(1973) 01 CAL CK 0001

Calcutta High Court

Case No: Civil Revision No. 3755W of 1969

Hemendu Bikash Nag		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: Jan. 8, 1973

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 14(1), 14(11), 14(3), 14(8), 15
- Central Civil Services (Conduct) Rules, 1964 - Rule 15(2)
- Constitution of India, 1950 - Article 311(2)
- Prevention of Corruption Act, 1988 - Section 5

Citation: (1973) 1 CALLT 226 : (1974) 1 ILR (Cal) 514

Hon'ble Judges: Anil Kumar Sen, J

Bench: Single Bench

Advocate: N.C. Banerjee and Mahitosh Majumddr, for the Appellant; Noni Coomar Chakraborty and Samarendra Nath Banerjee, for the Respondent

Final Decision: Allowed

Judgement

Anil Kumar Sen, J.

In this writ petition the Petitioner Hemendu Bikash Nag challenges the validity of a disciplinary proceeding held under Rule 15 of the Central Civil Services (Classification Control and Appeal) Rules, 1965, (hereinafter referred to as the said Discipline and Appeal Rules) and the various notices and order! made therein including the order of penalty of dismissal from ser vice dated April 23, 1969.

2. The Superintendent of Police, Special Police Establishment received a secret information that the Petitioner had amassed wealth disproportionate to his known sources of income by corrupt and illegal means. After certain preliminary enquiries a case for investigation was started against the Petitioner in course of which different persons were examined including the Petitioner and his father Dr. A.K. Nag.

Statements were called for from the Petitioner also. The exact result of this investigation is not known, but admittedly the Investigating Officer submitted a report to the Secretary, Ministry of Steel and Mines, Government of India, and as a result the impugned disciplinary proceeding was initiated on a charge-sheet dated August 23, 1966. There were two charges framed against the Petitioner. The first one was to the effect:

CHARGE No. I That Shri H. B. Nag, @ Hemendu Bikash Nag, while functioning in different capacities in the office of the Iron and Steel Control, Calcutta, during the period from 10. 5. 1943 to 17. 4. 1962, failed to maintain absolute integrity and committed gross misconduct as a Government servant inasmuch as he was found to have lived beyond his known sources of income thereby overspending to an extent of Rs. 12,771-47 and in addition being in possession of assets valued at Rs. 1,04,553-57, leading to the presumption that he incurred these expenses and acquired assets of the aforesaid value by dubious and/or questionable means and thereby contravened Rule 3 of the CCS. (Conduct) Rules, 1955.

The second charge was to the effect that the Petitioner had paid a life insurance premium exceeding Rs. 1,000 without any intimation to the prescribed authority and thereby had contravened Rule 15(2) of the Central Civil Services (Conduct) Rules, 1965. This charge would no longer be relevant for us as the Petitioner had been absolved of it concurrently by all the authorities.

3. The charge-sheet incorporates a statement of allegations. Such statement in support of the first charge sets out, in the first place, the Petitioner''s total income during the tenure of his service from May 10, 1943 to April 17, 1962, at Rs. 1,26,700 which sum is worked out as hereunder:

	Rs. 1,06,700-00
	Rs. 16,800-00
	Rs. 3,200-00
Total	Rs. 1,26,700-00

4. Such statement goes on to set out "Petitioner''s total expenditure during the period from May 10, 1943 to April 17, 1962, at Rs. 1,39,471-47 calculated as in sch. B which is set out hereunder:

SCHEDULE B

(1) Insurance premium	Rs. 11,371-47
	Rs. 22,349-00
	Rs. 4,400-00
	Rs. 4,491-00

Rs. 76,640-00

Rs. 5,720-00

(7) Expenses on marriages Rs. 9,000-00

(8) Expenses on religious ceremonies Rs. 500-00

Rs. 5,000-00

Rs. 1,39,471-00

The above expenditure is claimed to exceed the total income by Rs. 12,771-47 (Rs. 1,39,471-47-Rs. 1,26,700-00). Besides this overspending the statement goes on to set out that the Petitioner was found in possession of assets of the value of Rs. 1,04,553-57 as in sch. A which is set out hereunder:

SCHEDULE A

Rs. 5,000-00

Rs. 29,000-00

(3) Car No. WBE-52[illegible] Hindustan Rs. 5,000-00

Rs. 3,000-00

(5) [illegible] Rs. 637-00

(6) [illegible] Rs. 775-00

(7) Record Player Rs. 197-95

(8) [illegible] Rs. 227-58

(9) [illegible] Furniture Rs. 1,700-00

(10) [illegible] Rs. 200-00

(11) [illegible] Rs. 1,200-00

(12) Other articles Rs. 1,800-00

Rs. 34,800-00

Rs. 430-79

Rs. 100-00

(16) CD. Scheme--self Rs. 300-00

Rs. 120-00

(17) [illegible] wife Rs. 100-00

Rs. 20,000-00

Rs. 1,04,553-57

5. The Petitioner was put on suspension, by an order dated August 31, 1965. The Petitioner at first wanted to defer the enquiry on a plea that a civil suit for specific performance of a contract for sale of the land referred to in item No. 2 of sch. A was pending between the vendors and his father and the proposed enquiry is likely to prejudice the Petitioner and his father. Several representations were made on this account, but they were rightly turned down. In the meantime, the Petitioner asked

for inspection of documents, but such inspection was not furnished till December 4, 1965, when the Petitioner filed his first explanation to the charge-sheet denying broadly the charges levelled against him. The Petitioner, however, reserved his right to submit a supplementary explanation after inspection of documents. Thereafter, a long correspondence went on between the parties regarding inspection of documents and the admitted position now is that the Petitioner was given inspection of all documents except items (b) and (d) of the Petitioner''s requisition dated March 8, 1966. Or in other words, the Respondents refused inspection of the statements of persons recorded in earlier investigation except that of persons who were to be examined as departmental witnesses. Admittedly, the Respondents refused to disclose the statements of the Petitioner''s father recorded in such investigation. The Respondents similarly refused to give inspection of the report of the Investigating Officer. This position is admitted on the pleadings of the parties.

6. After the completion of inspection so far allowed the Petitioner submitted a supplementary explanation on October 27, 1966. The Petitioner''s defence shortly may be summarised as follows:

(1) that his personal net income for the relevant period would be Rs. 1,14,000 and not Rs. 1,60,700; such income with the income of his wife would amount to Rs. 1,17,200 ;

(2) that his father Dr. A.K. Nag not being his dependant, he is in no way concerned with the income of his father ;

(3) that he had borne l/5th of the expenditures in items (2), (3) and (5) of sch. B ;

(4) that the expenditure on account of items Nos. (4) and (6) was not his expenditure at all so also item No. (9);

(5) on item No. (7) his contribution is only Rs. 500 on the occasion of his sister''s marriage and item No. (8) is not an expenditure incurred during the disputed period;

(6) he disowned the assets in items Nos. (1), (2), (3) and (10) of sch. A and he claimed that items Nos. (16) and (17) were acquired alter the disputed period;

(7) he disputed the figure as in item No. (13) of sch. A and claimed that during the relevant period the amount would be Rs. 28,100.

An enquiry was thereafter held by Sri A. S. Ramchandra Rao, Commissioner for Departmental Enquiries, Government of India, Central Vigilance Commission. The Petitioner''s prayer for permission to have the assistance of a lawyer Was refused although in the disciplinary enquiry the proceeding was conducted by a Presenting Officer who was an Inspector of Police of the Special Police Establishment.

7. The Enquiry Officer overruled the major part of the Petitioner''s defence. He held that the properties purchased in the name of the wife and the father as also the

motor car purchased in the name of the father were all acquired by the Petitioner himself. The Enquiry Officer further held that it was the Petitioner who had invested Rs. 20,000 in his brother''s business. He accepted the Petitioner''s defence in respect of items Nos. (13), (14), (15), (16) and (17) of sch. A. Item No. (13) was, accordingly, reduced from Rs. 34,000 to Rs. 28,000; the sums set out in items Nos. (14) and (15) were substituted by sums of Rs. 616-13 and Rs. 100 and items Nos. (16) and (17).were deleted. According to the Enquiry Officer, the Petitioner had accepted the amounts set out in items Nos. (4) to (12) of sch. A. Thus, on the Enquiry Officer''s findings the total value of the assets was reduced to Rs. 97,703-91. As for the items of expenditure in sch. B the Enquiry Officer disallowed all the defence claim except the one in respect of item No. (8) which was deleted on a finding that it was not incurred during the disputed period. Thus, on his findings the total expenditure was reduced to Rs. 1,38,971-47.

