

1976, 7

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JUDICIAL COMMITTEE OF THE
IN THE PRIVY COUNCIL

No. 7 of 1975

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

BETWEEN

NAJAR SINGH

Appellant
(Plaintiff)

AND

1. The Government of Malaysia
2. The Chairman,
Police Public Service Commission

Respondents
(Defendants)

RECORD OF PROCEEDINGS

Bulcraig & Davis,
Solicitors,
6, Henrietta Street,
Strand,
London WC2E 8QS.

Solicitors for the Appellant

Stephenson Harwood & Tatham,
Saddlers Hall,
Gutter Lane,
Cheapside,
London EC2V 6BS.

Solicitors for the Respondents.

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N

NAJAR SINGH

APPELLANT
(PLAINTIFF)

AND

1. THE GOVERNMENT OF MALAYSIA
2. THE CHAIRMAN, POLICE PUBLIC
SERVICE COMMISSION

RESPONDENTS
(DEFENDANTS)

RECORD OF PROCEEDINGS

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Certificate of Counsel	27th March 1974
Further Affidavit of Appellant	12th August 1974

1.

JUDICIAL COMMITTEE OF THE
IN THE PRIVY COUNCIL

No. 7 of 1975

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR (APPELLATE JURISDICTION)

B E T W E E N:

NAJAR SINGH

APPELLANT
(Plaintiff)

- and -

1. The Government of Malaysia
2. The Chairman,
Police Public Service Commission

RESPONDENTS
(Defendants)

RECORD OF PROCEEDINGS

No. 1

Writ of Summons

In the High
Court of
Malaya

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 758 of 1972

No. 1

Writ of
Summons

BETWEEN

16th August
1972

NAJAR SINGH

Plaintiff

And

1. The Government of Malaysia
 2. The Chairman,
Police Public Services
Commission
- Defendants

10

GENERAL FORM OF WRIT OF SUMMONS

The Honourable Tan Sri Ong Hock Thye, P.M.N.,
P.S.M., D.P.M.S., Chief Justice of the High Court
in Malaya, in the name and on behalf of His Majesty
the Yang Di-Pertuan Agong.

In the High
Court of
Malaya

No. 1

Writ of
Summons

16th August
1972

(continued)

To: 1 The Government of Malaysia,
c/o The Attorney-General of
the Government of Malaysia,
Kuala Lumpur.

2 The Chairman,
Police Public Services Commission,
c/o Ministry of Home Affairs
Jalan Dato Onn,
Kuala Lumpur.

We COMMAND you, that within eight (8) days
after service of this Writ on you, inclusive of
the day of such service, you do cause an appear-
ance to be entered for you in an action at the
suit of Najar Singh.

10

AND TAKE NOTICE that in default of your so
doing the Plaintiff may proceed therein and
judgment may be given in your absence.

WITNESS, ABU BAKAR BIN AWANG, Senior Assistant
Registrar of the High Court in Malaya, this 16th
day of August, 1972.

20

Sd. Lovelace & Hastings, Sd. Abu Bakar bin Awang
Plaintiff's Solicitors. Senior Assistant Registrar,
High Court, Kuala Lumpur.

N.B. - This Writ is to be served within twelve
months from the date thereof, or, if renewed,
within six months from the date of last
renewal, including the day of such date,
and not afterwards.

The defendant (or defendants) may appear
hereto by entering an appearance (or appear-
ances) either personally or by solicitor at
the Registry of the High Court at Kuala
Lumpur.

30

A defendant appearing personally may, if he
desires, enter his appearance by post, and
the appropriate forms may be obtained by
sending a Postal Order for \$3.00 with an
addressed envelope to the Registrar of the
High Court at Kuala Lumpur.

INDORSEMENT ON WRIT

The Plaintiff's claim is for:-

- (i) A Declaration that his dismissal from the Polis Di-Raja Malaysia purported to be effected by Police Services Commission on 18th August, 1971 was void;
- (ii) An Order that the Defendants do pay to the said Plaintiff all arrears of pay, allowances and other emoluments due and owing to him as a Sergeant Major No. 3390 in the said Polis Di-Raja Malaysia from the date of the said purported dismissal;
- (iii) An account of which is due to the Plaintiff from the Defendants in respect of his salary and all other emoluments found to be due to him as a Sergeant Major No. 3390 of the Polis Di-Raja Malaysia and an Order for payment by the Defendants to the Plaintiff of any sum upon taking such account;
- (iv) Further or other relief;
- and (v) Costs of this suit.

Dated this 15th day of August, 1972.

Sd. Lovelace & Hastings

Solicitors for the Plaintiff

In the High
Court of
Malaya

No. 1

Writ of
Summons

16th August
1972

(continued)

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This Writ was issued by Messrs. Lovelace & Hastings whose address for service is No.57, Jalan Klyne, Kuala Lumpur, Solicitors for the said Plaintiff who resides at care of High Street Sikh Temple, Jalan Bandar, Kuala Lumpur.

In the High
Court of
Malaya

No. 2

Statement of Claim

No. 2

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Statement of
Claim

CIVIL SUIT NO. 758 of 1972

22nd January
1973

Between

Najar Singh

Plaintiff

And

1. The Government of Malaysia Defendants

2. The Chairman,
Police Public Services Commission

10

STATEMENT OF CLAIM

1. On the 1st day of December, 1939 the Plaintiff joined the Federation of Malaya Police Force as a police constable.

2. On the 1st day of February 1968 the Plaintiff was confirmed in the rank of Serjeant Major and emplaced on the Pensionable Establishment.

