INSPECTION AND DISCOVERY OR PRODUCTION OF DOCUMENTS IN DISCIPLINARY CASES

PROCEDURES ARE ONE of the essential elements in the rule of law. It is only by disciplinary techniques and procedural safeguards that ascendancy of the administrative process, which tends to impinge on every aspect of people's business and life, is rendered tolerable. A Judge of the United States Supreme Court has said :

> Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.[1]

The procedure for imposing penalties under the All India Services (Discipline and Appeal) Rules, 1969 and the C.C.S. (C.C.A.) Rules, 1965 seeks to ensure that the power of the disciplinary/inquiring authority is exercised fairly, both in appearance and reality, in disciplinary proceedings against public servants.

The procedure provides a time-table for various steps during an oral enquiry. One of the important provisions is that the public servant should be permitted to inspect and study the documents by which the articles of charge are proposed to be sustained and call for such other documents which he may require for his defence. In *Kumari C. Gabriel* v. *State of Madras*,[2] the Madras High Court summed up the purpose of this provision in the following words :

> The person proceeded against must be given a fair and reasonable opportunity to defend himself. This requires that he should be given facilities to examine and study the documents sought to be put in evidence against him and, if he desires to take notes or extracts, he should be allowed to do so without let or hindrance. Exceptions to this rule may have to be made in the interest of public safety or security or some such over-riding ground but such exceptions should be clearly rare. Susceptibilities of individuals, however highly placed, will not justify an exception being made to the rule. It is further necessary that the individual proceeded against should be given a fair and proper opportunity to cross-examine the witness who deposes against him.[3]

In *James Bushi* v. *Collector of Ganjam*[4] it was held that if a witness

1. Shanghnessy v. United States, 3454. S. 206 (1953) (Jackson J.)
2. (1959) 2 M.L.J. 15.
3. *Id.* at 25.
4. A.I.R. 1959 Orissa 152.

is examined against a delinquent officer the latter should be given copies of the previous statements of that witness so as to enable him effectively to cross-examine him.

The disciplinary authority, however, is not bound to supply copies of documents requisitioned by the accused public servant. In the case *K. N. Gupta* v. *Union of India*[5] the petitioner contended that he had a right to be supplied with copies of the various documents which he had asked for and the failure to furnish him with the copies of such documents constituted a denial of reasonable opportunity to the petitioner to defend himself. The High Court held :

> The petitioner was given permission to inspect the documents and to take extracts from them. If the petitioner wants to take copies of any of the documents made available to him for inspection, there was nothing to prevent him from doing so. It is not the case of the petitioner that he wanted to take copies of those documents but was permitted to take only extracts. It will be too much of a technicality to contend that it will not be sufficient if the petitioner is permitted to inspect the documents and take copies of those documents but the department itself must take copies and furnish those copies to the petitioner....The argument...that the petitioner has the absolute right to be furnished with copies of the documents by the department and it is not enough if he is permitted to peruse or inspect the documents and allowed to take copies of those documents, is not supported by any authority.[6]

The government servant is also not entitled to make a blank demand for copies of "all statements recorded during the enquiry."[7] He can ask for copies of statements of those witnesses only who are proposed to be examined in the departmental enquiry. It is, however, well established that a reasonable interval of time should be given to the government servant after supply of copies of documents and statements and before witnesses are examined.

Both the C.C.S. (C.C.A.) and All India Services (Discipline and Appeal) Rules provide that the public servant shall indicate the relevance of the documents required by him to be discovered or produced by the government. A similar requirement is included in the Railway Servants (Discipline and Appeal) Rules, 1968.

The inquiring authority on receipt of the notice for the discovery or production of documents is required to forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents by such date as may be specified therein.

5. A.I.R. 1968 Delhi 85.
6. *Id.* at 87.
7. Balakrishnan, *Law Relating to Services and Dismissals* (1962) 2nd 1969.

The inquiring authority may, however, for reasons to be recorded by it in writing, refuse to requisition such documents as are in its opinion not relevant to the case.

It would be observed that under the extant rules it is the duty of the inquiring authority to determine the relevance of the request for the discovery or production of the various documents. Under the old rules, however, the disciplinary authority could for reasons to be recorded in writing, refuse the public servant access to the requisitioned documents on the ground that they were not relevant or that it would be against the public interest to allow the government servant such access.

Under the revised rules the opportunity to the government servant to inspect the documents has been shifted from the stage of submission of written statement of defence to the stage when he appears in person before the inquiring authority at the prescribed time. The Railway Servants Discipline and Appeal Rules have, however, retained the provision regarding inspection of documents before submission of his written statement of defence.

Procedures relating to departmental enquiries are not without their drawbacks. Public servants sometimes take advantage of the same to balk or distort the process of justice. Inspection or production of documents itself often takes a long time. A scrutiny of thirty oral enquiries pending with the Commissioners for Departmental Enquiries for two years or more, at the commencement of the current financial year, has shown that as many as twelve cases were held up for want of inspection of documents. In order to expedite oral enquiries a suggestion was mooted that copies of important documents may be made available to the delinquent officer *along* with a copy of the articles of charge or a date fixed simultaneously for the inspection of documents. It, however, did not find favour with the Central Vigilance Commission as it was of the view that it would only furnish another excuse to a deviously inclined delinquent officer to protract the proceedings at the preliminary statge *itself* for an indefinite period. The scheme of the revised rules, occording to the legal opinion, contemplated that the written statement of defence would be limited to admitting or denying the charges and for mere admission or denial of charges, inspection of documents was not necessary.

