(3) [1924] 1 K. B. 256.

(4) [1939] 2 Ail E. R. 535.

(5) [1964] 108 S. J. 840.

(6) [1955] 1 Q. B. 41 at 51.

it whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, be must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that. he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, M.R. in Metropoli- tan Properties Co, (F.G.C.) Ltd. v. Lannon and Others, etc.(1)]. We should not, however, be understood to deny that the court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings.

As there was real likelihood of bias in the sense explained above, think that the inquiry and the orders based on the inquiry were bad. The decision of this Court in the State of Uttar Pradesh v. Mohammad Nooh(2) makes it clear that if an inquiring officer adopts a procedure which is contrary to the rules of natural justice, the ultimate decision based on his report of inquiry is liable to be quashed. We see no reason for not applying the same principle here as we find that the inquiring officer was biased.

The next point for consideration is whether the inquiring officer was authorised to conduct the enquiry. On April 13, 1959, Manvi, , as Director-in-charge, appointed Siddiqui, the Assistant Director as inquiring officer. Siddiqui, Assistant Director passed an order suspending the appellant on April 13, 1959 and served a Memorandum of charges on him on May 12, 1959. The appellant objected to the framing of charges by Siddiqui on May 26, 1959, by Ex. B-16. On July 1, 1959, by Ex. B-1 order, the Government directed that the enquiry must be conducted by the Director himself. On July 6, 1959 Manvi as Director-in-charge issued a Memorandum of charges containing practically the same charges as framed as Siddiqui. On July 15, 1959 the appellant protested against Manvi conducting the enquiry. On July 16, 1959 Manvi communicated to the appellant that be was conducting the enquiry in pursuance to the Government order, and that the written statement should be filed by the appellant before July 27, 1959. On July 27, 1959 Manvi went on leave; Luther was appointed as Director on August 1, 1959. On October 10, 1959, by Ex A-65, the appellant again

protested that Manvi was biased against him and a person unconnected with the Department should be appointed as inquiring officer. On October 20, 1959, Luther, as Director, authorised Manvi, Deputy Director to continue the enquiry (see Ex. A- 114-B). But on October 27, 1959, by Ex-B-4, the Government enquired of Luther whether it was the Deputy Director who was conducting the enquiry and said that the Director himself should conduct the enquiry. Ex-B-4 (1) (1968) 3 W. L. R. 694 at 707.

(2) [1958] S.C.R. 595.

5-L392Sup.CI/74 was not communicated to the appellant or shown to Manvi. On November 6, 1959, Luther wrote to Government explaining the practical difficulties in his conducting the enquiry and stating that it would be expedient if the Deputy Director was allowed to continue the enquiry On November 24, 1959 the enquiry was completed. On December 3, 1959 the Government- agreed to the suggestion of Luther that Manvi might continue the enquiry.

It is not clear from Ex. B-1 that although Manvi was the Director,in-charge at the time, he Was the person intended by the Government to conduct the enquiry, for by that document the Government only authorized the Director to conduct the enquiry. But Ex. B-4 is clear that the Government wanted the Director to conduct the enquiry. In that communication the Government said that it was the intention of the Government that the Director himself should conduct the enquiry and that if Manvi, the Deputy Director was conducting the enquiry, the Director should take up the matter and proceed with the enquiry. Even assuming for a moment that by Ex. B-1, the Director-in-charge at the time, namely Manvi, was authorised to conduct the enquiry, it would not follow that Manvi, when he ceased to be the Director-in-charge and became the Deputy Director, was authorised to continue the enquiry. In other words, even assuming that as Director-in-charge Manvi was authorised to conduct the enquiry, that authority came to in end when he ceased to be the Director-in-charge and became the Deputy Director. Beyond framing the charges, Manvi had taken no steps in the enquiry before he ceased to be the Director-in- charge. All the witnesses were examined by Manvi after he ceased to be the Dirctor-in-charge and after his reversion as Deputy Director. The order of the Government accepting the suggestion of Luther, the Director, that Manvi might continue the enquiry was passed only on December 3, 1959 and at that time Manvi had already completed the enquiry and drawn up his report of the inquiry. As we said, assuming that the Director-in-charge was authorised to conduct the enquiry by Ex. B-1, Manvi was not authorised to conduct the enquiry after he ceased to be the Director-in-charge and Ex. B-4 makes that position clear. The order of Government dated December 3, 1959, accepting the suggestion of Luther that Manvi might continue, the enquiry, as it did not in terms clothe Manvi with authority to conduct the inquiry after he became the Deputy Director, is of no avail because it did not either expressly or by implication have retros- pective operation, even if it be assumed that the Government 'could give that order retrospective effect. Rule 22 of the Hyderabad Civil Service (Classification, Control and Appeal) Rules, 1955, so far as it is material, provides :

