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SECRETARY, CENTRAL BOARD OF EXCISE AND CUSTOMS & ORS.

v.

K.S. MAHALINGAM

APRIL 23, 1986

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[A.P. SEN & MURARI MOHAN DUTT, JJ.]

Constitution of India, Article 311(2) and Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 15(4) - Punishment - Imposition of - Second opportunity to show cause - Whether necessary.

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A charge-sheet was served on the respondent, a Government servant, containing two articles of charges alleging misconduct involving lack of integrity and lack of devotion to duty and conduct unbecoming of a Government servant. In his defence the respondent denied the charges. The Inquiry Officer held that both the articles of charges were established. The Disciplinary Authority accepted the report of the Inquiry Officer and by his order dated May 15, 1980 dismissed the respondent from service. Against the dismissal order, the respondent preferred an appeal. The Appellate Authority by its order dated July 8, 1981 upheld the finding of the Disciplinary Authority. It, however, altered the penalty of dismissal to one of compulsory retirement of the respondent from service.

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The respondent filed a writ petition in the High Court. The Single Judge quashed the order of dismissal and directed reinstatement of the respondent in service holding that there was no evidence to substantiate the charges and that as no opportunity was given to the respondent to show cause against the punishment before the same was imposed the order of dismissal was vitiated.

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In the appeal preferred by the Department, the Division Bench agreed with the Single Judge that the respondent was deprived of an opportunity to show cause against the punishment imposed on him by the Disciplinary Authority, modified the order of the Single Judge and directed the

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Disciplinary Authority to proceed further with the disciplinary proceedings against the respondent from the stage of giving a fresh notice to show cause against the punishment to be proposed. A

Allowing the appeal by the Department, B

HELD : (1) Both the Single Judge and the Division Bench were not justified in holding that the order of dismissal was vitiated as the respondent was not given a second opportunity to make a representation against the punishment of dismissal before the same was imposed on him. [747 F-G]

(2) The judgment of the Division Bench is set aside. As the Division Bench did not consider the judgment of the Single Judge on merits, the case is remanded to the Division Bench for disposal of the appeal on merits after giving the parties an opportunity of being heard. [747 H; 748 A-B] C

(3) The Constitution (Forty-second Amendment) Act, 1976 has deleted from clause (2) of Article 311 of the Constitution the requirement of a reasonable opportunity of making representation on the proposed penalty and, further, it has been expressly provided in the first proviso to clause (2) that "it shall not be necessary to give such person any opportunity of making representation on the penalty proposed". After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which the Government servant has been informed of the charges against him and given a reasonable opportunity of being heard. [746 C-E] D E

In the instant case, such an opportunity has been given to the respondent. Undisputedly after the order of dismissal was passed, the respondent was supplied with a copy of the report of the Inquiry Officer which enabled him to prefer an appeal to the Appellate Authority against the order of dismissal. [746 E-F] F

(4) In view of the amendment of Article 311(2) of the Constitution, Rule 15(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was amended, which, inter alia, provided that it would not be necessary to give the Government servant any opportunity of making G H

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representation on the penalty proposed to be imposed. Therefore, the respondent cannot claim a second opportunity to show cause against the punishment either under Article 311(2) of the Constitution or under Rule 15(4) of the Central Civil Services (Classification, Control and Appeal), Rules, 1965. [746 G; 747 D-E]

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Union of India v. Tulsi Ram Patel, [1985] 3 S.C.C. 389, relied upon.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1279 of 1986.

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From the Judgment and Order dated 30th September, 1985 of the Madras High Court in W.A. No. 809 of 1985.

Anand Prakash, C.V. Subba Rao, R.D. Agarwala and T.V.S.N. Chari for the Appellants.

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K.S. Mahalingam in person.

The Judgment of the Court was delivered by

M.M. DUTT, J. The Special Leave Petition filed by the E appellants was heard upon notice to the respondent, who appeared before us in person. As arguments have been made by both sides at the hearing of the Special Leave Petition, we proceed to dispose of the appeal after granting such leave.

The only question that is involved in this appeal F whether it is necessary to give a second show cause notice against the punishment before the same was imposed on the respondent and to furnish him with a copy of the report of the Inquiry Officer in view of the amendment of clause (2) of Article 311 of the Constitution of India by the Constitution (Forty-Second Amendment) Act, 1976 and the consequential G change brought about in Rule 15(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Indeed, the notice of the Special Leave Petition that was served on the respondent was confined only to the said question.

