Board Of Trustees Of The Port Of Bombay vs Dilipkumar Raghavendranath Nadkarni ... on 17 November, 1982

Equivalent citations: 1983 AIR 109, 1983 SCR (1) 828, AIR 1983 SUPREME COURT 109, 1983 (1) SCC 124, 1983 LAB. I. C. 419, 1982 UJ (SC) 897, 1983 (1) SCWR 177, (1983) 46 FACLR 30, 1983 (1) SCJ 178, (1983) 1 SCR 828 (SC), 1983 46 FACLR 30 (2), (1983) 1 LABLJ 1, (1983) 1 LAB LN 314, 1983 SCC (L&S) 61, (1983) 1 SERVLJ 256, (1983) MAH LJ 1, (1983) MPLJ 1, (1983) 1 SERVLR 464, (1983) 2 BOM CR 334

Author: D.A. Desai

Bench: D.A. Desai, R.B. Misra

PETITIONER:
BOARD OF TRUSTEES OF THE PORT OF BOMBAY

Vs.

RESPONDENT:
DILIPKUMAR RAGHAVENDRANATH NADKARNI BAND OTHERS

DATE OF JUDGMENT17/11/1982

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
MISRA, R.B. (J)

CITATION:
1983 AIR 109 1983 SCR (1) 828
1983 SCC (1) 124 1982 SCALE (2)1097
CITATOR INFO :
R 1983 SC 454 (5)
E&D 1985 SC1618 (9)
R 1987 SC2257 (15)
R 1991 SC 107 (239)
RF 1991 SC1221 (4)

ACT:
Departmental Proceedings-Domestic enquiry-Management appointed Iegally trained officers as prosecuting officers-Employee s request to be represented by a legal practitioner rejected-whether violates principles of natural justice.

Natural justice-Employee denied assistance of Iegal practitioner before domestic enquiry while management

engaged legally trained men as prosecuting officers-Whether violates principles of natural justice.

HEADNOTE:

The time honoured and traditional approach in regard to a domestic enquiry in industrial disputes is that it is a managerial function which would be best left to the management without the intervention of persons belonging to the legal profession. This approach was based on the ground that a domestic enquiry should not be unduly inhibited by strict rules of evidence and procedural laws and that in the informal atmosphere in which the enquiry is conducted the delinquent would be able to defend himself. Whatever justification there might have been in the past for holding this view, the position today is altogether different. Industrial establishments employ on their rolls an impressive array of labour officers and legal advisors in the garb of employees. These officers are appointed as presenting and prosecuting officers for conducting the management's case in a domestic enquiry. The enquiry officer, more often than not, is a man of the establishment doning the robes of a judge. The enquiry is held in the establishment's office or part of it. It does not bear any comparison to an adjudication by an impartial arbitrator or a Court presided over by an unbiased judge. Witnesses are generally employees of the management which orders the enquiry. In short the scales are weighted in favour of the management and against the workman. ;832 G-H, 834 E-F]

Secondly, even in a domestic enquiry there can be very serious charges: an adverse verdict may so stigmatize a workman that his future, both in regard to his reputation as well as his livelhood, might be put in jeopardy. [834 D]

The aphorism that "justice must not only be done but must be seen to be done" is not a euphemism applicable to courts alone; it should apply with equal vigour to all those responsible for fairplay in action. A quasi-judicial tribunal cannot view the situation with equanimity where there is inequality of representation. [835 G]

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Brooke Bond lndia (Pvt) Ltd. v. Subba Raman (S) and Anr. [1961] 2 Labour Law Journal 417 referred to.

Dunlop Rubber Co. v. Workman [1965] 2 SCR 139, referred to.

Pet. v. Greyhound Racing Association Ltd. [1968] 2 All E. R. 545, referred to.

M. H. Hoscot v. State of Maharastra [1978] 3 SCC 544, referred to Facts:

In a chargesheet issued against the delinquent employee (respondent) for the misconduct alleged against him the management appointed its legal officer and his assistant as presenting officers. At the same time it rejected the

employee's request to engage a legal practitioner for his defence. Meanwhile, as the enquiry was in progress, a regulation came into force enabling a delinquent employee to engage a legal practitioner if the presenting officer appointed by the disciplinary authority is a legal practitioner. Even after the regulation came into force neither the enquiry officer nor the disciplinary authority reviewed the earlier decision rejecting the delinquent's request to be represented by a legal practitioner. At the end of the enquiry the respondent was dismissed from service.

The High Court set aside the order of dismissal on grounds of violation of principles of natural justice.

