

Rajasthan High Court

Krishanlal Godara And Ors. vs State Of Rajasthan on 7 January, 1969

Equivalent citations: 1969 WLN 17

Author: K Singh

Bench: K Singh

JUDGMENT Kan Singh, J.

1. These are three identical writ-petitions questioning the order of removal of the petitioners from the service of the State of Rajasthan, dated 28.3.67, as a result of a joint enquiry conducted against the petitioners. The events leading to the order of removal may be outlined as follows:

2. Each of the petitioners was a Deputy Superintendent of Police in the State of Rajasthan and all of them were posted in the District of Ajmer at the relevant time. Petitioner Jhabarmal Maharia was the Deputy City Superintendent of Police and Krishna Lal Godara was posted as Deputy Superintendent at the Range Headquarters Ajmer, while the third petitioner Krishna Kumar Singh was posted as Deputy Superintendent of Police at Beawar. On 22.4.61 a news item appeared in a local vernacular weekly 'Nyay'. That news item ran as follows. It is Ex. P. 1 on record:

vtesj jasUt ds Mho vkbZo tho o ,lo iho crkos fd ;g dSlS tu j{kd gS A foLoLr lw=ks ls irk pyk gS fd ,d nks lIrk g iwoZ dksbZ iqfyl ds mPpkf/kdkjh ,d nks mlh in ds lkFkh;ks ds lkFk fookfgr toku yM+dh dks mBk ys x;s A cws us viuh ixM+h iqfyl vf/kdjh ds vkxs j[k nh ijUr q?kskM+s ij lokj gksus ds dkj.k mUgksus m/kj dksbZ /;ku nsuk mfpr ugh lek A vkSj vius jkSc nkc ds lkFk iqfyl vf/kdkjh ml efgyk dks ys mM+s A cws us VsfyQksu }kjk dksrokyh dks fjiksZV ntZ djokuh pkg h ijUr mldh xjhch us lkFk ugh fn;k A rFkk izkr% ds yxHkx mu iqfyl vf/kdjh;ks us ml ;qorh dks viuk eqag dkyk djus ds ckn NksM+ fn;k A ifjuk;r% efgyk dk ifr vc bl ?kVuk ds ckn mls vius lkFk j[kus dks rS;kj ugh gS A vke turk es bl ?kVuk ls cM+k vkdzks'k gS ijUr vkt dy ds Hkz"V 'kklu es eqag [kksyus dh fgEer ugh gks ik jgh gS A gekjs ikl ;g lekpjk cM+h eqf'dy ls vk ik;s gS A vk'kk gS vtesj jsUt ds Mho vkbZo tho viuh lnL;rk dsk cyk;s rkd j[k dj bl ?kVuk dh tkap dj;k;sxs A ,lo iho lkgc vtesj ls Hkh dgsxs fd vtesj es ?kVus okyh ?kVukvks ds fy, os Hkh de ftEesnkj ugh ekus tk ldrs A mudh bZekunkjh vkSj dBksjrk ;fn iqfyl iz'kklu ls Hkz"Vkpjk vkSj O;kfHkpjk dks lekIr ugh dj ldrh rks ,slh bZekunkjh vkSj dBksjrk ds fn[kkos dk D;k vFkZ le>k tkos A

3. The Collector of Ajmer, Shri T.N. Chaturvedi, had heard rumours about the incident mentioned in the news item and also some deputationists of Ajmer whose names, of course, have not been disclosed, had waited on the Collector. The Collector eventually asked Shri Doongar Singh Mehta, the Additional District Magistrate to hold an enquiry into the incident mentioned in the news item and report to him. It appears that there was bad blood between Shri Jhabarmal Maharia, Deputy Superintendent of Police, on the one hand, and Shri Govind Singh, Superintendent of Police, Ajmer on the other. The Collector first sounded the Superintendent of Police for the enquiry, but the latter stated to him that it would be embarrassing for him on account of his not having good relations with the Deputy City Superintendent of Police, Shri Maharia. Shri Doongir Singh Mehta examined a number of witnesses, such as, Smt. Sita, Rajmal, Ramniwas Singhal, Surajbhan Halwai and Dharu and he submitted his report to the Collector. Shri Chaturvedi, the Collector, felt that one Bhanwarlal should also be examined by the Additional District Magistrate and also some clarification should be

had from Rajmal. Accordingly, on 8.5.61, Shri Doongar Singh Mehta examined Bhanwarlal and submitted his report on 9.5.61 and that report has been brought on the record as Ex. P./20. After this report some clarifications were sought from Rajmal on 12.5.61. Then Shri Chaturvedi, felt that the important witnesses should be called by him with a view to seeing that their statements were voluntary and were not as a result of any influence operating on them. On 18.5.61, he therefore called Smt. Sita and Rajmal and questioned them. On that day a telegram seems to have been received purporting to be from one Satya Narain, the second husband of Smt. Sita, wherein it was stated that his wife had been subjected to coercion and was prevailed upon to make certain statements against the three writ-petitioners. Shri Chaturvedi suspected these three writ-petitioners to have a hand in the giving of this telegram with a view to damaging the statements of the witnesses recorded by Shri Doongar Singh Mehta. On 20.5.61, a letter is said to have been written by the three writ-petitioners to the Collector wherein they expressed regrets for what had happened. That letter is Ex. P/23 on record. I will have occasion to deal with the impact of this letter in the course of the discussion. At this stage it is sufficient to say that this letter remained with Shri Chaturvedi till he appeared as a witness before the Commissioner of Enquiries on 12.10.62. Shri Chaturvedi submitted a report to the State Government on 20.6.61. The three writ-petitioners were transferred from Ajmer District some time in June 1961 and they handed over the charge of their respective offices on 3.7.61. It is alleged that on 8.7.61 Smt. Sita appeared before Shri O.P. Bansal, First Class Magistrate at Jaipur and submitted an affidavit which is Ex. P/38 on record, stating therein that she had stated against them on earlier occasions was on account of pressure. It is alleged that Shri Maharia was responsible for this affidavit Ex. P/38 filed by Smt. Sita before Shri Bansal. It further appears that a report was lodged with the Police against certain persons including Satya Narain, Prem Narain and Harji for coercing Smt. Sita and making her leave Ajmer for Jaipur and getting an affidavit from her. In pursuance of the report Satya Narain, Prem Narain and Harji were prosecuted in the court of the Additional Munsiff Magistrate, City, Ajmer. This case resulted in acquittal on 19.4.65 and the Judgment of the learned Magistrate has been brought on this record as Ex. P. 35. On the basis of the report submitted by Shri Chaturvedi the State Government framed charges against the writ-petitioners and served them with the same along with the statement of allegations. I ought to mention that before that the petitioners were suspended on 29.8.61. Against their suspension the petitioners made several representations and they were eventually reinstated on 8.8.63 during the pendency of the departmental enquiry.