8. In the enquiry report there is no discussion or consideration regarding the Petitioner''s defence in respect of the total income. From para. 28, however, it appears that the Enquiry Officer calculated the Petitioner''s total income as follows:

Personal income of the Petitioner	Rs. 1,01,011-71
Father''s	Rs. 33,600-00
Wife''s	Rs. 3,200-00
	Rs. 1,37,811-71

9. Though the aforesaid figure of Rs. 1,01,011-71 in respect of the Petitioner''s personal income was arrived at with reference to the statement Ex. P8, it appears that the Enquiry Officer towards the end of para. 22 of his report found "inclusive of house rent allowances, Sri Nag has received into his hands about Rs. 1,20,000 from 1943-44 to 1962-63." These findings are not reconcilable and no reason also has been assigned by the Enquiry Officer as to why he reduced the net income of the Petitioner from the figure Rs. 1,06,700 as in the charge-sheet to Rs. 1,01,011-77. There is also no specific finding on the Petitioner''s defence that his personal net income would be Rs. 1,14,000. However, on the other findings of the Enquiry Officer this discrepancy of a few thousand rupees is not material.

10. In the conclusion, the Enquiry Officer thus for and that the Petitioner had a total income of Rs. 1,37,811-77. His total expenditure was Rs. 1,38,971-47 leaving a balance of over-spending of Rs. 1,159-70. Adding this over-spending to the total assets found at Rs. 97,703-91 (the actual figure, however, would be Rs. 97,803-91), the total disproportionate assets and spending of the Petitioner was found at Rs. 98,863-61.

11. Agreeing with the findings so arrived at by the Enquiry Officer on the first charge, the disciplinary authority on March 1, 1968, issued the second show cause

notice calling upon the Petitioner to show cause why he should not be dismissed from service. The Petitioner showed cause on April 3, 1968. The disciplinary authority then consulted the Public Service Commission for its advice. The Commission accepted and agreed with the findings of the Enquiry Officer subject to certain modifications. The Commission accepted the findings of the Enquiry Officer that the total income of the Petitioner (taking the income of the father and the wife together) amounted to Rs. 1,37,811-77. The Commission, however, reduced the total expenditure of the Petitioner to a sum of Rs. 90,97147 by giving a credit of Rs. 48,000 as contribution by the brother anji -"?

sister to the total family expenditure. Similarly, the Commission reduced the total value of the assets by excluding the house purchased. by the wife (for Rs. 5,000) to Rs. 92,903-91. On the figures thus arrived at the Commission took the view that there had been no over-spending by the Petitioner, but then he is possessed of assets disproportionate to his known sources of income to the extent of Rs. 45,863-61. The Commission, accordingly, recommended that the Petitioner should be dismissed from service. The disciplinary authority accepted the recommendation, and by the aforesaid order dated April 23, 1969, the Petitioner was dismissed from service. This is the order which is the subject-matter of challenge in this Rule along with the disciplinary proceeding itself.

12. The Rule is being contested by the Respondents and two affidavits have been filed on their behalf. Except on the issue as to malice there is no real controversy on facts. Mr. Chakraborty is appearing on behalf of the Respondents to support the impugned proceeding and the orders made therein.

r 13. Mr. Banerjee, appearing in support of this Rule, has raised several points. In the first place, it has been contended by Mr. Banerjee that there is an error in the calculation on the face of the " records in the findings of the Enquiry Officer, the disciplinary authority as also the Public Service Commission when the sum of Rs. 11,371 representing the life insurance premium paid by the Petitioner had been twice credited adversely against the Petitioner-- once when it is deducted from the income to find out the net income and, secondly, when it is again added to the schedule of expenditures. Secondly, it has been contended by Mr. Banerjee that there has been a denial of reasonable opportunity to the Petitioner to substantiate his defence and there has also been a breach of principles of natural justice when (a) the Petitioner was denied inspection of the statement of the father recorded by the Investigating Officer, Inspector Banerjee, and "the report of such officer and (b) when the Petitioner was denied permission to have the assistance of a lawyer at the enquiry. Thirdly, it has been contended by Mr. Banerjee that the entire proceeding is mala fide having been initiated and carried on at the instance .of C. B; Mathur, the Respondent No. 6, who could not have got promotion to the-position of a Deputy Iron and Steel Controller superseding the Petitioner except by this process of a malicious condemnation of the Petitioner. Lastly, it has been contended fey Mr.

