State Of Orissa vs Bidyabhujshan Mohapatra on 19 October, 1962

Equivalent citations: 1963 AIR 779, 1963 SCR SUPL. (1) 648, AIR 1963 SUPREME COURT 779, 1963 SCD 368, 1963 (1) LABLJ 239, 29 CUTLT 302

Author: J.C. Shah

Bench: J.C. Shah, Bhuvneshwar P. Sinha, P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta

PETITIONER:
STATE OF ORISSA

Vs.

RESPONDENT:
BIDYABHUJSHAN MOHAPATRA

DATE OF JUDGMENT:
19/10/1962

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1963 AIR 779 1963 SCR Supl. (1) 648
CITATOR INFO :
R 1967 SC1353 (15)
R 1969 SC 966 (8)
R 1970 SC 679 (8)
RF 1972 SC1975 (9)
F 1974 SC1589 (12)
RF 1976 SC 232 (18)
RF 1977 SC2411 (19)
F 1989 SC1185 (20,23,25)
RF 1989 SC1854 (20)

ACT:
Public Servant-Disciplinary proceedings-Two parallel procedures available-Right of appeal under one but not under the other-If discriminatory-Punishment-If court can inter-

fere with-Orissa Discipilinary Proceeding (Administrative Tribunal) Rules, 1951-Civil Services (Classification, Control and Appeal) Rules, 1930-Constitution of India, Arts. 14, 309, 311.

HEADNOTE:

The respondent, a non-gazetted permanent employee of the State, was charged with (i) having received illegal gratification on five occasions and (ii) being possession of property disproportionate to his income. The Governor. referred is case to the Administrative Tribunal constituted under s. 4 (1) of the Disciplinary Proceeding,; (Administrative Tribunal) Rules which had been framed under Art. 309 of tile Constitution.. The Tribunal found four out of the five heads under the first charge and the second charge proved and recommended the dismissal of the respondent. The Governor, after giving the respondent a reasonable opportunity. to ,how cause against the proposed punishment, dismissed him. The respondent filed a writ petition before the High Court challenging the order of dismissal on the ground that the Tribunal Rules were discriminatory and that in holding the enquiry the Tribunal had violated the rules of natural justice. Following a previous decision the High Court held that the Tribunal Rules were discriminatory but since that decision was under appeal before the Supreme Court, it proceeded to deal with the second ground. It held that the second charge and only two head,, of the first charge were established and directed the Governor to reconsider whether on the basis of these charges the punishment of dismissal should be maintained.

Held, that the Tribunal Rules were not discriminatory. There were simultaneously in existence two sets of parallel rules, viz. the Tribunal Rules and the Classification Rules and proceedings could be taken against the respondent under either of the at the discretion of the Governor. But in substance there

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is no difference in the procedures prescribed by the two sets of rules. Mere adoption of one procedure in preference to another permissible procedure does not justify an inference ;of unlawful discrimination. The fact that under the Classification Rules there is a right of appeal from an order imposing a penalty whereas there is no such right of appeal under the Tribunal Rules against the order passed by the Governor was not a ground for sustaining the plea of unlawful discrimination.

Sardar Kapur Singh v. Union of India, [1960] 2 S. C. R. 569 and Jagannath Prasad v. State of U. P., A. 1. R. 1961 S. C. 1245, followed

State of Orissa v. Dhirendranath Das, A. I. R. (1961) S. C. 1715, distinguished.

Held, further that the High Court had no power to direct the Governor to reconsider the question of punishment. The High Court has only to see whether the constitutional guarantees have been violated; but it is not concerned with the penalty imposed, provided it is justified by the rules. The reasons which induce the punishing authority are not justiciable nor is the penalty open to review by the Court. If the order can be supported on any finding as 'to substantial misdemeanour for which the punishment can lawfully be imposed it is not for the court to consider whether that ground alone would have weighed with the authority dismissing the public servant.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 213 of 1962. Appeal from the judgment and order dated February 17, 1959, of the Orissa High Court, Cuttack in O.J. C. No. 216 of 1957.

