

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 30745 of 2017

Dr. Sanjit Biswas

-Vs-

President, Cantonment Board & Ors.

For the Petitioner	: Mr. R. Guha Thakurta Mr. S. Sengupta Ms. Dipa Roy
For the Respondent Nos. 1 & 2	: Mr. Indrajeet Dasgupta
For the Respondent Nos. 3 & 5	: Mr. Anirban Mitra
Heard on	: 12.06.2024, 10.07.2024, 01.08.2024
Judgment on	: 16.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner had been appointed as an Assistant Surgeon (Residential) for the Cantonment General Hospital by a memo bearing No. C/III/340/14 dated 24.12.2001, having possessed the requisite qualifications for appointment to the said post. He had been informed that his services would be governed by the Cantonment Funds Servants Rules, 1937, the Fundamental Rules and Supplementary Rules, as well as the Central Civil Services (Conduct) Rules, 1964. Over the course of his service, by a memo bearing No. C/III dated 15.12.2006 issued by the Chief Executive Officer of the Cantonment Board,

the respondent authorities had found his service to be satisfactory, and it had been recommended that he be treated as a service candidate for the purposes of appearing in the ensuing Post Graduate Entrance Examination conducted by the West Bengal University of Health Sciences.

2. The petitioner had submitted that subsequent to his joining, his efforts to introduce improvements within the hospital had not been met with support and had instead been dismissed by the then Chief Executive Officer. He had further alleged that he had been subjected to harassment at the hands of the said officer. Thereafter, by an order bearing SBR No. 6 dated 29.07.2016, the respondent authorities had sought to remove the petitioner from his post. In response, the petitioner had preferred an appeal under Rule 14 of the Cantonment Fund Servants Rules, 1937, being Appeal No. SB/SL/11/ dated 16.08.2016. During this period, on and from 31.05.2016, the petitioner had submitted an application before the respondent authority for grant of study leave for a period of 36 months in order to pursue an MD (Bio Chemistry) course at Nil Ratan Sircar Medical College, Kolkata. However, the leave had not been granted. As a consequence, the petitioner had instituted a writ petition before this Hon'ble Court, being WP No. 17844 (W) of 2016. By an order dated 06.10.2016, this Hon'ble Court had been pleased to direct the respondent authorities to arrive at a just decision in accordance with law in relation to the petitioner's request. Pursuant thereto, the petitioner had commenced his studies in the MD (Bio Chemistry) course at the said institution.

3. While the board had been holding a meeting to consider the petitioner's application for study leave, the respondent authorities had undertaken an examination of his service records. It had been at this juncture that they had claimed to have discovered serious acts of disciplinary misconduct and malpractice committed by the petitioner. In view of the said findings, the respondent authorities had terminated the petitioner's services without initiating disciplinary proceedings, by exercising the powers conferred under Rule 12E(ii) of the Cantonment Funds Servants Rules, 1937. Accordingly, by the impugned order dated 27.12.2016 bearing No. C/III/340/VOL VI/236, issued by the Chief Executive Officer vide Resolution No. 3, the petitioner had been dismissed from service. Aggrieved thereby, the petitioner had preferred an appeal before the General Officer Commanding-in-Chief, which had been dismissed by the impugned order dated 19.01.2017. Both the impugned orders had become the subject matter of challenge in the present writ petition.
4. The petitioner had taken the stand that he had been dismissed from service without any prior notice, without any opportunity to respond to specific allegations, and without being informed of the reasons for his dismissal. The petitioner had asserted that the action had been taken against him under Rule 12E(ii) of the Cantonment Funds Servants Rules, 1937, which had enabled the authorities to terminate his services without conducting a disciplinary hearing. The petitioner had therefore prayed for a writ in the nature of mandamus to declare Rule 12E(ii) as ultra vires to the Constitution of India. He had further prayed for setting aside and/or modifying the

impugned orders dated 27.12.2016 and 19.01.2017, and vide Resolution No. 3 dated 02.12.2016. He had sought reinstatement to his post as Assistant Surgeon (Residential) and Medical Officer-in-Charge of Barrackpore Cantonment Hospital, which had been subsequently renamed as the Cantonment Jagadish Chandra Bose General Hospital. In addition, the petitioner had prayed for the release of his salary and allowances including all arrears accrued since the date of his termination.