Banerjee that both the Enquiry Officer and the disciplinary authority acted erroneously on the face of the records in raising an adverse presumption against the Petitioner only from the finding that- the Petitioner was found to be in possession of assets more than his known sources of income. According to Mr. Banerjee, presumption u/s 5 of the Prevention of Corruption Act is not available in a disciplinary enquiry under the said Discipline and Appeal Rules, and in the absence of any such statutory authority the Enquiry Officer or the disciplinary authority could not have presumed that the excess asset was necessarily acquired by dishonest means. All these points,: raised by Mr. Banerjee, are contested by Mr. Chakraborty. I shall refer: to and consider the contention of Mr. Chakraborty in answer to these points raised by Mr. Banerjee when I consider individually the points raised by Mr. Banerjee.

14. So far as the first point raised by Mr. Banerjee is concerned, it is apparent that such an error crept in by the oversight of all the parties including the Petitioner. Mr. Chakraborty, appearing for the Respondents, has rightly pointed out that even the Petitioner in his explanation had accepted that a sum of Rs. 11,371 was spent by him for payment of life insurance premium. That this amount was spent by the Petitioner on that account and, as such, is an expenditure is not in dispute. So also it is not in dispute now before this Court that, in arriving at the net total income, life insurance premium deducted from the income at the source were adjusted so that the aforesaid sum of Rs. 11,371 had been adversely adjusted against the Petitioner twice. This being the position, the first, contention raised by Mr. Banerjee must be upheld, but even then on the findings of the Public Service Commission this, error would not be, of much consequence, because even if this figure is deleted from the schedule of expenditures still the Petitioner would be found to be in possession of assets disproportionate to his known sources of income to the extent of Rs. 34,492-61.

15. Mr. Baneerjee second grievance is that there has been denial of reasonable opportunity and infringement of principles5 of natural justice because of denial of inspection of two documents'' and refusal of permission to have the assistance of a lawyer. -?! shall deal with the two aspects separately. On facts it is not in dispute, as pointed out earlier, that the Petitioner; wanted inspection of the statements of persons including his own statement and the statement of his father recorded by the Investigating Officer in course of the investigation conducted by him. He also asked for inspection of the report submitted by the investigating Police Officer on such investigation. The Petitioner, however, was allowed inspection of the statements so recorded only in respect of such of the persons as were to be called as departmental witnesses at the disciplinary enquiry. He was also given inspection of his own statement recorded by the Investigating Officer, but the rest was refused. Mr. Banerjee makes a particular grievance that the Petitioner''s father was one of the persons from whom statement was recorded on the basis whereof the charge-sheet itself was drawn up, and yet the Respondents would not allow

inspection of such a statement not on the ground that such a statement is irrelevant but on the ground that the Petitioner''s father is not a departmental witness at the disciplinary enquiry. My attention has been drawn to the Petitioner''s representation dated March 8, 1966, annex. 01. By this representation the Petitioner specifically sought inspection of both the report of the Investigating Officer and the statements recorded in course of such investigation including the statement of his father. On September 3, 1966, the Petitioner made a representation to the Enquiry Officer that since a number of witnesses supported his case during the Police investigation he wanted inspection of the statements of such persons which is being unreasonably refused. He lodged a protest in this representation pointing out that it would be unfair for the authorities to disclose only such statements as are adverse to him and withhold those which may assist him in his defence. On July 30, 1966, the Petitioner specifically sought inspection of his father''s statement recorded by the Investigating Officer, but this prayer also was refused. Further, the admitted position is that, when the Investigating Officer in his evidence at the disciplinary enquiry clearly admitted that he entirely depended for his calculations on the statements of Dr. A.K. Nag and H. B. Nag regarding their expenses, the Petitioner applied that such statement of the Petitioner''s father should be disclosed at least in course of the enquiry. But the Enquiry Officer rejected the said prayer by passing the following order:

Sri Nag wants a copy of the statement of his father recorded by Sri D. C. Banerjee during investigation. The Prosecuting Officer points out that Sri Nag''s father is not mentioned as a witness in the list of witnesses by whom the article of charge is to be proved and, therefore, Sri Nag is not entitled to a copy of his father''s statement. Rule 14(3) and note to Rule 14(11) support the Presenting Officer. I shall consider hereinafter how far these rules support such refusal of a document with reference to which the principal witness, the Investigating Officer, was not only giving evidence but which document is admitted to be the basis of the calculations incorporated in the schedule to the charge-sheet. The Respondents in paras. 37, 38 and 43 of their affidavit have clearly acknowledged such refusal. They have taken the same stand as the Police Officer, namely, the Petitioner was not entitled to inspect or have disclosure of statements of persons who: were riot departmental witnesses. In para. 37 they have now claimed that the report of the Investigating Officer could not be disclosed as it was considered to be a privileged document; but such a plea does not appear to be bona fide at all for the simple reason that such a stand was never taken earlier in course of the disciplinary proceeding. On these facts, I am now to consider how far the Respondents were justified in their stand in refusing inspection or disclosure of these two documents,, namely, the statement of Dr. A- K-Nag as recorded by the Investigating Officer and the Investigating Officer''s report, and how far such refusal had resulted in detail of reasonable opportunity to the Petitioner for his defence.

16. In my considered opinion, the delinquent''s right in disciplinary proceedings to get inspection or claim disclosure of documents is a part of the right flowing from Article 311(2) of the Constitution which guarantees reasonable opportunity for his defence. If it be true that a delinquent cannot arbitrarily claim inspection or disclosure of any and every document to his choice without its relevance, it is equally true that the need for the document cannot be adjudged only from the standpoint of the need of the prosecuting authorities. If it once be conceded that the prosecuting authorities are entitled to withhold all documents which they are not going to rely on or withhold the statements of such persons earlier recorded whom they are not going to examine as a departmental witness, irrespective of their relevance and importance to the defence, then the enquiry loses all its importance. It would not be an enquiry then to find out the guilt or otherwise of the delinquent but would only be an enforced procedure to adjudge him guilty. In,, my view, therefore, a very prayer for inspection of document or disclosure thereof must be considered with reference to its relevance and its possible need of the defence to support its case. This, in my opinion, is a part of the requirement of Article 311(2) and, as it would presently be shown, such a right is also reserved by the provisions of the said Discipline and Appeal Rules under which the enquiry was held. In the present case, I have pointed out earlier that neither the Disciplinary authority nor the Enquiry Officer was ever conscious of this position. Their point of view is that when the Petitioner''s father is not a departmental witness the Petitioner is not entitled to the disclosure of his earlier statement. Similarly, they had refused the report of the Investigating Officer because that is not being relied on by the department in support of the charge. I shall consider the relevance of these documents hereinafter, but one thing is clear, namely, that the appropriate authorities themselves never considered the legitimacy of the Petitioner''s prayer, with reference to the relevance of the documents.

17. The Enquiry Officer is of the opinion that the provision in Rule 14(3) and note to Rule 14(11) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, (which came into force before the enquiry was actually held) is an authority for the view that a delinquent is not entitled to a copy of the statement of a person who is not a departmental witness. But I am unable to find any authority for such a proposition in either of the two provisions relied on by the Enquiry Officer. Rule 14(3) provides:

where it is proposed to hold an enquiry against a Government servant under this rule and Rule 15 the disciplinary authority shall draw up or cause to be drawn up (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge ;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain--(a) a statement of all relevant facts including any admission or confession made by the Government servant, (b) a list of

documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained.

Rule 14(11) provides as follows:

The Enquiring authority shall, if the Government servant fails to appear within the specified time or refuses, or commits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge and shall adjourn the case to a later date not exceeding 30 days after recording an order that the Government servant may for the purpose of preparing his defence (i) inspect within 5 days of the order or within such further time not exceeding 5 days as the Enquiring authority may allow, the documents specified in the list referred to in Sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf; Note--If the Government servant applies orally or in writing for supply of copies of the statements or witnesses mentioned in the list referred to in Sub-rule (3), the Enquiring authority shall furnish him with such copies as early as possible and in any case not later than 3 days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within 10 days of the order or within such further time not exceeding 10 days as the Enquiring authority may allow for the discovery or production of any documents which are in possession of the Government but not mentioned in the list referred to in Sub-rule (3). While the note to r. 14(ll)(ii) makes it mandatory for the Enquiring authority to give to the delinquent a copy of the earlier statement of a departmental witness, it does not either expressly or by necessary implication impose any prohibition that earlier statement of persons not to be examined as departmental witnesses need not be disclosed at all. On the other hand, r. 14(ll)(iii) specifically provides that such a statement can well be called for if it is relevant. Therefore, in my opinion, the Enquiry Officer in the present case clearly misread the provisions in the rules to think that the prosecuting authorities had no liability to disclose the earlier statement recorded by the Investigating Officer of the Petitioner''s father, Dr. A.K. Nag, or that the Petitioner was not entitled to claim inspection or production of such a statement. Similarly, the Investigating Officer''s report was also refused as that was not a document on which the prosecution would rely. This being the position, I must hold that these two documents were refused from an erroneous point of view and it is now to be seen how far such refusal has prejudiced the Petitioner in his defence.

18. It would be evident from the Enquiry Officer''s report itself that the Investigating Officer, Inspector Banerjee, gave evidence in the proceeding as to what the Petitioner''s father had stated to him in course of the investigation. To that extent, therefore, the earlier statement becomes a relevant document and the Petitioner is entitled to see what was here in the earlier statement. That apart, the Investigating

Officer has clearly admitted in his evidence and which is also noted by the Enquiry Officer that the material part of the charge-sheet itself was prepared with reference to the statements of Dr. A.K. Nag and the Petitioner. To that extent, therefore, the charge-sheet itself is based on the statement of Dr. A.K. Nag as recorded by the Investigating Officer, and I find no reasonable ground why the Respondents should be obstinate enough to refuse inspection or disclosure of such a document. No reason has been assigned by them except the mistaken idea as to the requirement of law and no reason could be found out by Mr. Chakraborty who is appearing on behalf of the Respondents. Mr. Chakraborty has been fair enough to state that left to himself he would never have advised refusal of such a document.

19. As for the report of the Investigating Officer, normally such a report bearing no relevance to the charge-sheet and, if unconnected with the disciplinary enquiry, is an irrelevant document which need not be disclosed. That is what the Supreme Court laid down in the case of State of Assam v. Mahendra Kumar Das AIR 1970 B.C.1255 relied on by Chakraborty. But in the present case the position is totally different. The earlier investigation was made on substantially the same charge, viz., the Petitioner possessing assets disproportionate to the known sources of his income. True purpose of the investigation is not known, but this much is established now that the materials secured in course of such investigation do not only constitute the foundation of the charge-sheet but are being used so far as they are adverse against the Petitioner by the prosecuting authorities. This was so done when the prosecuting authorities examined such witnesses and adduced such documents in the present disciplinary proceedings as were found out in course of such investigation. The Investigating Officer himself is the principal witness in this case who upon his own admission was giving evidence with reference to the materials and informations secured in course of the investigation and with reference to the statements recorded therein. The Petitioner makes a grievance that even in that investigation many a person had been examined who in their statements disclosed the materials in his favour but whose statements are being withheld from him. Thus, on the facts of the present case, the earlier investigation is not totally unconnected or irrelevant to the present disciplinary enquiry. At least when the Investigating Officer was the principal witness, his earlier report on the same issue would have been a valuable document for the defence to be used for cross-examining the witness or even contradicting him. Thus, I hold that here the report of the earlier investigation is a relevant document non-disclosure whereof must have prejudiced the defence. Strong reliance is placed by Mr. Chakraborty on the decision of the Supreme Court earlier referred to. But that decision is quite distinguishable as on the facts the relevance of the report to the disciplinary enquiry had not been made out.

