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years. In the meantime, that is to say, during the period of seven years, the defendant made substantial improvements in respect of this property. In these circumstances, we are of the opinion that the learned Judge of the lower appellate Court rightly passed an order that the mesne profits should be calculated from the date of the payment of the amount of Rs. 2,085, which was directed to be paid by the plaintiff in respect of the improvements made by the defendant in regard to the suit property. We are of the opinion that the discretion exercised by the learned Judge of the lower appellate Court in this behalf was properly exercised and accordingly Second Appeal No. 1110 of 1948 must also stand dismissed.

Regarding costs, I am in entire agreement with the order proposed by my learned brother.

Appeal allowed

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

PROVINCE OF BOMBAY (ORIGINAL DEFENDANT), APPELLANT *v.* MADHUKAR GANPAT NERLEKAR (ORIGINAL PLAINTIFF), RESPONDENT.*

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Government of India Act, 1935 (26 Geo. V, c. 2) ss. 240 (3), 243—Charges of misconduct against Police Sub-Inspector—Departmental enquiry by District Superintendent of Police—Order of dismissal—Order passed without issuing notice to show cause against it—Jurisdiction of Court to examine decision—Bombay District Police Act (Bom. IV of 1890), s. 27—Rules regarding conduct of departmental enquiry—Breach of rules—Validity of dismissal order—Suit for damages for wrongful dismissal—Plaintiff entitled to what relief—Breach of rule whether furnishes cause of action.

The right of dismissal of a police officer of a subordinate rank is a condition of service within the meaning of s. 243 of the Government of India Act, 1935, and, therefore, the right can be exercised in the manner indicated by the Police Act. In the rules framed under s. 27 of the Bombay District Police Act, 1890, there is no provision that before dismissing a police officer he should be given a notice to show cause against his proposed dismissal. Where, therefore, an order of dismissal is passed against a Sub-Inspector of Police without issuing to him a notice to show cause against it, the order cannot be challenged on the ground that it offends against the mandatory provisions of s. 240 (3) of the Government of India Act, 1935.

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* First Appeal No. 31 of 1948 with Cross F. A. No. 52 of 1948.

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N. W. F. Province v. *Suraj Narain*,[1] followed.

Suraj Narain v. *N. W. F. Province*[2] and *Punjab Province* v. *Tara Chand*,[3] referred to.

If legal evidence is given before a domestic tribunal convened for the purpose of investigating charges of misconduct against a subject and the tribunal has thought fit to accept it, it is not for a Court of law to enter into the matter of appreciation of that evidence.

Ramji v. *Naranji*[4] and *Bell* v. *Royal Western India Turf Club*,[5] followed.

Thompson v. *British Medical Association*,[6] referred to.

So long as a domestic tribunal acts honestly, in good faith, with a sense of responsibility and in consonance with its own rules, its decision cannot be questioned on the ground of breach of rules of natural justice, for the reason that in that case the rules of natural justice will be deemed to have been observed. All that is meant by compliance with rules of natural justice by a domestic tribunal is that the tribunal must act honestly and with good faith, and must give the delinquent a chance of explanation and defence. If its rules postulate an enquiry, the delinquent must have a reasonable opportunity of being heard and of correcting and contradicting a relevant statement prejudicial to his view.

Local Government Board v. *Arlidge*[7] and *Maclean* v. *The Workers' Union*,[8] referred to.

A rule made under s. 27 of the Bombay District Police Act, 1890, provided that before dismissing a police officer he must be given reasonable facilities for his defence, as for example, be allowed to call witnesses, have access to or copies of documents used in evidence against him or be made to understand them thoroughly, have reasonable time to produce his witnesses or to submit his written defence if he so desired. Another such rule provided that when all witnesses in support of the charge had been dealt with and all evidence relied upon in support of the charge had been carefully explained to the police officer, he should be called upon to enter on his defence and to produce his witnesses. In a departmental enquiry held by the District Superintendent of Police against a Sub-Inspector of Police (plaintiff) on charges of misconduct in the discharge of his duty, none of the vital requirements of the above rules were complied with, and the plaintiff was dismissed from service. The plaintiff having sued the Province of Bombay for recovery of Rs. 48,475 by way of damages for wrongful dismissal from service and in the alternative for a declaration that the order of his dismissal was

[1] (1948) 51 Bom. L. R. 425, P. C.
[2] [1942] A. I. R. F. C. 3.
[3] [1942] A. I. R. F. C. 23.
[4] (1934) 37 Bom. L. R. 261.
[5] (1944) 47 Bom. L. R. 916.
[6] [1924] A. C. 764.
[7] [1915] A. C. 120.
[8] [1929] 1 Ch. 602.

void and inoperative in law and that he was entitled to be reinstated in service as if he had not been dismissed from service:

Held, that the plaintiff's dismissal was wrongful and the order dismissing him from service was void and inoperative;

that, however, in view of the Privy Council decision in *High Commissioner for India and Pakistan* v. *Lall*,[1] the plaintiff was not entitled either to damages or to arrears of pay;

that, therefore, the only relief to which the plaintiff was entitled was a declaration that the order of his dismissal was void and inoperative.

A breach of a rule relating to dismissal or reduction from service, framed under the Police Act and relating to conditions of service of police officers referred to in s. 243 of the Government of India Act, 1935, gives rise to a cause of action.

Broach Municipality v. *Bhadriklal Ambalal*,[2] explained.

Lalbhai Chimanlal v. *Municipal Borough of Ahmedabad*,[3] *R. T. Rangachari* v. *Secretary of State*,[4] and *R. Venkata Rao* v. *Secretary of State*,[5] distinguished.

First Appeal from the decision of S. R. Kaprekar, Civil Judge (Senior Division), at Poona.

Suit for money.

On the evening of February 3, 1943, the Military Lines Police Station, Poona Cantonment, received a telephone message from Wanouri Police Station appealing for help to put down a scuffle that was going on between some civilians and Military personnel near Wanowri Chowki. The message was immediately conveyed to the Police Inspector Thornber and the Sub-Inspector Nerlekar (plaintiff) who were on duty at the police-station. The plaintiff sent out half a dozen constables to Wanowri and then personally went down to the spot. According to the plaintiff when he reached the place he found that it was only a drunken brawl, that the quarrelling people had already dispersed, that none was injured and that no property was lost or damaged. No note of the incident was, however, made either in the Station Diary or the plaintiff's personal office diary.

In the beginning of September of that year a preliminary enquiry was held by the Assistant Superintendent of Police in the matter of the alleged complicity of certain police officers with the activities of gamblers in Poona Cantonment. As a result of that enquiry, the District Superintendent of Police on

[1] (1948) 50 Bom. L. R. 649, P. C.
[2] (1950) 53 Bom. L. R. 282.
[3] F. A. No. 182 of 1948, decided by Chagla C. J. and Gajendragadkar J., on December 8, 1949 (unrep.).
[4] (1936) 39 Bom. L. R. 688, P. C.
[5] (1936) 39 Bom. L. R. 699, P. C.

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September 4, 1943, ordered the plaintiff to immediately hand over his charge and proceed the same day to take charge of Jejuri Police Station. On October 2, 1943, the plaintiff received a suspension order which further directed him not to leave his place of posting except with the permission of the District Superintendent of Police. On the next day the plaintiff received a charge-sheet charging him with misconduct in that although he visited the scene of riot at Wanowri on February 6, 1943, between gamblers and military sepoys in which property was damaged and people received injuries, he did not register any offence nor did he send special reports of the incident to his superiors as required by the standing orders and circulars because he was in the pay of the gamblers. The charge-sheet wrongly mentioned February 6, 1943, as the day of rioting in place of February 3, 1943, owing to some mistake.

A departmental enquiry was started against the plaintiff before the District Superintendent of Police, Poona, on October 6, 1943. On that day the plaintiff filed a written statement denying the charges against him and praying for an opportunity to cross-examine all the witnesses whose evidence had been recorded against him in the preliminary enquiry. On the next day sixteen witnesses were examined against the plaintiff out of which the plaintiff cross-examined ten. No opportunity was given to cross-examine three witnesses whereas the plaintiff declined to cross-examine the remaining three on the ground that they did not give any evidence. On the same day the plaintiff gave a list of the following persons whom he wanted to examine as his witnesses, viz. (*i*) Inspector Thornber, (*ii*) Mr. Padgaonkar, (*iii*) O. C., 5th Tank Recovery Company, (*iv*) O. C. I. A. O. C., Station Works at Wanowri and (*v*) D. A. P. M. The plaintiff was given permission to examine the first two persons on the 9th October and as to (*iii*) and (*iv*) he was given letters on them asking them to let the plaintiff see their records and give him certified extract of a report, if any, of injuries sustained by the soldiers in the evening of February 6, 1943. As regards the last witness the plaintiff was told that a memorandum was received from him in which he had said that his office had no record of any disturbance having taken place on February 6, 1943.

On October 9, 1943, Thornber expressed his unwillingness to give evidence as a defence witness. Thereupon the plaintiff wanted to examine one Pukraj but the District Superintendent of Police gave him only two hours in which to produce

him. Pukraj was not available in that short time and the plaintiff renewed his request to examine Thornber but later on as a result of some conversation he had with the District Superintendent of Police he dropped the request.

On October 10, 1943, the plaintiff filed his written statement and on the 11th his oral statement was recorded. While the oral statement was being recorded four letters which were received from the military authorities in regard to the incidents of gambling in the Cantonment area were brought on the record. On the 27th the District Superintendent of Police prepared his summary of evidence against the plaintiff in which he said that that it was proved that the riot had taken place because of gambling and although the plaintiff knew about it he made no entries in any official record. He, therefore, recommended his dismissal from service.

On November 8, 1943, the Inspector General of Police called the plaintiff and recorded his statement. On the 12th November the Inspector General of Police made his summing up and passed final orders dismissing the plaintiff from service.

On December 13, 1945, the plaintiff filed the present suit against the Province of Bombay (defendant) in which he claimed Rs. 48,475 by way of damages for wrongful dismissal from service. In the alternative, he claimed a declaration that the order of his dismissal was void and inoperative in law, and that he was entitled to be reinstated in service and to get the arrears of the salary as if he had continued in service. The plaintiff challenged the validity of the order on the ground that express and mandatory requirements of the rules and orders made under the Bombay District Police Act, 1890, were disregarded and punishment of dismissal was passed without giving him a notice to show cause against it as required under s. 240 (3) of the Government of India Act, 1935. The defence was that the plaintiff was dismissed after proper departmental enquiry, that the rules and procedure for such enquiry were duly observed, that the plaintiff being an officer of subordinate rank in the Police Force his case was governed by s. 243 and not s. 240 of the Government of India Act, 1935, and that, therefore, the plaintiff was not entitled to a notice to show cause against his dismissal.

