

CHAPTER III

Removal, Dismissal and Reduction in Rank

Article 311(2) prescribes a mandatory procedural safeguard as a condition precedent for the imposition of penalty of dismissal, removal or reduction in rank. Article 311(2) as it stood when the Constitution was promulgated provided that no civil servant 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. The content of 'reasonable opportunity' as provided in the said Article was interpreted as follows:—

A proper departmental enquiry should be held before removing or dismissing a Government servant from service. The reasonable opportunity envisaged by the said Article includes—

- (a) an opportunity for the civil servant to deny his guilt and to establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based,
- (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witness in support of his defence, and
- (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.¹

Thus, every departmental enquiry under Article 311(2) of the Constitution has got two stages; the first stage, the enquiry into the allegations and the findings thereon and the second, the opportunity to the Government servant to contest the findings recorded against him as well as the propriety of the

1 Khemchand V. Union of India—1958 SC 300—1958 SCR 1080.

proposed punishment. Both stages of the enquiry are quasi-judicial in nature.²

Article 311(2) was amended by the Constitution (Fifteenth Amendment) Act, 1963, which came into effect on 6-10-1963. Clause (2) of Article 311 after the said amendments reads as follows:—

“311(2): No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.”

The “reasonable opportunity” contemplated under Article 311(2) before its amendment was interpreted as stated earlier as consisting of (i) the reasonable opportunity of being heard in respect of the charges in the course of an enquiry and (ii) after such enquiry the punishing authority being satisfied of the guilt of the delinquent Government servant giving of show cause notice in reply to which the Government servant was entitled to make representation on merits as well as the quantum of punishment. By the Fifteenth Amendment of the Constitution all that was done was to clarify and give effect to the judicial decisions interpreting the unamended Article. Amended Article 311(2) specifically provides for holding of an enquiry and for a further opportunity to show cause against the correctness of the findings and the penalty proposed to be imposed. Therefore, in effect, the provision of Article 311(2) prior to and after its amendment remains one and the same.³

1. Reasonable Opportunity

Article 311(2) makes it obligatory for the State to hold a regular departmental enquiry and to afford a reasonable opportunity to the civil servant concerned before imposing any one of the penalties specified in the said Article. There are several aspects relating to the “reasonable opportunity” guaranteed under Article 311(2) of the Constitution and they are set out hereinafter.

(1) *Holding of regular enquiry part of reasonable opportunity* : When charges are framed against a civil servant and the civil servant denies the charges and submits his explanation it is obligatory on the part of the authority concerned to hold a regular enquiry and to give opportunity to the civil servant concerned to defend himself. If an order of dismissal is passed straightaway without holding an enquiry such an order is illegal as having been

2 (a) *State of Assam V. Bimal Kumar*—AIR 1963 SC 1612.

(b) *Bachhittar Singh V. State of Punjab*—AIR 1963 SC 395.

3 *Bhagbanchandradas V. State of Assam*—AIR 1971 SC 2004.

passed in clear breach of the condition of providing reasonable opportunity guaranteed under Article 311(2).⁴ The rule which incorporates the procedure for holding an oral enquiry against a civil servant against whom charges are framed if the official concerned desires to have an oral enquiry or if the authority concerned directs, is mandatory. The requirement to hold enquiry in accordance with such a rule is plainly based on consideration of natural justice and fair play. The refusal to hold enquiry in accordance with the rules introduces a fatal infirmity to the whole enquiry as it amounts to denial of reasonable opportunity.⁵

(2) *Opportunity of enquiry not availed of—penalty is not illegal* : Article 311(2) guarantees to a civil servant a reasonable opportunity of defending himself. But when an opportunity is afforded and the civil servant fails to avail the opportunity, it is not open to the civil servant to contend that the enquiry is invalid on the ground that there was no reasonable opportunity.⁶

(3) *Enquiry must be directed against the civil servant concerned* : (a) In a case where an enquiry was ordered and held in order to find out as to the persons who were responsible for the occurrence of a railway accident, the officials concerned gave evidence and the enquiry committee held that some officials who gave evidence were responsible for the accident, the said finding cannot form the basis for imposing the penalty on such officials. A general enquiry into a railway accident is not an enquiry directed against any official. A finding reached in such an enquiry cannot be a substitute for an enquiry contemplated under Article 311(2) which is required to be held against the civil servant concerned. Hence, the imposition of any of the penalties specified in Article 311(2) based on the findings in such an enquiry contravenes Article 311(2).⁷