4. Here, I may give the gist of the charges against the petitioner. Shri Jhabarmal Maharia along with the other two petitioners was alleged to have taken a Government jeep and gone to the house of Rajmal barber situated on the Kachery Road, Ajmer, They were accompanied by one Bhanwarlal. They went there at about mid-night some 10 or 11 days before the Holi of 1961 which fell on 3.3.61 and they awakened Rajmal by knocking at his door. Bhanwarlal was sent by Shri Maharia as an agent to entice Smt. Sita, the daughter of Rajmal. Smt. Sita was about 20 years of age When Rajmal opened the door Bhanwarlal told him that the services of his daughter Smt. Sita were needed at the residence of Shri Maharia as the wife of Shri Maharia was expecting a child and was having labour pains. The services of Smt. Sita were alleged to be needed for attending on the expectant lady for massaging her. Rajmal showed his unwillingness to send his daughter at such a late hour, but Maharia scolded him and eventually on being assured by Shri Maharia about the safety of the girl Rajmal agreed to send his daughter with them. Smt. Sita was taken in the jeep to the residence of

Shri Maharia in Sadar Kotwali. She was then taken to a bed room and there Shri Maharia committed sexual intercourse with Smt. Sita after putting off the lights. After this other two petitioners followed suit by turn and then the girl was left at her house in the jeep. This charge was common to all the three writ-petitioners.

5. Besides this Shri Maharia was confronted with an additional charge that on 8.7.61 Harji, Prem Narain and Satya Narain had forcibly taken away Smt. Sita to Jaipur by a car at the instance of Shri Maharia and at Jaipur on the same day at about midnight Smt. Sita was compelled by coercion and threats to file an affidavit disowning her previous statements given before Shri Doongar Singh Mehta, the Additional District Magistrate, Ajmer, regarding the incident that is said to have taken place at City Kotwali at the residence of Maharia some 10 or 11 days before Holi.

6. The petitioners were served with the charges in the first week of October, 1961. On receipt of the charge-sheets as well as the statements of allegations they wrote a number of letters to the State Government to furnish them copies of the relevant statements recorded by Shri Doongar Singh Mehta and all other documents including the report submitted by Shri Doongar Singh Mehta. In the alternative, they prayed that the inspection of these documents be allowed to them so that they may be able to prepare their defence to the charges served on them. On 25.10 61 Sbri Tej Narain Kak, Deputy Secretary to the Government in the Appointments Departments wrote to say to the petitioners that no copies of the documents were permissible at that stage. I may reproduce that letter as it will have a bearing on the case:

GOVERNMENT OF RAJASTHAN Appointments (A-III) Department.

No. F. 1 (83) Apptts (A) 61 Group III Jaipur 25th Oct. 61.

Shri K.K. Singh,
Dy. Supdt. of Police,
(Under Suspension),
82 Govt. Hostel,
JAIPUR.

Sub : Departmental enquiry.

Ref : Your application dated the-

I am directed to inform you that no copies of the documents are permissible at this stag

Sd/- Tej Narain kak
Deputy Secretary to Government

On 15.2.62, Shri Tej Narain Kak, Deputy Secretary to the Government again wrote to the Collector, Ajmer vide Ex p. 49/H that Sarva Shri J.M. Maharia. K.L. Godhara and K.K. Singh had made identical requests for grant of copies of documents and statements of witnesses and this having been refused they had requested for inspection of the same documents and in that connection it had been decided that the copy of the findings, of the Additional District Magistrate was not to be made available, because it was a confidential document on which departmental proceedings had been initiated. It was added that copies of the affidavits made by Smt. Sita and of the complaint in writing should be made, available to the officers in as much as copies pf the affidavit of Smt. Sita had been referred to the statements in the statement of allegations and the complaint would be needed in the course of the departmental enquiry. The Deputy Secretary, therefore, desired that the Collector should give access to the remaining documents in accordance with the instructions contained in a departmental circular No. F. 3(25). Appts (A)/61/G/III dated 14.2.62. A copy of this letter was endorsed to the petitioners and they were asked to contact the Collector of Ajmer for the purpose of inspection of the records and they were directed to submit their final reply to the charge Sheet within a week. The petitioner's were not satisfied with this reply when they were asked to go to Ajmer for inspection of records and they requested the Government to get the records and give them an inspection at Jaipur. This was done by them by their application Ex. P/49/I on record. This request of the petitioners was not acceded to and the Deputy Secretary wrote them to say vide his letter dated 10.3.1962 (Ex. P. 49/J that they should comply with the Government's orders already communicated to them failing which exparte action might be taken against them. On 14 5.62, the petitioners again wrote to the Deputy Secretary vide Ex. P./49/K that according to the rules they were entitled to have inspection of records at Jaipur which had been made their headquarters. It does not appear that any inspection was allowed to the petitibners at Jaipur as demanded by them or that they had gone to Ajmer for inspection of record. Ultimately on 8.8.62, the Government passed an order for the holding of a departmental enquiry in accordance with the Rajasthan Civil Service? (Classification, Control and Appeal) Rules, 1958, hereinafter to be referred as the "Rules" to by Shri Balwant Singh, Commissioner for Departmental Enquiries. As considerable arguments have centered round this Government order, I may reproduce the same in extensor:

GOVERNMENT OF RAJASTHAN
Appointments (A-III) Department
ORDER

No. F. 1(83) Appts (A)61 Jaipur the 8th August, 62.

Where as an enquiry under Rule 16 of the Rajasthan Civil Services (Classification, Contr

(1) Shri Jhabarmal Maharia,

Formerly Dy. Superintendent of Police (City) Ajmer.

(2) Shri K.L. Godara,

Formerly Dy. Superintendent of Police, Headquarters.

(3) Shri K.K. Singh,

Formerly Dy. Superintendent of Police, Beawar.

And whereas the Governor considers that an Enquiry Officer should be appointed to enquire

Now therefore, the Governor under Rule 18 of the Rajasthan Civil Services (Classification

BY ORDER

Sd/ Tej Narain Kak

Deputy Secretary to Government

In the endorsement to the petitioners it was stated that since they have been defying the Government and have failed for a long time, to submit the written-statements, ex parte proceedings had been ordered. The petitioners again demanded the copies of the statements and documents or their inspection at Jaipur according to the Rules saying that the action against them was drastic and harsh. Since by that time the Commissioner of Departmental Enquiries was seized of the matter, the representations were made before him. The Commissioner forwarded these representations vide his letter Ex. P/49/O on record of the Government for necessary action. The Commissioner, however, endorsed a copy of his forwarding letter to the petitioners saying that before the commencement of the Departmental Enquiry against them the names of the prosecution witnesses and the records which would be produced at the enquiry would be made available to them. On 17.9.62, the Commissioner of Departmental Enquiries gave notice to the petitioners fixing 24.9.62 for recording of the evidence. On 22.9.62 the Commissioner of Departmental Enquiries further wrote to the petitioners with reference to their application dated 12.9.62 that they might come and see the documents as permissible under the Rules. It may be mentioned that 23.9.62 was Sunday and on 24.9.62, the recording of evidence commenced. Here I may say that by their order Ex. P/52/A the Government nominated Shri P.C. Gupta who had succeeded Shri Doongar Singh Mehta by then as Additional Collector and Additional District Magistrate at Ajmer as a departmental representative in the above enquiry. On 12.9.62, petitioner Shri K.K. Singh submitted to the Special Secretary in the Appointments Department that the nomination of Shri Nemichand, Public Prosecutor, Anti-Corruption Department be approved to assist Shri K.K. Singh in presenting his case in accordance with Rule 16(5) of the Rules. Likewise, on the same date Shri Godara requested the Special Secretary in the Appointments Department to approve Shri Kuber Dan as his nominee. Shri Maharia in the same terms prayed for appointment of Shri Ramjiwan Deputy Superintendent (C.I.D.) at Jaipur to be his nominee. On 20.9.62 vide Ex. P/52/E the Government approved of the nomination of Shri Nemichand as a representative for Shri K.K. Singh. Likewise, on the same day they approved of the nominations of Shri Kuber Dan and Ramjiwan for Shri Godara and Shri