5. The respondents had submitted that the board had been in the process of considering the petitioner's application for study leave when it had undertaken a review of his service file. In the course of this review, the authorities had come across what they had described as serious disciplinary violations and malpractice on the part of the petitioner. In view of the same, and invoking the provisions of Rule 12E(ii) of the Cantonment Funds Servants Rules, 1937, the petitioner had been dismissed without a formal disciplinary inquiry. The respondents had further submitted that the petitioner had not exhausted the alternative remedy available to him under Rule 15 of the Cantonment Funds Servants Rules, 1937, which provided for a statutory appeal to the Central Government. Instead of availing such remedy, the petitioner had directly approached this Hon'ble Court by way of a writ petition challenging the disciplinary decision taken against him.

6. The petitioner had, accordingly, sought redress before this Hon'ble Court by challenging both the orders that had culminated in the termination of his service and the dismissal of his appeal. He had contended that the procedure followed had been arbitrary and violative of the principles of natural justice.

The primary relief sought in the writ petition had been a declaration of Rule 12E(ii) as unconstitutional, along with ancillary reliefs that included reinstatement and disbursal of service-related dues.

7. The Learned Advocate for the petitioner had submitted that the Cantonment Board had fallen within the ambit of an “Other Authority” under Article 12 of the Constitution of India, and therefore it had been incumbent upon it to act in a fair, non-arbitrary and lawful manner. It had been contended that the petitioner had been dismissed without any reason being assigned and without being served any notice or allegation, which had rendered the dismissal illegal, arbitrary, mala fide, unreasonable, unconstitutional, and void. The Learned Advocate for the petitioner had argued that the Cantonment Board, acting on behalf of the State and governed by the Central Services (Classification, Control and Appeal) Rules, 1965, had been bound by constitutional obligations. It had been submitted that the petitioner, being a public servant, could not have been dismissed or removed without being informed of the charges against him and without being afforded a reasonable opportunity of being heard as mandated under Article 311(2) of the Constitution of India. However, in the present case, no such opportunity had been extended to the petitioner and thus the impugned orders dated 27.12.2016 vide Resolution No. 3 dated 02.12.2016 and the order dated 19.11.2017 had been illegal and in violation of the Constitution.

8. The Learned Advocate for the petitioner had contended that the respondent authorities had neither informed the petitioner of any charges nor had constituted any enquiry authority to verify such charges. Without initiating

any enquiry, the respondents had proceeded to impose the impugned orders of dismissal upon the petitioner, which had been entirely without jurisdiction, authority of law, and in clear violation of Rules 12B and 12C of the Cantonment Funds Servants Rules, 1937. It had been submitted that the Appellate Authority had failed to take into account that the petitioner had been a permanent employee and had earlier been demoted from the post of Medical Officer-in-Charge to that of Medical Officer without being assigned any reason. The Learned Advocate had submitted that this demotion and eventual dismissal without any enquiry had clearly demonstrated the bias of the Cantonment Board and its disregard for settled principles of service jurisprudence. The dismissal without any notice or inquiry had been illegal and void.

9. It had further been submitted that Rule 12E(ii) of the Cantonment Funds Servants Rules, 1937 had empowered the Executive Officer to impose punishment without a hearing where satisfied that reasons existed, but such a provision had been void under Section 23 of the Indian Contract Act, 1872 and contrary to public policy. It had been contended that Rule 12E(ii) had been ultra vires Article 14 of the Constitution of India, and violative of the Directive Principles contained in Articles 39A and 41. Consequently, the impugned orders had been unconstitutional, injurious to the petitioner, and unsustainable in law or on fact and were liable to be set aside. The Learned Advocate had argued that being a permanent employee, the petitioner had possessed a right to know the allegations against him and to defend himself,

but he had been dismissed without being afforded any opportunity or reason, in blatant disregard of the principles of natural justice.