(b) Similarly where a Government servant was furnished with a charge memo on the basis of certain alleged admissions made by him in the course of the enquiry directed against some other Government servants passing of an order imposing penalty without holding enquiry against him amounts to denial of reasonable opportunity.⁸ Particularly when there was no clear and unambiguous admission of his guilt, failure to hold a formal enquiry is a serious infirmity. It is of utmost importance that before imposing a penalty on a Government servant a proper departmental enquiry must be held.⁸

4 (a) *State of Mysore V. H. L. Chablani*—AIR 1958 SC 325.

(b) *State of Bombay V. Nurul Latif Khan*—AIR 1966 SC 269—1965(3) SCR 135.

(c) *State of Punjab V. Amar Singh*—AIR 1966 SC 1313.

5 *State of Bombay V. Nurul Latif Khan*—AIR 1966 SC 269—1965(3) SCR 135.

6 (a) *Kshirode Bihari V. Union of India*—SLR 1970 SC 321.

(b) *State of Madhya Pradesh V. Bhagwantha Rao*—SLR 1971(1) M.P. 94.

(c) *P. Joseph John V. State of T. C.*—AIR 1955 SC 160.

7 *Amalendu Ghosh V. Dist. Traffic Superintendent*—AIR 1960 SC 992.

8 *Jagdish Prasad V. State of Madhya Bharath*—AIR 1961 SC 1070.

(4) *Preliminary enquiry not sufficient* : Preliminary enquiry is held only for purposes of deciding whether there is a prima facie case for holding departmental enquiry. Even during that stage some opportunity to the official concerned may have been given. But whatever that may be, a regular enquiry must be held after the charges are framed. No punishment can be imposed on the basis of admission of some facts relating to the charges at the stage of preliminary enquiry. An enquiry may be unnecessary if after the charges are framed the delinquent official admits them. But when he denies the charge and asks for an oral enquiry, holding of the enquiry is mandatory.⁹

2. Reasonable Opportunity during the Enquiry

(1) *Charges must not be vague and indefinite* : The charges framed against a civil servant must be capable of being intelligently understood. Where the charges are vague and not definite, it is not possible for a civil servant to defend himself. It is for this reason that the rules also provide for the furnishing of the statement of allegations. Framing of charge in a vague and indefinite manner and not furnishing the statement of allegations clearly contravenes Article 311(2) of the Constitution.¹⁰

(2) *Statement of allegations must be furnished* : The charges framed against the civil servant must be supported by the necessary statement of allegations on the basis of which the charge is framed and the statement of allegations must be supplied to the delinquent civil servant. In the absence of statement of allegations, it is impossible for the civil servant to defend himself. Hence, the non-supply of the statement of allegations on the basis of which the charge against a civil servant is framed amounts to denial of a reasonable opportunity as contemplated under Article 311(2) and vitiates the departmental enquiry proceedings.¹¹

(3) *Documents required for cross-examination should be supplied* : A civil servant against whom disciplinary proceedings are started is entitled to have the documents which are necessary for purposes of effectively cross-examining the prosecution witnesses. The findings recorded in a preliminary enquiry and statements and such other documents connected with the preliminary enquiry against a civil servant are all documents which may be necessary

9 T. K. Singh *V.* State of Bihar—SLR 1969 Patna 18.

10 (a) Suratchandra Chakravarti *V.* State of West Bengal—AIR 1971 SC 752—1971 SLR 103 (SC).

(b) C. P. Govindarajan *V.* State of Mysore—W.P. No. 1418/1970 DD 1-3-1973 (Mys).

11 (a) Khemchand *V.* Union of India—AIR 1958 SC 300—1958 SCR 1080.

(b) Suratchandra Chakravarti *V.* State of West Bengal—AIR 1971 SC 752—1971 SLR 103 (SC) Fundamental Rule 55 interpreted.

(c) A. K. Narayana Rao *V.* General Manager, Southern Railway 1969 (1) *Mys. L. J.* 588—Rule 1709 of Railway Discipline and Appeal Rules interpreted.