Maharia respectively. It may be mentioned that in their application made on 12.9.62 the petitioners had requested the Commissioner to stay proceedings till their nominees were appointed by the Government so that the proceedings could be taken in their presence. On 24-9-62 the Commissioner of Departmental enquiries started the recording of evidence and he recorded the statements of 7 witnesses namely, Smt Sita Rajmal, R.N. Singhal, Bhanwarlal, Khet Pal Singh, Govind Singh and Suraj Bhan. On this date only Shri Ramjiwan, the nominee for Shri Maharia was present and the other two nominees being away from Jaipur were not present. The enquiry was adjourned to 12th and 13th of October, 1962 and on these dates two more statements were recorded. The Additional District Magistrate Shri Doongarsingh Mehta was examined on 12-10-62 and on this date he produced the copies of the statements recorded by him at the preliminary enquiry as also the report made by him. Shri Chaturvedi, the Collector was also examined on that date and the examination of Shri Chaturvedi was completed on 13.10.1962 Shri produced Ex. P/23 on 12.10.62 when his statement was recorded. As considerable arguments have been made regarding this document, I may reproduce the same in extenso:

Ex. P. 6 dated 12.10.61 To, Shri T.N. Chaturvedi, IAS Collector, Ajmer.

Sir, Yesterday we met you and expressed our regrets regarding certain incident in which you enquired. We are really sorry for all that happened and assure you that nothing like this will occur in future. We are sorry for any embarrassment caused to the administration.

Yours faithfully, Sd/- J.M. Maharia, K.L. Godara, K.K. Singh.

7. The petitioners also examined some defence witnesses and eventually on 15.2.63 the enquiry was closed. The Commissioner of Departmental Enquiries Shri Balwant Singh submitted his report on 27.4.64. He came to the conclusion that the charges against the writ-petitioners were not established and consequently he exonerated them. The Government, however, did not accept the findings of the Commissioner of Departmental Enquiries and recorded a dissenting note where by the Government came to the conclusion that all the charges were proved. On 18.1.1965, show cause notices of identical nature were served on the petitioners and they were called upon to explain why they should not be awarded the penalty of removal from service. The petitioners submitted their explanations on 15.2.1965. The Government then referred the case to the Public Service Commission and on 8.4.65 the Public Service Commission agreed with the Government regarding the finding of the petitioners' guilt. As I, have already mentioned, on 19.4.65 the Munsiff-Magistrate at Ajmer had acquitted Satyanarain and others regarding the charge for taking away Smt. Sita to Jaipur and making her file affidavits before Shri Bahsal under duress. The writ-petitioners, therefore made a representation before the Government that in the light of the observations made by the learned Magistrate in his judgment they should be exonerated. On, this representation of the petitioners the State Government again referred the matter to; the Public Service Commission. The Public Service Commission reconsidered, the matter and submitted their fresh advice on 5.9.66. This time the Public Service Commission, however, recommended that instead of the penalty of removal the petitioners should be demoted. The Government, however, did not accept the recommendation of the, Public Service Commission about the reduction of the proposed penalty and eventually passed the impugned order of removal from service against the petitioners.

8. In challenging the proceeding taken against them as also the order of removal passed in pursuance thereof the petitioners contended : (1) that the Collector of Ajmer was not empowered order the holding of a preliminary enquiry as the petitioners were not subordinate to the Collector, being Deputy Superintendent; of Police. It is urged that preliminary enquiry, if any, could be ordered only by; the disciplinary authority; (2) that the State Government could not have legitimately charge sheeted the petitioners or formulated the statement of allegations on the basis of the statements recorded by the Additional District Magistrate Shri Doongarsingh Mehta. In this connection it was pointed out that the Collector who, had ordered the preliminary enquiry had proceeded on pre-conceived notions he having already made exparte informal enquiries in the matter and. further, according to the petitioners, Shri Chaturvedi, the Collector, was biased against them. Then it was pointed out that the report of Shri Doongar Singh Mtehta showed that he had proceeded merely on the basis of certain presumptions and. was not able; to connect the identity of the petitioners with the alleged incident with which they were later on charged; (3) that the order of the State Government appointing the Commissioner of Departmental Enquiries' to hold the departmental enquiry was bad being in contravention of rule 18 of the Rules. It was urged that before a joint enquiry against civil servant was ordered it was necessary for the Government to specify (i) the disciplinary authority, (ii) the penalties Specified in Rule 14 which such disciplinary authority shall be competent to impose and (iii) also whether the procedure prescribed in Rule; 16 or 17 may be followed in the proceedings. According to the petitioners, the State Government alone could have made the enquiry and it could not have delegated this function to the Commissioner of Departmental Enquiries in the manner it, was done, with the result that the entire proceedings, taken by Shri Balwantsingh, the Commissioner of Departmental Enquiries was bad. (4) The order of removal of the petitioners from service, was bad being in violation of the provisions of Article 311 of the Constitution. It is urged that the reasonable opportunity of preparing their defence was denied to the petitioner. It was submitted that refusal to furnish the petitioners with the copies of the statements recorded at the so-called preliminary enquiry by Shri Doongar Singh Mehta or that of the report submitted by Shri Mehta precluded the petitioners from putting up their defence properly. It was urged that eventually agreeing to the giving, of inspection of record at Ajmerahd not at Jaipur which was designated as the headquarters of the petitioners during the enquiry was also denial of adequate opportunity of preparing the defence. More so for the reason that Shri Chaturvedi had an animus against the petitioners and was too much involved in this affair in implicating the petitioners. Then it was maintained that the Government were not justified in ordering the exparte, enquiry in the petitioners to have the copies of relevant statements and documents or in the alternative their inspection, so that they could prepare their written statements. Then it was urged that this exparte enquiry was ordered by the Government at the behest of Shri Chaturvedi, the Collector of Ajmer. It was next contended that before Shri Balwant Singh recorded the statements of the witnesses, the copies of the statements of these witnesses recorded by Shri Doongar Singh Mehta were not furnished to the petitioners so that they could have effectively cross-examined these witnesses. It was further argued that the request of two of the petitioners namely, Serva Shri K.K. Singh and K.L. Godra for staying the proceedings till the Government approved of their representatives for conducting the enquiry was wrongly refused. It was stated that these two petitioners had applied on 12.9.62 for the appointment of their representatives. Of them Shri Nemichand was posted at Bikaner and Shri Kuber Dan was posted, in Special Police Establishment at Jaipur and although the orders of their appointments were made only on 20.9.62

the enquiry was started by Shri Balwant Singh on 24.9.62. It was pointed out that even before the appointment of these representatives Shri Balwant Singh had read over the charges to the petitioners on 17.9.1962.

