Supreme Court of India
S. Kapur Singh vs Union Of India (Uoi) on 15 December, 1959
Equivalent citations: AIR 1960 SC 493, 1960 2 SCR 569
Author: Shah
Bench: B S Shah, K Dasgupta, K S Rao, P Gajendragadkar
JUDGMENT Shah, J.

1. Sardar Kapur Singh (who will hereinafter be referred to as the appellant) was admitted by the Secretary of State for India in Council to the Indian Civil Service upon the result of a competitive examination held at Delhi in 1931. After a period of training in the United Kingdom, the appellant returned to India in November, 1933 and was posted as Assistant Commissioner, Ferozepore in the Province of Punjab. He served in the Province in various capacities between the years 1933 and 1947. In July, 1947, he was posted as Deputy Commissioner at Dharamsala and continued to hold that office till February 11, 1948, when he was transferred to Hoshiarpur at which place he continued to hold the office of Deputy Commissioner till a few days before April 14, 1949. On April 13, 1949, the appellant was served with an order passed by the Government of East Punjab suspending him from service. On May 5, 1950, the appellant submitted a representation to the President of India protesting against the action of the Government of East Punjab suspending him from service and praying that he be removed from the control of the Punjab Government and that if any disciplinary action was intended to be taken against him, it be taken outside the Province of Punjab by persons appointed by the Government of India and in atmosphere "free from prejudice and hostility". The Government of East Punjab on May 18, 1950, appointed Mr. Eric Weston, Chief Justice of the East Punjab High Court as Enquiry Commissioner under the Public Servants (Inquiries) Act, XXXVII of 1850, to hold an enquiry against the appellant on twelve articles of charges. Notice was issued to the appellant of those charges. On November 5, 1950, at the suggestion of the Enquiry Commissioner, the Government of East Punjab with drew charges Nos. 11 and 12 and the Enquiry Commissioner proceeded to hold the enquiry on the remaining ten charges. Charges 1, 2, 7, 8, 9 and 10 related to misappropriation of diverse sums of money received by or entrusted to the appellant, for which he failed to account. The third charge related to the attempts made by the appellant to secure a firearm belonging to an engineer and the unauthorised retention of that weapon and the procuration of sanction from the Government of East Punjab regarding its purchase. The fourth charge related to the granting of sanction under the Alienation of Land Act for sale of a plot of land by an agriculturist to a non-agriculturist, the appellant being the beneficiary under the transaction of sale, and to the abuse by him of his authority as Deputy Commissioner in getting that land transferred to his name, without awaiting the sanction of the Government. The fifth charge related to the grant to Sardar Raghbir Singh of a Government contract for the supply of 'fire-wood' without inviting tenders or quotations, at rates unreasonably high and to the acceptance of wet and inferior wood which when dried weighed only half the quantity purchased, entailing thereby a loss of Rs. 30,000 to the State. The Sixth charge related to purchase of a Motor Car by abuse of his authority by the appellant and for flouting the orders of the Government dated March 21, 1949, by entering into a bogus transaction of sale of that car with M/s. Massand Motors and for deciding an appeal concerning that car in which he was personally interested.

2. Charges Nos. 1 to 4 and 7 to 10 related to the official conduct of the appellant when he was posted as Deputy Commissioner at Dharamsala and charges Nos. 5 and 6 related to the period when he was posted as Deputy Commissioner at Hoshiarpur.