R. Ganapathy lyer and P. D. Menon, for the appellants. G. B. Pai, B. Parthasarthy, J. B. Dadachanji and O. C. Mathur, for, the respondent.

1962. October 19. The judgment of the Court was delivered by SHAH, J.-Bidyabhushan Mohapatra hereinafter called 'the respondent'-was a permanent non-gazetted employee of the State of Orissa in the Re- gistration Department and was posted at the material time as a Sub-Registrar at Sambalpur. Information was received by the Government of the State of Orissa that the respondent was habitually receiving illegal gratification and that he was possessed of property totally disproportionate to his income. The case of the respondent was referred by order of the Governor of Orissa to the Administrative Tribunal constituted under r.4(1) of the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 framed in exercise of the powers conferred by Art. 309 of the Constitution. The Tribunal held an enquiry in the presence of the respondent on two charges (1) relating to five specific heads charging the respondent with having received illegal gratification and (2) relating to possession of means disproportionate to his income as a Sub-Registrar. The Tribunal held that there was reliable evidence to support four out of the five heads in the first charge 'of corruption' and also the charge relating to possession of means disproportionate to the income and recommended that the respondent be dismissed from service. The finding of the- Tribunal was tentatively approved by the Governor of Orissa and the respondent was called upon to show cause why he should not be dismissed from service as recommended. The respondent made a detailed submission in rejoinder and contended, inter alia, that the Tribunal held the enquiry in a manner contrary to rules of natural justice. After consulting the Public Service Commission the Governor of Orissa by order dated September 26, 1957, directed that the respondent be dismissed from service. The respondent then applied to the High Court of Orissa by petition under Arts. 226 and 227 of the Constitution. inter alia, for a writ quashing the "'entire proceedings before the Tribunal beginning from the charges and culminating in the order of dismissal" and directing the State of Orissa to forbear from giving effec to the order of dismissal dated September 26, 1957, and for a declaration that he be deemed to have continued in his post as Sub-Registrar.

In support of his petition the respondent submitted that the order of dismissal was void because the rules relating to the holding of an enquiry against non-gezetted public servants, called the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951. were discriminatory and that in holding the enquiry against him the Tribunal had violated the rules of natural justice. Following their view in Dhirendranath Das v. State of Orissa(1), the High Court held that the impugned rules were discriminatory and on that account void, and that the respondent was entitled to a writ declaring that the order of dismissal was inoperative. As, however, the case of Dhirendranath Das(1) was carried in appeal to this Court, the High Court proceeded to deal-with the second submission. The High Court held that the findings of the Tribunal on charges 1(a) and 1 (e) were vitiated because it had failed to "observe the rules of natural justice",, but they held that the findings on charges 1(c), 1(d) and charge (2) were supported by evidence and were not shown to be vitiated because of failure to observe the rules of natural justice. The High Court accordingly directed that if this Court disagreed with the Dhirendra nath Das's case(1), "the findings in respect of charges 1(a) and 1(e) be set aside as being opposed to the rules of natural justice but the findings in respect of charges 1(c) and 1(d) and Charge (2) need not be disturbed", and "that it would then be left to the Government to decide whether, on the basis of those charges, the punishment of dismissal should be maintained or else whether a lesser punishment would suffice".