The trial Judge held that the rules prescribed for the holding of a departmental enquiry against a police-officer of a subordinate rank were substantially complied with. But he further came to the conclusion that s. 240 of the Government of India

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Act applied to the case, and that as the order of dismissal was passed against the plaintiff in contravention of that section the said order was invalid. He, therefore, awarded Rs. 9,000 by way of damages to the plaintiff on the basis of five years' loss of salary, and dismissed the rest of his claim.

Both the plaintiff and the defendant appealed to the High Court. The plaintiff in his appeal claimed a further sum of Rs. 11,000 as damages whereas the defendant in its appeal prayed for the entire dismissal of the plaintiff's suit. Both the appeals were heard together.

K. G. Datar, for Government Pleader, for the appellant.
D. V. Patel, for the respondent.

VYAS J. These are two appeals arising out of Civil Suit No. 1483 of 1945 of the Court of the Civil Judge, Senior Division, Poona. One of them (No. 31 of 1948) is filed by the Province of Bombay and the other (No. 52 of 1948) is filed by Madhukar Ganpat Nerlekar, a Sub-Inspector of Police, who was dismissed from Government service by the order of the Inspector-General of Police, Bombay, dated November 12, 1943, after departmental enquiry which was held by the District Superintendent of Police, Poona. The plaintiff has filed Suit No. 1483 of 1945 for recovering Rs. 48,475 by way of damages for wrongful dismissal from service, future interest at 6 per cent. on that amount and costs. In the alternative, he has asked for a declaration that the order of his dismissal was void and inoperative in law and that he is entitled to be reinstated in service and receive the arrears of salary as if he had not been dismissed from service.

The plaintiff's contentions are that the enquiry which was conducted by the District Superintendent of Police, Poona, under orders of the Inspector-General of Police, Bombay, was illegal, unfair and unjust, that rules of natural justice were violated in the conduct of the enquiry, that express and mandatory requirements of the rules and orders made under the Bombay District Police Act, 1890 (No. IV of 1890), were disregarded. and that even the provisions of s. 240 of the Government of India Act, 1935, which were a pre-requisite for the passing of an order of dismissal against a servant of the Crown, were broken by the defendant. It is contended by him that under s. 240 sub-s. (3) of the Government of India Act, 1935, a punishment of dismissal could not be passed against him without giving him a notice to show cause why such punishment should

not be inflicted on him. Admittedly no opportunity was given to him to show cause against his proposed dismissal before an order of dismissal was passed against him. It is contended for him that he was not allowed to have a copy of the "Summary of evidence" forwarded by the District Superintendent of Police to the Inspector-General of Police with a recommendation that he should be dismissed from service. It is also submitted that the Inspector-General of Police had not informed the plaintiff that he had proposed to accept the recommendation of the District Superintendent of Police. It is contended that the order of dismissal passed in these circumstances is illegal.

The contentions of the defendant (the Province of Bombay) are that the plaintiff was dismissed after proper departmental enquiry, that the rules and procedure for such enquiry were duly observed, that the plaintiff being an officer of subordinate rank in the Police Force, his case was governed by s. 243, and not s. 240, of the Government of India Act, 1935, that in accordance with s. 243, the conditions of service of the plaintiff were determined by the rules framed under the District Police Act, 1890, that there was no rule in the rules framed under s. 27 of the District Police Act, 1890, laying down that a notice to show cause against dismissal or reduction should be issued to a police-officer of a subordinate rank before an order of dismissal or reduction is passed on him, and that, therefore, the plaintiff was not entitled, as of right, to a notice to show cause against dismissal before an order of dismissal was passed against him. It is accordingly submitted for the defendant that the suit of the plaintiff deserves to fail.

The learned trial Judge, who has written a very careful and able judgment, has held that the plaintiff has failed to prove that the enquiry held before his dismissal was improper, illegal and in violation of the rules of natural justice. In his opinion, the rules prescribed by Government for the holding of a departmental enquiry against a police-officer of a subordinate rank were substantially complied with. But he has further come to the conclusion that the Crown had power to dismiss its servants subject to the provisions of s. 240 of the Government of India Act, 1935, and that as the order of dismissal was passed against the plaintiff in contravention of s. 240, sub-s. (3), of the Government of India Act, 1935, the said order was wrongful and the plaintiff had a cause of action arising out of it.

The facts which gave rise to the plaintiff's suit are as follows: The plaintiff was confirmed as a Sub-Inspector of Police in the

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Province of Bombay in July 1940. On January 1, 1943, he was posted to the Military Lines Police Station, Poona Cantonment. One of the executive officers of the Cantonment wrote a letter on January 25, 1943, to the Police Sub-Inspector, Poona Cantonment, stating that hand cart gambling was going on in the Cantonment area. At 7-25 p. m. on February 3, 1943, a telephone message was sent from Wanowri police-station to the Military Lines police-station. The message was taken down in the telephone book maintained at the Military Lines police-station by police constable, M. H. Moray. It was taken down both in Marathi and English. The original message appears to have been communicated in and taken down in Marathi. The message, translated in English, was to the following effect :—

"7-25 P. M. Duty Constable Phalke, phoned from Wanowri Chowki that 'maramari' is going on between Civil and Military people, near Wanowri Chowki. Send people urgently for help." (See exhibit 48.)

Mr. M. H. Moray, who took down the message, conveyed information regarding it immediately to the Sub-Inspector and Police Inspector. It is the case of the plaintiff that he sent out half a dozen constables to Wanowri immediately on receiving information of the incident from the message which was communicated by Phalke from Wanowri and that he went down to the spot personally also. He found that it was only a drunken brawl, that the quarrelling people had already dispersed, that none was injured and that no property was lost or damaged. It is contended that the Military police and Inspector Thornber, who had also arrived at Wanowri, were satisfied that nothing serious had happened. It is the case of the plaintiff that as nothing requiring notice or action had happened, no note was made about the incident in the Station Diary or in the Personal Diary of the plaintiff. It is submitted further that, in the circumstances, no question of making any entry about an offence in any register relating to cognizable or non-cognizable offences arose. Nothing happened thereafter till August 31, 1943. On August 31, 1943, a conference was held at Poona in the office of the District Superintendent of Police between the Inspector-General of Police, the District Superintendent of Police and the Assistant Superintendent of Police (Mr. Moray). That conference was held in connection with the alleged complicity of certain police-officers with the activities of the gamblers in Poona Cantonment. An impression was current that the gamblers in the Poona Cantonment area were

paying hush money to certain police-officers so that no action might be taken against them. At the conference it was thought that some junior police-officer might be persuaded to come out with true information regarding the alleged connection of the police with the gamblers. Accordingly Mr. P. W. Chitnis,, Sub-Inspector Poona Cantonment, was selected to give information and was tendered pardon. He was persuaded to give out full particulars of the alleged paid association of the police-officers with the gamblers. He made a statement at the above-mentioned conference containing allegations against certain police-officers who were in the habit of receiving money from gamblers in order to hush up instances of gambling. In that statement Mr. Chitnis disclosed names of certain police-officers. That statement was not produced during the trial of the suit. It was asked for by the plaintiff, but privilege was claimed in respect of it, and the Court considered the statement privileged. As we have just pointed out, that statement of Mr. Chitnis made at the conference of the above-mentioned police-officers on August 31, 1943, is said to have contained names of certain police-officers. On that statement being made, the District Superintendent of Police, Poona, asked the Assistant Superintendent of Police, Mr. Moray, to make a preliminary enquiry in the matter of the alleged complicity of certain police-officers with the activities of the gamblers. The enquiry was directed to be made against certain police-officers. Accordingly a preliminary enquiry was conducted by Mr. Moray at his own residence. On September 4, 1943, the plaintiff received a letter from the District Superintendent of Police, Poona, at 2 o'clock in the afternoon, asking him to hand over the charge of the Military Lines police-station, Poona Cantonment, to one Mr. Mohan. By that letter the plaintiff was directed to leave Poona before six o'clock the same evening and proceed to Jejuri, a place about thirty miles away from Poona. The order of transfer is exhibit 41 and reads :—

"*S. I. Nerlekar of Military Lines P. S.*

You will hand over charge of your Police Station at once to Sergt. Mohan and proceed today and take charge of Jejuri Police Station. You will leave Poona before 6 p.m.

Sd. J. G. MAXWELL-GUMBLETON
Dist. Supdt. of Police,
Poona."

The preliminary enquiry which the Assistant Superintendent of Police, Mr. Moray, was directed to make into the conduct of

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certain police-officers was duly conducted by him, and in due course he forwarded papers of the enquiry made by him against the plaintiff to the District Superintendent of Police, Poona. It would appear that on the basis of those papers the Inspector-General of Police ordered a departmental enquiry against the plaintiff and asked the District Superintendent of Police, Poona, to conduct the enquiry and forward a summary of evidence recorded by him to the Inspector-General of Police. On October 2, 1943, the plaintiff received a suspension order which was dated October 1, 1943. That order is exhibit 42 on the record and reads:

"*Order,*

The I. G. P. has suspended S. I. M. G. Nerlekar of Jejuri Police Station from the date of receipt of this order. While under suspension he should not leave his present place of posting except with the permission of the D. S. P.....

Sd. J. G. MAXWELL-GUMBLETON
Poona."

Dist. Supdt. of Police,

It would thus be seen that by this order of suspension the plaintiff's freedom of movement was restricted and he was asked not to leave his place of posting, namely Jejuri, without obtaining the previous permission of the District Superintendent of Police, Poona. On October 3, 1943, the plaintiff received a charge-sheet with translations of some statements. That charge-sheet is exhibit 43 and reads:

"*Charges against Sub-Inspector Nerlekar,*

Serious Misconduct in that—

(1) You on 6-2-43 at about 7 p.m. visited the scene of riot at Wanowrie between gamblers and Military sepoys in which property was damaged and people received injuries including Police Constable Phalke who was on duty at Wanowrie Chowky. You did not register an offence under sections 147, 332 I. P. C. etc. nor did you send special reports to the D. S. P., the D. M. and the S. D. P. O. and thus contravened the orders in D. S. P.'s circular No. a/12/410 of 10-3-42 and endorsement No. b/16/-1795 of 15th September 1942 on Government of Bombay, H. D. (Pol) No. 2496 of 1-7-1942. You acted thus because you were in the pay of gamblers.

(2) You allowed gambling to go freely in your charge in consideration of which you used to receive regular payments from the gamblers.

Sd. J. G. MAXWELL-GUMBLETON
3-10-43."

It would be noticed that charge No. (1) was framed on the basis as though a certain incident had taken place at Wanowri on

February 6, 1943. The telephone book maintained at the Military Lines police-station, Poona Cantonment, had in the meantime been produced in Court in some other case, and it appears that it was understood from the papers in the preliminary enquiry that the incident had taken place on February 6, 1943. Accordingly the date mentioned in charge No. (1) was February 6, 1943. It would further be seen that two circulars were referred to in charge No. (1), one of which is at exhibit 46 and reads:

"All P. S. O.'s in the district are informed that immediate intimation of any incident, however, trivial, in which a soldier is involved whether as an aggressor against a member of the public or as one attacked by a civilian or whether in an accident, or whether the matter be one of brawl amongst soldiers themselves be given by a special report to the D. S. P., Poona, copies being sent direct to the District Magistrate, Poona, and the Sub-Divisional Police Officer concerned, with a view that all three should receive information simultaneously."