20. Next I will consider Mr. Banerjee''s contention that refusal of permission to have the assistance of a lawyer at the enquiry amounts to denial of reasonable opportunity and infringement of the principles of natural justice. Rule 14(8) of the

said Discipline and Appeal Rules itself provides "the regulation where such assistance of a lawyer would be permissible. Therefore, application of principles of natural justice is no longer called for. It is only to be seen how far there has been an infringement of the statutory regulation or denial of reasonable opportunity as envisaged by Article 311(2). It is now an accepted principle that whether such assistance of a lawyer would be necessary to safeguard the delinquent''s right of reasonable opportunity would depend upon the facts and circumstances of each case. The delinquent has no absolute right to be represented by a lawyer at a disciplinary enquiry. On the other hand, if the facts and circumstances are such that by refusing the assistance of a lawyer the authorities only deny him a reasonable opportunity to defend himself, such refusal would vitiate the enquiry. This is the view expressed by the Special Bench of this Court in the case of Nripendra Nath Bagchi Vs. Chief Secretary, Govt. of West Bengal, . Reference may also be made to the decision of the Mysore and Andhra Pradesh High Courts in the cases of T. Muniswamy v. State of Mysore AIR 1964 Mys 250 and Dr. K.S. Rao v. State of Hyderabad AIR 1957 A.P 414. Mr. Banerjee, in his turn, again has strongly relied on a recent decision of the Supreme Court in the case of C.L. Subramaniam Vs. Collector of Customs, Cochin, . The Supreme Court was considering a similar provision of the Central Civil Services (Classification, Control and Appeal) Rules, 1967. In the present case, it appears that the Petitioner in his very first explanation to the charge-sheet, which was submitted even before the inspection was held, prayed for permission to have the assistance of a lawyer at the disciplinary enquiry. Such prayer was made to the disciplinary authority itself. Then again on September 3, 1966, in his representation to the Enquiry Officer he prayed for such permission. To support such a claim the Petitioner pointed out that he having neither the legal acumen nor the adequate knowledge and when the departmental proceeding would be conducted by law-knowing Policemen, he should not be refused assistance of a lawyer. It is not disputed that no such permission was ever granted though the Respondents have failed to produce any specific order either by the disciplinary authority or by the Enquiry Officer rejecting the said prayer made on behalf of the Petitioner. On the other hand, in para. 39 of the affidavit-in-opposition what has been stated by the Respondents is so far as the request for engaging the lawyer is concerned, under the existing rules the Enquiry Officer has no power to allow the officer under enquiry to engage a lawyer unless the prosecution takes the help of a lawyer. This again is an unfortunate misconception of the legal position. There is nothing in the rules which lays down that unless the prosecution takes the help of a lawyer the defence cannot seek such help. Rule 14(8) may be referred to. It is on the following terms-- the Government servant may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstance of this case, so permits. This provision in my reading contemplates two contingencies where the delinquent can have the assistance of a

lawyer. Firstly, when the

Presenting Officer being a lawyer is to confront such a lawyer and, secondly, when having regard to the circumstances of the case he is permitted by the disciplinary authority to have the assistance of a lawyer. For the second contingency, it is not necessary as a condition precedent that the Presenting Officer must also be a lawyer. In the present case, therefore, the Petitioner precisely sought for a permission contemplated by the latter part of the Rule which should'' have been disposed of on merits considering the circumstances of the case. But, if we are to accept the reasons set out in the affidavit-in-opposition the appropriate authority never considered the prayer on its merits but rejected it on a mistaken idea that the Presenting Officer not being a lawyer the Petitioner is not entitled to any representation by a lawyer. Even there the appropriate authority failed to appreciate that the prosecuting authorities were having the assistance of two legally trained Inspectors of Police--one as the Presenting Officer and the other as the principal witness as against the Petitioner. That apart even on merits of the Petitioner''s claim, it must be noted that a complicated enquiry was gone into involving the Petitioner''s income, expenditure and assets covering a period from 1943 to, 1962, that is,. nearly 20 years. At the enquiry 20 witnesses were examined and cross-examined and depositions ran upto 82 pages.. While the Presenting Officer had exhibited 30 documents, the defence had relied on 43 documents. Many of these documents are entire files and many are lengthy statements of accounts. Some of the witnesses on behalf of the department represented the vendors against whom the Petitioner''s father had to institute a title suit for specific performance of a contract for sale. Taking all these circumstances into consideration, I cannot but accept the contention of Mr. Banerjee that the Petitioner, whatever be his position in life, faced with a major penalty proceeding must have felt himself incompetent to support his own defence. Mr. Banerjee has rightly relied on th6 decision of the Supreme Court where refusal to grant permission to have the assistance of a legal practitioner under r. 15 of the 1967 Rules under similar circumstances, was held to have vitiated the enquiry. I am conscious of the position that in the case considered by the Supreme Court the delinquent was refused not only representation by a legal practitioner but also by another Government servant. Bu,t, in my reading, the two together was not considered by the Supreme Court to be the breach of r. 15(5) of the 1967 Rules. On the. other hand, refusal of the prayer for permission to have the assistance of a lawyer was by itself considered as a breach of the Rule and refusal of assistance of another Government servant was considered as an additional ground for challenge. Thus, it was observed in para. 13--