9. Then in challenging the observations made in the dissenting note of the State Government recorded it was urged that the findings recorded by the the State Government stood vitiated as they were partly based on evidence which was inadmissible against the petitioners and also the Government had omitted to consider the defence evidence adduced by the petitioners. In this connection it was urged that the statements of witnesses recorded by Shri Doongar Singh Mehta were produced at the enquiry for the first time on 12.10.62, and these statements were not usable as substantive evidence and yet, according to the petitioners, the Government had used these statements as substantive evidence against the petitioners. These statements, according to the petitioners, were admittedly recorded by Shri Doongar Singh Mehta in the absence of the petitioners and by no stretch of imagination according to them could have been used against them. In this connection it was pointed out that Bhanwarlal had not deposed against the petitioners at the departmental enquiry before Shri Balwant Singh and yet his statement recorded by Shri Doongar Singh Mehta had been made use of in the dissenting note of the State Government. Likewise, it was urged that none of the witnesses in the course of the enquiry before Shri Balwant Singh had deposed that the incident had taken place before Holi and yet the State Government had held so relying on the statements of witnesses at the so called preliminary enquiry made by Shri Doongar Singh Mehta.

10. In challenging the observations of the Public Service Commission it was contended that like the State Government the Public Service Commission had also fallen into the error when they had relied on the statements recorded at the so called preliminary enquiry made by &hri Doongarsingh Mehta It was pointed out that the Public Service Commission proceeded on the postulate that the testimony of Smt Sita could not be accepted without corroboration and in trying to find corroboration of her testimony they had relied on the statements of persons made at the preliminary enquiry. It was further pointed out that the Public Service Commission had also referred to the defence evidence of one Dharajit for corroboration when this witness had not at all said any thing against the petitioners. It was further urged that the Public Service Commission had relied on hearsay evidence in seeking corroboration of Smt. Sita's testimony. It was pointed out that Shri Chaturvedi's statement was so relied upon though Shri Chaturvedi was not at all a witness of the incident. Likewise it was urged that the Public Service Commission had wrongly relied on the so called confession made by petitioners before the Collector vide Ex. P/23 which was marked as Ex. P/6 in the enquiry. It was urged that a bare reading of this document would show that this was no confession at all and, according to the petitioners, it referred to the incident of the telegram dated 18.5.61 about which the Collector had his suspicions against the petitioners. Then it was urged that the observations of the Public Service Commission bordered on preversity in that they had not considered at all the question of denial of reasonable opportunity to the petitioners in preparing their defence or to effectively cross-examine the witnesses at the enquiry. It was also pointed out that the observations of the Public Service Commission regarding the proceedings being not exparte were also not borne out from the record and then it was urged that they had not taken due note of the fact that Shri Doongar Singh Mehta was not authorised to record the statements of witnesses on oath as he was not acting as a Magistrate in conducting the enquiry.

11. Then finally it was urged that the State Government had not properly appreciated all the facts and circumstances of the case and they were not justified in lightly brushing aside the findings arrived at by the Enquiry Officer. Reference, was made to a number of circumstances in this connection.

12. The writ-petition has been opposed by the State. It was denied that proceedings taken against the petitioners or the order of removal from a service passed against them was vitiated on any of the grounds mentioned by the petitioners.

13. I may now deal with the several points raised by learned Counsel for the petitioners one by one.

14. Regarding the validity of the enquiry made by Shri Doongarsingh Mehta under orders of Shri T.N. Chaturvedi, the Collector, at Ajmer, it was argued on behalf of the petitioners, on the basis of the instructions contained in a hand book on Disciplinary Proceedings published by the Government of Rajasthan, that it is only a superior authority who can initiate a preliminary enquiry on allegations of delinquency or misconduct on the part of a Government servant, calling for disciplinary proceedings, being brought to his notice. Instruction No. 2, omitting parts which are not material, runs as follows:

2. Initiation of Preliminary Enquiries:

(i) When any serious delinquency or misconduct on the part of a Government servant calling for disciplinary proceedings is brought to the notice of his superior, the latter should without any avoidable delay make a preliminary enquiry into the matter either himself or cause such an enquiry to be made by an officer superior to the delinquent.

It was maintained that the petitioners being Deputy Superintendents of Police were not subordinate to the Collector and District Magistrate with the result that the latter could not have initiated a preliminary enquiry, he not being superior officer as contemplated in the above instructions. Having considered the matter I am unable to accept the contention as tenable. Section 4 of the Police Act inter-alia provides that the Administration of the Police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such magistrate, be vested in a District Superintendent. Rule 58(b) of the Rajasthan Police Regulations inter alia provides that the Superintendent of Police is subject to the general control of the District Magistrate who is responsible for the criminal administration of the District. While it is enjoined that in the exercise of his general responsibility the District Magistrate should not interfere in the internal organisation and discipline of the Police Force, he is expected to bring to the notice of the Superintendent of Police all cases in which the conduct and qualification of a Police Officer affect the general administration of the District. It is further enjoined on the District Magistrate that he must always ask the Superintendent of Police to enquire into all cases where the conduct of the Police has been impugned by any judicial authority. Then it is the duty of the Superintendent of Police to make full enquiry and report all these cases to the District Magistrate. The District Magistrate is further empowered to direct an enquiry to be made into any case of misconduct of a Police Officer. The Superintendent of Police is required to submit to the District Magistrate papers regarding all serious

cases of misconduct and all cases likely to affect the relations of police with the public I have, therefore, no doubt whatsoever that a District Magistrate is an authority superior to that of a Deputy Superintendent of Police and even according to the aforesaid instructions contained in the hand book on which reliance has been placed by counsel for the petitioners the District Magistrate will be competent to initiate a preliminary enquiry. It has come in the evidence of Shri Chaturvedi and also in the statements of other witnesses that at the outset Shri Chaturvedi had asked Shri Govind Singh, Superintendent of Police, to make an enquiry but as the latter felt that on account of his strained relations with Shri Maharia he would be embarrassed in conducting the enquiry that the District Magistrate had, in the circumstances, ordered the preliminary enquiry to be made by Shri Doongarsingh Metha, the Additional District Magistrate. Therefore, it cannot be held, in the circumstances, that the enquiry conducted by Shri Doongarsingh Metha was vitiated. It is true, Shri Doongarsingh Metha had recorded the statements of witnesses on oath which obviously he was not authorised to do, but this will not, in my view result in invalidating the statements for the purposes of a departmental enquiry.

15. Apart from this, the matter did not rest at that. The report of the preliminary enquiry was submitted to the Government who was the disciplinary authority. All the three petitioners being members of the Rajasthan Police Service, the State Government could have itself framed a charge even without the benefit of a preliminary enquiry as contemplated by Rule 16 of the Rules. In these circumstances the framing of the charges or formulating the statements of allegations cannot be said to be unauthorised when this was done by the State Government who was the disciplinary authority in the case of the three petitioners.

16. I may now turn to the question about the holding of the departmental enquiry by Shri Balwantsingh the Commissioner of Departmental Enquiries. It was argued by learned Counsel for the petitioners that the matter is governed by Rule 18 of the Rules and in according with the provisions of that rule the Government were not competent to delegate the function of making an enquiry to authority and this should have been done by the State Government itself. It will be convenient to read the relevant rules in this behalf.