> "The State of Orissa has appealed to this Court with certificate of fitness granted by the High Court under Art. 132 of the Constitution. The High Court in Dhirendranath Das's case(1) had held that at the material time there were in operation two sets of (1) I. L. R. (1958) Cuttack 11.

rules governing enquiries against non-gazetted public servants : (i) the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 (called the Tribunal Rules) and (ii) the Civil Services (Classification, Control and Appeal) Rules, 1930 with the subsidiary rules framed thereunder such as the Bihar and Orisa Subordinate Service Discipline and Appeal Rules, 1935 (collectively called the Classification Rules), and these two sets of rules provided for different punishments and justified commencement of proceedings for different reasons, and whereas there was a right of appeal against the order of a departmental head imposing punishment, under the Classification Rules there was no. right of appeal. against the order of the Governor, imposing punishment, under the Tribunal Rules. The High Court observed "'the main difference between the two sets of rules arises from (1) the nature of the punishment proposed, and (2) the right of appeal. Under the Tribunal Rules the findings of the Tribunal including the proposed punishment are submitted to Government are in the nature of a recommendation which the Government may or may not accept. But the Government are bound to consult the Public Service Commission before they pass final orders. Government have the power to impose the penalty of compulsory retirement under sub-r. (2) of r. 8 of the Tribunal rules in addition to the other penalties, described in r. 49 of the Classification rules. The right of appeal is expressly barred by sub-rule (3) of r. 9. The Tribunal Rules do not say that every case against a Government servant, whether gazetted or non-gazetted, in which the acts of misconduct alleged are any of those described in sub-rule (1) of r. 4 of the said Rules, should be invariably referred to the Tribunal. Thus, if there are two non-gazetted Government servants both of whom have committed identical acts of misconduct such as failure to discharge duties properly, it is left to the unfettered discretion of the Government to refer the case of one of them to the Tribunal for enquiry under the

said rule-,, and to allow the enquiry against the other public servant to be held departmentally by his superior Officers under the provisions of the Classification Rules. The former public servant will have no right of appeal, but he will leave the satisfaction of his case being enquired into not by his immediate superiors, but by an independent authority, namely, the Member, Administrative Tribunal, whose recommendation will be subjected to further scrutiny by the Public Service Commission and the final authority to pass any order of punishment will be the Government. The latter public servant however, though denied the advantage of having his case investigated by independent authorities, is given a statutory right of appeal. The procedure laid down in the Classification Rules may be described as the normal procedure for taking disciplinary action against the Government servants, whether gazetted or non-gazetted; and the procedure laid down in the Tribunal Rules may be described as a drastic procedure". The High Court then observed after considering the arguments advanced at the Bar "that so far as non-gazetted Government servants are concerned the provisions of the Tribunal Rules are less advantageous and more drastic than those of the Classification Rules and the conferment of an unfettered discretion on the Executive to apply either of these rules for the purpose of taking disciplinary action against a non- gazetted Government servant would offend Art. 14 of the Constitution". Accordingly the High Court quashed the order of dismissal passed against the public servant concerned. Against the order of the High Court, an appeal was filed to this Court. In this Court counsel for the State of Orissa in that appeal made no attempt to challenge the correctness of the decision of the High Court, on the question of discrimination. The Tribunal Rules and the Classification Rules were not even included in the Books prepared for the use of this Court at the hearing. The only argument in support of the appeal advanced by counsel for the State was that the Classi- fication Rules, were not in operation when enquiry was directed against the delinquent public servant and the only rules under which the enquiry could be directed were the Tribunal Rules and therefore by directing an enquiry against the delinquent public servant the guarantee of the equal protection clause of the Constitution was not violated. This Court held that if two sets of rules were simultaneously in operation at the material time, and by order of the Governor, enquiry was directed against the respondent under the Tribunal Rules which were "more drastic" and "Prejudicial to the interests of the public servant", a clear case of discrimination arose, and the order directing the enquiry against the public servant and the subsequent proceedings were liable to be struck down as infringing Art. 14 of the Constitution. This Court accordingly dismissed the appeal of the State. An application for review of ,judgment was then filed by the State, and it was contended that as the Bihar & Orissa Subordinate Services Discipline & Appeal Rules, 1935 were not statutory rules and they did not constitute "law", and that there had been some misapprehension about "the submission made at the Bar which had led to an apparent error on the face of the record". Even at that stage it was not urged that the view taken by the High Court that the Tribunal Rules were "more drastic and prejudicial to a public servant against whom an enquiry was directed to be made" could not on a true interpretation of the rules be sustained. This Court rejected the application for review of judgment.