10. The Learned Advocate for the petitioner submitted that a demand for justice had been served upon the respondent authorities by the petitioner through his advocate on 24.07.2017, but the same had not been considered in accordance with law. The respondent authorities had not served any notice or show cause upon the petitioner prior to or even after issuing the impugned dismissal order dated 27.12.2016 vide Resolution No. 3 dated 02.12.2016, which had rendered the action illegal, mala fide, arbitrary, unreasonable, and unconstitutional. It had been contended that no charge sheet had been served upon the petitioner, and the dismissal had occurred without any proceedings being initiated. The action of the respondent authorities had thus been without jurisdiction and in clear violation of Article 311(2) of the Constitution of India. The dismissal order had been served without any charge sheet, and no opportunity for defence had been granted, no charge had been framed, and the constitutional safeguards under Article 311(2) had not been complied with, thereby rendering the action null and void.

11. The Learned Advocate for the petitioner had also submitted that the petitioner, being a confirmed officer of the Cantonment Board, Barrackpore, had been entitled to a reasonable opportunity of defence. However, the respondent authorities had invoked the doctrine of pleasure and had acted illegally and arbitrarily despite there being no adverse entry or allegation in the petitioner's entire service record. It had been emphasised that the petitioner had not been a temporary public servant or a probationer and thus

had been entitled to constitutional protection. Even in the case of a temporary public servant, dismissal without opportunity to be heard would have been impermissible under Article 311(2). The Learned Advocate had contended that the authorities had not acted fairly or reasonably since the dismissal dated 03.01.2017 had not been based on any proper consideration, and that such unfair treatment had been violative of Article 14 of the Constitution of India.

12. It had been submitted that as an authority under Article 12, the respondent authorities could not have acted in an arbitrary or illegal manner. However, the petitioner had been removed without any show cause notice, charge sheet, or opportunity to defend himself under Article 311(2), which had rendered the action illegal, prejudicial, and unwarranted in law. The Learned Advocate had further contended that no agenda concerning the petitioner's service or any proposed punishment had been included in the meeting dated 02.12.2016. Despite the absence of agenda or discussion, the order of dismissal dated 27.12.2016 had been passed in violation of the norms and principles governing meetings under Section 39 of the Cantonment Act, 2006.
13. With regard to Rule 12E(ii), The Learned Advocate for the petitioner had submitted that the said rule had been inconsistent with or in derogation of the Fundamental Rights of citizens, and as such, it had been liable to be declared void under Article 13(2) of the Constitution of India. The rule had been ultra vires Article 14 for creating discriminatory classes of employees with respect to punishment. It had also been inconsistent and repugnant to Section 23 of the Contract Act, 1872, and violative of the Directive Principles in Articles 39A and 41. It had been submitted that the rule had been contrary

to the constitutional mandate under Article 311(2), which required that no civil servant be dismissed without being informed of the allegations and afforded a hearing. The Learned Advocate had further contended that the rule had been akin to a “Henry VIII clause,” conferring arbitrary powers upon the Cantonment Board without specifying who would exercise such power, and without laying down any guidelines or circumstances for its invocation. No opportunity of hearing had been provided to the petitioner before exercising such an extraordinary power.

14. The Learned Advocate for the petitioner had further argued that although Rule 12E(ii) had provided for dispensation of inquiry proceedings in certain circumstances, it had never contemplated the exclusion of the principles of natural justice. In the instant case, the rule had been invoked and the petitioner had been dismissed based on reasons recorded in the minutes of the meeting, but the reasons mentioned had not satisfied the condition of it being “not reasonably practicable to hold an inquiry” as required under the said rule. Therefore, the Learned Advocate had submitted that the entire action of the Cantonment Board had been bad in law. It had been further contended that the rule had not excluded the requirement of fair hearing, and the respondent authorities had failed to inform the petitioner of the purported charges or provide an opportunity to reply, which had been a fundamental breach.

15. The Learned Advocate for the petitioner had also submitted that the meeting of the Cantonment Board on 02.12.2016 had been required to comply with Section 43(1) of the Cantonment Boards Act, 2006, which required that the

minutes be signed by the presiding officer and the Chief Executive Officer before the close of the meeting. However, this requirement could not have been met as the minutes contained 101 typed pages with annexures of 200 pages. Thus, the meeting had no legal force and its decisions had been non-est in the eyes of law. It had been argued that the minutes had not reflected the actual state of affairs.