17. Rule 14 of the Rules lays down what penalties may for good and sufficient reasons, which have to be recorded, could be imposed on a Government servant. Such penalties are (i) censure; (ii) withholding of increments or promotion; (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of any law, rule or order (iv) reduction to a lower service, grade or post or to a lower time scale or to a lower stage in the time scale or in the case of a pension to an amount lower than that due under the rules; (v) compulsory retirement on proportionate pension (vi) removal from service which shall not be a disqualification for further employment; (vi) dismissal from a service which shall ordinarily be a disqualification for further employment. These penalties have been classified as major and minor penalties. Penalties Nos. (i) to (iii) have been classed as minor penalties and penalties Nos. (iv) to (vii) have been classed as major penalties. The procedure for imposing major penalties is laid down in Rule 16 and that for imposition of minor penalties has been laid down in Rule 17 of the Rules. The vital difference in the procedure for the imposition of the major and minor -penalties is that in the case of the latter the Government servant is only required to be informed of the proposed action to be taken against him

and of the allegations on which it is proposed to be so taken and he is to be given an opportunity to make any representation he may wish to make. Then the disciplinary authority has to consider such representation as may be made by the civil servant concerned and then the final order regarding the imposition of any of the minor penalties or for exonerating the civil servant is passed. In the case of major penalties an elaborate procedure, as contained in Rule 16 is provided. According to Clause (2) to Rule 16, the disciplinary authority has to frame a definite charge or charges on the basis of the allegations on which the enquiry is proposed to be held. Such charges together with a statement of allegations on which they are based have to be communicated in writing to the civil servant and he is required to submit within such time as is specified by the disciplinary authority a written statement indicating whether he admits the truth of all or any of the charges what explanation or defence, if any, he has to offer and whether he desires to be heard in person. Clause (3) of Rule 16 enables the Government servant for the purposes of preparing his defence to inspect and take extract from such official record as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing in the opinion of the disciplinary authority such records are not relevant for the purpose or it is against the public interest to allow him access thereto. Clause (4) provides that on receipt of the written statement of defence, or if no such statement is received within the time specified, the disciplinary authority may itself inquire into such of the charges as are not admitted or if, it considers it necessary to do so, appoint a Board of Inquiry or an Inquiring officer for the purpose. Clause (5) provides the disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges or likewise the Government servant may present his case with the assistance of any other Government servant approved by the disciplinary authority, but is not entitled to engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority is a legal practitioner or the disciplinary authority permits the engagement of a legal practitioner. Clause (6) lays down that the Inquiring Authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant shall be entitled to cross-examine witness examined in support of the charges and to give evidence in person. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witness on the ground that his evidence is not relevant or material, it shall record its reasons in writing. Then it is provided that at the conclusion of the enquiry the Inquiring Authority shall prepare a report of the enquiry recording its findings on each of the charges together with reasons therefor and submit the findings to the disciplinary authority. Then thereafter the disciplinary authority has to issue the necessary notice to the Government servant and to deal with the matter further. It is not necessary to refer to the remaining provisions of Rule 16, as there is no controversy regarding the same.

18. Then Rule 18 makes provision for holding of a joint enquiry. I may read this Rule-

Rule 11. Joint inquiry (1) Where two or more Government servants are concerned in any case, the Government or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

(2) Any such order shall specify:

(i) the authority which may function as the Disciplinary Authority for the purpose of such common proceedings.

(ii) the penalties specified in Rule 14 - which such Disciplinary authority shall be competent to impose, and

(iii) whether the procedure prescribed in Rule 16 or 17 may be followed in the proceeding.

It was argued by learned Counsel for the petitioner that according to Clause (2) it was necessary for the Government to specify as to who was to function as the Disciplinary Authority for the purposes of such common proceedings and also to specify the penalties in Rule 14 which such Disciplinary Authority shall be competent to impose and further it should provide whether the procedure prescribed in Rule 16 or 17 may be followed in the the proceedings. It was submitted that Rule 18 did not entitle the State Government to assign this function of making the departmental enquiry to any other authority.

19. Now a persual of the order of the Government Ex. P/49/L which I have already extracted in the earlier part of this judgment, shows that the Government have laid down that the procedure prescribed in Rule 16 shall be followed in the proceedings regarding the specification of the Disciplinary Authority. For the purpose of the common proceedings it is sufficient to say that the State Government is the Disciplinary Authority for all the three officers and, therefore, it would have been a meaningless formality for the State Government to say in its order Ex. P/49/L that the Disciplinary Authority will be the State Government itself Rule 18 has been designed to cover all kinds of civil servants. There are civil servants for whom the appointing authority is the State Government, whereas there are number of others for whom the appointing authorities are the Heads of the Departments, the Heads of Offices and the like It is where the appointing authorities are different in relation to the different status of civil servants about whom a joint enquiry is ordered that it is necessary for the Government to specify as to who shall be the disciplinary authority, for the common purposes of making the joint enquiry. As also the powers of the various authorities in the matter of imposition of penalties may not be identical and, therefore, it is to cover such an eventuality that it has been made incumbent on the State Government to specify what penalty could be imposed as a result of the joint enquiry ordered against more than one civil servant for whom the appointing authorities may be different. In the present case the Government itself being the appointing authority who is fully competent to impose one or more of the penalties specified in Rule 14 of the Rules, there is nothing wanting in the Order Ex. P/49/L, if the Government did not choose to specify the penalty that could be imposed on the petitioners. For these reasons I do not find any defect in the order Ex. P/49/L on the ground of there being no specification about the disciplinary authority and the penalties.

20. I may now turn to the question whether the enquiry should have been made by the State Government itself or it was open to it to ask the Commissioner of Departmental Enquiries to make the enquiry, Learned Counsel for the petitioners argued that Clause (2) of Rule 18 was only

applicable and the procedural provisions contained in Rule 16 was not made applicable. I am unable to construe Clause (2) of Rule 18 so narrowly. The procedure prescribed in Rule 16 having been made applicable to the joint enquiry in the present case the provisions contained in Clause (4) of Rule 16 will ipso facto be attracted. The provision for appointing the Enquiry Officer is, in my view, nothing but a procedural provision. In these circumstances the direction contained in Ex. P/49/L asking the Commissioner of Departmental Enquiries to conduct the joint enquiry against the petitioner was not in contravention of Rule 18 as contended.

21. In view of what I have said above, I do not find that the order Ex. P/49/L is bad when the Government appointed Shti Balwant Singh to be the Enquiry Officer for conducting the joint enquiry into the charges framed against the three petitioners.