> "22(1) in, every case where it is proposed to impose on a Government servant any of the penalties mentioned in items (v), (vi), (vii) and (viii) of rule 12, or in any other case where disciplinary action into the conduct of a Government servant is

considered necessary, the authority competent to order an enquiry- and appoint an Inquiry Officer shall be as follows:

Class of members of the State Authority competent to Subordinate Service enquiry and/or to appoint an Inquiry Officer

(a) Subordinate Service (Class The Head of the Officer, III service) the appointing authority or, any higher authority".

We think that when the Government made it clear that the Director should conduct the enquiry, the Director as Head of the Department cannot exercise his power under the rule by designating another person to conduct the enquiry and therefore the order passed by Luther (Ex. A-I 14-B) authorising Manvi as Deputy Director to conduct the enquiry could not invest him with the power to do so. We think that the Director, as Head of the office bad no power to designate or appoint an inquiry officer, as Government, the appointing authority, had already directed that the Director should himself conduct the enquiry. It would be anomalous to hold that both the appointing authority, namely, the Government and the Head of the Office, namely, the Director, could, in the same case, appoint two persons to conduct the enquiry. We cannot, therefore, agree with the reasoning of the High Court that Manvi, as Deputy Director, was invested with authority to conduct the enquiry by the Director by Ex. A-114-B. The High Court said that since Ex. B-4 order was not communicated to the appellant, he cannot found an argument upon it and say that the Director alone was autho- rized to conduct the enquiry. We see little substance in the reasoning. The question is whether the Government, as appointing authority, had manifested its intention that the Director alone should conduct the enquiry. Whether Ex. B-4 was communicated to the, appellant or not, .it manifested the intention of Government to invest, only the Director with power to conduct the enquiry. That is all what is relevant. No doubt, the Government could have changed that order. But in this case when it changed the order and authorized Manvi to continue the enquiry by its order dated December 3, 1959, Manvi had already completed the enquiry and drawn up the report. As we said, the order dated December 3, 1959 was not retrospective in character and, therefore' it did not invest Manvi with authority to conduct the inquiry from an anterior date. Nor do we think that when the Director alone was invested with power to conduct the inquiry by Ex. B- I read in the light of Ex.B-4, he could have delegated that power to Manvi, as we think ,that the Government had manifested its intention in Ex-B-4 that the Director alone should conduct the enquiry and so any delegation by the Director of that power would have been contrary to the intention of the Government. The trial court was of the view that the appellant was not given a reasonable opportunity of defending himself as the inquiring officer did not give him facility for inspecting the relevant files. The High Court found that although the appellant was not allowed to inspect the confidential record of some of the witnesses for the purpose of enabling the appellant to cross-examine them, that would not be a denial of reasonable opportunity of defending himself in the, enquiry. The High Court also found that Exhibits 3 and 4 (R.D. File No. Estt/89 of 1951 Pt. II p.17 and H.D. File No. Est/89 of 1951 Pt-11 paras 253 to 258 pp.55 also found that Exhibits 3 and 4 (R.D. File No. Estt/89 of 1951 Pt. II were not material for the purpose of defence, that the appellant was made aware of the contents of those, proceedings and therefore, the inquiring officer was justified in not giving copies of these proceedings or in not acquainting the delinquent of them. Ex. 3

relates to a file regarding the transfer of the appellant in 1951 from the Secretariat to the Information Department. Ex.4 relates to a proceeding against the appellant which resulted in a censure on the basis of a complaint in 1951. Whatever night be said in justification of the refusal of the inquring officer to give access to the appellant of the confidential records relating to the witnesses we see no justification for not granting the prayer of the appellant to inspect the files containing the proceedings on the ground that the appellant was appraised of the proceedings in 1951, especially when it is seen that these proceedings have been relied upon by the inquiring officer in his report to sub- stantiate one of the charges against the appellant. it was too much to assume that the appellant would be remembering the details of the proceedings of 1951 at the time of the inquiry.

We set aside the judgment and decree of the High Court and restore the decree passed by the trial court, but in the circumstances, we make no order to costs.

S.C. Appeal allowed.