16. The Learned Advocate for the petitioner had submitted that during the pendency of the writ petition, the petitioner had completed his MD in Biochemistry from the West Bengal University of Health Sciences in November 2020 and had thus become better equipped to serve as a Medical Officer. In support of the submissions, reliance had been placed on several authorities including *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398; *Chief Security Officer v. Singasan Rabi Das*, (1991) 1 SCC 729; *Tarsem Singh v. State of Punjab*, (2006) 13 SCC 581; *Risal Singh v. State of Haryana*, (2014) 13 SCC 244; *Union of India v. Raghunath*, (2018) 15 SCC 463; *Hari Niwas Gupta v. State of Bihar*, (2020) 3 SCC 153; and *Ram Bahadur v. Union of India*, (2022) 1 SCC 389. In addition, the Learned Advocate had placed reliance on the decision in *Whirlpool Corporation v. Registrar of Trademarks*, (1998) 8 SCC 1, to submit that the existence of an alternative remedy would not bar the maintainability of a writ petition, particularly where the matter involved a breach of the principles of natural justice.

17. The Learned Advocate for the respondent no. 1 and 2 submitted that the petitioner had joined the MD (Biochemistry) course at Nil Ratan Sircar Medical College, Kolkata without obtaining any prior authorization or

permission as required under the applicable rules. It had been further submitted that no application for contempt of the order dated 6th October, 2016 had been filed by the petitioner and, moreover, the said order had never set aside the order rejecting the petitioner's application for study leave. The Learned Advocate for the respondent no. 1 and 2 submitted that the letter dated 15th December, 2006 could not have created any enforceable right or equity in favour of the petitioner for seeking a study leave of thirty-five months commencing from 31st May, 2016, and it remained an admitted fact that no order had been passed granting any such study leave. The petitioner, it was submitted, had received his salary for May and June without any deduction despite his absence, but that did not imply a grant of leave, as no presumed leave or leave by default was contemplated under service jurisprudence. Formal authorization by the appropriate authority was mandatory for such leave to be legally valid. The Learned Advocate for the respondent no. 1 and 2 submitted that despite knowing that his leave had not been sanctioned, the petitioner had deliberately continued his unauthorised absence up to his dismissal on 2nd December, 2016.

18. The Learned Advocate for the respondent no. 1 and 2 submitted that if the petitioner intended to impute malice or personal bias to the then Chief Executive Officer, he ought to have impleaded the said officer in his personal capacity. Mere allegations without manifest bias in the impugned order were insufficient. It had also been submitted that the petitioner had neither challenged the order dated 29th July, 2016 nor approached the Court regarding the pendency of the appeal. The Board had already passed

Resolution CBR-12 on 29th July, 2016 rejecting his leave application. The Learned Advocate for the respondent no. 1 and 2 submitted that the petitioner had been dismissed from service under Rule 12E(ii) of the Cantonment Fund Servants Rules, 1937, which did not mandate a disciplinary proceeding. It had been further submitted that Article 311 of the Constitution of India applied to members of the civil services of the Union or State or holders of civil posts under the Union or State, and did not apply to employees of the Cantonment Board, which was a deemed municipal authority. The dismissal, it was submitted, had been in accordance with Rule 12E(ii), a provision analogous to the second proviso to Article 311(2) of the Constitution of India.

19. The Learned Advocate for the respondent no. 1 and 2 submitted that Rule 12E(ii) of the Cantonment Fund Servants Rules, 1937 had not been declared unconstitutional or ultra vires by any court of law. The rule did not necessitate the issuance of notice, charge-sheet, show cause, or opportunity of hearing before termination, provided reasons had been recorded in writing, which had been done in the present case though not annexed by the petitioner. The conduct of the petitioner during his entire service tenure had made it impossible for the respondent authorities to retain him, and it had not been reasonably practicable to hold an enquiry. The resolution dated 2nd December, 2016 had detailed the petitioner's conduct and the reasons justifying the departure from a formal enquiry.