22. I may next proceed to consider the contention whether the petitioners had a reasonable opportunity of preparing their defence or for cross-examining the department witnesses examined by the Commissioner of Departmental Enquiries. Article 311 of the Constitution, inter alia, provides that no civil servant shall be dismissed or reduced in rank after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed after such enquiry to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed but only on the basis of the evidence adduced during such enquiry. Article 311 was amended by the Constitution 15th Amendment Act, 1963, and before this amendment it provided that no civil servant shall be dismissed or removed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The enquiry commenced before Article 311 was amended, but it was concluded in 1964 after the amendment when the Commissioner submitted his report and the State Government passed the orders removing the petitioners from service in 1967. In these circumstances the matter will be governed by Article 311 as it stood amended. Even, as the Article stood prior to its amendment it had been held that the civil servant was entitled to a reasonable opportunity of showing cause twice, before the order of dismissal or removal from service was passed. The unamended Article contemplated two stages in a proceeding; the first being when the charges are enquired into and at that stage the civil servant who is confronted with the charges to enter into his defence; and the second stage was when after the enquiry the competent authority came to the conclusion on the charges and then the question of a proper penalty to be imposed arose. I may refer to *P. Joseph John v. State of Travancore-Cochin* and *Khemchand v. Union of India*. According to Clause (3) of Rule 16 of the Rules the Government servant has to be permitted to inspect and take extracts from the official records as he may specify and such permission could be refused, if for reasons to be recorded in writing, the disciplinary authority thought that such records were not relevant for the purpose and it was against the public interest to allow access to the civil servant concerned to such records. Clause (6) of this Rule provides that the enquiring authority can take such oral evidence as may be relevant or material to the charges and the Government servant shall be entitled to cross-examine witnesses examined in support of the charges. Clauses (3) and (6) of Rule 16 contemplate two distinct stages. The first stage envisaged under Clause (3) is to enable the Government servant to prepare his defence to the charges. At that stage it is true the Government servant is not entitled to have copies of the statements of witnesses recorded at the preliminary enquiry, but he is certainly entitled to an

inspection of such statements At the subsequent stage when the witnesses are to be examined by the enquiring authority the civil servant is undoubtedly entitled to cross-examine the witnesses who are examined at the enquiry against him and he can exercise his right of cross-examination effectively only if the statements of such witnesses recorded at an earlier stage are made available to the civil servant concerned. It is also plain that it is only such statements as are recorded in the presence of the civil servant and of which he had an opportunity of cross-examining the deponents that could be used as substantive evidence in the case. Statements which had never been recorded in the presence of a civil servant and about which he had no opportunity of cross-examining the deponents at the time such statements were recorded cannot be used as substantive evidence against the civil servant at the enquiry.

23. In the present case when the petitioners were served with the charges and the statements of allegations and were called upon to submit their replies, they applied to the State Government to furnish them with the copies of the statements recorded by Shri Doongar Singh Mehta as also the copy of the report submitted by him. By the order dated 25.10.61. which has already been extracted above, the Deputy Secretary to the Government wrote to say to the petitioners in reply to their applications that no copies of the documents were permissible at that stage and for that he relied on Rule 16(3) of the Rules. The applications made by the petitioners before the Deputy Secretary have also been brought on record and they are at pages 190, 191, 196 and 195 of the paper book. They show that the petitioners asked for copies of the complaint, the statements of Smt. Sita, Bhanwarlal, Rajmal and others recorded at the preliminary enquiry, the copy of the enquiry, report, copies of affidavits and a few other papers. It was also prayed in these applications that the petitioners be given an opportunity to inspect the extracts from the official records as per list given in the applications. The Deputy Secretary to the Government by this letter dated 25.10.61 had only dealt with the request for copies. It is true, at that stage the petitioners had no right to obtain copies of the statements of the documents, but certainly they had the right to inspect all these papers and such inspection could be refused only if the disciplinary authority were of the opinion that such words were not relevant for the purpose of or it was against the public interest to allow access to such records. Letter dated 25.10.61. has completely overlooked the provisions of Clause (3) of Rule 16 of the Rules.

24. I may now turn to the other letter of the Government dated 15.2.62. By this letter the Collector, Ajmer was told that the request for grant of copies of documents and statements of witnesses had been refused and the petitioners were now requesting for inspection of the same documents. It was therefore, desired that the papers other than the copy of the findings of the Additional District Magistrate be made available for inspection. About the findings of the Additional District Magistrate, it was observed that it is a confidential document on which the departmental proceedings had been initiated. Here again the Deputy Secretary had overlooked the provisions of Clause (3) of Rule 16. If it was thought that the findings of the Additional District Magistrate were of such a nature that it would be against the public interest to allow access to such findings the State Government should have clearly come to that conclusion. Their merely saying that the findings were of confidential nature hardly met the requirements of law. I have been completely unable to appreciate how what was of confidential nature at that time ceased to be so when Shri Doongar Singh Mehta was produced before the Enquiry Officer on (sic).10.62 and then he produced the copy

of the findings. The observations contained in Ex. P/49/H only show that the person who was dealing with this matter did not realise the requirements of Clause (3) of Rules 16 of the Rules and was not quite careful in disposing of the petitioners' request for inspection of the findings. However, the petitioners have contended that the Government were unjustified in asking them to go to Ajmer and inspect these documents which were with Shri Chaturvedi, the Collector. While it is true it was desirable to obtain all the necessary papers for inspection at place where the enquiry Officer was sitting or where the petitioners were to remain but the mere fact that the petitioners were required to go to Ajmer for inspection of the record does not mean that they were denied the opportunity of inspecting the documents. After all Ajmer was hardly at a distance of 82 miles from Jaipur and could not have taken much time or put the petitioners to unreasonable expenses. That being so, I am unable to hold that except for want of access to the findings of Shri Mehta the petitioners did not have a reasonable opportunity inspecting the relevant records to enable them to prepare their defence. The report of Shri Mehta was not a piece of evidence in the case, because whatever opinion Shri Mehta formed was based on the material collected by him and the opinion of Shri Mehta was not relevant for the purpose of recording a finding by the Enquiry Officer or by the State Government. In these circumstances I am unable to hold that the petitioners did not have a reasonable opportunity of preparing their defence against the charges.

25. Apart from every thing the mere fact that the petitioners could not submit their written reply to the charges or the statements of allegations, in the facts and the circumstances of the case, could not have resulted in any prejudice. The stand of the petitioners has been of complete denial on the allegations and they have furnished their defence on these lines. Therefore even if they were to furnish a reply to the charges or the statements of allegations it would have been nothing but denial of the allegations. Also they have been able to say everything that they could say against Shri Chaturvedi or Shri Doongar Singh Mehta or the Superintendent of Police Shri Govind Singh. They have put forward their case that there was a theft case at the time against Smt. Sita and she was a woman of questionable character and on account of their animosity with the then Superintendent of Police Shri Govind Singh, Smt. Sita and her father were made a tool for weaving a false story of enticement and committing sexual intercourse with the woman against the petitioners.

26. In view of the clear cut stand that the petitioners have taken, it cannot be said that they were prejudiced merely because they were not able to file a written reply to the charges. It is also remarkable that at the commencement of the enquiry Shri Balwant Singh had put the charges to the petitioners and they had denied the same.