On October 6, 1943, the departmental enquiry against the plaintiff started before the District Superintendent of Police, Poona. On that date the plaintiff appeared before the District Superintendent of Police. Mr. Moray, Assistant Superintendent of Police, was present. The charge was explained to the plaintiff. The plaintiff made an oral statement which is at exhibit 67, denying the charge. He also filed a written statement (exhibit 66) on the same date, saying that the facts disclosed in it did not constitute an offence under ss. 147 and 332 of the Indian Penal Code, and that he had not failed in his duties as he had taken prompt and necessary action in the matter. In that written statement the plaintiff also denied having received any money in consideration of hushing up the matter and said that he might be given an opportunity to cross-examine all the witnesses whose evidence had been recorded against him. On October 7, 1943, the plaintiff said that he did not wish to cross-examine B. L. Pawar, B. G. Pawar and A. B. Burungule, as the statement of one Jagdale, a police constable, which was recorded in the preliminary enquiry, was merely read out in the departmental enquiry to these three constables (B. L. Pawar, B. G. Pawar and A. B. Gurungule) and they had merely said that that was a correct statement. On the same day (October 7, 1943) the plaintiff said that he wished to examine (1) Police Inspector Thornber, (2) Mr. V. G. Padgaonkar, (3) O. C. 5th Tank Recovery Company, (4) O. C. I. A. O. C. Station Works at Wanowri and (5) D. A. P. M. He also expressed a wish to inspect the service-sheets of constables Phalke and Gurungule. He said that he wished to examine O. C. 5th Tank

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Recovery Company and O. C. I. A. O. C. Station Works in order to bring on record the report about injured soldiers, if any had been received on the night of February 6, 1943. Regarding D. A. P. M. he stated on that day that he wanted him to produce report, if any, received by him regarding the alleged riot at Wanowri or injuries received by soldiers in that incident on the night of February 6, 1943. As far as Inspector Thornber was concerned, the plaintiff was told that the District Superintendent of Police, Poona, would arrange to keep him present, for examination by the plaintiff, on the morning of October 9, 1943, and, as far as Padgaonkar was concerned, the plaintiff was asked to produce him that morning (October 9, 1943) at ten o'clock. If Padgaonkar was likely to leave Poona before that time, the plaintiff was to produce him before the District Superintendent of Police earlier. As far as the proposed witnesses O. C. 5th Tank Recovery Company and O. C. I. A. O. C. Station Works at Wanowri were concerned, the plaintiff was given letters addressed to them, asking them to let him examine their records and give him a certified extract of a report, if any, regarding injuries received by soldiers between 6 p.m. and 9 p.m. on February 6, 1943. As far as the plaintiff's desire to examine D. A. P. M. as his witness was concerned, he was shown a memorandum received from that gentleman in which he had said that his office had no record of any disturbance having taken place, presumably on February 6, 1943. Lastly, the plaintiff was told to produce his witnesses at ten o'clock in the morning of Sunday, October 10, 1943. All this happened on October 7, 1943. On October 10, 1943, the plaintiff filed his written statement (exhibit 68) and on October 11, 1943, his final oral statement was recorded by the District Superintendent of Police. On October 27, 1943, the District Superintendent of Police prepared his summary of evidence (exhibit 58) against the plaintiff in which he said that it was proved that a riot had taken place at Wanowri between civilians and soldiers, that gambling was going on with the connivance of the police at Wanowri, that the riot had taken place because of the gambling, that the plaintiff had arrived at the scene of the riot either during the later stages of the riot or very soon thereafter, that he must have known what had happened, and that, notwithstanding that knowledge, he had made no entries about the incident in any official record and had made no report to anybody. It was also mentioned by the District Superintendent of Police in his summary of evidence that, in his opinion, there was only one

punishment for Sub-Inspectors who hushed up crime in order to "line their own pockets." That punishment, according to him, was dismissal. On November 8, 1943, the Inspector-General of Police called the plaintiff and recorded his statement which is exhibit 69. Therein the plaintiff said that he was forced to drop Mr. Thornber as a defence witness and requested that the "defence statement" of Mr. Thornber might be taken into consideration in his own proceeding, as the first charge against Mr. Thornber was precisely the same as the one which was framed against him in the proceedings pending against him. On November 12, 1943, the Inspector-General of Police made his summing-up (exhibit 72) and passed final orders (exhibit 61) dismissing the plaintiff from service. Thereafter an appeal was made by the plaintiff to the Government of Bombay against his order of dismissal, but it was rejected on July 27, 1944. A memorial to His Excellency the Governor was thereupon submitted by the plaintiff, which also was rejected. Then a notice under s. 80 of the Civil Procedure Code was given by the plaintiff to Government on August 9, 1945 (exhibit 70). Finally, the present suit was filed against the Province of Bombay on December 13, 1945, in which the plaintiff claimed, as we have seen, Rs. 48,475 by way of damages for wrongful dismissal from service, together with future interest and costs. The learned trial Judge has allowed the claim to the extent of Rs. 9,000 by way of damages for wrongful dismissal from service and has also allowed proportionate costs of the suit from the defendant. The defendant has been ordered to bear his own costs of the suit. In Appeal No. 52 of 1948 the claim has been valued at Rs. 11,000 for all purposes. It is to be noted at this stage that in the memorandum of appeal no relief is asked for a declaration that the plaintiff is wrongfully dismissed from service, although one of the grounds urged in the appeal memorandum does say that it ought to have been held that he was entitled to be reinstated in service. Mr. Patel for the plaintiff has made a request to us that he should be allowed to amend his memorandum of appeal and a prayer should be permitted to be inserted in it asking for a declaration that the plaintiff was wrongfully dismissed from service. That request is allowed on condition that the plaintiff pays additional court-fee for this relief (Rs. 18-12-0).

Before proceeding to deal with the various contentions which were pressed before us at considerable length, we shall refer to a comparatively smaller point, though an important one, which was raised by Mr. Patel for the plaintiff. It was

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contended by Mr. Patel that the legal evidence on the record was not adequate to justify an adverse finding against the plaintiff on the two charges made against him. It was argued that the evidence of Bhagu Bhima Jagtap, Shaikh Ibrahim Shaikh Nabi and Pratapmal Tarachand Marwadi was not really much good, since these witnesses were not made available for cross-examination by the plaintiff, that the so-called evidence of B. L. Pawar, B. G. Pawar and A. B. Gurungule, all police constables, was no evidence in fact since they merely said that they corroborated a statement of Jagdale which was made by him during the preliminary enquiry and read out to him in the departmental enquiry, that the evidence of Rustomji and Chitnis being accomplice evidence was unworthy of acceptance without independent corroboration, and that in those circumstances there was no adequate evidence to support the finding of the enquiry officer (District Superintendent of Police, Poona) against the plaintiff in respect of the alleged incident of February 6, 1943, and corruption. This raised a question at once whether this Court had power to act as Court of appeal and sit in judgment on the judgment of a domestic tribunal on merits. In this context Mr. Patel referred us to *Thompson* v. *British Medical Association (N. S. W. Branch)*[1] and pressed his point that if a domestic tribunal rightly convened and properly composed was burdened with the discharge of some judicial or *quasi*-judicial duty affecting the rights, liberties or properties of a subject, and made a decision which it had jurisdiction to make, that decision, if legal evidence were given in the course of the proceeding adequate to sustain it, could not in the absence of some fundamental error be impeached or set aside, except upon the ground that the domestic tribunal was interested, or biased by corruption or otherwise, or influenced by malice in deciding as it did decide. However, there is a decision of our own Court in *Ramji* v. *Naranji*[2] in which it was held that if the requirements of natural justice had been complied with, a Court of law would not act as a Court of Appeal in reference to a decision of a domestic tribunal. In the body of his judgment Mr. Justice Blackwell referred to the observations of Lord Atkinson in *Thompson* v. *British Medical Association (N. S. W. Branch)*[1] (p. 778) :

"That decision if legal evidence be given in the course of the proceeding adequate to sustain it, cannot in the absence of some fundamental

[1] [1924] A. C. 764.

[2] (1934) 37 Bom. L. R. 261.

error be impeached or set aside, save upon the ground that this body was interested, or biased by corruption or otherwise, or influenced by malice in deciding as it did decide,"

and characterized them as *obiter*. Then, again, in *Bell* v. *Royal Western India Turf Club*[1], it was held that a domestic tribunal was not bound by the ordinary rules of evidence nor was it bound to follow the procedure of the Courts of law or anything like it. It was not even bound to hear the parties, but might reach its decision even by correspondence. It was observed in that case that it was not even bound to act in a way that "the man in the street" would necessarily regard as just. But even if we were to hold on the authority of *Thompson* v. *British Medical Association* (*N. S. W. Branch*)[2] that adequate legal evidence is necessary to support a charge in an enquiry by a domestic tribunal, even then, in our opinion, there was adequate legal evidence in this case. Regarding charge No. 1, there was the evidence of Phalke, Dagdu, Mahadu and Dnyanoba and other witnesses, which the enquiry officer thought sufficient to prove the charge. In respect of charge No. 2, there was the evidence of Rustomji and Chitnis. No doubt theirs was accomplice evidence, but such evidence was legally admissible. What value should be attached to it was a different matter, and into that matter of appreciation of evidence we shall not enter, since we cannot sit as a Court of Appeal over a decision of a domestic tribunal. The point at this stage is only this, that in respect of both charges there was legal evidence which the enquiry officer thought fit to accept and which he considered was adequate for holding both the charges proved. In these circumstances, we do not see much substance in the submission advanced before us by Mr. Patel for the plaintiff on the authority of *Thompson* v. *British Medical Association* (*N. S. W Branch*),[2] that as there was no adequate legal evidence to support the offence against the plaintiff, the conclusion of the domestic tribunal against the plaintiff was unsustainable.

We proceed next to the various other contentions which were pressed before us. Those were:

(1) Mr. Patel for the plaintiff urged that the order of dismissal was void and inoperative as it offended against the mandatory provisions of sub-s. (3) of s. 240 of the Government of India Act, 1935, which said that no person holding any civil post under the Crown in India.

[1] (1944) 47 Bom. L. R. 916. [2] [1924] A. C. 764.

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"shall be dismissed 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."

In the present case, it is alleged, and not disputed, that no such opportunity was given to the plaintiff.

Mr. Datar for the defendant submitted that as the plaintiff belonged to the subordinate rank of the police force, his dismissal was governed by s. 243 of the Government of India Act 1935, and as the rules, framed under the District Police Act, 1890, under which the conditions of service of the police-officers of the subordinate ranks were determined, did not provide for any notice to show cause against the proposed action to be given to them before taking action against them, the order of the plaintiff's dismissal was valid.