20. The Learned Advocate for the respondent no. 1 and 2 submitted that although the agenda of the meeting had originally been regarding the

petitioner's leave, his service records had been scrutinised during the discussion, revealing various violations which compelled the members to dismiss him in order to protect the interest of the Cantonment Board. The minutes, although not annexed by the petitioner, had duly recorded the proceedings. The petitioner had been present at the meeting and had left on his own. The Learned Advocate for the respondent no. 1 and 2 submitted that the letter dated 23rd May, 2018 expressing disagreement with the resolution had been issued approximately 18 months later and was clearly an afterthought.

21. The Learned Advocate for the respondent no. 1 and 2 submitted that prior issues such as pay scale, demotion, and removal from post had occurred much earlier and were not challenged by the petitioner. These issues were irrelevant to the present petition and, if the petitioner had alleged bias, he should have named the specific members of the Board allegedly harbouring personal malice. It could not be the petitioner's case that all members were biased or influenced by the then CEO. The Learned Advocate for the respondent no. 1 and 2 submitted that the Board's decision had been based on numerous facts, each supported by evidence, and the conclusion regarding the impracticability of conducting an enquiry had been based on objective criteria. There had been no arbitrariness, malice, or non-application of mind, and the petitioner had not challenged the dismissal or appellate order on merits but only on grounds of non-compliance with natural justice and vires of Rule 12E.

22. The Learned Advocate for the respondent no. 1 and 2 further submitted that during reconsideration of study leave, the Board had scrutinised the petitioner's files and found anomalies, including unauthorised absence, malpractice, and anonymous threats. The petitioner had been called to explain these matters, but he had failed to do so and had walked out of the meeting. It had been discovered that he had tampered with web pages during the meeting. The Learned Advocate for the respondent no. 1 and 2 submitted that personal files were missing, and there was evidence of collusion with office staff. In such circumstances, the Board had invoked Rule 12E and, by resolution dated 2nd December, 2016, had dismissed the petitioner. The resolution and minutes had been detailed and evidence-based.
23. The Learned Advocate for the respondent no. 1 and 2 submitted that Rule 12E of the 1937 Rules was *pari materia* with Article 311(2)(b) and that the Supreme Court had set out the required ingredients in *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416. It had been held that the disciplinary authority must be satisfied that holding an enquiry was "not reasonably practicable", and that such satisfaction must be recorded in writing. "Not reasonably practicable" meant more than mere impracticability and must be judged reasonably. The Learned Advocate for the respondent no. 1 and 2 referred to circumstances such as threats to witnesses or general indiscipline which could justify such satisfaction. The decision had to be taken by the disciplinary authority, which was best suited to assess the situation, and the authority's satisfaction was final as per Article 311(3). This authority had been reiterated in *Ved Mitter Gill v. Union Territory of Chandigarh*, (2015) 8

SCC 86, where concerns about potential witness intimidation justified dispensing with a formal enquiry.

24. The Learned Advocate for the respondent no. 1 and 2 submitted that the Board's decision had not been based on conjecture and that the petitioner's guilt had been well-supported. The petitioner had not denied or challenged the facts recorded in the resolution. His conduct had warranted the invocation of extraordinary powers under Rule 12E, and relief could not be granted as it would be against public interest. The Learned Advocate for the respondent no. 1 and 2 referred to *Rajasthan State Industrial Development & Investment Corporation v. Subhash Sindhi Coop. Housing Society*, (2013) 5 SCC 427, to assert that writs were discretionary and equitable in nature, and that relief could be denied if it would result in injustice or was against public interest.
25. The Learned Advocate for the respondent no. 3 and 5 submitted that the petitioner had been an employee of the Barrackpore Cantonment Board and that the Cantonment Fund Servants Rules, 1937 governed the terms of service and disciplinary proceedings. Rule 12 laid down the procedure for conducting disciplinary proceedings. As per the Rules, the Cantonment Board was the appointing and disciplinary authority for supervisory posts, and the Officer Commanding-in-Chief, the Command, acted as the appellate authority. Rule 15 provided for a further appeal to the Central Government. The petitioner had not availed this remedy but had instead approached this Court directly by filing Writ Petition No. 30745(W) of 2017. The Learned Advocate for the respondent no. 3 and 5 submitted that the petitioner's

service conditions were governed by CFSR 1937, and as per Rule 3(A), the CCS (Leave) Rules, 1972 were applicable, which stated that leave could not be claimed as a matter of right. The leave application had been rejected vide Resolution No. 12 dated 29th July, 2016.