3. The Enquiry Commissioner heard the evidence on behalf of the State at Dharamsala between July 31 and August 21, 1950. Enquiry proceedings were then resumed on September 5 at Simla and were continued till October 23 on which date the evidence on behalf of the State was closed. On October 27, the appellant filed a list of defence witnesses. A detailed written statement was filed by the appellant and he gave evidence on oath between November 28 and December 5. The defence witnesses were then examined between December 5 and December 28. It appears that the appellant did not, at that stage desire to examine any more witnesses, and the appellant's case was treated closed on December 28. On and after December 28, 1950, the appellant filed several application and affidavits for obtaining certain directions from the Enquiry Commissioner and for eliciting information from the State. On January 2, 1951, the Enquiry Commissioner adjourned the proceeding for the winter vacation. The proceedings were resumed on March 12, 1951, and after recording formal evidence of two witnesses, S. Gurbachan Singh, Sub-Inspector and Ch. Mangal Singh, Sub-Inspector about the statements made by certain witnesses for the defence in the course of the investigation which it was submitted were materially different from those made before the Enquiry Commissioner and after hearing arguments, the enquiry was closed. On May 14, 1951, the Enquiry Commissioner prepared his report. He held that the appellant had taken the amount referred to in charge No. 1 from the Government on the basis of a claim of Raja Harmohinder Singh which was made at the appellant's instance, that the appellant has also received the amount which was the subject matter of charge No. 2, that the appellant admitted to have received the amounts which were the subject matter of charges Nos. 7, 9 and 10, that the amount which was the subject-matter of charge No. 8 was obtained by the appellant from the Government under a fraudulent claim sanctioned by the appellant with full knowledge of its true nature and that accordingly the appellant had received an aggregate amount of Rs. 16,734-11-6 and that even though he had made certain disbursements to refugees, the appellant had failed to account for the disbursement of the amount received by him or anything approximate to that amount and therefore the charge against the appellant for misappropriation must be held proved although the amount not accounted for could not be precisely ascertained. On charges 3 and 4, the Enquiry Commissioner did not record a finding against the appellant. On charge No. 6, he recorded an adverse finding against the appellant in so far as it related to the conduct of the appellant in deciding an appeal in which he was personally concerned. He held that the conduct of the appellant in giving a contract to Sardar Raghbir Singh which was the subject matter of charge No. 5 was an act of dishonest preference and the appellant knowingly permitted the contractor to cheat the Government when carrying out the contract and thereby considerable loss was occasioned to the Government for which the appellant was responsible.

4. This report was submitted to the Government of East Punjab. On February 11, 1952, the Secretary to the Government of India, Ministry of Home Affairs supplied a copy of the report to the appellant and informed that on a careful consideration of the report and in particular of the conclusions reached by the Enquiry Commissioner in respect of the charges framed, the President of India was of the opinion that the appellant was "unsuitable to continue" in Government service and that the

President accordingly provisionally decided that the appellant should be dismissed from Government service. The appellant was informed that before the President took auction, he desired to give the appellant an opportunity of showing cause against the action proposed to be taken and that any representation which the appellant may make in that connection will be considered by the President before taking the proposed action. The appellant was called upon to submit his representation in writing within twenty one days from the receipt of the letter. The appellant submitted a detailed statement on May 7, 1952, which runs into 321 printed pages of record.

5. The President consulted the Union Public Service Commission, and by order dated July 27, 1953, dismissed the appellant from service with immediate effect. The order passed by the President was challenged by a petition filed in the East Punjab High Court for the issue of a writ under Art. 226 of the Constitution. The appellant prayed that a writ quashing the proceeding and the report of the Enquiry Commissioner and also a writ of Mandamus or any other appropriate Writ, Direction or Order commanding the Union of India to reinstate the appellant into the Indian Civil Service from the date of suspension be issued. By separate, but concurring judgments, Chief Justice Bhandari and Mr. Justice Khosla of the East Punjab High Court dismissed the petition. Against the order of dismissal of the petition, this appeal has been filed by the appellant pursuant to a certificate of fitness granted by the High Court.

6. Counsel for the appellant submitted that the order dismissing the appellant was liable to be set aside because the proceedings of the Enquiry Commissioner were without jurisdiction and were in any event vitiated because the Commissioner followed a procedure which was violative of the rules of natural justice. Counsel urged, (1) that the enquiry could not be directed by the Punjab Government as the appellant was a member of the Indian Civil Service and was not employed under the Government of Punjab; (2) that in any event, the enquiry could not be made under the Public Servants (Inquiries) Act, 1850, and could only be held under r. 55 of the Civil Services (Classification, Control and Appeal) Rules and the enquiry not having been held under the rule, the order passed against the appellant was without jurisdiction; that the enquiry under the Public Servants (Inquiries) Act, 1850, violated the equal protection clause of the Constitution and was accordingly void; and (4) that the Enquiry Commissioner held the enquiry against the appellant in a manner contrary to the rules of natural justice in that the Commissioner did not allow the appellant sufficient opportunity to examine witnesses and to produce documentary evidence in support of his case. The order of dismissal by the President was challenged by the appellant on the plea that the President not having directed viva voce examination before him of witnesses whose evidence was recorded by the Enquiry Commissioner and not having given opportunity to the appellant to make an oral submission about the evidence led in the case and particularly the defence, the appellant was deprived of a reasonable opportunity of showing cause against the action proposed to be taken against him.