27. So far as the question of effective cross-examination of the witnesses is concerned, there is no gain saying the fact that the petitioners were not furnished with the copies of the statement of witnesses recorded by Shri Doongar Singh Mehta before these witnesses were examined on 24.2.62, by Shri Balwant Singh. These statements were produced for the first time by Shri Doongar Singh Mehta on 12.10.62 when he was examined by the Department as a witness. The petitioners have all along been asking for the copies of these statements. It is remarkable that even before the Enquiry Officer on 12.9.62 the petitioners had moved an application for the grant of copies of the statements of witnesses recorded by Shri Doongar Singh Mehta. The application is available at page 213 of the paper-book and is marked Ex. P/49/P. The request was repeated on 20.9.62 vide application at page

214 of the Paper - Book (Ex. P/49/Q). This last mentioned application is a fairly detailed one and in this application attention was invited to the earlier representations made by the petitioners and it was emphasised that before the commencement of the departmental enquiry the statements of witnesses have to be made available. A Supreme Court case *State of M.P. v. Chintaman* AIR 1961 S.C. 1923 was also cited in the application dated 20.9.62 and it was stated that the right to cross-examine the witnesses who gave evidence against the petitioners was a very valuable right and for the effective exercise of such a right the Enquiry Officer has to give the relevant documents failing which the enquiry would not be in accordance with the rules of natural justice. There is no manner of doubt that in spite of this clear cut request of the petitioners the Commissioner of Departmental Enquiries did not ensure that the relevant file of enquiry conducted by Shri Doongar Singh Mehta was made available and the copies of the statements recorded by him were furnished to the petitioners. If for any reason, which is not apparent, this could not be done earlier and it was left to Shri Doongar Singh Mehta to produce the relevant statements on 12.10.62, then it was the duty of the Enquiry Officer to have recalled all these witnesses and afforded a fresh opportunity to the petitioners to cross-examine these witnesses on the basis of the statements recorded by Shri Doongar Singh Mehta. This was obviously not done and, therefore, it cannot be said, in the circumstances, that the petitioners had a reasonable opportunity of cross-examining the witnesses examined against them before Shri Balwant Singh. Apart from this the Government passed the order regarding the appointment of representatives respectively for Servashri K.K. Singh and K.L. Godara on 20.9.62 only four days before the date on which the enquiry was to commence on 24.9.62. These representatives could not be present at the enquiry, because sometime was needed before the orders could be communicated to these officers who were to act as the representatives of the petitioners and also they had to prepare the case. It was, therefore, not proper for the Enquiry Officer to hasten the enquiry on 24.9.62, but in the fitness of things he should have postponed the enquiry affording reasonable opportunity to the representatives to prepare the case for the purposes of cross-examining the various witnesses. On 24.9.62 only Shri Ramjiwan appearing for Shri Maharia was present and cross-examined the witnesses, but this was not done by any of the two representatives for the other petitioners. On this score also that the two of the petitioners namely Servashri K.K. Singh and Shri K.L. Godara did not have a fair opportunity of defending themselves through representatives particularly when the Department had appointed a representative to conduct the enquiry on its behalf.

28. I may next come to close quarters with the dissenting note of the State Government. As already observed, Shri Balwantsingh had come to the conclusion that the charges were not proved against the petitioners and consequently he exonerated them. The Government had taken a different view of the matter. They were undoubtedly entitled to do so, if the circumstances so warranted, but they could make use of only such material as was available on the record and which could be used against the petitioners according to law and in accordance with the principles of natural justice. The dissenting note is at page 272 of the paper book and is marked Ex. P/54/C. I may make it clear that in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution it is not the function of this Court to examine the correctness of the findings of fact arrived at by a competent authority, because this Court does not act as a Court of appeal or revision under Article 226 while hearing a writ-petition. But, at the same time, if such authority has, while in dealing with the matter before it, committed any illegality or has not observed the principles of natural justice, then such

errors can certainly be corrected by this Court under Article 226 of the Constitution by issuing an appropriate writ, direction or order. AS already observed, the State Government could have made use of the material available on record according to law and only in accordance with the principles of natural justice. Perusal of the dissenting note shows that at places more than one the facts available on record have not been as respected as they should have been. It has been observed that "it is to be noted and appreciated that except for one affidavit affirmed before the Jaipur Magistrate, she (Smt. Sita) has generally stuck to the story of having been taken away from her house late at night in a jeep to a room in the Kotwali where she was subjected to sexual intercourse". There are obviously two affidavits purporting to have been sworn by Smt. Sita. One was sworn before the Jaipur Magistrate Shri O.P. Bansal and which is Ex. P/38 and is dated 8.7.61, and the second affidavit is dated 31.7.62, Ex. P/37 at page 174. This affidavit purports to have been sworn before one Shri Basantilal Maheshwari, a Notary Public. The deponent Smt. Sita. appears to have been identified before him by one Shri K.S. Goyal, Advocate. Therefore the above observations of the State Government are not quite accurate. Then it appears that free use has been made of the earlier statement recorded by Shri Doongar Singh Mehta. It has been observed in Ex. P/54/C that "she has also been persisting in her statements that at least one of the offenders was Shri Maharia, the then Deputy Superintendent of Police, Ajmer". In her earlier statements, she has only referred to him as Dy. S.P. Saheb. This means that for evaluating the statements of Smt. Sita recorded by Shri Balwant Singh, the earlier statement of Smt Sita, which was neither put to Smt. Sita when she was examined before Shri Balwant Singh, nor furnished to the petitioners for cross-examining Smt. Sita, had been made use of. Then again in para -2 of that note the observations of Shri Doongar Singh Mehta have been referred. It has been observed that Shri Doongar Singh Mehta on the basis of the description "that there was one fat person, another with moustaches and another a thin person" came to the conclusion that the petitioners were the persons involved in the incident. As I have already observed, the opinion formed by Shri Doongar-Singh Mehta was wholly irrelevant and could not have been made use of in coming to the conclusion about the merits of the case. Then para 3 of the note shows that again the circumstances brought out in the preliminary enquiry have been adverted to and the most objectionable part of the observations contained in para 3 is that the statements of Bhanwarlal had been referred. Bhanwarlal, no doubt, appeared as a witness for the Department, but had turned hostile. His earlier statement which was also produced later on by Shri Doongar Singh Mehta on 12.10.62 was made use of. It had been observed that Shri Bhanwarlal has mentioned the name of Shri Maharia very specifically. The conclusion recorded in the dissenting note in para-4 thereof is very pertinent. It reads from all points, it is not difficult to draw the conclusion that at least Shri Maharia was clearly involved in the incident. This conclusion negatives the guilt of the other two petitioners. The subsequent paragraph in the note however shows that the State Government had placed reliance on other materials. The most important one was Ex. P/23 which was marked Ex. P/6 in the enquiry. This has been referred in para-6 of the Government's dissenting note. It has been mentioned that it is this Ex. P/6 or ExP/23 which established the identity of all the petitioners with the incident which was the subject matter of enquiry. I have already extracted Ex. P/23. A perusal of the same does not reveal that the petitioners were confessing anything about the incident which was the subject matter of the charges framed by the Government. I, therefore, closely examined the statement of Shri Chaturvedi with a view to seeing whether Shri Chaturvedi had stated anywhere that these three petitioners had confessed their guilt about the present incident before him. Shri Chaturvedi's statement is at page 90 of the paper-book and is Ex. P/6. Shri Chaturvedi stated about

the: version given by the petitioners as follows:

Whatever might have happened since their names had been brought in, they would purge themselves of the blame for their own sake and for the embarrassment that might have been caused to the administration.

At another place in his statement Shri Chaturvedi stated as follows:

Shri Maharia came to me. I told him that he very well knew that why I had called him and it would be no use my repeating. He, however consistently denied the allegations and made counter allegations against the S.P., which I had to tell him had nothing to do so far as the facts brought to my notice were concerned. Shri K.K. Singh and Shri Godara also met me but both of them were too much overwhelmed to say any particular thing., I told them that the whole thing was very unfortunate and what can be done about it.