(d) Aswathanarayana Rao *V.* The Chief Justice—1969 *Mys. L. J.* SN. P. 29—Rule 11 of Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, interpreted.

for a civil servant to effectively cross-examine the witnesses. The mere fact that the department or the prosecution does not choose to depend upon those documents could be no reason to refuse to supply the same to the civil servant if he requires the same for purposes of cross-examination. The findings recorded in preliminary enquiry and such other connected documents cannot be considered as confidential and denied to the delinquent official. Such denial would be opposed to the principles of natural justice and would amount to denial of reasonable opportunity to defend as contemplated under Article 311(2) of the Constitution.¹² Similarly failure to supply a copy of the complaint or report on the basis of which departmental enquiry is instituted required for cross-examination amounts to denial of reasonable opportunity.¹³

(4) *Failure to supply document which are not material*: (a) In order to show that reasonable opportunity has been denied or principles of natural justice have been violated by not furnishing documents, the aggrieved official must show that those documents were relevant for purposes of cross-examining the witnesses. In a case where an official was charged for acceptance of illegal gratification and the evidence consisted of witnesses who participated in the trap arranged by the police on the complaint of a party about the demand of illegal gratification and the finding in departmental enquiry was based only on the statement of witnesses who were witnesses to the trap, the mere fact that some documents which the delinquent required to cross-examine a witness whose evidence had no bearing on the charge framed and was not relied on to find him guilty of the charge, does not vitiate the departmental enquiry proceedings.¹⁴

(b) Before the Government decides to hold an enquiry against a civil servant, the Government may call for a report in connection with the complaint received against the civil servant. The report is meant only to enable the Government to take a decision whether to institute a departmental enquiry or not. The fact that a copy of such report was not furnished to a civil servant does not vitiate the enquiry. The validity of the enquiry will have to be decided only by the manner in which it is conducted. If the civil servant concerned had the full opportunity of participating in the enquiry and adducing evidence on behalf of himself and of cross-examining the witnesses for the prosecution and the entire evidence was recorded in his presence, the non-furnishing of the report does not vitiate the enquiry.¹⁴

(5) *Right to cross-examine officers who made adverse report*: Where disciplinary proceedings are instituted against a civil servant on the basis of

- 12 (a) *State of Madhya Pradesh V. Chintaman*—AIR 1961 SC 1623.
 (b) *Bindu Rao Jeevaji Kulkarni V. State of Mysore*—1967(2) *Mys. L. J.* 632.
 (c) *A. K. Narayana Rao V. General Manager, Southern Rly.*—1969(1) *Mys. L. J.* 588.
- 13 (a) *Dhup Singh V. State of Haryana*—SLR 1969 P & H 436.
 (b) *Shri Kalyan Singh V. State of Punjab*—SLR 1967 Punjab 129.
 (c) *Jugraj Singh V. Delhi Administration*—SLR 1970 Delhi 400.
- 14 (a) *State of Assam V. M. K. Das*—AIR 1970 SC 1255 at 1260.
 (b) *R. R. Bilgi V. Central Board of Excise*—W.P. No. 2046/69 (DD 18-1-73) (Mys).

an adverse report made by a superior officer, it is the duty of the Enquiry Officer to send a notice to such an officer and give an opportunity to the delinquent official to cross-examine him. The failure to summon the officers who are available and who had made adverse report against the delinquent official for purposes of cross-examination would amount to denial of reasonable opportunity.¹⁵

(6) *Opportunity to defend and lead evidence* : (a) A civil servant must be afforded necessary opportunity to adduce evidence in support of his case including by way of examination of witnesses. Omission on the part of the Enquiry Officer to give an opportunity to the delinquent civil servant to bring his witnesses in support of his case or tender himself for examination would vitiate the whole proceedings. When the attempt on the part of the delinquent officer to adduce his evidence is ruled out or frustrated on account of inaction on the part of the Enquiry Officer, such enquiry vitiates the whole proceedings and contravenes Article 311(2) of the Constitution.¹⁶

(b) A delinquent official is entitled to have a reasonable opportunity to defend himself by examining defence witnesses. The choice of examining the requisite number of witnesses is that of the delinquent official and not that of the Enquiry Officer. Arbitrary picking up of witnesses and refusal on the part of the Enquiry Officer to summon all the defence witnesses or not allowing the official to make the choice, as to who are the witnesses to be examined in his behalf, causes prejudice to the official concerned and amounts to denial of reasonable opportunity.¹⁷

