TRUE EXTRACT FROM THE BOOK -

DISCIPLINARY ACTION AGAINST GOVERNMENT SERVANTS AND ITS REMEDIES (THIRD EDITION) BY K.D.SRIVASTAVA
(Chapter IX, Page 419 & Nos. 58 to end)

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58. Scope : Not reasonably practicable to give opportunity to show cause; Article 311(3).(i) Two stages; Jurisdiction of Civil Court. --

It would be noticed that in respect of both the stages special circumstances may arise in consequence of which the superior authority may dispense with the service of notice on the delinquent public servant. In the first stage he may not comply with the provisions of rule 55 and proceed with the enquiry .....

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ex parte if the person concerned has absconded or where it is for other reasons considered impracticable to communicate with him, but this he can do only "for Special and Sufficient reasons to be recorded in writing". At the second stage also he may dispense with the issue of notice if he is satisfied that for some reasons to be recorded in writing "it is not reasonably practicable" to give the public servant concerned an opportunity of showing cause against the proposed punishment. It is true that at both the stages the satisfaction is the 'subjective' satisfaction of the superior authority holding the enquiry. But Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and proviso (b) to clause (2) of Article 311 of the Constitution require that the reasons for such satisfaction should be recorded in writing, thereby giving some sort of limited jurisdiction to court to examine whether they are good reasons, in law or no reasons at all. It is also true that according to clause (3) of Article 311 of the Constitution the satisfaction of the authority concerned is final. But it is well-settled that the finality conferred by such a statutory provision will not take away the limited jurisdiction of the Civil Courts. 44

ii) Discretionary power: Whether justiciable - It was pointed out by Halsbury (Laws of England, Third Ed. Volume 30, page 688) that statutory powers must be exercised bona fide, reasonably, without negligence and for the purpose for which they were conferred. In the recent book of S.A. de Smith on Judicial Review of Administrative Action at page 188, the learned author after pointing out that the Court must first examine whether the authority has acted in good faith, further

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observed:

> "In most contexts the Courts will pursue an inquiry further and will consider whether the repository of a discretion, although acting in good faith, has abused its power by exercising it for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."

Again at page 243 the learned author has discussed those cases where by the statutory provision itself

> "The competent authority is empowered to take a prescribed course of action when it ' is satisfied', or when 'it appears' to it, or when 'in its opinion' a given state of affairs exists" ;

and observed as follows;

> "In cases set in this type of context the expression of the opinion or satisfaction of the competent authority has usually been accepted as conclusive ... but there are several dicta indicating that the act of the authority might be held invalid if it were shown that there was no evidential or rational basis upon which it could have formed its opinion." (See decisions cited thereunder.)

Some of the English decisions may now be noticed. The audi alteram partem rule is so clearly established that it is only in exceptional circumstances and subject to the safeguards provided in the statute itself that an authority is permitted to contravene this rule. Thus in De Verteuil Knaggs,45 it is observed that there might be obstructive conduct on the part of the person affected which might justify the relaxation of this rule. In R.V.Minister of Health, 46 it was held that there the statute conferred on the Minister the power to satisfy himself that the local authority had served appropriate notice under Section 63(1) of the Housing Act, the satisfaction of the Minister would ordinarily be sufficient subject to the following qualification:

> "No doubt the Minister must not be satisfied with unreasonable readiness or with culpable complacency, but otherwise it suffices that he is in fact satisfied". In the well-known case of Nakkuda Ali v.M. F. de S.Jayaratne, 47 Their Lordships of the Privy Council while construing Regulation 62 of the Defence Council (Control of Textiles) Regulations, 1945 of Ceylon which empowered the Controller of Textiles to do certain things where the

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Controller has the "reasonable grounds" to believe that no dealer should be allowed to continue as a dealer observed, while explaining the well-known decision in Liversidge v. Anderson: 48

"After all, words such as these are commonly found when a Legislature or law-making authority confers powers on a Minister or official. However, read, they must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power. But if the question whether the condition has been satisfied is to be conclusively decided by the man who wields the power the value of the intended restraint is an effect nothing. No doubt he must exercise the power in bad faith but the field in which this kind of question arises is such that the reservation for the case of bad faith is haraly more than formality. Their Lordships, therefore, treat the words in Regulation is in 62,'where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer' as imposing a condition that there must in fact exist such reasonable grounds, known to the Controller, before he can validly exercise the power of cancellation". It is true that Their Lordship went further and said that Controllers' action was administrative and was not amenable to certiorary. But this portion of their judgement does not appear to have been wholly endorsed by the House of Lords in a recent judgement in Ridge v. Baldwin. 49 Lord Reid pointed out :

"Nothing short of a decision of this House directly in point would induce me to accept the position that, although an enactment expressly required an official to have reasonable grounds for his decision, our law is so defective that a subject cannot bring up such a decision for review however seriously he may be affected and however obvious it may be that the official acted in breach of his statutory obligation."