(2) It was contended for the plaintiff that the rules framed under the District Police Act, 1890, in regard to the conducting of departmental enquiry against police-officers of subordinate ranks were broken in several respects by the District Superintendent of Police, Poona, who held the departmental enquiry against the plaintiff, and that, therefore, the order of the plaintiff's dismissal based on the said enquiry was null and void. On the other hand, Mr. Datar for the defendant argued that the rules under the Police Act for the holding of departmental enquiries were substantially observed and, therefore, the order of the plaintiff's dismissal was valid.

(3) It was urged for the plaintiff that rules of natural justice were violated in the conduct of the departmental enquiry against him, whereas it was maintained for the defendant that they were complied with.

(4) Whether the plaintiff was entitled to any relief in the suit, and if so, what.

Now, regarding the first point, namely, whether the making of an order of dismissal against the plaintiff was governed by s. 240, sub-s. (*3*), or s. 243 of the Government of India Act, 1935, the learned trial Judge's view is that it was governed by s. 240, sub-s. (*3*), and that, therefore, since no notice was given to the plaintiff why he should not be dismissed from service before an order of dismissal was passed against him, the enquiry was vitiated and became null and void. Mr. Patel for the plaintiff says that that is a correct view and submits that since the order of dismissal was passed without previous notice to the plaintiff to show cause against it, the order was illegal,

Mr. Datar's submission, on the other hand, is that s. 243 of the Government of India Act, 1935, applies, which speaks of conditions of service of police-officers of subordinate ranks which are determined by the rules framed under the Police Act. His argument is that since the rules under the Police Act do not say that a prior notice to show cause against a dismissal order is necessary, the order of the plaintiff's dismissal in this case is valid. The learned Judge relying on the two cases of *Suraj Narain* v. *N. W. F. Province*[1] and *Punjab Province* v. *Tara Chand*[2] has held that there is a distinction between "tenure" and the expression "conditions of service" occurring in s. 243, that tenure is a fundamental factor of vital importance to an officer, whereas conditions of service refer merely to matters of details such as pay, leave, pension, posting, etc., that therefore, orders regarding tenure are governed by the Constitution itself, whereas conditions of service are left to be dealt with by departmental heads according to the rules framed under the Police Act, and that therefore the order of dismissal of a police-officer of a subordinate rank, which is a question of tenure, is governed by s. 240 and not by s. 243, although s. 243 is a special section dealing with the conditions of service of police-officers of such ranks.

Now, it is true that in *Suraj Narain* v. *N. W. F. Province*[1] it was held that it might be that as a matter of etymology, the expression "conditions of service" could be given a very comprehensive meaning; but that, reading the four sections of the chapter (ss. 240 to 243 of Chapter II) together, it seemed that the Act clearly intended to draw a distinction between the tenure on which an office was held on the one hand and the incidents relating to service in the office on the other, and that the duration of the office as well as the authority by which the Crown's pleasure to terminate it was to be signified were treated as fundamental matters standing on a different footing from the incidents of service. Their Lordships thought that the former were regarded as of such importance as to justify a declaration by the Act itself, while the latter were considered to be a proper subject for the rules. It was observed further that in ss. 241 and 242, the "conditions of service" left to be provided for by rules could not have been intended to comprise the matters dealt with in sub-ss. (*1*) and (*2*) of s. 240, and it seemed reasonable to hold that the same restricted meaning should have been intended when the same expression was used in s. 243.

[1] [1942] A. I. R. F. C. 3. [2] [1947] A. I. R. F. C. 23.

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But the above mentioned is no longer the position in law now in view of the decision of the Privy Council in that very case in *N. W. F. Province* v. *Suraj Narain.*[1] Their Lordships reversing the judgment of the Federal Court held that the right of dismissal of a police-officer of a subordinate rank was a condition of service within the meaning of s. 243 of the Government of India Act, 1935. They observed that, in the absence of any special significance, they were unable to regard provisions which prescribed the circumstances under which the employer was to be entitled to terminate the service as otherwise than conditions of the service, whether those provisions were contractual or statutory, and were, therefore, of opinion that the natural meaning of the expression "conditions of service" would include provisions prescribing the circumstances under which the employer was to be entitled to terminate the service of his employee. Their Lordships said in terms that they did not accept the construction which the Federal Court had put on s. 243, namely that "conditions of service" did not include provisions as to dismissal. In other words, it was held by the Privy Council that for the construction of s. 243 there was no distinction between tenure and conditions of service, that tenure was included in conditions of service, and that the question of retention in, or dismissal from service was one in respect of conditions of service and was, therefore, governed by s. 243. Now, s. 243 says that the conditions of service for police-officers of subordinate ranks shall be determined by or under the Police Act. In the rules framed under the District Police Act, 1890, there is no provision that before dismissing a police-officer he should be given a notice to show cause against his proposed dismissal. It is, therefore, contended by Mr. Datar that the order of the plaintiff's dismissal is valid.

Mr. Patel for the plaintiff says that the gist of the Privy Council decision referred to above is that where there is a rule, under the Police Act, regarding tenure of police-officers of subordinate ranks, it would be a valid rule under s. 243 notwithstanding sub-ss. (*2*) and (*3*) of s. 240, and in that case, s. 243 will apply and the rule will govern cases of dismissal or reduction. It is argued by Mr. Patel that the effect of the Privy Council decision is that tenure being a condition of service within the meaning of s. 243, and s. 243 having laid down that conditions of service shall be determined by or under the Police Act, i. e.,

[1] (1948) 51 Bom. L. R. 425, P. C.

by rules framed under that Act, a rule relating to tenure, made under the Act, would be a valid rule; and if there is such a rule, it will govern cases where tenure is terminated. But, says Mr. Patel, where there is no rule made under the Police Act in relation to tenure, s. 243 will not govern cases of termination of tenure; but sub-ss. (2) and (3) of s. 240 will apply.

In our opinion, this is not a correct reading of the Privy Council decision in *N. W. F. Province* v. *Suraj Narain.*[1] Their Lordships have clearly pointed out that sub-ss. (2) and (3) of s. 240 are the only provisions of Chapter II to which the introductory words of s. 243 can be referable in relation to conditions of service, and since conditions of service for police-officers of subordinate ranks include tenure, it is clear, having regard to introductory words of s. 243, that cases of tenure of such police-officers will be governed not by s. 240, sub-ss. (2) and (3), but by s. 243. Their Lordships have made it unreservedly clear that the right of dismissal was a condition of service within the meaning of s. 243. They have not said that if there is no rule made under the Police Act laying down that a show cause notice is necessary before termination of tenure, s. 240, sub-ss. (2) and (3), will apply, and not s. 243. As a matter of fact, we have got the rules made under s. 27 of the District Police Act, 1890, which do contain provisions regarding conducting of departmental enquiries and passing orders of punishment including dismissal. Therefore, there is no doubt that there being rules, in this case, made under the Police Act in relation to conditions of service of police-officers of subordinate ranks, s. 243 will apply and the rules framed under the Police Act will govern the cases of termination of tenure of such police-officers.

Mr. Patel for the plaintiff next adopts an argument which was referred to in the judgment of the Federal Court in *Suraj Narain* v. *N. W. F. Province,*[2] and urges that the defendant's reading of s. 243 would exclude the declaration in sub-s. (1) of s. 240 as to the offices being held during His Majesty's pleasure. Their Lordships of the Federal Court had observed in the above case that it did not seem reasonable to them to assume that when passing the Act of 1935 the Parliament had intended to place a principle that all public servants held office during His Majesty's pleasure on a statutory basis as regards some offices, but allowed it to remain on a common law or implied contract basis as regards the rest. In their Lordships'

[1] (1948) 51 Bom. L. R. 425, P.C. [2] [1942] A. I. R. F. C. 8.

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opinion it was more reasonable to hold that the statutory declaration as to the nature of the tenure contained in sub-s. (*1*) of s. 240 was intended to apply as much to the offices referred to in s. 243 as to the offices referred to in ss. 241 and 242; and for the same reason the protection afforded by sub-s. (*2*) should equally be held to have been intended for the benefit of both. Their Lordships saw no justification in the reason of the thing for drawing a distinction for the above mentioned purpose between one set of public officers and another. This argument which Mr. Patel for the plaintiff has adopted from the observations of their Lordships of the Federal Court in *Suraj Narain* v. *N. W. F. Province*[1] is effectively answered by their Lordships of the Privy Council in *N. W. F. Province* v. *Suraj Narain.*[2] They observed, in the body of the judgment, that it would be found, on a perusal of chapter II of the Government of India Act, 1935, which included ss. 240 to 263, that sub-ss. (*2*) and (*3*) of s. 240 were the only provisions of chapter II to which the introductory words of s. 243 could be referable in relation to conditions of service, as every one of the other provisions of the chapter, with one exception, dealt with special classes of service, just as s. 243 dealt with a special class; and, said their Lordships, the one exception was sub-s. (*1*) of s. 240, but that provided for termination by His Majesty, and there could be no question of delegation of that power by virtue of s. 243. In these circumstances, in our opinion, there is no force in this particular argument advanced by Mr. Patel for the plaintiff on the authority of the observations of their Lordships of the Federal Court in *Suraj Narain* v. *N. W. F. Province.*[1].

Mr. Patel has next referred us to the decisions of this Court in *Broach Municipality* v. *Bhadriklal Ambalal*[3] *Lalbhai Chimanlal Shah* v. *Municipal Borough of Ahmedabad,*[4] *R. T. Rangachari* v. *Secretary of State*[5] and *R. Venkata Rao* v. *Secretary of State,*[6] and has argued that according to these decisions it was held that if there was a breach of a statute, then only there would be a cause of action, and that a breach of rules did not give rise to a cause of action. It is then contended by Mr. Patel that if we construe the Privy Council decision in

[1] [1942] A. I. R. F. C. 3.

[2] (1950) 52 Bom. L. R. 283.

[3] (1948) 51 Bom. L. R. 425, P. C.

[4] (1949) F. A. No. 182 of 1948, decided by Chagla C. J., and Gajendragadkar J., on December 8, 1949 (unrep.).

[5] (1936) 39 Bom. L. R. 688, P. C.

[6] (1936) 39 Bom. L. R. 699, P. C.