On the question whether, where in a domestic enquiry tho employer appoints a legally trained person as presenting-cum-prosecuting officer the enquiry would be vitiated for violation of principles of natural justice if the employer rejected the delinquent's request for permission to defend him by a legal practitioner.

Dismissing the appeal,

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HELD: Since the delinquent employee had not been afforded a reasonable opportunity to defend himself the enquiry ii vitiated for violation of principles of natural justice. [836 E]

(1) Where in an enquiry before a domestic tribunal tho delinquent is pitted against a legally trained person and if he had sought permission to appear through a legal practitioner, refusal to grant such request would amount to denial of reasonable opportunity to defend himself. [837 D]

C. L. Subramaniam v. Collector of Customs Cochin [1972] 3 SCR 485, applied.

(2) Where rules governing a domestic enquiry do not place an embargo on the right of the delinquent to be represented by a legal practitioner the matter would be in the discretion of the enquiry officer whether, considering the nature of the adjudication and the enquiry, the delinquent should be afforded a reasonable opportunity to be represented by a legal practitioner. [839 G]

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(3) When an enquiry officer finds that the employer had appointed a legally trained person as presenting officer, he must, before the commencement of the enquiry, enquire from the delinquent whether he would like to take the assistance of a legal practitioner. [838 E]

A. K. Roy v. Union of India, [1982] 2 SCR 272 at p. 345, referred to.

In the instant case when the enquiry commenced rules were silent on the question of representation of the delinquent by a legal practitioner. While rejecting tho delinquent's request to be represented by a legal practitioner the disciplinary authority appointed the appellant's legal officer and his assistant who were in its

employment as presenting-cum-prosecuting officers, apparently on the view that the issues that would arise in the enquiry were such complex issues involving intricate legal propositions of law which need the assistance of legally trained person. While tho employer was represented by two legally trained persons at tho cost of the appellant, the delinquent was asked either to fend for himself or have the assistance of another employer who was not a legally trained person. In tho circumstances, the delinquent was denied resonable opportunity to defend himself and therefore the conclusion arrived at by the disciplinary authority was in violation of one of the principles of natural justice.

Though tho disciplinary authority, even in the absence of a specific provision, could have exercised his discretion to permit the employee to be represented by a legal practitioner, it was exercised against the employee on the ground that the disciplinary authority was not under any statutory obligation to grant such request. The regulation, which came into force during the course of the enquiry, made it obligatory for the disciplinary authority to grant permission to tho delinquent to appear and defend himself by a legal practitioner if the management was represented by legally trained persons. After the regulation came into force the disciplinary authority should have suo motu reviewed his earlier order and afforded an opportunity to the delinquent to be represented by a legal practitioner. [838 D]

The expression "life" used in Art 21 of the Constitution has a wide moaning. It does not connote only existence or continued drudgery through life. [839 C]

JUDGMENT:

CIVIL APPELLATE JURISDlCTlON: Civil Appeal No. 3734 of Appeal by Special Leave from the Judgment and order dated the 4th November, 1982 of the Bombay High Court in Misc. Petition No 705 of 1979.

F. S. Nariman, A. S. Bhasania, O.C. Mathur and D.N. Mishra for the Appellant.

Y.S. Chitale, Mrs. S. Bhandare and T. Sridharan, for the Respondent.

The Judgment of the Court was delivered by DESAI, J. No Special leave granted.

We heard Mr. F. S. Nariman for the appellant and Dr. Y.S. Chitale for the first respondent. With the consent of parties we proceed to dispose of the appeal.

A charge-sheet was drawn-up against the first respondent for the alleged misconduct and an Enquiry Officer was appointed to hold the enquiry against the first respondent. Before the enquiry

opened, the first respondent submitted a request seeking permission to engage a legal practitioner for his defence. The Chairman of the appellant rejected this request and simultaneously appointed two officers, namely, Shri R.K. Shetty and Shri A.B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively of the appellant as Presenting Officers before the Enquiry Officer. A copy of this letter was endorsed to the first respondent with a foot note that his request for permitting him to appear through a legal practitioner in the enquiry has been rejected by the Chairman. As a sequel to the rejection of his request, the first respondent out of compelling necessity submitted a request that Shri V.V. Nadkarni be permitted to appear in his defence which appears to have been granted. The enquiry opened on April 13, 1976. On May 8, 1976 Bombay Port Trust Employees Regulations 1976 came into force. Regulation 12(8) reads as under:

> "12(8): The employee may take the assistance of any other employee or, if the employee is a class III or a Class IV employee, of an "Office Bearer" as defined in Clause (d) p of Section 2 of the Trade Unions Act, 1926 (16 of 1926) of the union to which he belongs, to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits."