the grievance of the Appellant was that he was pitted against the trained prosecutor and not that Shivaraman was a legal practitioner. The disciplinary authority did not consider that grievance. It brushed aside the request of the Appellant on the ground that Shivaraman was not a legal practitioner, a consideration which was not relied on by the Appellant. The grounds urged by the Appellant in support of his request

for permission to engage a legal practitioner were by no means irrelevant. The fact that the case against the Appellant was being handled by a trained prosecutor was a good ground for allowing the Appellant to engage a legal practitioner to defend himself lest the scales would be weighed against him. The disciplinary authority completely ignored that circumstance. Therefore, that authority failed to exercise the power conferred on it under the Rule. It is not unlikely that the disciplinary authority refused to permit the Appellant to engage a legal practitioner in the circumstances, mentioned earlier, had caused serious prejudice to the Appellant and had amounted to a denial of reasonable opportunity to defend himself. Mr. Chakraborty, appearing on behalf of the Respondents, had contended that the Petitioner was well educated and was a responsible officer and, as such, refusal of permission to have the assistance of a lawyer could not have prejudiced him in the least. I am unable to agree with Mr. Chakraborty. Whatever be his qualification or status in life, it cannot be denied that faced with a major penalty proceeding, he could not have the mental equilibrium to marshal personally so much of complicated facts and accounts and support his own defence. The only answer which I can give to the point raised by Mr. Chakraborty is to quote the words of P. B. Mukharji J. (as his Lordship then was) in the case of Nripendra Nath Bagchi (Supra)--

if a physician is not the proper person to heel himself, a lawyer is not necessarily the proper person to conduct his own case at least unaided.

This being the position, I must hold that, on the facts and circumstances of the present case, refusal by the Respondents of the permission to the Petitioner to have the assistance of a lawyer at the enquiry j has denied him a reasonable opportunity to defend himself.

21. On the question of malice raised by Mr. Banerjee some allegations have been made in the application to this Court that the entire disciplinary proceeding was the result of machination of the Respondent No. 6. The motive ascribed was to get a walkover over the Petitioner to the position of the Deputy Controller. These allegations have been controverted and denied both by the Respondent No. 6 and the other Respondents. The Respondents in their affidavit have clearly disclosed the circumstances how first the Police enquiry was initiated and then the disciplinary enquiry. I am in agreement with the Enquiry Officer that the initial anonymous complaint might have been made by a person inimically disposed towards the Petitioner, but that would not make the entire proceeding tainted by malice. There was an independent investigation by persons against whom no malice has been made out. Then again there had been an independent enquiry by the Commissioner of the departmental enquiries. No malice have been alleged as against such an Enquiry Officer or even against the disciplinary authority. This being the position, I am unable to hold that the disciplinary proceeding itself is tainted by any malice.

22. So far as the last point raised by Mr. Banerjee is concerned, I deem it unnecessary to decide it finally though strong reliance is placed by Mr. Chakraborty, appearing on behalf of the Respondents, on the Central Government Circular No. M.H.A.O.M. 30/19/51 Ests. dated October 8, 1952, which conveys a Government decision that where in a departmental enquiry the delinquent is unable to explain satisfactorily the large wealth amassed by him, the officer holding the enquiry is to act on the presumption that such wealth was amassed by corrupt means. I consider it unnecessary to decide because on my findings made hereinbefore this application must succeed on the second point raised by Mr. Banerjee.

23. The application accordingly succeeds.

24. The Rule is made absolute.

25. The entire disciplinary proceeding from the stage of the enquiry and upto and including the final order of penalty is hereby set aside.

26. The Respondents, however, would be at liberty to proceed afresh from that stage in accordance with law.

27. Let a writ in the nature of certiorari do issue quashing and setting aside the disciplinary proceeding as above.

28. There will be no order for costs.

29. Let the operation of this order remain stayed for a period of one month.