(c) Similarly when the delinquent officer produces witnesses in support of his case refusal on the part of the Enquiry Officer to take their evidence on the ground they were not present at the time of the offence complained amounts to denial of reasonable opportunity. It is wrong to anticipate the value of the evidence of a witness even before he is examined.¹⁸

(7) *Duty to summon documents and witnesses* : The Enquiry Officer is under a duty to summon the documents and witnesses required by the delinquent official for purposes of his defence. Denial on the part of the Enquiry Officer to summon the documents and witnesses which are necessary for the defence of the delinquent official clearly amounts to denial of reasonable opportunity.¹⁸⁻¹⁹

15 *State of Punjab V. Dewan Chunilal*—AIR 1970 SC 2086.

16 *State of Uttar Pradesh V. C. S. Sharma*—AIR 1968 SC 158.

17 (a) *Gajender Singh V. State of Punjab*—SLR 1972 P & H 432.

(b) *Harmander Singh V. The General Manager, Northern Railway*—SLR 1973(1) P & H 846.

18 *M. Yousuf Ali V. State of A.P.*—SLR 1973(1) A.P. 650.

19 (a) *Mohinder Singh V. State of Punjab*—1968 SLR 470 (P & H).

(b) *State of U.P. V. C. S. Sharma*—AIR 1963 All. 94.

(8) *Denial of request for reasonable time to prepare for the defence :*

(a) When a civil servant against whom a departmental enquiry is instituted requests for a reasonable time to prepare for his defence, refusal to grant such a request would amount to denial of reasonable opportunity. Reasonable opportunity to defend means, the civil servant must have sufficient time to prepare his defence. In a case where the civil servant was on hunger strike in support of settlement of his claims and was very weak, serving on him a charge memo consisting of sixteen charges and giving him three days time to prepare his defence, is clear denial of reasonable opportunity. It is no doubt true that his conduct in resorting to an extra legal device *i.e.*, hunger strike for the enforcement of his legal rights is reprehensible. But in determining whether a reasonable opportunity was given or not the court cannot be influenced by extraneous considerations. What the court has got to determine is whether in the circumstance the civil servant was given reasonable opportunity. As the civil servant was on hunger strike and was very weak serving on him a charge memo consisting of 16 charges and giving him only 3 days time to defend amounted to denial of Reasonable Opportunity.²⁰

(b) Similarly where a civil servant was served with the statement of allegations and immediately thereafter enquiry was commenced and a witness was examined, and his request for a day's time to prepare himself and permission to look into the records was refused it amounted to denial of reasonable opportunity to defend and violation of the principles of natural Justice.²¹

(9) *Legal assistance :* (a) On request by a civil servant against whom departmental enquiry is instituted for engaging a legal practitioner, such a request must be complied with when on behalf of the department a trained prosecutor is appointed to lead evidence against the Government servant. Where the disciplinary authority completely ignored that circumstance and refused to permit a civil servant to engage a legal practitioner on the ground that the Department had not engaged a legal practitioner, such refusal caused serious prejudice to the Government servant and resulted in denial of reasonable opportunity.²²

(b) Similarly where the delinquent Government servant against whom an enquiry is instituted, is not a highly educated person and had a very disturbed state of mind during the enquiry and was not in a position to defend himself, it would amount to denial of reasonable opportunity to refuse his request to engage an Advocate.²³

(c) But when in a joint departmental enquiry, request of one of the officials to engage a counsel was rejected and the counsel appearing for other

20 Rama Kanta *V.* District School Board—AIR 1969 Cal. 397.

21 Akal Sewak Singh *V.* State of Punjab—SLR 1970 P & H 235 at 238.

22 C. L. Subramaniyan *V.* Collector of Customs—AIR 1972 SC 2178.

23 State of Andhra Pradesh *V.* V. Mohamad Sarwar—SLR 1971(1) A.P. 507.

delinquent official defended him, there being no conflict of interest between the officials involved in the enquiry, it cannot be said that there has been denial of reasonable opportunity.²⁴