It may be mentioned that the date on which the aforementioned regulation came into force, the second out of 25 witnesses for the employer was in the witness box. It may as well be mentioned that even after the Regulation 12 (8) came into force, neither the Enquiry Officer nor the Chairman of the appellant thought fit to review the earlier decision so as to enable the first respondent to appear through a legal practitioner. At the end of the enquiry, the first respondent was dismissed from service.

The first respondent challenged the legality and validity of the order of dismissal in Misc. Petition No. 705 of 1979 in the High Court of Judicature at Bombay. A learned Single Judge of the High Court by his judgment and order dated September 13, 1982 quashed and set aside the order of dismissal, inter alia, holding that while appointing two Presenting Officers both legally trained, the Chairman of the appellant failed to afford a reasonable opportunity to the first respondent to defend himself by refusing him permission to appear through a legal practitioner and the principles of natural justice are violated. An appeal being O.O.C.J 594 of 1982 by the appellant was dismissed in limine by a Division Bench of that High Court. Hence this appeal by Special leave.

We were not inclined to grant leave to appeal in this case, but as we want to clear a legal misconception we thought fit to hear learned counsel on either side and to dispose of this appeal by a short judgment.

The narrow question which we propose to examine in this appeal is whether where in a disciplinary enquiry by a domestic tribunal, the employer complaining misconduct appoints legally trained person as Presenting-cum- Prosecuting Officer the denial or refusal of a request by the delinquent employee seeking permission to engage a legal practitioner to defend him at the enquiry, would constitute such denial of reasonable opportunity to defend one self and thus violate one of the

essential principles of natural justice which would vitiate the enquiry ?

The time honoured and traditional approach is that a domestic enquiry is a managerial function and that it is best left to management without the intervention of persons belonging to legal profession. This approach was grounded on the view that a domestic tribunal holding an enquiry without being unduly influenced by strict rules of evidence and the procedural jagger-naugkt should hear the delinquent employee in person and in such an informal enquiry, the delinquent officer would be able to defend himself. The essential assumption underlying this belief is questionable but it held the field for some time and there are decisions of this Court in Brooke Bond India (Pvt.) Ltd. v. Subba Raman (S) and Anr.(1) and Dunlop Rubber Co. v. Workmen(2), in which it has been held that in a disciplinary enquiry before a domestic tribunal a person accused of misconduct has to conduct his own case and therefore as a corollary it cannot be said that in such an enquiry against a workman natural justice demands that he ought to be represented by a representative of his Union much less a member of the legal profession. While buttres- sing this approach, an observation was made that unless rules prescribed for holding the enquiry do not make an enabling provision that the workman charged with misconduct is entitled to be represented by a legal practitioner, the Enquiry Officer and/or the employer would be perfectly justified in rejecting such a request as it would vitiate the informal atmosphere of a domestic tribunal. A strikingly different view was sounded by Lord Denning in Pet v. Greyhound Racing Association Ltd.(3), wherein the concerned authority directed an enquiry to be held into the withdrawal of a trainer's dog from a race at a stadium licensed by the National Greyhound Racing Club. The rules of the Club did not prescribe the procedure to be followed in such an enquiry, and there was negative provision excluding a legal practitioner from such an enquiry. The procedure for enquiry was the routine one of examination and cross-examination of the witnesses. The licensee charged with misconduct sought permission to be represented by counsel and Solicitor at the enquiry, which request was turned down by track stewards. When the matter reached the Court of Appeal, Lord Denning observed as under:

> "I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor."

The trend therefore is in the direction of permitting a person who is likely to suffer serious civil or pecuniary consequences as a result of an enquiry, to enable him to defend himself adequately, he may be permitted to be represented by a legal practitioner. But we want to be very clear that we do not want to go that far in this case because it is not necessary for us to do so. The all important question: where as a sequal to an adverse verdict in a domestic enquiry serious Civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner is kept open.

We concern ourselves in this case with a narrow question whether where in such a disciplinary enquiry by a domestic tribunal, the employer appoints Presenting-cum- Prosecuting Officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner, a denial of such a request would

vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby vitiating one of the essential principles of natural justice.