N. W. W. Province v. *Suraj Narain*[1] as laying down that a cause of action would arise from a breach of a rule, the above said position in law would be disturbed. We have considered the decisions in *Broach Municipality* v. *Bhadriklal*[2] and *Lalbhai Chimanlal* v. *Municipal Borough of Ahmedabad*[3] but are unable to find any observations therein from which it could be said that their Lordships had held in those cases that a breach of a rule would not give rise to a cause of action. It is true that in both those cases the proper procedure according to the rules was not followed. But it is to be remembered that in both those cases the person dismissed was a municipal employee, whereas in the case before us the plaintiff held an office under the Crown. This would show that the persent case would stand on a different footing from the cases which were dealt with in the above said appeals. In *Broach Municipality* v. *Bhadriklal Ambalal*[2] Mr. Justice Bhagwati said that if the rule which was broken was mandatory, the dismissed person would be entitled to a declaration that his dismissal was void and inoperative, and to a further declaration that he should be deemed to be in service in spite of the resolution or order of dismissal. His Lordship went on to say that if the rule which was broken was directory, then the resolution of dismissal would be valid, but the dismissal itself would nevertheless be wrongful as the proper procedure under the rules was not observed and the dismissed person would be entitled to damages on account of wrongful dismissal. The actual observations of Mr. Justice Bhagwati on this point in that case were as follows (p. 289) :—

"If the provisions of r. 182 were mandatory, the result in terms of the decision of their Lordships of the Privy Council in the *High Commr. for India & Pakistan* v. *Lall*[4] would be that the resolution would be null and void and the plaintiff would be held entitled to a declaration that his purported dismissal on December 16, 1942, was void and inoperative and that he remained the Chief Officer of the Municipality at the date of the institution of the suit. On the other hand, if the provisions of r. 182 were directory and were merely an administrative rule passed by the Municipality under the provisions of s. 58 (*f*) of the Bombay Municipal Boroughs Act or the corresponding provisions contained in the Bombay District Municipal Act, 1902, the resolution would be bad in so far as it did not comply with the provisions of r. 182 and

[1] (1948) 51 Bom. L. R. 425, P. C.

[2] (1950) 52 Bom. L. R. 283.

[3] (1949) F. A. No. 182 of 1948, decided by Chagla C. J. and Gajendragadkar J. on Dec. 8, 1949 (unrep.).

[4] (1948) 50 Bom. L. R. 649, P. C.

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would amount to a wrongful dismissal of the plaintiff from the employ of the Municipality and the plaintiff would be entitled to damages for such wrongful dismissal, the resolution being nonetheless a valid resolution passed by the Municipality in compliance with the provisions of s. 33 (2) of the Act though in flagrant violation of r. 182."

In either case Mr. Justice Bhagwati held that a breach of the provisions of the rule (r. 182) would give rise to a cause of action.

In *Lalbhai Chimanlal Shah* v. *Municipal Borough of Ahmedabad*[1] also, the proper procedure as required to be followed by the rules was not followed, but the case was disposed of on the basis of the relationship of master and servant, and it was held that there was negligence on the part of the person dismissed. That being so, his dismissal was held proper and his claim for damages was dismissed. This decision would again be no authority for saying that a breach of a rule would not give rise to a cause of action, since as we have just said, the matter was disposed of on the basis of the relationship of master and servant between the Municipality and the person dismissed.

It is to be noted that in *R. T. Rangachari* v. *Secretary of State*[2] there was a statutory provision in s. 96B of the Government of India Act, 1915, which, as amended by the Act of 1919, said that a person in the Civil Service of the Crown in India held office during His Majesty's pleasure and could not be dismissed by an authority subordinate to the one which appointed him. The actual words in the section are, "but no person in that service may be dismissed by any authority subordinate to that by which he was appointed....." It was held in this case that a breach of the abovementioned statutory provision gave rise to a cause of action. In that case no question arose for considering whether a breach of a rule would give rise to a cause of action. Therefore, in this decision also we see no support for an argument that no cause of action could arise from a breach of a rule.

The next case to which our attention was drawn was *R. Venkata Rao* v. *Secretary of State*[3]. It was held in that case that the rules which were alleged to have been broken were directory and no contractual obligations were created by them. In the circumstances the decision in *Shenton* v. *Smith*,[4] was followed, and it was held that no cause of action would arise from a breach of the rules. It is to be noted, however,

[1] (1950) 52 Bom. L. R. 283.
[2] (1936) 39 Bom. L. R. 688, P.C.
[3] (1936) 39 Bom. L. R. 699, P.C.
[4] [1895] A. C. 229.

that at the time when that case was decided there were no provisions analogous to the provisions of s. 243 of the Government of India Act, 1935, which made all the difference to the law on the subject.

In *N. W. F. Province* v. *Suraj Narain*,[1] it was held that if a delegation of power to terminate the tenure of an officer had been made under a rule in the absence of s. 243 of the Government of India Act, 1935, it would have been invalid in view of sub-ss. (*2*) and (*3*) of s. 240 of the Act. But in view of s. 243 which excluded the operation of sub-ss. (*2*) and (*3*) of s. 240 of the Act, a rule regarding tenure made under the Police Act, 1890, would be valid and a breach of it would give rise to a cause of action. That was, in fact, the spirit of the decision in that case (*N. W. F. Province* v. *Suraj Narain.*[1])

Mr. Datar for the defendant also concedes that a breach of a vital rule *e.g.*, a rule relating to dismissal or reduction from service, framed under the Police Act and relating to conditions of service of police-officers referred to in s. 243 of the Government of India Act, 1935, would give rise to a cause of action. We thus do not see any impediment in our holding, on the authority of the Privy Council decision, that the order of dismissal passed on the plaintiff in this case is governed by rules under the Police Act, by which the conditions of service of the police-officers are determined. Mr. Patel also concedes that if there had been a rule under the Police Act saying that a notice to show cause should be given to an officer before dismissing him, it would have been a valid rule under s. 243 of the Government of India Act, 1935, and a breach thereof would have given rise to a cause of action. It is, therefore, clear that, so far as the special provisions of s. 243 and the statutory force given by them to the rules made under the Police Act regarding conditions of service are concerned, a breach of those rules would give rise to a cause of action. The present suit will, therefore, be maintainable.

The second and the third points pressed before us are regarding alleged breaches of rules framed under the Police Act and of rules of natural justice and the two points may be dealt with together. There is no doubt, in our opinion, that the rules under the Police Act are based on the principles of natural justice. Therefore, it is not necessary, in our opinion, to deal with the

[1] (1948) 51 Bom. L. R. 425.

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question of natural justice apart from the question of compliance or non-compliance with the rules under the Police Act. If there is no breach of any of the rules framed under the Police Act, it will be safe to assume that there has been compliance with the rules of natural justice. The expression "rules of natural justice" has been the subject of consideration in many cases, and it has been held that so long as a domestic tribunal acts honestly, in good faith, with a sense of responsibility and in consonance with its own rules, its decision cannot be questioned on ground of breach of rules of natural justice, for the reason that in that case the rules of natural justice will be deemed to have been observed.

In *Local Government Board* v. *Arlidge*[1] a point was taken for the respondent that the appeal had been decided neither by the Local Government Board nor by any one lawfully authorised to act for them, and that the procedure adopted by the Board was contrary to natural justice in that the respondent had not been afforded an opportunity of being heard orally before the Board. It was further assumed that a point was also taken that the report of the inspector on the second inquiry was not disclosed to the respondent. In his address before the House of Lords, Viscount Haldane L.C. said that when the duty of deciding an appeal was imposed, those whose duty it was to decide it must act judicially, and they must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. His Lordship pointed out that the decision must be arrived at in the spirit and with the sense of responsibility of a tribunal whose duty it was to mete out justice. His Lordship agreed with the view expressed in an analogous case (*Board of Education* v. *Rice*[2]) by Lord Loreburn, in which it was laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. It was pointed out, however, that the Board was not bound to treat such a question as though it were a trial, that the Board had no power to administer an oath, and need not examine witnesses, and that it could obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. His

[1] [1915] A. C. 120. [2] [1911] A. C. 179.

Lordship (Lord Shaw of Dunfermline) then went on to say that the words "natural justice" occurred in arguments and sometimes in judicial pronouncements, and pointed out that when a central administrative board dealt with an appeal from a local authority, it must do its best to act justly, and to reach just ends by just means; that if a statute prescribed the means, it must employ them; and that if it was left without express guidance, it must still act honestly and by honest means.

In *Maclean* v. *The Worker's Union*,[1] also it was pointed out that eminent Judges had at times used the phrase "the principle of natural justice", which, of course was used only in a popular sense and was not to be taken to mean that there was any justice natural among men. Maugham J. went on to say in that case that a person who joined an association governed by rules under which he might be expelled, *e.g.*, such rules as existed in rr. 45 and 46, had no legal right of redress if he were expelled according to the rules, however unfair and unjust the rules or the action of the expelling tribunal might be, provided that it acted in good faith. His Lordship added that it was impossible to doubt that, if the rules postulated an inquiry, the accused must be given a reasonable opportunity of being heard. In his Lordship's opinion the phrase "the principles of natural justice" could only mean the principles of fair play, so that a provision for an inquiry necessarily imported the idea that the accused should be given his chance of defence and explanation. It was pointed out that the truth was that justice was a very elaborate conception, the growth of many centuries of civilisation, and the conception differed very widely in countries described as civilised. From a carcful consideration of these authorities, it is clear that all that is meant by compliance with rules of natural justice by a domestic tribunal is that the tribunal must act honestly and with good faith, and must give a delinquent a chance of explanation and defence. If its rules postulate an enquiry, the delinquent must have a reasonable opportunity of being heard and of correcting and contradicting a relevant statement prejudicial to his view.

During the course of his judgment in *Maclean* v. *The Worker's Union*,[1] Maugham J. said that a domestic tribunal was bound to act strictly according to its rules and was under an obligation to act honestly and in good faith, and added that it was

[1] [1929] 1 Ch. 602.

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not suggested in the case before him that the rules as they then stood had not been complied with, and on the evidence before him he was quite unable to hold that the committee had acted otherwise than honestly and in good faith. From these observations it is clear, in our opinion, that the Court's jurisdiction to examine the decisions of the domestic tribunals would be ousted if both the conditions were satisfied, namely, that the domestic tribunal had acted strictly according to its rules and that it had also acted honestly and in good faith. In the case before us there in no question, of course, that the Inspector-General of Police, Bombay, who passed the order of dismissal of the plaintiff, had acted dishonestly or in bad faith. Therefore, the only question that remains for us now to consider is, whether it is proved by the plaintiff that the tribunal in this case who conducted the enquiry and the tribunal who passed the order of dismissal, namely, the District Superintendent of Police, Poona, and the Inspector-General of Police, Bombay, had not acted strictly according to the rules framed under the Police Act.