(10) *Non-payment of subsistence allowance*: A civil servant under suspension pending departmental enquiry is entitled to the payment of subsistence allowance prescribed in the rules. Denial to pay subsistence allowance in spite of the inability expressed by the civil servant to participate in the enquiry held at a distant place unless he is paid the subsistence allowance and holding enquiry *ex parte* and passing order of removal amounts to denial of reasonable opportunity.²⁵

(11) *Recording of evidence in a language not known to the delinquent official*: When the evidence were given by witnesses in the language known to the delinquent official but were recorded by the Enquiry Officer in a language not known to the delinquent official, all that was left to the official was to rely on his memory for the statements made by several witnesses recorded by the Enquiry Officer and he cannot take the benefit of the record to make out his defence and such a procedure amounts to denial of reasonable opportunity.²⁶

(12) *Enquiry officer collecting information from outside sources improper*: It is highly improper for an Enquiry Officer to collect any material from outside sources and not to make that information so collected available to the delinquent officer and further to make use of the same in the enquiry proceedings. Similarly to collect outside information and to be influenced in coming to a conclusion without making any reference in the enquiry report is equally bad. If it is established that material behind the back of the delinquent official was collected during the enquiry and has been relied on without disclosing it, the enquiry proceedings stand vitiated.²⁷ The position will be worse where the disciplinary authority is itself the enquiring authority. In such an event even an appellate order confirming that order will not cure the defect.²⁷

(13) *Effect of independent consideration by disciplinary and appellate authority*: Where the allegation against an Enquiry Officer was that he had collected information outside the record and there is absolutely no reference to any such material in the report of the enquiry, even if he has collected some such information it will not vitiate the enquiry, if the enquiry has been conducted in conformity with the rules of natural justice, and the disciplinary authority has independently considered the records and has passed the order after giving an opportunity and further when the appellate authority has also independently considered the record and has passed the order.²⁷

24 Jeevarathnam *V.* State of Madras—AIR 1966 SC 951.

25 Ghana Shyamdas *V.* State of Madhya Pradesh—AIR 1973 SC 1183—SLR 1971 (SC) 239.

26 Babu Lal *V.* Hon'ble M.C. Desai, Chief Justice—SLR 1969 All. 170.

27 State of Assam *V.* M. K. Das—AIR 1970 SC 1255.

(14) *Finding by disciplinary authority* : In relation to the departmental proceedings against a civil servant it is not always practicable for the disciplinary authority to hold a departmental enquiry itself. In such cases, it is competent for the disciplinary authority to appoint an Enquiry Officer for holding a departmental enquiry to record the findings and submit the records to the disciplinary authority for final orders. In cases where the disciplinary authority is not the enquiring authority, it is necessary for the disciplinary authority to record its own findings before taking any further action. It is not however necessary for the disciplinary authority where it agrees with the findings of the Enquiry Officer to record reasons in support of its findings. Where the disciplinary authority after receipt of the Enquiry Officer's report issues a show cause notice to the delinquent Government servant to show cause against the proposed punishment, the mere fact that the disciplinary authority has not recorded that it has agreed with the findings of the Enquiry Officer also does not vitiate the proceedings. When the disciplinary authority issues a show cause notice on the basis of the report of the Enquiry Officer, it can only mean that the disciplinary authority has agreed with the findings of the Enquiry Officer. There is no defect in such a show cause notice.²⁸⁻²⁹

(15) *Show cause notice* : Having regard to the provisions of Article 311 of the Constitution, a civil servant is entitled to have a double opportunity. First at the stage of enquiry and thereafter at the stage and before passing the final order of punishment. After the disciplinary authority records its findings and comes to a tentative conclusion about the penalty to be imposed, the disciplinary authority should communicate the findings along with report of the enquiry and call upon the delinquent official to show cause against the proposed penalty. In reply to the show cause notice the civil servant is entitled not only to contest the correctness of the findings recorded against him but also about the propriety of the quantum of punishment proposed to be inflicted. The civil servant is entitled to show cause that the punishment tentatively proposed is excessive and not warranted by the facts and circumstances of the case.³⁰

(16) *Both the stages are judicial* : A departmental enquiry consists of two stages viz: (i) the process of trial and recording of finding, (ii) if in the first stage a civil servant is found guilty, then to propose and determine as to the penalty to be imposed. The two stages cannot be treated as two independent separate proceedings and that the first stage is quasi-judicial and the second stage is administrative. Both stages are judicial. The second stage is no less judicial than the first. Consequently, a decision taken regarding punishment is a judicial order and cannot be varied at the will of the authority.³⁰

28 *State of Madras V. Srinivasan* —AIR 1966 SC 1827.