A careful reading of Shri Chaturvedi's statement does not reveal in any portion of such statement that any of the petitioners had confessed that they had taken away Smt. Sita from her house in the manner alleged or had committed sexual intercourse with her as was alleged. The word 'confession' cannot be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even conclusively incriminating fact, is not of itself a confession. Likewise, a statement that contains self exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which if true could negative the offence alleged to be confessed. This is how the confessions are construed under the Criminal Law and I may invite attention to *Narayana Swami v. Emperor* AIR 1939 P.C. 47. While one may not adopt this concept of a confession for purpose of a departmental enquiry the so-called statement to be utilised as confession must, at any rate, admit the material facts on the basis of which an inference about the guilt of the person making the statement could be drawn in unambiguous terms. In the present case, a reading of Ex. P/23 cannot postulate the inference without adding to it something more that it was an admission of guilt with which the petitioners came to be charged. Were the Collector before whom Ex. P/23 was presented to say that the petitioners had stated to him orally something in addition which could lead to the inference of guilt of the petitioners, the position might have been different, but this does not emerge from the statement of Shri Chaturvedi. Learned Counsel for the petitioners has assailed this Ex. P/23 on a number of pounds and he pointed out that there was no reason for Shri Chaturvedi to withhold the so-called confession Ex. P/23 even from the Government and he had not made any reference to it in the report that he submitted. He kept this document with him for a pretty long time and produced it before the Enquiry Officer for the first time on 12.10.62. These are circumstances which have to be taken due note of by a court of facts. In the exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution I am not inclined to enter into the appreciation of evidence. On this aspect of the matter therefore, I express no opinion, but there is no manner of doubt that Ex. P/23 has been largely relied on in the Government's dissenting note and but for this the State government would not have held the petitioners other than Shri Maharia guilty in view of the conclusion reached by them in para 4 of the note.

29. Apart from this para 6 of the note statement of Shri Bijey Singh DW. 14 had also been utilised for corroborating the testimony of Smt. Sita. DW. 14 snn Bijey Singh had not implicated the petitioners and it was against the record to say that DW. 14 Shri Bijey singh had corroborated the testimony of Smt Sita so far as the identity of the petitioners was concerned. DW 14 was produced by the petitioners in their defence for showing that someone else had come to Smt. Sita's house. Then in para-7 of the note it has been observed "that the S.P. also indicated to the Collector that according to his information the incident had taken place. To say the least the reliance on the so-called statement of the Superintendent of Police to the Collector which was nothing but hearsay was not justified on any cannons of justice or fair play. It was for the persons who had informed the Superintendent of Police to come in evidence and make statements, it they wanted to do so, but whatever the Superintendent of Police learnt from others or whatever he conveyed to the Collector, could, by no stretch of imagination, he treated as evidence in the case. It further appears that in para 11 of their note the Government have tried to establish the date of incident to be 10 or 11 days before Holi of 1961. In the statements made by the various witnesses before the Enquiry Officer they have not said a word that the incident had taken place 10 or 11 days before Holi. It is, therefore, obvious that the State Government had based their conclusion on what the witnesses had stated before Shri Doongar Singh Mehta at the preliminary enquiry, because there alone the witnesses had stated that incident had taken place 10 or 11 days before Holi. This again was not a justifiable use of the statements of witnesses recorded by Shri Doongar Singh Mehta. Learned Counsel for the petitioners further, submitted that in the dissenting note the State Government have not properly appreciated the defence witnesses. Here again, I am not inclined to enter into the appreciation of evidence. I have confined my consideration to the question whether the material on which the finding of the Government was based could lawfully be made use of in arriving at the finding about the guilt of the petitioners.

30. To summarise it is clear that the petitioners did not have a proper opportunity of cross-examining the witnesses examined against them by Department before Shri Balwant Singh on 24.9.62 in as much as they were not furnished with the copies of the statements made by these witnesses on the earlier occasion before Shri Doongar Singh Mehta. Two of the petitioners namely, Servashri K.K. Singh and K.L. Godara did not have sufficient opportunity of defending themselves as the enquiry was not adjourned to enable their representative participate in the enquiry and to defend them after preparing the case. The order for the appointment of the representatives were issued as late as on 20.9.62 only and the enquiry commenced on 24.9.62 Then as regards Shri K.K. Singh and Shri K.L. Godara the finding about their guilt is based on Ex. P/23 which had been wrongly held to be a confession when, in fact, it is not so In this way the Government have been misled in coming to the conclusion that the guilt was established against these two petitioners. But for reliance on Ex P/23 marked s Ex. P/6 in the enquiry, their conclusion would not have been as embodies in para 4 of the Governments dissenting note. In these circumstances I am satisfied that reasonable opportunity has been denied to the petitioner in effectively cross-examining the departmental witnesses examined against them by shri Balwant Singh on 24.9.62 and the Government had made use of such material as could not have been made use of against the petitioners.

31. In *Dhirjlal v. I.T. Commissioner, Bombay*, it was held that if the court of fact whose decision of fact is final arrives at a decision of fact by considering material which is irrelevant to the enquiry, or by considering material which is partly on conjectures, surmises and suspicions and partly on evidence, then in such a situation clearly an issue of law arises. And in such cases, it is well established that when a court of fact on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises. The same view has been taken in *K.N. Gupta v. Union of India* AIR 1968 S.C. 383 and *Jogesh Chandra v. State of West Bengal*. In view of this I come to the conclusion that the finding recorded by the Government in their dissenting note stands vitiated.

32. Learned Counsel for the petitioner also criticised the opinion recorded by the Public Service Commission. Some of the errors committed by the State Government in its dissenting note have been repeated even by the Public Service Commission. The Public Service Commission have observed that Smt. Sita's statement would need corroboration before it could be accepted and then corroboration is sought from Ex. P/23, the so-called confession marked as Ex. P/6 in the enquiry. Therefore, whatever I have said about the observations of the State Government have observed in their advice. Ex P/6 thus could not have been made use of by them. Similarly the Public Service Commission too has referred to the statements of witnesses recorded at the preliminary enquiry. This could not have been done. Apart from this the Public Service Commission have relied on the statement of defence and witness Dharajit in corroboration of the departmental witnesses. The statement of Dharajit does not corroborate the statement of the departmental witnesses. Apart from this learned Counsel for the petitioner contended that the Public Service Commission have not considered the plea advanced by the petitioner about their not having had reasonable opportunity for preparing their defence or to effectively cross-examine the departmental witnesses without the statements recorded at the so-called preliminary enquiry by Shri Doongar Singh Mehta. I need not deal at length with the various observations of the Public Service Commission, because whatever has operated on the mind of the State Government is clear from their own dissenting note. I have, therefore, no doubt that petitioners did not have reasonable opportunity to defend themselves within the meaning of Article 31 of the Constitution.

33. Accordingly, the order of removal from service passed against the several petitioners on 28.3.67 stands vitiated and order has to be quashed. The State Govt. will, however, be free to proceed afresh in the matter against the petitioners according to law, if they are advised to do so.

34. In the result, I allow the three writ-petitions and hereby quash the order dated 28.3.67 Ex. 56 on the record. The respondents shall reinstate the petitioners on the posts which they were holding on the date of this order of removal from service. The parties are, however, left to bear their own costs of all the three writ petitions.