H The respondent, K.S. Mahalingam, was the Examiner of Madras Customs House. While he was acting in that capacity, a

charge sheet was served on him containing two articles of charge alleging misconduct involving lack of integrity and lack of devotion to duty and conduct unbecoming of a Government servant. The respondent submitted his defence, inter alia, denying the charges. The Inquiry Officer held that both the articles of charge were established. The Disciplinary Authority, namely, the Collector of Customs, Madras, examined the report of the Inquiry Officer and by his order dated May 15, 1980 came to the finding that both the charges framed against the respondent were proved. In view of the said finding, the Collector of Customs by his said order dismissed the respondent from service. Being aggrieved by the order of dismissal, the respondent preferred an appeal against the same to the Chief Vigilance Officer, Central Board of Excise and Customs. The Appellate Authority elaborately considered the facts and circumstances of the case and by its order dated July 8, 1981 upheld the finding of the Disciplinary Authority that the charges against the respondent were proved. The Appellate Authority, however, altered the penalty of dismissal to one of compulsory retirement of the respondent from service.

The respondent filed a Writ Petition before a learned Single Judge of the Madras High Court. The learned Judge, upon a review of the materials on record, came to the conclusion that there was no evidence of lack of integrity or lack of devotion to duty or conduct unbecoming of a Government servant as alleged in the charges levelled against the respondent. Further, the learned Judge took the view that as no opportunity was given to the respondent to show cause against the punishment before the same was imposed by the Disciplinary Authority and as no copy of the Inquiry Officer's report was supplied to him, the order of dismissal was vitiated. Accordingly, the learned Judge by his order dated September 7, 1985 quashed the order of dismissal and directed reinstatement of the respondent in service.

The appellants preferred an appeal before a Division Bench of the High Court. The Division Bench by its judgment dated September 13, 1985 agreed with the learned Single Judge that the respondent was deprived of an opportunity to show cause against the punishment imposed on him by the Disciplinary Authority. In that view of the matter, the

Division Bench did not consider the findings of the learned Judge on merits. The Division Bench modified the order of the learned Single Judge by setting aside the direction for reinstatement of the respondent in service and permitting the Disciplinary Authority to proceed further with the disciplinary proceedings against the respondent from the stage of giving a fresh notice to show cause against the punishment to be proposed by him. Hence this appeal by the appellants.

It thus appears that the Division Bench as also the learned Single Judge of the High Court took the view that the order of dismissal was vitiated as the Disciplinary Authority failed to give to the respondent an opportunity to show cause against the punishment of dismissal before the same was imposed on him. Both the Division bench and the learned Single Judge of the High Court have completely overlooked the fact that the Constitution (Forty-Second Amendment) Act, 1976 has deleted from clause (2) of Article 311 of the Constitution the requirement of a reasonable opportunity of making representation on the proposed penalty and, further, it has been expressly provided inter alia in the first proviso to clause (2) that "it shall not be necessary to give such person any opportunity of making representation on the penalty proposed". After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which the Government servant has been informed of the charges against him and given a reasonable opportunity of being heard. In the instant case, such an opportunity has been given to the respondent. It is also not disputed that after the order of dismissal was passed, the respondent was supplied with a copy of the report of the Inquiry Officer which enabled him to prefer an appeal to the Appellate Authority against the order of dismissal.

In this connection, it may be noticed that in view of the said amendment of Article 311(2) of the Constitution, Rule 15(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was amended. Rule 15(4) as amended provides as follows :

> "15(4). If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced

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during the inquiry is of the opinion that any of the penalties specified in clause (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making B representation on the penalty proposed to be imposed :

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such C advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

Clause (ix) of Rule 11 referred to in Rule 15(4) is the penalty of dismissal. D

It is, therefore, clear that the respondent cannot claim a second opportunity to show cause against the punishment either under Article 311(2) of the Constitution or under Rule 15(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. E

The question was also considered by a five-Judge Bench of this Court in **Union of India v. Tulsi Ram Patel,** [1985] 3 S.C.C. 398. In that case, it has been observed per majority that the only right to make a representation on the proposed penalty which was to be found in clause (2) of Article 311 of F the Constitution prior to the amendment having been taken, by the Constitution (Forty-Second Amendment) Act, there is no provision of law under which a Government servant can claim this right. In our view, therefore, both the learned Single Judge and the Division Bench of the High Court were not justified in holding that the order of dismissal was vitiated G as the respondent was not given a second opportunity to make representation against the punishment of dismissal before the same was imposed on him.

In the circumstances, we set aside the judgment of the Division Bench of the High Court but, as in disposing the H

A appeal the Division Bench has not considered the judgment of the learned Single Judge on merits of the case, we send the case back on remand to the Division Bench for the disposal of the appeal on merits after giving the parties an opportunity of being heard.

This appeal is allowed. There will, however, be no order
B as to costs.

A.P.J. Appeal allowed.