II

The relevant rules require that on receipt of the requisition every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority unless it is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents would be against the public interest or security of the State.

On being so informed the inquiring authority should communicate the information to the public servant and withdraw the requisition made

by it for the production or discovery of such documents.

If the document is held to relate to any affairs of State, the head of the department becomes the sole judge of the question whether disclosure should be allowed or withheld in the public interest. It being a matter of policy the discretion has been left to the head of the department concerned and the court has no concern with it.[8]

Claiming privilege on the ground that disclosure of the contents of a document would be against public interest is a highly dangerous power. An official's motive in claiming the privileges may be to shield his own wrong doing or the vagaries of his department. The Supreme Court has observed in *State of Punjab* v. *S.S. Singh*[9]:

> Care has, however, to be taken to see that interests other than that of the public do not masquerade in the garb of public interest and take undue advantage of the provisions of S. 123...[10]

In *Prasad* v. *Works Manager*[11] the department refused to give copies of records as it was 'against a departmental rule'. The Court held that the inquiry was vitiated. In *State of Mysore* v. *Manche Gowda*[12] the disciplinary authority took into consideration the previous record of the government servant and on the basis of that record proposed to impose a certain penalty. The previous record was not shown to the government servant. It was held that the failure to supply the previous record was against the principles of natural justice.

In *Shirkhedkar* v. *Accountant General, Maharashtra*[13] the disciplinary authority took into consideration some secret directive or instruction from higher authority of which the petitioner had no notice in determining the guilt of the government servant. It was held that the order of dismissal was vitiated.

In *Brijlal Manilal & Co.* v. *Union of India*[14] the Board of Revenue had considered the report of the state government while dealing with an application for review relating to the grant of a mining licence. The report was not disclosed to the person who was making a grievance against the refusal to grant a licence to him. It was held that the omission amounted to denial of reasonable opportunity to the person concerned.

In another case privilege was negatived because the claim to it was made on the ground that it "might cause a scandal in the office."[15]

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8. Sarkar on Evidence (India, Pakistan, Burma and Ceylon) 1147 (11th edn.) 1964.
9. A.I.R. 1961 S.C. 493.
10. *Id.* at 501.
11. A.I.R. 1957 Calcutta. 4.
12. A.I.R. 1964 S.C. 506.
13. A.I.R. 1963 Bom. 121.
14. A.I.R. 1964 S.C. 1643.
15. *Sarkar on Evidence* 1162 (11th edn. 1964).

The question naturally arises "whether the courts should hold the scales of justice where private right and public interest thus come into conflict or whether the last word must rest with the executive."[16] The English Law on the subject is very interesting. Until recently the courts in England had been guided by what is known as the doctrine of the *Thetis*[17] case. In this case the plaintiffs called on the contractors to produce certain important papers but the First Lord of Admiralty swore an affidavit that disclosure would be against the public interest. The House of Lords held that the affidavit could not be questioned.[18]

Privilege is also invoked under 'class' claims, *i e.*, on the ground that the documents belong to a class which the public interest requires to be withheld from production. This practice is particularly injurious since it enables privileges to be claimed not because the particular documents are themselves secret but merely because it was thought that all documents of that kind should be confidential.[19]

Privilege is frequently claimed in the interests of "freedom and candour of communication" with or within the public service. In the *Grosvenor Hotel*[20] case the Court of Appeal decided, in disagreement with the doctrine of the *Thetis* case, that "such a claim could not be accepted unquestioned" "that the Minister must explain the reasons for it", that the court could if it thought fit call for documents and inspect them and that if the court found that the interests of justice outweighed the claims of official secrecy it could override the Ministers's objection and order production.[21]

The statement of the Lord Chancellor on Crown privilege for documents and oral evidence sets out certain categories of "class cases" in which privilege may not be claimed on the ground of the proper functioning of the public services. In regard to

> the category of departmental and interdepartmental minutes and memoranda containing advice and comment—and recording decisions the documents by which the administrative machine thinks and works—it, however, adds that "Crown privilege must be maintained."[22]

There is a strong tradition in the United States against allowing untrammelled powers to the government and so judges have sometimes refused pleas of privilege and have even ordered the production of departmental files for inspection.[23]

16. H.W.R. Wade, *op. cit. Supra*, note 1.
17. *Duncan* v. *Cammell, Laird and Co. Ltd.*, (1942) A.C. 624.
18. *Ibid.*
19. *Ibid.*
20. *Re Grosvenor Hotel* (No. 2), (1965) Ch. 1210.
21. H.W.R. Wade, *Op. cit., Supra*, note 1.
22. Griffith and Street, *A Casebook of Administrative Law* (1967).
23. *Sarkar on Evidence* 1149.

The trend of the case law is, therefore, to assert judicial control over 'the insidious class' cases 'where litigant's rights might be sacrificed to a rule of thumb'[24] and not to allow privilege to run riot.

Convenience and justice it has been said are often not on speaking terms, but the cleavage between the legal and the administrative worlds can no longer be allowed to continue. In sympathy with modern trends to evolve fair administrative procedures the authorities concerned with departmental action or conduct or oral enquiries will have to manage change rather better and with greater sensitivity than has been done so far and strike a delicate balance between practical needs and justice.

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24. H.W.R. Wade, *op. cit.*, *Supra*, note 1 at 289.

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