26. The Learned Advocate for the respondent no. 3 and 5 submitted that under Section 178(3) of the Cantonments Act, 2006, the Cantonment Board was the competent authority to appoint the Medical Officer-in-Charge. The petitioner had filed an appeal on 19th January, 2017, which had been forwarded to the appellate authority (GOC-in-Chief, Eastern Command) via the Directorate of Defence Estate letter dated 13th February, 2017. The appellate authority had disposed of the appeal on 19th November, 2017. The Learned Advocate for the respondent no. 3 and 5 submitted that Cantonment Boards were autonomous bodies and their employees were not government employees but were governed under the CFSR 1937, which had been promulgated under Section 346 of the Cantonments Act, 2006. The GOC-in-C, Eastern Command was only the appellate authority and neither the PD, DE nor DG, DE had any role in appointments, disciplinary matters or appeals.

27. The Learned Advocate for the respondent no. 3 and 5 submitted that under Rule 41 of the Cantonment Board Employees Service Rules, 2021, all existing appointments, orders, and permissions under the CFSR 1937 continued to be valid unless inconsistent with the new rules. It had been submitted that the petitioner had not exhausted the alternative remedy under Rule 15(1) of CFSR 1937 which permitted a further revision before the Central Government, and as such, the writ petition was not maintainable.

28. The petitioner had entered service in 2001 under the CFSR 1937 and other applicable rules. It was his specific case that the order of dismissal had been passed without issuing any charge memorandum, affording him a hearing, or conducting any inquiry, thus offending the fundamental safeguards embedded in Article 311(2) of the Constitution. The petitioner had been denied the opportunity to defend himself despite being a confirmed employee, and no justification was placed on record to invoke the exception under Rule 12E(ii), which permitted dismissal without inquiry only where it was not reasonably practicable to conduct one.
29. The petitioner's claim of unauthorised absence was not willful, and he had applied for study leave to pursue an MD (Biochemistry) course, which had been unjustly refused. He had approached this Court earlier in W.P. 17844(W) of 2016, where the authorities were directed to consider his request. The petitioner had proceeded to pursue his studies based on the said direction. Petitioner emphasised procedural irregularities in the Board's resolution, noting that the agenda did not include his dismissal and the voluminous minutes and annexures could not have been considered and approved in a single sitting in compliance with Section 43 of the Cantonments Act, 2006.
30. The respondents, believed and decided the petitioner had joined the MD course without proper sanction of leave, thereby violating applicable service rules and Rule 12E(ii) had been validly invoked in view of threats, manipulation of records, and misconduct attributed to the petitioner, which

rendered it impracticable to hold an inquiry. Accordingly the order of dismissal was passed with due satisfaction recorded in the Board's meeting and was subsequently upheld by the competent appellate authority.

31. It was argued that the petitioner had alternate statutory remedies available under Rule 15 of the CFSR 1937, which he failed to avail. On the question of vires, it was submitted that Rule 12E(ii) was in consonance with the second proviso to Article 311(2) and had been upheld in *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416. The respondents placed reliance on several precedents to contend that no writ would lie where alternate remedies were not exhausted and that the power under Article 226 was discretionary.
32. The respondents further submitted that the petitioner had been guilty of serious acts of misconduct including private practice, misrepresentation, and unethical conduct, which had been noted in the records. It was finally argued that no prejudice was caused in law, and the decision of the Board was not arbitrary, mala fide, or violative of any constitutional mandate.
33. The Hon'ble Supreme Court held the following in ***Union of India v. B.V. Gopinath***¹:-

40. *Article 311(1) of the Constitution of India ensures that no person who is a member of a civil service of the Union or an all-India service can be dismissed or removed by an authority subordinate to that by which he was appointed. The overwhelming importance and value of Article 311(1) for the civil administration as well as the public*

¹(2014) 1 SCC 351

servant has been considered, stated and restated by this Court in numerous judgments since the Constitution came into effect on 19-1-1950 (sic). Article 311(2) ensures that no civil servant is dismissed or reduced in rank except after an inquiry held in accordance with the rules of natural justice. To effectuate the guarantee contained in Article 311(1) and to ensure compliance with the mandatory requirements of Article 311(2), the Government of India has promulgated the CCS (CCA) Rules, 1965.