In Rose-Clunis V. Papadopoullos, 50 a similar question arose for consideration while construing Regulation 5(2) of the Cyprus Emergency Powers (Collective punishment) Regulations, 1955 which required the Commissioner to satisfy himself that the inhabitants of a particular area were given adequate opportunity of understanding the subject-matter of the enquiry and making representations thereon. Regulation 13 gave finality to the orders made by the Commissioner. Nevertheless the Privy Council observed at page 33 as follows, while noticing the argument that the satisfaction was a subjective satisfaction of the Commissioner:

"Their Lordships felt the force of this argument, but they think that if it could

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be shown that there were no grounds on which the appellant could be satisfied, a court might infer either that he did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts."

Thus there is abundant authority for the view that though for adequate grounds to be recorded in writing the superior authority may dispense with the service of notice (at both the stages) on the delinquent public servant if he is satisfied due to special circumstances that it will not be practicable to serve the notice on him and though by clause (3) of Article 311 his satisfaction is declared to be final, the courts have limited jurisdiction to examine the reasons given by him with a view to satisfy themselves that he did not act with "unreasonable readiness" or with "culpable complacency" or by not applying his mind to the relevant facts. 51

iii) Scope of exercise of discretion: - Here though the plaintiff examined himself and stated that he was always at Berhampur and that he never avoided service of notice, that the defendant has not cared to lead any evidence worth the name to show that the plaintiff was deliberately avoiding the receipt of the charges. The charges were sent to the old address, namely "Bharti Cycle Stores, Berhampur" first by registered post which was returned with an endorsment "absent". Then the Tehsildar of Berhampur was directed to effect personal service, the same address was given. On three occasions, namely 28th December, 1951, 4th January, 1952 and 18th January, 1952 the process server reported that the delinquent public servant was not in his house. But it is not clear from the endorsement as to whether the process servers made enquiries at the address "Bharti Cycle Stores". Presumably this was done.

There was also nothing on record to show that the Tehsildar got affixed a copy of the charges at the residence of the plaintiff. Exts. M, M(1) and M(2) are entirely silent on this point and the only witness examined by the defendant (D.W.1) has obviously no personal knowledge as to how an attempt was made to serve a copy of the charges on the plaintiff. On 29th December, 1951, the Deputy Commissioner had received a letter Ex-E signed by the plaintiff where his address for a week was given as "Bharti Electronics Co., Behrampur" which seems different from the original address "Bharti Cycle Stores, Berhampur". If these two addresses are identical, some evidence to that effect should have been given by the defendant. On receipt of Ex-E on 29th December, 1951, the Deputy Commissioner was in duty bound to issue a fresh notice of the charges to that new address either by post or personal services through the Tehsildar of .....

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Berhampur. No such effort was admittedly made. It is true that in Ex.E the plaintiff gave the new address only for a week. But the Deputy Commissioner appears to have assumed that the plaintiff would be there for some months thereafter because he sent a copy of his final order of discharge Ex.F to the address on 15th March, 1952.

Thus the factual position is that from 3rd November, 1951, till 29th January, 1952, efforts were made to serve the charges on the plaintiff at his old address "Bharti Cycle Stores, Berhampur". On 29th December, 1951 the Deputy Commissioner had already received an intimation from the plaintiff about the change of his address. This omission to get the charges served at the new address though the Deputy Commissioner was aware of that change of address must, in the circumstances be held to show gross negligence on his part. It would also come within the scope of the expression "unreasonable readiness" or "culpable complacency" on his part to assume that the plaintiff was deliberately avoiding to receive communication from his office. The Deputy Commissioner's exercise of his discretion conferred by the second part of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules must therefore be held to be grossly unreasonable and as such not binding on this Court.

The departmental proceedings against the plaintiff suffer from another serious infirmity. As pointed out by their Loroships of the Supreme Court in the Khemchand case, 52 the plaintiff was entitled to a second notice regarding the tentative view formed by the superior authority about the nature of the punishment to be proposed and then to be given an opportunity to show cause against that punishment. Here it does not appear that any effort was made to serve the second notice, and the Deputy Commissioner's order Ext. F also does not show that he applied his mind to this aspect. He has written a composite order holding after an ex-parte enquiry that the charges were proved and deciding that the plaintiff should be discharged from service. He has not stated anywhere that after holding the charges to be proved he formed an opinion as to the punishment proposed and then further decided that the second notice also could not be served on the plaintiff as he was deliberately avoiding to receive communication and that consequently the Deputy Commissioner was compelled to exercise the discretion conferred on him by proviso (b) to Article 311 (2). 53.

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THE ABOVE REFERRED CASES ARE GIVEN BELOW :

40. Bal Kissen V. Collector of Customs, AIR 1962 Cal. 460.

41. Jaffar Imam V. Calcutta Dock Labour Board, AIR 1962 Cal. 411.

42. AIR 1961 MP 261, Rel on; Balkishan V. Chief Secretary, AIR 1963 MP 216.

43. Dharni Mohan Barman V. State of Assam, AIR 1963 Ass 183; Shama Charan V. Commissioners Bareilly, AIR 1969 All 11.

44. State of Orissa V. Krishnaswami, AIR 1964 Ori. 29.

45. 1918 AC357 at p. 561; AIR 1918. 46: 1937-3 All ER 176. 47: 1951 AC 66.