In this context Mr. Patel for the plaintiff has invited our attention to sub-rr. (*6*), (*7*), (*10*), (*11*) of r. 1278, r. 1281, and sub-rr. (*8*), (*9*) and (*10*) of r. 1284, and has contended that all those rules were broken by the District Superintendent of Police, Poona, while conducting the departmental enquiry against the plaintiff. Now, sub-r. (*6*) of r. 1278 says that the charges must be complete, explicit and fully understood by the respondent before he is called upon to cross-examine the witnesses against him and to enter upon his defence generally. In this case, it is submitted by Mr. Patel for the plaintiff that although the entry in the telephone book which was maintained at the Military Lines Police Station, Poona Cantonment, showed that a message was received from Duty Constable Phalke at 7-25 p.m. on February 3, 1943, the charge mentioned February 6, 1943, as the date of the incident and the statement of allegations also alleged that the incident had taken place on February 6, 1943. The whole of the enquiry was also conducted on the basis that the incident had taken place on February 6, 1943, and the finding of the Inspector-General of Police, Bombay, was also based on the assumption that the incident had transpired in the evening of February 6, 1943. Consistently with that finding, the plaintiff was punished for the conduct attributed to him in respect of an incident dated February 6,

1943. Now, on this point, the grievance of the plaintiff is referred to by himself in his own evidence in which he has said that on enquiry made by him he had learnt that constable Phalke had telephoned not on February 6, 1943, but on February 3, 1943, and his message was received at 7-25 p.m. on February 3, and was recorded in the telephone book the same evening, *i. e.*, February 3. It is the contention of the plaintiff that the mention of February 6, 1943, as the date of the incident in the charge and the conduct of the enquiry on the basis that the incident had occurred on February 6, 1943, had put a totally different complexion on the proceedings and had disclosed the falsity of the entire police case against him. One of his grievances in this case is that the charge and the statement of allegations being defective on account of this reason, he was prejudiced in his defence. His final submission on this point is that all the witnesses, except Dagadu and Sub-Inspector Chitnis, who mentioned that the incident had occurred on February 6, 1943, had given false evidence, and, that being so, the finding of the Inspector-General of Police was, in fact, based on evidence which was not trustworthy. Thus, the contentions of the plaintiff in regard to sub-r. (*6*) of r. 1278 are that the said sub-rule was broken in this case, that rules of natural justice were thereby adversely affected, that his defence also was prejudiced on that score, and that the entire proceedings had terminated in his being found guilty of an incident which had not occurred, in fact, on February 6, 1943. Now, in this connection the learned trial Judge's view is that this was merely a case of mistake in the mentioning of the date in the charge, and that the ends of justice were not prejudiced, nor was the defence of the plaintiff prejudiced, on that score. In our opinion, this is a correct view to take as far as the point about the charge is concerned. It is to be remembered that the incident had occurred in the first week of February 1943 and the preliminary enquiry was conducted in September 1943, something like six or seven months subsequently. When the departmental enquiry was being conducted, the telephone book which used to be maintained at the Military Lines Police Station had been produced in a Court in some other case and had not been returned to the Military Lines Police Station. Witnesses who gave evidence in the departmental enquiry obviously made a mistake as to the date on which the incident in respect of which they were deposing had occurred. But the important point to be borne in mind is that the plaintiff himself knew perfectly well what the incident was in respect of which an enquiry was

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being conducted against him. In his evidence at exh. 65 he said that there was no doubt in his mind at the time of the enquiry that the charge against him related to an incident which had occurred at Wanowri in the first week of February 1943. It is an undisputed position in this case that only one such incident had occurred at Wanowri in the first week of February 1943. In these circumstances, although a mistake had occurred in mentioning the date in the charge and although the enquiry was conducted and the finding was arrived at by the Inspector-General of Police on the basis of the mistaken date, as far as the plaintiff himself was concerned, his defence was not prejudiced as he understood perfectly well what the incident was in respect of which he was being proceeded against departmentally. If two incidents had occurred in the first week of February 1943, if the charge had referred to one of them, if the witnesses had given evidence in respect of the other incident and if the Court relying on the evidence of witnesses had found him guilty of the incident which was referred to in the charge, there would be no doubt that it would be a case in which the defence of the accused could be said to have been prejudiced. But the case here is not of that description at all. In these circumstances, without adding any more comments, it would be safe to say that there was sufficient compliance with the requirements of sub-r. (6) of r. 1278 in this case.

We turn next to sub-r. (7) of r. 1278 which says that the respondent must be given reasonable facilities for his defence, as for example, be allowed to call witnesses, have access to or copies of documents used in evidence against him or be made to understand them thoroughly, have reasonable time to produce his witnesses or to submit his written defence if he so desires. Mr. Patel urges strenuously in this case that the plaintiff was not allowed to call his witnesses, did not have access to or copies of documents which were used in evidence against him, and did not have reasonable time to produce his witnesses or submit his written defence. In other words, the contention of Mr. Patel is that almost all the vital requirements of sub-r. (7) of r. 1278 were broken by the enquiry officer in this case. We have given anxious thought to this part of Mr. Patel's arguments and have also carefully considered the submissions which Mr. Datar has made in that connection, and our opinion is that reasonable facilities were not given by the enquiry officer (District Superintendent of Police, Poona,) to the plaintiff for his defence. It is clear from the record before us that

on October 6, 1943, the charge against the plaintiff was read out to the plaintiff, his oral statement was also recorded on the same date, and his written statement also was filed by him on that date. On the next day, October 7, witnesses against the plaintiff were examined and cross-examined. He did not wish to cross-examine constables B. L. Pawar, B. G. Pawar and A. B. Bhurungule, but went on with the cross-examination of the rest of the witnesses except, it is alleged by the plaintiff, Bhagu Bhima Jagtap, Shaikh Ibrahim Shaikh Nabi and Pratapmal Tarachand Marwadi who, according to him, were not made available to him for cross-examination. The next-day, October 8, was spent by the plaintiff in approaching the Military for seeing their records and getting a certified extract of a report, if any, made regarding injuries to soldiers caused between 6 p.m. and 9 p.m. on February 6, 1943. It is to be remembered that the plaintiff wanted to examine three Military witnesses, namely, O. C. 5 Tank Recovery Company, O. C. I. A. O. C. Station Works and D. A. P. M. But the District Superintendent of Police, instead of calling these men for examination as witnesses for the plaintiff, gave to the plaintiff letters addressed to two of them in which he asked them to let the plaintiff see their records and give him a certified extract of a report, if any, of injuries sustained by the soldiers between 6 p.m. and 9. p.m. in the evening of February 6, 1943. As far as the third man, namely, D. A. P. M., was concerned, the District Superintendent of Police had simply told the plaintiff that a letter had been received by him from that person stating that there was no record in his office of any disturbance having taken place during the period in question. On October 9, Thornber expressed his reluctance to give evidence as a defence witness for the plaintiff. Thereupon the plaintiff gave a fresh name of one Pukraj and said that he wanted to examine him in his defence. The District Superintendent of Police gave him two hour's time within which to produce him. The place of residence of that witness was five miles away from Poona. The case of the plaintiff is that he went to that place but did not find Pukraj at home. He returned to Poona, and the record shows that he thereafter gave up Pukraj as a witness. It appears that since the plaintiff found that Pukraj was not available, he renewed his request for the examination of Thornber as his defence witness. The record before us shows that the District Superintendent of Police "explained the situation" to him, whereupon he agreed to drop him as a witness. It is therefore clear, in our opinion, that after the plaintiff expressed his desire to examine

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Thornber in his defence, some conversation took place between him and the District Superintendent of Police, as the result of which he, a subordinate police-officer, agreed not to examine Thornber as his witness. On that day, October 9, Pukraj was to be examined by the plaintiff as his witness, and on the next day, which was Sunday October 10, at 8 o'clock in the morning the plaintiff was expected to submit his written statement before the District Superintendent of Police. That time, however, was extended by a few hours, and ultimately at eight o'clock in the evening on October 10, the plaintiff filed his written statement. On October 9, his final oral statement had already been recorded by the District Superintendent of Police. From these facts it is evident that almost the entire bulk of the enquiry against the plaintiff was conducted and finished between October 6 and October 10 by the District Superintendent of Police, Poona. In our opinion, the enquiry was rushed through and the plaintiff was not given reasonable facilities for his defence. It is to be remembered in this context that the preliminary enquiry against the plaintiff had taken nearly a month in September 1943. Keeping that fact in view, it appears to us that the departmental enquiry, which was begun from the stage of reading the charge to the plaintiff on October 6, and was practically concluded on October 10, was gone through with expedition which could not be said to be reasonable.

Sub-rule (7) of r. 1278 says, as we have pointed out already, that the respondent has to be given all reasonable facilities for his defence, one of the facilities expressly referred to being that he should be allowed to call witnesses. In this connection, it has to be borne in mind that on October 7, 1943, the plaintiff expressed a wish that he wanted to examine five witnesses, namely, (1) Police Inspector Thornber, (2) V. G. Padgaonkar, (3) O. C. 5 Tank Recovery Company, Wanowri, (4) O. C. I. A. O. C. Station Workshops, Wanowri, and (5) D. A. P. M. Now, the last named three gentlemen belonged to the military. As far as the gentlemen mentioned at serial Nos. (3) and (4) were concerned, the plaintiff was told by the District Superintendent of Police that he would be given letters addressed to them and that he might go to them and make a request to them to show him the records for the purpose of taking out a certified copy of an extract from them about a report, if any, of injuries sustained by soldiers between 6 p.m. and 9 p.m. in the evening

of February 6, 1943. As far as the gentleman mentioned at serial No. (5) was concerned, the plaintiff was told that a letter had been received from him already stating that there was no record in his office about any disturbance having taken place. Now, it is quite clear that a mere letter can never take the place of evidence. It is argued by Mr. Datar for the defendant that when the plaintiff expressed a wish to examine five men as witnesses in his defence he was asked the reason why he wanted to examine the persons mentioned at serial Nos. (3), (4) and (5), and the reason adduced by him was that they were required to produce a record of any report received by them regarding the injuries sustained by soldiers or the disturbance having taken place near Wanowri Police Chowki. From this it is argued by Mr. Datar that if a letter was received from D. A. P. M. saying that no incident had been recorded in his office regarding any disturbance, and if certain copies of extracts from the records were produced from the offices of the persons mentioned at serial Nos. (3) and (4) showing that no injuries were in fact sustained by soldiers on that day (February 6.) that would be sufficient as far as the purpose of the plaintiff was concerned. Now, in our opinion, the District Superintendent of Police was not entitled to ask the plaintiff why he wanted to examine certain persons as his witnesses, nor was the plaintiff bound to disclose the reason for his so doing. But, as it happened, the plaintiff did give a reason in a rough and ready way and, instead of giving a list of half a dozen or more reasons he merely said that he wanted to examine these witnesses in order to prove whether any soldiers were injured or not, or whether any incident had taken place near the Military Lines Police Station. Surely, the plaintiff could not have been ready at the moment with a full analysis of the questions which he might have wanted to ask those persons if they had appeared as his defence witnesses. It is quite probable that if those witnesses had actually been called to give evidence for the plaintiff, he might have asked them questions whether they had gone personally to the scene of the incident, whether they had made any enquiry from others, and if so, what enquiry, from whom and with what result, whether any record was made in their offices regarding the main incident, and if so, what that record was and all other questions pertinent to the enquiry. The plaintiff was precluded from doing all this on account of the reason that the District Superintendent of Police, Poona, did not allow him to call these witnesses to give evidence.