34. The following was held in **M. Ramanatha Pillai v. State of Kerala**² by the Hon'ble Supreme Court:-

19. *When Article 311 states that no person shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him it affords a protection and security of government service. Article 311 applies to all government servants holding permanent, temporary or officiating post. The protection afforded by Article 311 is however limited to the imposition of three major penalties. These are dismissal, removal or reduction in rank. The words "dismissed", "removed" and "reduced in rank" are technical words. Both in the case of removal or dismissal there is a stigma. It also involves loss of benefit. There may also be an element of personal blame worthiness of the government servant. Reduction in rank is also a punishment. The expression "rank" in Article 311(2) has reference to a person's classification and not to his particular place in the same cadre in the hierarchy of the service to which he belongs. Merely sending back a servant to his substantive post has been held not to be a reduction in rank as a punishment since he had no legal right to continue in officiating post. The striking out of a*

²(1973) 2 SCC 650

name from the panel has been held to affect future rights of promotion and to be a reduction in rank.

35. The following was held by the Hon'ble Supreme Court in **A. Sudhakar v. Postmaster General**³:-

25. *In terms of Article 311(2) of the Constitution, the procedural requirements which were required to be followed were as under:*

(i) opportunity to the officer concerned to deny his guilt and establish his innocence which means he must be told that what the charges against him are and the allegations on which such charges are based;

(ii) he must be given a reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf; and

(iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him.

26. *It is well settled that those principles of natural justice are not embodied principles. The requirements contained in Article 311(2) of the Constitution in view of the decision of this Court in Khem Chand v. Union of India [1958 SCR 1080 : AIR 1958 SC 300] are held to be as a part of the principle of natural justice. The courts in the aforementioned situation are required to see as to whether non-observance of any of the said principles in a given case has resulted in denial of justice. If there had been substantial compliance with the procedure, the court may not interfere. (See State of U.P. v. Om*

³(2006) 4 SCC 348

Prakash Gupta [(1969) 3 SCC 775] and Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] .)

36. The following was held by the Hon'ble Supreme Court in **State of Assam v.**

Bimal Kumar Pandit⁴:-

6. Article 311(1) provides, inter alia, that no person covered by the said sub-article shall be dismissed or removed by an authority subordinate to that by which he was appointed. We are not concerned with this sub-article in the present appeal. Article 311(2) provides that no such person as specified in Article 311(1), shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It is now well settled that a public officer against whom disciplinary proceedings are intended to be taken is entitled to have two opportunities before disciplinary action is finally taken against him. An enquiry must be conducted according to the rules prescribed in that behalf and consistently with the requirements of natural justice. At this enquiry, the public officer concerned would be entitled to test the evidence adduced against him by cross-examination, where necessary, and to lead his own evidence. In other words, at this first stage of the proceedings he is entitled to have an opportunity to defend himself. When the enquiry is over and the enquiring officer submits his report, the dismissing authority has to consider the report and decide whether it agrees with the conclusions of the report or not. If the findings in the report are against the public officer and the dismissing authority agrees with the said findings, a stage is reached for giving another opportunity to the public officer to show why disciplinary action should not be taken against him. In issuing the second notice, the dismissing authority naturally has to come to a tentative or

⁴1963 SCC OnLine SC 111

provisional conclusion about the guilt of the public officer as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. There is no doubt that in response to this notice, the public officer is entitled to show cause not only against the action proposed to be taken against him, but also against the validity or the correctness of the findings recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for. This position is not in dispute.