Even in a domestic enquiry there can be very serious charges and adverse verdict may completely destroy the future of the delinquent employee The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and the Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a Presenting-cum- Prosecuting Officer and an Enquiry Officer a Judge and a prosecutor rolled into one. In the past it could be said that there was an informal atmosphere before such a domestic tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his payrolls labour officers, legal advisers lawyers in the garb of employees and they are appointed Presenting-cum-Prosecuting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself. Now if the rules prescribed for such an enquiry did not place an embargo on the right to the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permit ted to appear through a legal practitioner. Why do we say so? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere ? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased judge. The Enquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to this uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not an euphemism for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi-judicial tribunal cannot view the matter with equanimity on inequality of representation. This Court in M. H. Hoscot v. State of Maharashtra(1) clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor, accused, for adequate representation, must have legal aid at State cost. This will apply mutatis mutandis to the present situation.

We are faced with the situation where when the enquiry commenced the rules neither provided for permitting the delinquent employee to be represented by an advocate nor an embargo was placed on such appearance. The rules were silent on this point. But the Chairman of the appellant while rejecting the request of the first respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s. R.K. Shetty and A. B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively, in the employment of the appellant as Presenting cum-Prosecuting Officers. What does this signify? The normal inference is that according to the Chairman of the appellant the issues that would arise in the enquiry were such complex issues

involving intricate legal propositions that the Enquiry Officer would need the assistance of Presenting-cum Prosecuting Officers. And look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the Chairman. While he directed two of his law officers to conduct the enquiry as prosecutors, he simultaneously proceeds to deny such legal representation to the delinquent employee when he declined the permission to the first respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action ? Can one imagine how the scales were weighted and thereby tilted in favour of the prosecuting officer. In this enquiry the employer would be represented by two legally trained minds at the cost of the Post Trust while the first respondent was asked either to fend for himself in person or have the assistance of another employee such as Nadkarni who is not shown to be a legally trained person but the delinquent employee cannot engage legal practitioner at his cost. Can this ensure a fair enquiry ? The answer is not far to seek. Apart from any legal proposition or formulation we would consider this approach as utterly unfair and unjust. More so in absence of rules, the Chairman of the appellant was not precluded from granting a request because the rules did not enact an inhibition. Therefore apart from general propositions, in the facts of this case, this enquiry would be a one sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself. He was pitted against the two legally trained minds and one has to just view the situation where a person not admitted to the benefits of niceties of law is pitted against two legally trained minds and then asked to fend for himself. In such a situation, it does not require a long argument to convince that the delinquent employee was denied a reasonable opportunity to defend himself and the conclusion arrived at would be in violation of one of the essential principles of natural justice, namely, that a person against whom enquiry is held must be afforded a reasonable opportunity to defend himself.

Are we charting a new course ? The answer is obviously in the negative. In C.L. Subarmaniam v. Collector of Customs, Cochin(1) a Government employee requested the Enquiry Officer to permit him to appear through a legal practitioner and even though a trained public prosecutor was appointed as Presenting Officer, this request was turned down. When the matter reached this Court, it was held that the enquiry was in breach of the principles of natural justice. The order of the domestic tribunal was sought to be sustained on the submission that sub-rule 5 of rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 that "..... The Government Servant may present his case with the assistance of any Government servant approved by the Disciplinary Authority but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits." The submission was that it is a matter within the discretion of the Enquiry Officer whether to grant permission and more so because the relevant rule fetters the claim to appear through a legal practitioner. Negativing this contention, this Court held that the fact that the case against the appellant was being handled by a trained prosecutor was by itself a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighted against him. This conclusion was recorded after reference to the earlier decisions in Brooke Bond India (Pvt) Ltd. v. Subba Ramman (S) and Anr. and Dunlop Rubber Co. v. Workmen. Reference was made to Pet's case, referred to earlier, but it is observed that this case has not commended itself to this Court. The earlier cases of this Court were distinguished. In our view we have reached a stage in our onward march to fairplay

in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. This view has been taken by a learned Single Judge and while dismissing the appeal in If mine approved by the Division Bench of the High Court commends to us. Therefore, this appeal is liable to be dismissed.