29 *State of Assam V. Bimal Kumar*—AIR 1963 SC 1612.

30 (a) *Union of India V. K. Rajappa Menon*—AIR 1970 SC 748.

(b) *State of Assam V. Bimal Kumar*—AIR 1963 SC 1612.

(c) *Bachittar Singh V. State of Punjab*—AIR 1963 SC 395.

(17) *Failure to furnish enquiry officer's report* : Along with the show cause notice, it is the duty of the disciplinary authority to furnish the Government servant a copy of the report of the Enquiry Officer with which the disciplinary authority has agreed and proposes to impose the punishment on a civil servant. Unless the Enquiry Officer's report is supplied, it will not be possible for the delinquent official to point out the defects in the finding recorded by the Enquiry Officer. Therefore, failure to furnish the copy of the report of the Enquiry Officer would result in violation of the guarantee of reasonable opportunity.³¹

(18) *Withholding of part of enquiry officer's report illegal* : Enquiry Officer's duty is only to record finding on the charges framed against a civil servant. He is under no duty to make recommendations regarding quantum of punishment. But when the Enquiry Officer's report not only contains his findings on the charges framed against a Government official, but also recommendation as to the punishment that may be imposed on the Government official concerned, having regard to the findings reached and gravity of the charges framed against the official, it certainly influences the mind of the disciplinary authority as to the quantum of punishment. Therefore, while issuing the show cause notice withholding that part of the report of the Enquiry Officer where he has proposed the quantum of punishment, would be bad and the final orders passed in pursuance to such show cause notice would be invalid.³²

(19) *Failure to avail of opportunity* : A civil servant is no doubt entitled to reasonable opportunity. But in a case where the civil servant fails to avail the reasonable opportunity afforded to him, he cannot complain that there is violation of Article 311(2).³³

(20) *Mentioning of all the three penalties in the show cause notice* : The fact that in a show cause notice issued to a Government servant after holding a regular departmental enquiry all the three major penalties were mentioned and in the final order punishment of removal was imposed there is no contravention of Article 311(2). There is nothing wrong in principle in the disciplinary authority tentatively forming an opinion that the charges proved merit any one of the major penalties and on that basis to issue a show cause notice. To specify more than one penalty does not render the show cause notice indefinite. On the other hand, a civil servant will have better opportunity to show cause against the imposition of each of the penalties.³⁴

- 31 (a) *State of Maharashtra V. B. A. Joshi*—AIR 1969 SC 1302—(1969) 3 SCR 917.
 (b) *Avtar Singh V. Inspector General*—SLR 1968 SC 131.
 (c) *Nanjundeswar V. State of Mysore*—1960 Mys. L. J. 79.
- 32 (a) *State of Gujarat V. R. G. Teredesai*—AIR 1969 SC 1294.
 (b) *Y. Pandurangaswamy V. State of A.P.*—SLR 1971(1) AP 242.
- 33 (a) *U. R. Bhat V. Union of India*—AIR 1962 SC 1344.
 (b) *Joseph John V. State T.C.*—AIR 1955 SC 160.
- 34 *Hukumchand V. Union of India*—AIR 1959 SC 536.

(21) *Not disclosing disagreement on the findings of acquittal on some of the charges*: It is mandatory that the disciplinary authority should give notice to the concerned Government official if he disagrees with the finding on some of the several charges on which he was found not guilty. Therefore, in a case where several charges are framed against a civil servant and the Enquiry Officer found him guilty on some of the charges and found him not guilty of other charges and suggested a lighter penalty, the show cause notice issued by the disciplinary authority without disclosing his disagreement with the finding of not-guilty on some of the charges and passing final orders holding all the charges are proved amounts to denial of Article 311(2) of the Constitution and also principles of natural justice.³⁵