37. The following was held by the Hon'ble Supreme Court in **Union of India v. Tulsiram Patel**⁵:-

95. *The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to*

⁵(1985) 3 SCC 398

legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of State in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

96. *The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a Court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry. If we look at clause (2) of Article 311 in the light of what is stated above, it will be apparent that that clause is merely an express statement of the audi alteram partem rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that article by recent decisions of this Court. Clause (2) of Article 311 requires that before a government servant is dismissed, removed or reduced in rank, an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.*

The nature of the hearing to be given to a government servant under clause (2) of Article 311 has been elaborately set out by this Court in Khem Chand case [AIR 1958 SC 300 : 1958 SCR 1080 : (1959) 1 LLJ 167] in the passages from the judgment extracted above. Though that case related to the original clause (2) of Article 311, the same applies to the present clause (2) of Article 311 except for the fact that now a government servant has no right to make any representation against the penalty proposed to be imposed upon him but, as pointed out earlier, in the case of Suresh Koshy George v. University of Kerala [AIR 1969 SC 198 : (1969) 1 SCR 317, 326] such an opportunity is not the requirement of the principles of natural justice and as held in Associated Cement Companies Ltd. v. T.C. Shrivastava [1984 Supp SCC 87 : 1984 SCC (L&S) 488 : (1984) 3 SCR 361, 369] neither the ordinary law of the land nor industrial law requires such an opportunity to be given. The opportunity of showing cause against the proposed penalty was only the result of the interpretation placed by the Judicial Committee of the Privy Council in Lall case [AIR 1948 PC 121 : LR (1947-1948) 75 IA 225, 243-4 : 1948 FCR 44] upon Section 240(3) of the Government of India Act, 1935, which was accepted by this Court in Khem Chand case [AIR 1958 SC 300 : 1958 SCR 1080 : (1959) 1 LLJ 167] . If, therefore, an inquiry held against a government servant under clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purpose of invalidating it.

38. Notwithstanding the allegations against the petitioner in the perspective of its veracity and genuineness, the peculiarity of this calls for the intervention of this Court. The respondent's authority in the process of considering the application for study leave filed by the petitioner were scrutinizing his service records and incidentally detected gross irregularities which constituted certain misconduct and malpractices, severe and unprecedented to the extent of invoking the Rule 12E(ii) of the Cantonment Funds Servants Rules, 1937 which empowered the concerned authority to terminate the services of the petitioner in absence of initiating disciplinary proceedings, which was further covered by the ambit of the provisions of Article 311(2)(b) of the Constitution of India. The respondent authorities had been convinced that the enquiry could not have been possibly conducted since the same was "not reasonably practicable", however, the reasons to have prompted the respondents to come to such a conclusion must not be arbitrary and contrary to principles of natural justice, preventing the petitioner to present his defence.
39. In view of the above decisions and the constitutional provisions and the discussions, this Court is of the opinion for ensuring principles of natural justice, a fair and transparent opportunity must be granted to the petitioner to address the grievances of the respondents involving professional misconduct, to obliterate the probability that the respondent authority solely for the purpose of removing the petitioner did not adhere to disciplinary proceedings as mandated by Article 311 of the Constitution of India.

40. The respondent authority is to follow the process of disciplinary proceedings conforming and complying the service laws, rules and regulations, giving a fresh opportunity to the petitioner to participate in the same. The petitioner shall co-operate in the said proceedings without creating any obstruction, nuisance, imposing threats, instigation, tampering of evidence, influencing the witnesses and any such unwanted and unwarranted act to impede or to frustrate the aforesaid proceedings. The respondent authorities shall ensure service of notice upon the petitioner and further communication through e-mail to establish and reflect transparency in the process barring either of the party to deny institution of and participation in the said proceedings. Though this Court is not to direct or even interfere with the process of the disciplinary proceeding being a quasi-judicial in house affair, but considering the peculiarities of allegations and counter-allegations raised in the instant writ petition, this Court is constrained to elaborately lay down the steps of acknowledgement, which under no circumstances shall be treated as a precedent.
41. The impugned orders dated 27.12.2016 and 19.01.2017 are set aside. The petitioner shall be placed under suspension for the period of completion of disciplinary proceedings being entitled to statutory subsistence allowance.
42. The entire process of disciplinary proceedings shall be completed within 6 months from the date of communication of this order.
43. In view of the above discussions, the instant writ petition being WPA No.30745 of 2017 is allowed.

44. Accordingly, the WPA No.30745 of 2017 along with connected application, if any, be disposed of.
45. There is no order as to costs.
46. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)