7. The appellant was admitted to the civil service under a covenant with the Secretary of State for India, but the special method of recruitment of the appellant to the service does not warrant the view that the appellant was not employed at the material date under the Government of East Punjab. By sub-s. 2 of s. 10 of the Indian Independence Act, 1947, in so far as it is material, it was enacted that every person appointed by the Secretary of State to civil service of the Crown in India

who continued on and after the appointed day to serve under the Government of the Dominion of India or of any Province or part thereof was entitled to receive the same conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary matters, or as the case may be, as respects the tenure of his office. By sub-s. 2 of s. 240 of the Government of India Act as amended, a person appointed by the Secretary of State who continued in the establishment of the Dominion of India was not liable to be dismissed by any authority subordinate to the Governor General or the Governor according as that person was serving in connection with the affairs of the Dominion or the Province. Indisputably, since India became a Republic, by Art. 310(1) of the Constitution, every person who is a member of a civil service of the Union or of an all-India service or holds any civil post under the Union, holds office during the pleasure of the President. But the power to dismiss a member of the civil service of the Union or of an all-India service may not be equated with the authority conferred by statue upon the State under which a public servant is employed to direct an enquiry into the charges of misdemeanour against him. By s. 2 of the Public Servants (Inquiries) Act, 1850, it is provided that :

"Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehavior by any person in the service of the Government not removable from his appointment without the sanction of the Government, it may cause the substance of the imputations to be drawn into distinct articles of charge, and may order a formal and public inquiry to be made into the truth thereof", and the expression 'Government' is defined by s. 23 of the Act as meaning Central Government in case of persons employed under that Government and the State Government in the case of persons employed under that Government. The appellant was, at the date when enquiry was directed, employed under the East Punjab Government and there is nothing in the Constitution which abrogates the authority of the State to direct an enquiry under s. 2 of the Act."

8. The submission of the appellant that the Act did not apply to enquiries against members of the Indian Civil Service is without force. The Act was, as the preamble recites, passed for regulating enquiries into the behavior of public servants who are not removable from appointment without the sanction of the Government. The appellant, it is true, entered service under a covenant with the Secretary of State for India in Council, but since the commencement of the Constitution of India, the Secretary of State had no authority in the matter of employment and dismissal of public servants employed in the civil service of the Union of India and the members of the Indian Civil Service who continue to remain employed in India hold office during the pleasure of the President, and are accordingly liable to be dismissed from service by the President. The Public Servants (Inquiries) Act, 1850, seeks to regulate enquiries into the behavior of superior public servants who are not removable from their appointment without the sanction of the Government; enquiries into the behavior of members of subordinate services, who are appointed and are liable to be dismissed by authorities subordinate to the Government being excluded from the purview of the Act. There is no foundation for the submission that members of the Indian Civil Service, because they hold office during the pleasure of the President since the commencement of the Constitution, are employees of the President. They are and continue to remain employees of the Union or the State under which they are employed. By the Constitution, the executive power of the Union is conferred upon the President, and it is in exercise of that executive power that the President may dismiss a member of

the Civil Service of the Union or of an all-India service from his appointment. Members of the Indian Civil Service are accordingly not liable to be dismissed from their appointment without the sanction of the Government and are not excluded from the purview of the Public Servants (Inquiries) Act, 1850.

9. Rule 55 of the Civil Services (Classification, Control and Appeal) Rules provides :

"Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal court or by a Court Martial) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations 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. He shall be required, within a reasonable time, to put in a 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 direct, an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him. 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 a difficulty in observing exactly the requirements of the rule and those requirements can be waived without injustice to the person charged."

10. It was submitted relying upon that rule, that no order for dismissal or removal of a member of the Indian Civil Service can be passed unless an enquiry is held against him as prescribed by r. 55. But the rule in terms states that the enquiry contemplated therein is "without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850". The rule apparently means that an order of dismissal, removal or reduction in rank shall not be passed without an enquiry either according to the procedure prescribed by the Public Servants (Inquiries) Act, 1850, or the procedure prescribed by the Rule. The Rule does not support the submission that even if an enquiry be held under the Public Servants (Inquiries) Act, 1850, before an order of dismissal or removal or reduction is passed against a member of the civil service another enquiry expressly directed under r. 55 shall be made. The argument on behalf of the appellant proceeds upon an assumption which is not warranted by the language used, or by the context that the expression 'without prejudice' is used in the rule as meaning 'notwithstanding'.