(22) *Failure to give reasonable time*: After the disciplinary authority records its finding of guilt against a civil servant and issues show cause notice proposing to inflict any one of the major penalties mentioned in Article 311 a civil servant is entitled to show that the findings recorded is without any basis and he is also entitled to submit that the punishment proposed is excessive. Therefore he should be given reasonable time and opportunity to go through the records. Denial of such opportunity amounts to denial of reasonable opportunity which is guaranteed under Article 311(2).³⁶

3. Final Order

(1) *Requirements of final order*: The final order imposing penalty must ex-facie disclose that the points raised as regards the correctness of the findings as well as the quantum of punishment have been considered by the disciplinary authority. The very object of issue of show cause notice is in order to give an opportunity to delinquent officials to contest the findings recorded in the enquiry, as well as the propriety of the quantum of punishment. Therefore, final order by disciplinary authority must be a speaking order and must meet all the points raised in reply to the show cause notice. There is difference between the order of the disciplinary authority in agreeing with the findings recorded by the Enquiry Officer and passing final orders after issuing show cause notice and after the reply is received by the delinquent official. While agreeing with the findings of Enquiry Officer, disciplinary authority is not required to give reasons. But while passing final orders it is mandatory that the disciplinary authority must consider the reply given by the official to the Show Cause Notice. An order by disciplinary authority imposing the penalty by merely stating that there is no substance in the reply or that no fresh points are raised would not meet the requirement of affording

35 *Narayan Misra V. State of Orissa*—SLR 1969 SC 657.

36 *Shahabuddin V. State of Andhra Pradesh*—SLR 1970 AP 599.

reasonable opportunity at the 2nd stage as contemplated by Article 311(2) of the Constitution.³⁷

(2) *Oral hearing not part of reasonable opportunity*: An authority competent to dismiss a civil servant is not required to hear the evidence of the witnesses by virtue of Article 311 of the Constitution. The Government servant is entitled to a reasonable opportunity before any action is taken against him. But the said requirement is not conditioned by the holding of an enquiry once again before the punishment is inflicted notwithstanding an earlier fair and full enquiry before the Enquiry Commission or Enquiry Officer. Further, an opportunity of showing cause against the action proposed to be taken should be no doubt, a reasonable opportunity, but an opportunity of making an oral representation is not a necessary postulate of an opportunity of showing cause within the meaning of Article 311 of the Constitution.³⁸

(3) *Consideration of past misconduct while passing final orders*: After reaching a conclusion regarding the guilt of an official on the charges framed against him in a departmental enquiry if the disciplinary authority having regard to the findings in the said enquiry and also having regard to the previous misconduct of the Government servant concerned, wants to impose a higher penalty, having regard to the charges proved as well as the previous misconduct, it is the duty of the disciplinary authority to say so in the show cause notice. Where, in the show cause notice issued to a Government servant there was no reference to the previous misconduct, as a ground for inflicting a higher penalty but the same was relied on while passing final order, the final order so passed is clearly illegal as the civil servant had no opportunity to show cause against the higher penalty on the basis of the previous misconduct.³⁹

4. Other Matters Relating to Departmental Enquiry

The content of reasonable opportunity as contemplated by Article 311(2) of the Constitution are indicated above. There are other matters affecting the validity of departmental enquiry which are common to the procedure relating to imposition of three major penalties contemplated by Article 311(2) as well as other penalties contemplated in the Rules relating to discipline applicable to civil servants. They are dealt with in the chapter dealing with departmental enquiries.

- 37 (a) Ramachandruppa *V.* State of Mysore—1967(2) *Mys. L. J.* 360.
 (b) Alimuddin Siddique *V.* State of Mysore—W.P. No. 1972 *Mys. L. J.* SN. P. 13
 (c) R. Muniswamy Naik *V.* State of Mysore—W.P. No. 4747/69 DD 4-8-72.
 (d) Shankaraiah *V.* State of Mysore—W.P. No. 7121/69 DD 11-10-72.
 (e) G. V. M. Nadagouda *V.* State of Mysore—1973(2) *Mys. L. J.* SN. P. 62.
- 38 (a) Kapur Singh *V.* Union of India—AIR 1960 SC 493—1960(2) SCR 569.
 (b) U. R. Bhat *V.* Union of India—AIR 1962 SC 1344.
- 39 State of Mysore *V.* K. Manche Gowda—AIR 1964 SC 506—1964(4) SCR 540.