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As far as Thornber was concerned, it is quite clear from the record before us that the plaintiff was really keen to examine him as his witness. He gave his name at the very outset on October 7. When he was reluctant to give evidence, he dropped him and gave another name, namely Pukraj. But when Pukraj could not be had in two hours' time which was allotted to him for the purpose by the District Superintendent of Police, the plaintiff renewed his request to examine Thornber, and at that time something happened between the District Superintendent of Police and the plaintiff, as the result of which the plaintiff agreed to give him up. It is to be remembered that in his statement which the plaintiff made before the Inspector-General of Police on November 8, he did make a categorical allegation that he was forced to give up Thornber. In our opinion, the circumstances pointed out above do suggest that Thornber must not have been given up voluntarily by the plaintiff. If the District Superintendent of Police advised a Sub-Inspector or explained to him that it was advisable in certain circumstances for him to give up Thornber as a defence witness, it would be difficult, we think, for the Sub-Inspector, placed as the plaintiff then was, to insist upon his examination.

In this connection it would not be out of place to refer, once again, to certain observations from *Local Government Board* v. *Arlidge,*[1] to which we have already referred. It was pointed out by Viscount Haldane L. C. that even in matters decided by a domestic tribunal, the tribunal must give to each of the parties the opportunity of adequately presenting his case. It was also said that a domestic tribunal might obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. Now, there is no doubt that one of the ways in which the plaintiff could have, in this particular case, corrected or contradicted the statement prejudicial to his case was by leading evidence in his own defence, and, according to the observations just cited above from *Local Government Board* v. *Arlidge,*[1] it was the duty of the District Superintendent of Police to allow the plaintiff to call the men whom he wanted to call as his defence witnesses. In *Maclean* v. *The Workers' Union*[2] it was observed by Maugham J. that "the principles of natural justice" could only mean the principles of fair play, so that a

[1] [1915] A. C. 120.
[2] [1929] 1 Ch. 602.

provision for an inquiry by a domestic tribunal necessarily imported the idea that the accused should be given his chance of defence and explanation. There is, therefore, no doubt on the authority of these cases that if a respondent is not allowed to call witnesses in his defence such as those whom he wanted to call, it would mean this, that a reasonable facility was not given to him for the purpose of leading his defence.

Proceeding further with the examination of the question whether sub-r. (7) of r. 1278 was properly complied with or not by the enquiry officer in this case, it is to be remembered that the plaintiff was only given two hours' time to go a distance of five miles and back and produce his witness one Pukraj. The plaintiff has told us in his own evidence that he went to call Pukraj, but he was not found at his house, and, therefore, he had to return without him. He has added in his deposition that when Pukraj was not found and he had to return without him, he asked for more time to enable him to examine him. On this point, our attention was invited by Mr. Datar to certain other portions from the deposition of the plaintiff, and it is argued that these would show that he had not made any attempt to secure the presence of Pukraj. For instance, at one place the witness said :

"On October 7, 1943, I cross-examined 10 witnesses. The enquiry was then adjourned for defence evidence till the 9th of October. On that day my witness Mr. Padgaonkar was examined. I did not make any attempt to secure the presence of my witness Pukhraj Marwadi.

I wanted to examine Mr. Thornber as my witness but the D. S. P. did not allow me to do so."

At another place, again, the plaintiff said :

"Pukhraj lives at Wanowrie. I did not try to see him before October 9."

Surely, from these statements in the evidence of the plaintiff it could not be contended validly that after Thornber was given up by him and after Pukraj's name was cited by him as a defence witness, he did not go to Pukraj's house in order to get hold of him and produce him before the District Superintendent of Police. Reading his evidence as a whole, it appears quite clear that his original idea was to examine Thornber as his defence witness. Therefore at that point of time he had not given the name of Pukraj. It was only after he had to give up examining Thornber in his defence after his conversation with the District Superintendent of Police that he decided for the

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first time to give the name of Pukraj as a defence witness. Obviously therefore, before that point of time there was no occasion for him to try and secure the presence of Pukraj. This is a totally different matter from saying that even after he had given the name of Pukraj as his defence witness he had not made any effort to go to the place of his residence and get him. As a matter of fact, he has clearly deposed that he did go to the house of Pukraj but found him absent. The question before us, therefore, is whether allowing only a two hour's time to the plaintiff to go a distance of five miles and back and produce a witness in his defence could be said to be giving a reasonable facility to him for his defence. In our opinion, the question must be answered in the negative. The District Superintendent of Police should have foreseen the possibility of Pukraj not being at home and should have therefore allowed the plaintiff more time than only two hours' time to enable him to make a search for him. We do not know what conveyance exactly was available to the plaintiff to perform the journey of five miles. Presumably buses must have been running between the two places, but buses usually start at an interval of a few minutes, so that we are really not in a position to know whether even two hours' full time was effectively available to the plaintiff for getting hold of his witness.

In the result we hold that in this respect also the plaintiff's defence was hampered and a reasonable facility which it was obligatory upon the enquiry officer to give to the respondent under r. 1278, sub-r. (7), of the Rules was not given to him.

We proceed next to yet another circumstance which would show that there was another breach of the provisions of sub-r. (7) of r. 1278 of the Rules under the Bombay District Police Act, 1890. We have seen that the plaintiff was suspended from service by the District Superintendent of Police, Poona, by his order dated October 1, 1943, which was received by him on October 2, 1943. By that same order the plaintiff's freedom of movement was restricted and it was directed that whilst under suspension he was not to leave Jejuri without the previous permission of the District Superintendent of Police. Now, in our opinion, the District Superintendent of Police had neither authority nor any justifiable reason for ordering this virtual internment of the plaintiff at Jejuri. The statements of witnesses who were to give evidence against the plaintiff in the departmental enquiry had already been recorded in the preliminary enquiry in September 1943 and those persons were not

likely to tell a different story in the departmental enquiry in view of those statements. There was, therefore, not much real danger of the plaintiff tampering with witnesses, and even if it be assumed or imagined that there was such a danger, the District Superintendent of Police had no authority to pass orders which in effect amounted to a detention of the plaintiff at Jejuri.

But what is material for the present purpose of deciding these appeals is that the unwarranted restriction imposed on the plaintiff's freedom of movements by the order dated October 1, 1943, hampered the defence of the plaintiff substantially. One cannot pin down a person to a certain place and expect him at the same time to defend himself effectively. To charge a person with misconduct arising out of an incident which is alleged to have occurred at a certain place and to order that he shall not visit that place amounts not only to not giving reasonable facilities for his defence, but in fact to smothering his defence. We feel that if the plaintiff had been free to leave Jejuri and move about freely between October 3, 1943, the date on which he received his suspension order, and October 6, 1943, the date on which the departmental enquiry against him was commenced, he would have been able to go to the place of the alleged incident, might have made enquiries about the matter himself and might have been able to defend himself better. It is not improbable that an incident may have two versions, each supportable by a set of witnesses. In this case, certain witnesses were examined against the plaintiff in the departmental enquiry. It is possible that if the plaintiff had reasonably sufficient time at his disposal and freedom of movement between October 3, 1943, and October 6, 1943, he might have found people who might have given evidence in defence in respect of this very incident. The point is that but for the prohibition from moving out of Jejuri imposed upon him from October 3, 1943, we feel that he might have been able to collect better and more defence evidence in his favour. Once the departmental enquiry was started and the plaintiff was busy attending to it from day to day, he could not very well enquire and collect evidence in his own favour at the same time, as he might have been able to do if he had been free to move about between October 3 and October 6, 1943.

Moreover, if he had been free to leave Jejuri between October 3 and October 6, 1943, we have no doubt he would in all probability have consulted a lawyer and other persons as well

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in the matter of his defence and would have been able to defend himself better. As it is, we feel extremely doubtful if he had really been able to take legal advice before his oral statement was recorded by the District Superintendent of Police on October 6, 1943, and before his written statement was also filed on the same date. He did approach a lawyer on October 7, and once or twice thereafter before October 10, but even so, it was hustling a lawyer too. Unless a legal adviser also has reasonable time at his disposal, he cannot effectively advise or draft. In short, in our opinion, the fact that the plaintiff was restrained from moving out of Jejuri between October 3 and October 6, 1943,—the latter being the date on which he appeared before the District Superintendent of Police, Poona, in the departmental enquiry against him—is by itself sufficient to show that all reasonable facilities were not afforded to him for defending himself. On this ground also, therefore, there was a breach of sub-r. (7) of r. 1278 of the Rules.

We have already referred to the authority of *Local Government Board* v. *Arlidge*[1] to point out that a domestic tribunal should always give a fair opportunity to the person charged to contradict a statement prejudicial to him. It is, therefore, that a right to cross-examine witnesses has been given to a respondent under the rules [see r. 1284, sub-r. (7)]. Now, in this case, the contention of the plaintiff is that three witnesses Bhagu Bhima Jagtap, Shaikh Ibrahim Shaikh Nabi, Pratapmal Tarachand Marwadi were not made available to him for cross-examination. On the other hand, Mr. Datar for the defendant submits that these witnesses were cross-examined in fact by the plaintiff. Now, on this point, the plaintiff himself has stated in his evidence at exhibit 65 that these three persons were not examined at all in his presence, but their evidence recorded in his absence was brought on the record of the departmental enquiry. Clearly, therefore, he had no chance or opportunity of cross-examining them. It is difficult to see how else the plaintiff can prove this contention of his except by his own evidence and circumstances such as are found on the record.

We find that the plaintiff did say to the District Superintendent of Police on October 7, 1943, that he did not wish to cross-examine B. L. Pawar and B. G. Pawar and A. B. Burungule as they had not given any evidence, but had merely said that they corroborated a statement of Jagdale which was read out to them. He did not say that he did not wish to cross-examine

[1] [1915] A. C. 120.

Bhagu, Shaikh Ibrahim and Pratapmal. Besides, in his evidence he has said that on October 7 he had cross-examined ten witnesses. This would also show that the three men named above were not available to him for cross-examination and were not cross-examined by him. It is clear from the roznama (exh. 55) that in all sixteen statements of witnesses against the plaintiff were recorded in the departmental enquiry. Out of these sixteen men, ten were cross-examined by the plaintiff on October 7. That was the only date on which the cross-examination of witnesses against the plaintiff was done. The two Pawars and Burungule were not cross-examined as the plaintiff did not wish to cross-examine them. This would account for thirteen out of the sixteen witnesses so far as the point of cross-examination is concerned and would seem to support the contention of the plaintiff that he had no opportunity to cross-examine Bhagu, Shaikh Ibrahim and Pratapmal.