11. The observations made in S. A. Venkataraman v. The Union of India and Another ([1954] S.C.R. 1150) by Mr. Justice Mukherjea, in delivering the judgment of the court that :

"Rule 55, which finds a place in the same chapter, lays down the procedure to be followed before passing an order of dismissal, removal or reduction in rank against any member of the service. No such order shall be passed unless the person concerned has been informed, in writing, of the grounds on which it is proposed to take action against him and has been afforded an adequate opportunity of defending himself. An enquiry has to be made regarding his conduct and this may be done either in accordance with the provisions of the Public Servants (Inquiries) Act of 1850, or in a less formal and less public manner as is provided for in the rule itself", dispel doubt, if there be any, as to the true meaning of the opening clause of the rule.

12. Does the holding of an enquiry against a public servant under the Public Servants (Inquiries) Act, 1850 violate the equal protection clause of the Constitution ? The appellant submits that the Government is invested with authority to direct an enquiry in one of two alternative modes and by directing an enquiry under the Public Servants (Inquiries) Act which Act it is submitted contains more stringent provisions when against another public servant similarly circumstanced an enquiry under r. 55 may be directed, Art. 14 of the Constitution is infringed. The Constitution by Art. 311(2) guarantees to a public servant charged with misdemeanour that he shall not be dismissed, removed or reduced in rank unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The content of that guarantee was explained in Khem Chand v. The Union of India and Others ([1958] S.C.R. 1080 at 1096-97). It was observed that :

"the reasonable opportunity envisaged by the provision under consideration includes -

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant."

13. By the Constitution, to public servants who are not members of the Indian Civil Service charged with misdemeanour a guarantee to a fair enquiry into their conduct is given : i.e., the public servant must be afforded a reasonable opportunity of defending himself against the charges by demonstrating that the evidence on which the charges are sought to be founded is untrue or unreliable, and also by leading evidence of himself and his witnesses to that end; he must, besides, be afforded an opportunity of showing cause against the proposed punishment. The Constitution however does not guarantee an enquiry directed in exercise of any specific statutory powers or administrative rules. But the guarantee in favour of members of the Indian Civil Service is slightly different. By Art. 314, a public servant who was appointed by the Secretary of State to a civil service

of the Crown in India continues except as expressly provided by the Constitution on or after the commencement of the Constitution to serve under the Government of India or of the State subject to the same conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before the Constitution. Rule 55 of the Civil Services (Classification, Control and Appeal) Rules before the date of the Constitution assured the public servants that no order of dismissal, or removal from service shall be passed except following upon an enquiry, and by Art. 314, to civil servants appointed by the Secretary of State the same rights in disciplinary matters as were available before the Constitution are guaranteed. A member of the Indian Civil Service, before disciplinary action is taken against him is therefore entitled by the force of guarantees enshrined in the Constitution to an enquiry into his alleged misdemeanour either under the Public Servants (Inquiries) Act or under r. 55 of the Civil Services (Classification, Control and Appeal) Rules, in operation at the date of the Constitution. But the guarantee being one of an enquiry directed under one of two alternative powers, the exercise of authority under one of the two alternatives is not prima facie illegal.

14. The procedure to be followed in making an enquiry under the Public Servants (Inquiries) Act, 1850, is prescribed in some detail. The Enquiry Commissioner is required to supply to the person accused a copy of the articles of charges and list of the documents and witnesses by which the charges are to be sustained at least three days before the beginning of the enquiry. By s. 11, the prosecutor is required to exhibit articles of charges which are read and the person accused is required to plead 'guilty' or 'not guilty' to each of them; then the plea of the person accused is required to be recorded and if that person refuses, or without reasonable cause neglects to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge. By ss. 13, 14, 15 and 16, the sequence to be followed in the examination of witnesses is prescribed. Section 18 prescribes the method of maintaining notes of oral evidence. By s. 19, after the person accused has made his defence, the prosecutor is given an opportunity to make a general oral reply on the whole case and to exhibit evidence to contradict any evidence exhibited for the defence; but the person accused is not entitled to any adjournment of the proceedings although such new evidence were not included in the list furnished to him. By s. 20, power is given to the Enquiry Commissioner to amend the charge. This procedure is evidently prescribed in greater detail than the procedure prescribed by r. 55. Under r. 55, the grounds on which it is proposed to take action against the public servant concerned must be reduced to the form of a definite charge and be communicated to him together with the statement of the allegations on which each charge is based and of any other circumstances on which it is proposed to take into consideration in passing orders on the case. The public servant must be given reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person, and if he desires or if the authority so directs, an oral enquiry must be held. At that enquiry, opportunity is given to the public servant to cross-examine witnesses to give evidence in person and to examine his own witnesses. The provisions of the Public Servants (Inquiries) Act, 1850, were made more detailed for the obvious reason that at the time when that Act was enacted, there was no codified law of evidence in force. But the procedure prescribed by Act XXXVII of 1850 and the procedure to be followed under r. 55 are in substance not materially different. Under either form of enquiry, the public servant concerned has to be given notice of the charges against him; he has to be supplied with the materials on which

the charge is sought to be sustained and if he so desires, he may demand an oral hearing at which the witnesses for the prosecution and his own witnesses shall be examined.