In this appeal copies of the Bihar & Orissa Subordinate Services Discipline & Appeal Rules, 1935 and the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 are produced. Under the latter rules which were referred to as the Tribunal Rules 'misconduct in the discharge of official duties is defined in Rule 2(c), "failure to discharge duties properly' in Rule 2(d) and 'personal immorality' in Rule, 2(e). By Rule 3(4) the Tribunal constituted by the Governor is authorised subject to the

directions of the Governor to co-opt an Assessor to assist it, such Assessor being a departmental officer higher in rank in the department to the official charged. By Rule 4 the Governor is authorised to refer to the Tribunal cases relating to public servants in respect of matters involving-

(a) misconduct in the discharge of official duties;

(b) failure to discharge duties properly;

(c) irremediable general inefficiency in a public servant of more than ten years' standing: and

(d) personal immorality.

By Rule 7 the Tribunal is required to make such enquiry as may be deemed appropriate and in conducting the enquiry the Tribunal is to be guided by rules of equity and natural. justice and not by formal rules relating to procedure and evidence. Clause (3) of Rule 7 provides that before formulating its recommendations the Tribunal shall give a summary of the charges against the official and shall if he is not absconding or untraceable, give him an opportunity orally or in writing, within the time to be specified by the Tribunal to offer his explanation in respect of the charges. Rule 8 provides that after completing its proceedings the Tribunal shall make a record of the case in which it shall state the charges, the explanation and its own findings, and it shall, where satisfied, that punishment be imposed, also formulate its recommendations about the punishment. Rule 9 provides that the Governor may, after considering the recommendations of the Tribunal, pass such order of punishment as he may deem appropriate. By el. (3) of Rule 9 an appeal against the order of the Governor is expressly prohibited. By el. (iii) of Rule 1. of the, Bihar and Orissa Subordinate Services Discipline & Appeal Rules, 1935 it is provided that the Rules shall apply to all members of Subordinate Services under the administrative control of the Government of Bihar, and Orissa, except those for whose appointments and conditions of employment special provision was made by or under any-law for the time being in force. By Rule 2 the penalties specified in the order may be imposed "for good and sufficient reasons". The procedure to be followed before an order of dismissal, removal or reduction is passed, is the same as is set out in Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. It is further directed that in drawing up proceedings and conducting departmental enquiries, the instructions contained in rr. 172 to 178 of the Bihar and Orissa Board's Miscellaneous Rules, 1928, are to be followed except where more detailed instructions have been framed by the Department concerned. Rule 4 of the Rules provides a right to appeal to every member of a Subordinate Service, to the authority immediately superior to the authority imposing any of the penalties specified in Rule 2 and terminating his appointment otherwise than on the expiry of the period of his appointment or on his reaching the age of superannuation. Rule 55 of the Civil Services (Classifica- tion, Control and Appeal) Rules which is referred to in the note to Rule 2, in so far as it is material, provides for information being given in writing of the grounds on which it is proposed to take action against the public servant and to afford him an adequate opportunity of defending himself :

> the grounds on which it is proposed to take action are to be reduced to the form of a definite charge or charges, which have to be communicated to the person charged