We would reach the same conclusion for a different reason altogether. The first respondent while submitting a reply to the charge-sheet dated 14th April 1975 requested the Chairman of the appellant to permit him assistance of an advocate at the enquiry. This request was refused and the decision was conveyed by the Dock Manager as per his letter dated March 1975. The enquiry opened p on April 13,1976. By May 8, 1976 evidence of only one out of 25 witnesses of the employer was offered and the second witness was under

> examination. On that date Bombay Port Trust Employees (Regulation) 1976 admittedly came into force. The relevant regulation 12(8) is extracted herein before. The latter portion of the regulation practically borrows the languages of sub.rule (5) of rule 15 referred to herein before, in that it provides that the delinquent officer may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is the legal practitioner or the Disciplinary Authority having regard to the circumstances of the case so permits. Now the first respondent had already submitted his request for appearing through a legal practitioner at the enquiry. This eminently just request was turned down on untenable grounds, and to make matters worse for the delinquent employee two law officers of the appellant were appointed Presenting-cum-Prosecuting Officers. Assuming that in the absence of rules the Chairman has a discretion which was required to be exercised wisely yet taking shelter behind legal facade it was exercised against the first respondent because he was not under any statutory obligation to grant this request. However, when Regulation 12(8) came into force the situation materially altered and the large number of witnesses almost all except one were examined after the Regulation came into force and which made it obligatory to grant the request of the first respondent because the regulation provided granting of permission to appear and defend by a legal practitioner once the department was represented by legally trained minds. A very feeble submission was made by Mr. Nariman that after the Regulation 12(8) came into force, the request was not renewed. In our opinion, that is hardly relevant. The unjustly refused request was already there and obligation under the regulation coupled with fairplay in action demanded that the employer should have suo motu reviewed his order refusing the request. In fact one can go so far as to say that the Enquiry Officer in order to be fair and just, whenever he finds the employer appointing legally trained persons as Presenting cum-Persecuting Officers must enquire from the delinquent employee before commencement of enquiry whether he would like to take assistance of a legal practitioner. The option then is with the delinquent employee. In this connection, we would like to refer to a weighty observation on this point where despite constitutional

inhibition this Court conceded such a right. In K. Roy v. Union of India(1) the learned Chief Justice while rejecting the contention that a detenu should be entitled to appear through a legal adviser before the Advisory Board observed that Art. 22(3)(b) makes it clear that the legal practitioner should not be permitted to appear before an Advisory Board for any party. While noting this constitutional mandate, the learned Chief Justice proceeded to examine, what would be the effect if the department is represented before the Advisory Board by a legally trained person. It was held that in such a situation despite the inhibition of Art. 22(3)(b) the fair procedure as contemplated by Article 21 requires that a detenu be permitted to appear by a legal practitioner. Thus spoke the learned Chief Justice:

"We must therefore make it clear that if the Detaining or Authority or the Government take the aid of a legal practi-

tioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. We are informed that officers of the Government in the concerned departments often appear before the Board and assist it with a view to justifying the detention orders. If that be so, we must clarify that the Boards should not permit the authorities to do indirectly what they cannot do directly; and no one should be enabled to take shelter behind the excuse that such officers are not "legal practitioners" or legal Advisers."- And this view was taken as flowing from Art. 21 which mandates that no one shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous words of Chapter II of Bhagwad Gita:

Sambhavitasya Cha Kirti Marnadati Richyate Therefore in this case, there can be no doubt that for the additional reason that after the Regulation 12(8) came into force, the first respondent should have been given a reasonable opportunity to appear through legal practitioner and failure on their part had vitiated the enquiry. For these reasons, this appeal fails and is dismissed with costs quantified at Rs. 2,000.

Now, we may note the consequence of this decision. As the decision reached by the domestic tribunal is held to be vitiated on the ground that the enquiry was held in violation of the principles of natural justice on the ground that the first respondent was not afford- ed a reasonable opportunity to defend himself, the High Court was justified in quashing the order of dismissal. The sequel to our order would certainly mean that it would be open to the appellant to continue the enquiry. But it must be expedited. We therefore direct that while continuing the enquiry, it will be open to

the appellant to treat the examination-in-chief of each witness already recorded during the enquiry as proper but all witnesses examined at the enquiry will have to be offered to the first respondent for cross-examination and the respondent would be entitled to appear through a lawyer of his choice and even examine witnesses and participate in the enquiry. The earlier cross- examination may also be retained as part of the record. Both sides would be entitled to adduce fresh evidence both document and oral, if considered necessary. The first respondent would be entitled to call upon the appellant to produce any document which he desires for effective adjudication subject to the decision of the Enquiry Officer about its relevance and necessity for efficient and just disposal of the enquiry. As the order of dismissal is being set aside and the enquiry is being continued, the order suspending the first respondent' from service pending enquiry would be revived and the appellant should pay subsistance allowance throughout this period and till the end of the enquiry which would be continued hereafter after taking credit of whatever payment that had been made since the suspension order and till today. The payment herein directed should be made within a month from today.

P.B.R. Appeal dismissed.