15. Counsel for the appellant submitted that the procedure under the Act was more onerous against the public servant concerned in two important respects : under s. 11 of Act XXXVII of 1850, if the accused refuses or without reasonable cause neglects to appear to answer the charge, he shall be taken to admit the truth of the articles of charge, whereas there is no similar provision in r. 55; (2) that under s. 19 of the Act, even after the evidence for the defence is closed, it is open to the prosecutor to exhibit evidence to contradict evidence exhibited for the defence and the Commissioner is not bound to adjourn the proceeding although the new evidence was not included in the list furnished to the accused whereas there is no similar provision in r. 55. The procedure prescribed by r. 55 is undoubtedly somewhat more elastic, but the provisions similar to those which have been relied upon by counsel for the appellant as discriminatory are also implicit in r. 55. If the public servant concerned does not desire an oral enquiry to be held, there is no obligation upon the authority to hold an enquiry. Again, there is nothing in the rule which prevents the authority from exhibiting evidence for the prosecution after the case of the defence is closed if that evidence is intended to contradict the evidence of the public servant concerned.

16. The primary constitutional guarantee, a member of the Indian Civil Service is entitled to is one of being afforded a reasonable opportunity of the content set out earlier, in an enquiry in exercise of powers conferred by either the Public Servants (Inquiries) Act or r. 55 of the Civil Services (Classification Control and Appeal) Rules, and discrimination is not practised merely because resort is had to one of two alternative sources of authority, unless it is shown that the procedure adopted operated to the prejudice of the public servant concerned. In the case before us, the enquiry held against the appellant is not in manner different from the manner in which an enquiry may be held consistently with the procedure prescribed by r. 55, and therefore on a plea of inequality before the law, the enquiry held by the Enquiry Commissioner is not liable to be declared void because it was held in a manner though permissible in law, not in the manner, the appellant says, it might have been held.

17-20. The plea that the Enquiry Commissioner held the enquiry in a manner violative of the rules of natural justice, may now be considered. (His Lordship, after considering the material furnished to support the plea, agreed with the view of the High Court that the enquiry was not vitiated on account of violation of the rules of natural justice.)

21. The President of India was not bound before passing an order dismissing the appellant, to hear the evidence of witnesses. He could arrive at his conclusion on the evidence already recorded in the enquiry by the Enquiry Commissioner. By Art. 311 of the Constitution, a public servant is entitled to show cause against the action proposed to be taken in regard to him, but exercise of the authority to pass an order to the prejudice of a public servant is not conditioned by the holding of an enquiry at which evidence of witnesses viva voce, notwithstanding an earlier fair and full enquiry before the Enquiry Commissioner, is recorded. In The High Commissioner for India and Another v. I. M. Lal (75 L.A. 225) dealing with s. 240, clause 3, Lord Thankerton in dealing with similar contentions observed :

"In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges and the actual punishment to follow is provisionally determined on. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statue gives the civil servant the opportunity for which sub-section (3) makes provision. Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant had been through an inquiry under rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out; but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry."

22. And this view was affirmed by this court in Khem Chand v. The Union of India and Others ([1958] S.C.R. 1080) where at p. 1099, it was observed by Chief Justice S. R. Das :

"Of course if the government servant has been through the enquiry under r. 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out."

23. By the Constitution, an opportunity of showing cause against the action proposed to be taken against a public servant is guaranteed and that opportunity must be a reasonable opportunity. Whether opportunity afforded to a public servant in a particular case is reasonable must depend upon the circumstances of that case. The enquiry in this case was held by the Enquiry Commissioner who occupied the high office of Chief Justice of the East Punjab High Court. The appellant himself examined 82 witnesses and produced a large body of documentary evidence and submitted an argumentative defence which covers 321 printed pages. An opportunity of making an oral representation not being in our view a necessary postulate of an opportunity of showing cause within the meaning of Art. 311 of the Constitution, the plea that the appellant was deprived of the constitutional protection of that Article because he was not given an oral hearing by the President cannot be sustained.

24. The appeal therefore fails and is dismissed with costs.

25. Appeal dismissed.