together with a statement of any allegation on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case : the public servant concerned has within a reasonable time, to put in his written statement of his defence and to state whether he desires to be heard in person; if he so desires, or if the authority concerned so directs, an oral inquiry is to be held, at which inquiry oral evidence as to such of the allegations as are not admitted is to be led and the person charged is entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may desire, provided that the officer conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. Rule 55 further provides that the proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof and that all or any of the provisions of the rule, may in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived where there is difficulty in observing the requirements of the rule and those requirements can be waived without injustice to the person charged. It is manifest that whereas detailed provisions are made in the Tribunal Rules as to the grounds on which an enquiry may be directed against a public servant for misconduct in the discharge of official duties, failure to discharge duties properly, general inefficiency or personal immorality, under the Classification Rules for "good and sufficient reasons' penalties may be imposed. The expression used in the Classification Rules is somewhat vague, but whatever other ground it may include, it does in our judgment include charges described in Rule 4 of the Tribunal Rules. The procedure to be followed in the enquiry under the Tribunal Rules is not described in any detail. But it is clearly indicated, that the public servant must be given a summary of the charges against him and he must be given an opportunity to submit his explanation orally or in writing, in respect of the charges, and that the Tribunal must in holding the enquiry be guided by rules of natural justice and equity, in the matter of procedure and evidence. The procedure prescribed by Rule 55 of the Civil Services (Classification, Control and Appeal) Rules which is assimilated by virtue of the note under Rule 2 into the Classification Rules, is set out in greater detail, but is in substance not different from the procedure under Rule 7 of the Tribunal Rules. It is true that the Tribunal Rules do not set out the punishments which may be imposed whereas the Classification Rules set out the various punishments such as-, censure, withholding of increments or promotion, including stoppage at an efficiency bar, reduction to a lower post or time- scale or to a lower stage in a time-scale, recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order, fine, suspension, removal from the Civil Service, which does not disqualify from future employment and dismissal from the Civil Service which ordinarily disqualifies from future employment. But failure to enumerate the penalties which may be imposed also does not indicate any variation between the Tribunal Rules and the Classification Rules. Rule 2 of the Classification Rules merely enumerates the diverse punishments which may be imposed. This list is exhaustive, and no penalties other than those enumerated are ever imposed upon delinquent public servants. Under the Tribunal Rules there is no enumeration of penalties, but it

is left to the Governor in his discretion, after considering the report of the Tribunal to select the appropriate punishment having regard to the gravity of the delinquency. This Court in Sardar Kapur Singh v. The Union of India(1) has held that even if the procedure prescribed under a particular method adopted for enquiry is more detailed than that prescribed by Rule 55 of the Civil Services (Classification, Control and (1) [1960] 2 S.C.R. 569.

Appeal) Rules, if in accordance with both the sets of rules notice has to be given of charges and the materials on which the charges are sought to be sustained and if the public servant so desires he can demand an oral hearing and examination of witnesses, it cannot be said that there is any discrimination. In Sardar Kapur Singh's case(1) it was contended that an enquiry under the procedure prescribed by Public Servants (Inquiries) Act, 1850 was void as discriminatory when an enquiry could have been made under the procedure prescribed by rule 55 of the Civil Services Classification, Control and Appeal) Rules. This Court held that the procedure under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules was described in terms elastic, but the procedure under the Public Servants (Inquiries) Act, 1850 not being substantially different, an enquiry directed under the latter procedure and not under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules did not result in any discrimination leading to the invalidation of proceedings started against the public servant under the Public Servants (Inquiries) Act, 1850. It was observed in that case that in the absence of proof of any prejudice to the public servant concerned, mere adoption of one procedure in preference to another permissible procedure will not justify an inference of unlawful discrimination.

Under the Classification Rules there is a right of appeal from an order imposing a penalty passed by a departmental head to the latter's superior whereas there is no such right of appeal against the order passed by the Governor imposing penalty upon a public servant. But this also cannot be regarded as a ground sustaining a plea of unlawful discrimination. In Jagannath Prasad v. State, _of U. P.(2), the question whether an enquiry directed against a public servant under the Rules of the State of Uttar Pradesh similar to the Orissa Tribunal Rules which provided no right of appeal from the order of the Governor (1) [1960] 2 S. C. R. 569.