48. 1941-3 All ER 338 at p.77 (of 1951 AC).

49. 1963-2 WLR 935 at p. 950.

50. 1958 All ER 23 at p.33

51. State of Orissa V. Krishnaswami, AIR 1964 Ori. 29.

52. AIR 1958 SC 300.

53. State of Orissa V. Krishnaswami, AIR 1964 Ori. 29.

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For Favour of Publication

Mr. George Fernandes, Convener, Preparatory Committee of National Convention of Working People released the following Declaration to the press:-

Declaration adopted at the meeting of Central Trade Union organisations and national Federations of Labour held in New Delhi on July 21, 1974

The Government of India has struck the worst blow yet on the working people of India by promulgating the Ordinance providing for the compulsory deposit of all additional wages and half of the increase in dearness allowance by all wage and salary earning persons in the industrial and service sectors. The move is nothing short of a wage freeze which the government has been threatening for the last three years.

The Government has sought to justify this ordinance by stating that it is intended to bring down the prices and check inflation by immobilising a part of the money supply. It is significant that the affluent class of people who have money for wasteful expenditure and luxury consumption should not be affected by this attempt to immobilise money supply. The other two ordinances, viz. on compulsory deposit and on restriction of dividends are but symbolic gestures which do not touch even the fringe of the problem of inflation and price rise. While the truth is that the working classes are in no way responsible for the economic crisis, the Government, by the wage freeze ordinance, is trying to lay the blame for its policy failures at the doors of the working people.

The wages and dearness allowance of an overwhelming number of persons affected by the Ordinance are actually spent on food. In fact, more than fifty per cent of the affected wage and salary earners and their families actually live below the poverty line. It speaks volumes for the anti-working class and anti-people character of the Government that it should have thought of attacking the poorer sections of society in its much-trumpeted drive to hold the price line.

The phenomena of rising prices and the economic crises facing the people are the inevitable outcome of the wrong policies of the Government pursued over a long period of time including deficit financing, ever-increasing money supply, excessive indirect taxation, unproductive governmental expenditure, under-utilisation of the installed capacity both in public and private sectors, repayment burden of foreign debts, government-imposed price rise of several essential and basic commodities and tax evasion on a gigantic scale.

The growth of a parallel black money economy which is now overshadowing the government-managed economy and is responsible in no small measure for the present economic

crisis, is neither a freak development nor is it a global phenomena to which Mrs. Gandhi refers to day in and day out. The black money in the country has been created by the vested interests in connivance with the ruling Congress Party and government interests. A government which pleads helplessness in tackling the black money question has no right to remain in office for one more day.

The agricultural and industrial sectors of the economy are also stagnating. There is inadequate production and inequitable distribution of foodgrains and other essential commodities. To cover up its failure, the government has been feeding the Indian people on false and inflated statistics of foodgrain production. There is no understanding of priorities either. From cars to conditioners, refrigerators and other luxury goods, the emphasis is on producing the needs of one per cent of the people. At the same time the anti-working class and anti-trade union actions of the Government have completely antagonised the ranks of the working people whom the government has now begun to take for granted.

In the situation created by the Government, the working class movement can have no alternative but wage a relentless struggle to protect its earnings and its existing low standard of living. For what the Government is doing is nothing short of a concerted bid to starve the workers and their families by a further reduction in their real earnings which have already been on the decline during the last several years. The entire trade union movement must immediately get together and chalk out an effective counter-offensive to defeat the government's attack against the working people.

The meeting of Central Trade Union Organisations and National Federation of Labour held in New Delhi on July 21 hereby demands that the Government withdraw the anti-working people ordinance at once. At the same time the meeting resolves

1. to mobilise the country's working class to fight against the ordinance to freeze wages and dearness allowance;

2. to launch a nationwide campaign of agitation and education of workers;

3. to observe an anti-wage freeze ordinance week from August 9 to August 15 by staging meetings, demonstrations, dharnas etc.

4. to stage massive demonstrations before Parliament and State Assemblies and other government offices on August 9;

5. to organise with immediate effect continuous demonstrations before every factory, office and other establishments protesting against the wage freeze;

6. to convene a National Convention of Working People in New Delhi on August 28, 1974 to plan the details of the programme of massive struggles and strike action; and

7. To set up a National Campaign Committee at the National Convention of Working People to carry forward the movement to a successful end.

The meeting decides to set up a Preparatory Committee consisting of representatives of all Central Trade Union organisations and national federations of Labour to organise the National Convention and to do all work incidental to it.

The working class movement is today passing through the gravest crisis it has faced in recent years. Only through united action and at tremendous sacrifice will it be possible for the workers to beat back the attack mounted against them by the Congress government. The meeting calls upon the working people to rally round the united platform now being set up through the National Convention of Working People, and ready themselves to launch a mighty struggle in the next few days. The meeting appeals to the INTUC to make cause with the organised trade union movement in the country and join the mainstream of the working people in the ensuing struggle.

George Fernandes
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Preparatory Committee for National
Convention of Working People