Moreover, it is evident from the District Superintendent of Police's note dated October 9, 1943, that he had resolved to finish the recording of evidence by the evening of October 9. In this context it would be convenient to remember that October 9 was the date fixed for recording the defence evidence of the plaintiff. Eighth October was set apart for the plaintiff to go to the Military to obtain a certain copy of an extract of a report, if any, regarding injuries received by the soldiers on February 6, 1943. Obviously thus the idea of the District Superintendent of Police was to finish the cross-examination of the witnesses against the plaintiff on October 7, 1943. Now, on the one hand, there were as many as sixteen witnesses; on the other hand, their examination and cross-examination were to be finished in one day, October 7, as I have indicated above. It appears to us, in the setting of these circumstances, that as a step in aid of the District Superintendent of Police's objective, he did away with the cross-examination of three men, and as for the other three out of the thirteen persons, he got them to say that they corroborated the statement of Jagdale which was read out to them. In these circumstances, we feel disposed to accept the plaintiff's evidence that he was given no opportunity of cross-examining Bhagu, Shaikh Ibrahim and Pratapmal. Clearly thus there was again a breach of r. 1278, sub-r. (7), and also r. 1284, sub-r. (7).

Then, as regards the statements of two Pawars and Burungule, they would not amount to evidence at all, in our opinion. It might have done if Jagdale's previous statement had been

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read out to him and treated as his evidence. A domestic tribunal could treat that sort of material as evidence. But the bare statement of three other persons that they corroborated Jagadale's statement which was not read over to Jagdale at the time cannot amount to any evidence at all, and accordingly, in our opinion, the District Superintendent of Police's or the Inspector-General of Police's reliance upon those statements had prejudiced the object underlying the rules.

Mr. Datar for the defendant has argued that since the plaintiff did not complain to the District Superintendent of Police, nor to the Inspector-General of Police, that military witnesses were not allowed to be exaimned by him in his defence, that a sufficient time was not given to him for getting Pukraj, that three witnesses were not made available to him for cross-examination, that a restriction on his movements imposed by the District Superintendent of Police's order dated October 1, 1943, had hampered his defence, etc., etc., we should take it that he did not think that his defence was prejudiced. We are not impressed by this submission. It was a domestic tribunal, and we have to remember the position in which the plaintiff stood in relation to that tribunal. The enquiry officers, *i.e.*, the District Superintendent of Police and the Inspector-General of Police, were his superior officers, and he was just a subordinate police-officer under them. This, in our opinion, must have weighed with him when he did not complain to them about the manner in which the enquiry was conducted against him by the District Superintendent of Police who constituted a domestic tribunal. Moreover, the language of r. 1278, sub-r. (7), is mandatory. It says that the respondent *must* be given all reasonable facilities for his defence, *e.g.*, must be allowed to call witnesses, must have access to or copies of extracts of documents used against him, etc., etc. A respondent is not to request an enquiry officer to give him reasonable facilities in his defence. The position under the rules is that the enquiry officer is required to give those facilities to him, and it is quite clear to us from the several circumstances pointed out above that in several respects the plaintiff was not allowed reasonable facilities for defending himself.

Mr. Patel has next invited our attention to sub-rr. (*9*) and (*10*) of r. 1284. Sub-rule (*9*) says that when all witnesses in support of the charge have been dealt with and all evidence relied upon in support of the charge has been carefully explained to

the respondent, he should be called upon to enter on his defence and to produce his witnesses. Sub-rule (*10*) says that:

"Respondent's further statement should then be fully recorded in continuation of his previous one referred to above. As every reasonable facility to defend himself should be given to a respondent, he may, if he so desires and the officer conducting the enquiry sees no valid reason to refuse, be given copies of the statements and other documents in evidence against him or, under proper supervision, allowed to take his own copies, and allowed to submit his defence in writing, etc., etc."

Now, it is to be seen in this case that after the plaintiff had closed his defence and after he had submitted his final written statement on October 10, 1943, and whilst his final oral statement was being recorded by the District Superintendent of Police on October 11, four letters which were received from the military authorities in regard to the incidents of gambling in the Cantonment area were brought on the record, and those must presumably have been taken into consideration by the Inspector-General of Police in arriving at his conclusion. This, in our opinion, was clearly contrary to the spirit of sub-r. (*9*) of r. 1284, which says that the respondent should be called upon to enter on his defence after all the papers relied on in support of the charge have been carefully explained to him. As it was, the respondent had no opportunity to lead any further defence evidence, in respect of the four letters which were brought on the record while his final oral statement was being recorded. In our opinion, therefore, there was a breach of r. 1284, sub-r. (*9*).

Mr. Patel has then invited our attention to sub-rr. (*10*) and (*11*) of r. 1278. Sub-rule (*10*) says that the summing up and the final order should invariably be the work of the officer competent to inflict punishment and sub-r. (*11*) says that the respondent should ordinarily be present before the officer at the time of summing-up and passing of the final order. It is suggested in this case that the summing-up of evidence was not really the work of the District Superintendent of Police, but that Mr. Moray, the Assistant Superintendent of Police, had a considerable hand in it. There is no evidence in support of this allegation, and we have no hesitation in discarding it. In our opinion, there has been therefore no breach of sub-r. (*10*) of r. 1278. As far as sub-r. (*11*) of r. 1278 is concerned, we do not gather from it that the respondent should be present at the actual moment when the authority competent to dismiss him signs the summing-up and passes the final order. In our opinion it is enough if sufficient opportunity is given to the officer

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concerned before the summing-up is made and the final order is passed, which was done in this case. We know from the record that the plaintiff's statement was recorded by the Inspector-General of Police on November 8, 1943. Thereafter it was not necessary for the Inspector-General of Police to keep the plaintiff present at the time when he signed the summing-up and the final order. Sub-rule (*11*) of r. 1278 also, in our opinion, was therefore not broken in this case.

Mr. Datar has next invited our attention to sub-s. (*3*) of s. 29 of the Bombay District Police Act, 1890, the concluding portion of which lays down as follows :—

> "But the exercise of any power conferred by this sub-section shall be subject always to such rules and orders as may be made by the Provincial Government in that behalf."

Now, this sub-s. (3) deals with punitive powers of the Inspector-General, Deputy Inspector-General and Superintendent. An argument, therefore, is made that if the Inspector-General of Police wishes to exercise his punitive powers, he can only do so subject to such rules and orders as may be made by the Provincial Government in that behalf. It is then submitted before us that there are no such rules and orders in the matter of departmental enquiries and, therefore, it is contended that even without an enquiry the plaintiff could have been dismissed from service by the Inspector-General of Police. This argument must fail, in our opinion. We have no doubt that the rules to which our attention has been invited by Mr. Patel on behalf of the plaintiff in this case are the rules which are contemplated in the concluding portion of sub-s. (3) of s. 29 of the Bombay District Police Act, 1890. There is a rule, item No. 100 under r. 38 at page 74 of the Police Manual which says that "no police officer shall be departmentally punished otherwise than is provided by the rules." There is, therefore, no doubt, in our opinion, that the rules to which we have already made a reference in this judgment are the rules which are referred to in sub-s. (3) of s. 29. Accordingly we do not see any force in the submission of Mr. Datar that the plaintiff could have been dismissed from service by the Inspector-General of Police even without conducting any departmental enquiry against him.

From what has been stated above, it is clear that this is a case of breach of vital rules not merely rules relating to matters like leave, pay, etc. The career of the plaintiff, indeed a question of his livelihood, was at stake, and therefore the important provisions of the rules enabling him to make a proper

defence should have been strictly followed. The breach of rules, in our opinion, entirely vitiated the enquiry and also the order of the Inspector-General of Police based upon it. In our opinion, therefore, the plaintiff's dismissal was wrongful and the order of the Inspector-General of Police, Province of Bombay, dismissing him from service was void and inoperative.

The next question is what relief the plaintiff is entitled to. In the suit, as we have seen, he asked for damages to the extent of Rs. 48,475, or, in the alternative, for reinstatement and arrears of salary. The learned trial Judge has passed a decree in his favour for Rs. 9,000 on the basis that he was entitled to damages equivalent to loss of salary and allowances for five years. In appeal the plaintiff has asked for Rs. 11,000 more. In view of the Privy Council decision in *High Commr. for India and Pakistan* v. *Lall*,[1] he is not entitled either to damages or to arrears of pay. Their Lordships observed in that case that it was not necessary to cite authority to establish that no action in tort could lie against the Crown and therefore any right of action for damages must either be based on contract or conferred by statute. They went on to say that the respondent had sought to establish a statutory right to recover arrears of pay by action in the civil Court and had made reference accordingly to ss. 179 (8), 247 (4), 249 and 250 of the Government of India Act, 1935. But, said their Lordships, it was enough to state that they were unable to derive from those sections any statutory right to recover arrears of pay by action. As far as damages were concerned, their Lordships said that the order of remit by the Federal Court was not maintained by the respondent before that Board. It would clearly, therefore, follow from this decision of the Privy Council that the plaintiff's claim to damages and arrears of salary must fail. The rules made under the Bombay District Police Act, 1890, do not provide for any right to claim damages or arrears of pay. Admittedly there was no contract in this case on the basis of which the plaintiff could claim damages, and there is no statutory provision also in regard to the claim made in this respect. The same would apply also as far as his claim to arrears of pay is concerned. This position was realised obviously by Mr. Patel, and it was, therefore, that he did not seriously press before us his client's claim to damages and arrears of pay.

It may be said in passing that Mr. Patel has invoked the aid of the Federal Court's decision in *Secretary of State* v. *I .M*

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Lall[1] in support of his claim for damages, but we cannot act upon that case since that judgment has ceased to be operative by virtue of the superior Court's (Privy Council's) appellate decision in the same case in *The High Commr. for India and Pakistan* v. *Lall.*[2] In our opinion, therefore, the only relief to which the plaintiff is entitled in this case and which we do grant him is a declaration that his dismissal from service is wrongful and the order passed by the Inspector-General of Police, Province of Bombay, is void and inoperative. To this limited extent, his Appeal No. 52 of 1948 succeeds, and in all other respects it fails.

The defendant's Appeal No. 31 of 1948 succeeds wholly in view of the Privy Council decision in *The High Commr. for India and Pakistan* v. *Lall,*[2] from which it must follow that the plaintiff is not entitled to any damages. It has to be borne in mind that Appeal No. 31 of 1948 is in respect of the learned trial Judge's order allowing Rs. 9,000 by way of damages to the plaintiff. As far as that order is concerned, obviously it cannot be sustained in view of the above mentioned Privy Council decision. Accordingly Appeal No. 31 of 1948 is wholly allowed.

As to costs, we direct that in Appeal No. 52 of 1948 each party will bear its own costs. In Appeal No. 31 of 1948 the plaintiff will bear his own costs and also the costs of the Province of Bombay. As far as the suit costs are concerned, it is to be seen that originally the plaintiff had made an exaggerated and indeed a fantastic claim to damages, the major portion of which was disallowed by the learned trial Judge. Accordingly we order that as far as the suit costs are concerned, the plaintiff will bear his own and half the defendant's costs.

The result is that the decree of the trial Court is set aside and the following decree substituted in its place :—

"It is declared that the order of the Inspector-General of Police, Bombay, dated November 12, 1943, purporting to dismiss the plaintiff from the subordinate police service was void and inoperative."

[1] [1945] A. I. R. F. C. 47. [2] (1948) 50 Bom. L. R. 649, P. C.

Decree varied.

M. W. P.