(2) [1962] 1 S.C. R. 151.

imposing punishment and not under Rules similar to the Orissa Classification Rules which provided a right of appeal against an order dismissing a public servant in the employment of the State of Uttar Pradesh, was discriminatory fell to be considered, and it was held that the enquiry under the Tribunal Rules was not discriminatory. The public servant concerned in that case was a police officer against whom an enquiry was commenced before the Constitution, which resulted after the commencement of the Constitution in an order of dismissal. The enquiry against the public servant was directed under the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 by a Tribunal appointed by the Governor of Uttar Pradesh. At this time there were in operation also the U. P. Police Regulations which were framed under the Indian Police Act. which authorised the Governor to dismiss a Police Officer employed in the State. The Tribunal Rules of the State of U. P. were framed in exercise of the powers vested under s. 7 of the Police Act. The Police Regulations

framed by the Government of U. P. and Tribunal Rules in so far as they were not inconsistent with the provisions of the Constitution remained in operation by virtue of Art. 313 even after the commencement of the Constitution. Therefore at the material time there were two sets of rules for holding an enquiry against 'a police officer. The Police authorities could direct an enquiry under the Police Regulations and the procedure in that behalf was prescribed by Regulation 490; it was also open to the Governor of the State to direct an enquiry against a public servant under Rule 4 of the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules. Relying on the existence of the two distinct sets of rules simultaneously, and the power vested in the State authorities to commence enquiry against the Police Officer under either of these two sets of rules in respect of charges set out in Rule 4 of the Tribunal Rules, it was urged that in commencing an enquiry against the public servant concerned under the Tribunal Rules discrimination was practised and he was deprived of the guarantee of equal protection of laws. It was held that even after the commencement of the Constitution, continuation of the enquiry against the delinquent public servant under the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 did not result in any unlawful discrimination infringing the protection of Art. 14 of the Constitution. Under the Police Regulation an appeal did lie from a subordinate police authority to a superior authority whereas no appeal lay from the order passed by the Governor accepting the recommendations of Tribunal. In considering the effect of the decision in State of Orissa v. Dhirendranath Das(1) on which reliance was placed on behalf of the appellant in that case, it was observed that the case was not an authority for the proposition that where out of the two sets of rules in force it is open to the authorities to resort to one for holding an enquiry against a public servant charged with misdemeanor and if one of such set of rules does not provide for a right of appeal against an order passed against the public servant and the other set provides for a right of appeal, unlawful discrimination results: the only point decided in state of Orissa v. Dhirendranath Das case(1) was that at the material time there were in existence two sets of rules simultaneously in operation, it being accepted that the Tribunal Rules under which the enquiry was made against the public servant were " more drastic" and "prejudicial to the public servant". The Court then proceeded to hold that the procedure under the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 and the procedure under the enquiry commenced under the U. P. Police Regulations were substantially the same and the mere fact that there was a right of appeal against the order of penalty imposed by a, subordinate police authority and there was no such right against the order of the Governor accepting the recommendations (1) A.I.R. (196) S.C. 1715.

of the Tribunal did not make any discriminations justifying this Court in striking down the Tribunal Rules as being discriminatory under Art. 14 of the Constitution. It was observed in Jagannath Prasad's case (1):

> "Regulation 490 of the Police Regulations sets out the procedure to be followed in apt enquiry by the police functionaries, and rr. 8 and 9 of the Tribunal Rules set out the procedure to be followed by the Tribunal. There is no substantial difference between the procedure prescribed for the two forms of enquiry. The enquiry in its true nature is quasi-judicial. It is manifest from the very nature of the enquiry that the approach to the materials placed before the enquiring body should be judicial. It is true that by Regulation 490, the oral evidence is to be direct, but even under r. 8 of the Tribunal

Rules,, the Tribunal is to be guided by rules of equity and natural justice and is not bound by formal rules of procedure relating to evidence. It was urged that whereas the tri- burnal may admit on record evidence which is hear-say, the oral evidence under the Police Regulations must be direct evidence and hear- say is excluded. We do not think that any such distinction was intended. Even though the Tribunal is not bound by formal rules relating to procedure and evidence, it cannot rely on evidence which is purely hearsay, because to do so in an enquiry of this nature would be contrary to rules of equity and natural justice. The provisions for maintaining the record and calling upon the delinquent public servant to submit Is explanation are substantially the same under Regulation 490 of the Police Regulations and r. 8 of the Tribunal Rules. It is urged that under the Tribunal Rules, there is a departure (1) [1962] 1 S.C.R. 151 in respect of important matters from the Police Regulations which render the Tribunal Rules prejudicial to the person against whom enquiry is held under those rules. Firstly, it is submitted that there is. no. right of appeal under the Tribunal Rules as is given under the Police Regulations; secondly, that the Governor is bound to act according to the recommendations of the Tribunal and thirdly, that under the Tribunal Rules, even if the complexity of a case under enquiry justifies engagement of counsel to assist the person charged, assistance by counsel may not be permitted at the enquiry. These three variations, it is urged, make the Tribunal Rules not only discriminatory but prejudicial as well to the person against whom enquiry is held under these Rules. In our view, this plea cannot be sustained. The Tribunal Rules and the Police Regulations in so far as they deal with enquiries against police officers are promulgated under s. 7 of the Police Act, and neither the Tribunal Rules nor the Police Regulations provide an appeal against an order of dismissal or reduction in rank which the Governor may pass. The fact that an order made by a police authority is made appealable whereas the order passed by the Governor is not made appealable is not a ground on which the validity of the Tribunal Rules can be challenged. In either case, the final order rests with the Governor who has to decide the matter himself. Equal protection of the laws does not postulate equal treatment of all persons without discrimination to all persons similarly situated. The power of the Legisla-

ture to make a distinction between persons or transactions based on a real differential is not taken away by the equal protection clause. Therefore by providing- a right of appeal against the order of police authorities acting under the Police Regulations imposing penalties upon a member of the police force, and by providing no such right of appeal when the order passed is by the Governor, no discrimination inviting the application of Art. 14 is practised."

The plea that there was discrimination because there was a right of appeal against an order imposing penalty under one set of rules, and no such right under the other, was rejected in Jagannath Prasad v. State of U. P. (1). It must therefore be held that the existence of a right of appeal against the order of an administrative head imposing penalty and absence of such a right of appeal against the order of the Governor under the Tribunal Rules, does not result in discrimination contrary to Art. 14 of the Constitution. The High Court has held that there was evidence to support

the findings on heads (c) & (d) of Charge (1) and on Charge (2). In respect of charge 1(b) the respondent was acquitted by the Tribunal and it did not fall to be considered by the Governor. In respect of charges 1(a) and 1(e) in the view of the High Court "the rules of natural justice had not been observed". The recommendation of the Tribunal was undoubtedly founded on its findings on charges 1(a), 1(e), 1(c), 1(d) and Charge (2). The High Court was of the opinion that the findings on two of the heads under Charge (1) could not be sustained, because in arriving at the findings the Tribunal had violated rules of natural justice. The High Court therefore directed that the Government of the State of Orissa should decide whether "on the basis of those charges, the punishment of dismissal should be maintained or else whether a lesser punishment would suffice". It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on charges 1(a) and 1(e) were vitiated for reasons set out by it, because in our judgment the (1) [1962] 1. S.C.R. 151 order of the High Court Directing the Government to reconsider the question of punishment cannot, for reasons we Will Presently set out,, be sustained. If the order of dismissal was based on the findings on charges 1(a) and 1(e) alone the Court would have jurisdictions declare the order of dismissal illegal but when the findings the Tribunal relating to the two of five a of the first charge and the second charge was found, not liable to be interfered. with by the ,High 'Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view , the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal. The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under Art. 309 of the Constitution. But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, is not justiciable:

> nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the finding the Tribunal were "unassailable", the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty, for as we have already observed the order of dismissal passed by a competent authority on a public servant., if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal Prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of

Orissa to reconsider the question. The appeal must therefore be allowed and the order passed by the High Court set aside. Having regard to the circumstances of the case, there will be no order as to costs in this Court and the High Court.

Appeal allowed.