3. The Plaintiff was subject to the provisions of the Police Act 1967 and the Police Regulations 1970 and to all Rules Regulations and Orders made thereunder, in so far as the said Provisions, Rules Regulations and Orders were not inconsistent with the provisions of the Constitution of the Federation of Malaya.

20

4. In exercise of the power conferred upon the Minister of Home Affairs by S.8(1)(a) Internal Security Act 1960 the Plaintiff, on the 31st day of May, 1971 was served with an order for detention for a period of two years commencing from the 7th June 1971 in Batu Cajah Special Detention Camp.

30

5. On the 6th day of June 1971 the Plaintiff made representation to the Chairman of the Advisory Board regarding the matter mentioned in paragraph 4 aforesaid.

6. On the 25th day of January 1972 the plaintiff was unconditionally released from detention by order of the Minister of Home Affairs, Malaysia.

In the High
Court of
Malaya

7. Whilst the Plaintiff was in detention he received from the Inspector General of Police a letter dated 5th July 1971 on the 31st day of July, 1971 requesting the Plaintiff to show cause why he should not be dismissed from the said Police Force.

No. 2

Statement of
Claim

22nd January
1973

10 8. The Plaintiff forthwith, in July 1971, showed cause in a letter to the Inspector General of Police di-Raja through the Officer-in-Charge of Police District, Muar, but the Inspector General of Police, by a letter dated 15th day of September, 1972 informed the Plaintiff that his cause has been rejected and that he has been dismissed from the said Police Force.

(continued)

20 9. No charges have ever been framed against the Plaintiff in accordance with an or any of the offences prescribed in the schedule under Regulation 2 of the Police (Conduct and Discipline) (Junior Officers and Constables) Regulations 1970.

10. Further, the disciplinary procedure as set out under Regulations 3, 4, 5 and 6 of the Police (Conduct and Discipline) (Junior Officers and Constables) Regulations 1970, have not been followed in any disciplinary action against the said Plaintiff.

30 11. Both the Defendants have deprived the Plaintiff of the benefit of a disciplinary action against the to make representations to and be heard [sic] under the provisions of Regulations referred to in paragraph (10) hereof.

12. In the premises, the said purported dismissal of the Plaintiff was void, inoperative and of no effect.

40 13. In the further premises, since the said dismissal of the Plaintiff has been deprived of pay, allowances and other emoluments to which he was entitled as a Serjeant-Major in the said Police Force.

14. And the Plaintiff claims:

In the High Court of Malaya

No. 2

Statement of Claim

22nd January 1973

(continued)

- (i) a Declaration that his dismissal from the said Police Force purported to be effected by the Police Service Commission was void.
- (ii) that he be re-instated in the said Police Force.
- (iii) an order that the Defendants do pay to the said Plaintiff all arrears of pay, allowances and other emoluments due and owing to him as a Serjeant-Major in the said Police Force from the said purported dismissal.
- (iv) further or other relief.
- (v) Costs of this suit.

10

Dated this 22nd day of January, 1973.

Sd. Lovelace & Hastings,
Plaintiff's Solicitors.

No. 3

Defence

19th February 1973

No. 3

Defence

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

20

CIVIL SUIT NO. 758 OF 1972

Between

Najar Singh

Plaintiff

And

- 1. The Government of Malaysia Defendants
- 2. The Chairman,
Police Public Services Commission

STATEMENT OF DEFENCE

- 1. The Defendants admit paragraphs 1 and 2 of the Statement of Claim.
- 2. The Defendants admit paragraph 3 of the

30

Statement of Claim and further aver that the Plaintiff was also subject to the Public Officers (Conduct and Discipline) (General Orders Cap. 'D') Regulations, 1969.

In the High
Court in
Malaya

No. 3

Defence

19th February
1973

(continued)

3. The Defendants admit paragraphs 4, 5, 6 and 7 of the Statement of Claim.

4. The Defendants admit paragraph 8 of the Statement of Claim and further aver that the Plaintiff was dismissed by the Police Force Commission.

10

5. The Defendants admit paragraph 9 of the Statement of Claim and say that the Plaintiff was dismissed under the Public Officers (Conduct and Discipline) (General Orders Cap. 'D') Regulations 1970 does not arise.

6. The Defendants admit paragraph 10 of the Statement of Claim and repeat the argument in paragraph 5 above.

20

7. With regard to paragraph 11 of the Statement of Claim the Defendants aver that the Plaintiff was given the opportunity to make representations and to be heard under the provisions of the said General Orders.

8. The Defendants deny paragraph 12 of the Statement of Claim.

9. The Defendants deny paragraph 13 of the Statement of Claim as the dismissal of the Plaintiff was done in accordance with the law.

30

10. The Defendants deny that the Plaintiff has suffered any damages.

11. Wherefore, the Defendants pray that the Plaintiff's claim be dismissed with costs.

Dated this 19th day of February 1973

Sd/-

Federal Counsel,
for and on behalf of the Defendants
whose address for service is c/o
the Attorney-General's Chambers,
Kuala Lumpur.

In the High Court of Malaya

No. 3
Defence

19th February 1973

(continued)

No. 4
Amended Defence

5th June 1973

To:

Tetuan Lovelace & Hastings,
Peguambela dan Peguamcara,
57, Jalan Klyne,
Kuala Lumpur.

(Solicitors for the Plaintiff)

No. 4

Amended Defence

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 758 OF 1972

10

Between

Najar Singh

Plaintiff

And

1. The Government of Malaysia
2. The Chairman,
Police Public Services
Commission

Defendants

AMENDED STATEMENT OF DEFENCE

1. The Defendants admit paragraphs 1 and 2 of the Statement of Claim. 20

2. The Defendants admit paragraph 3 of the Statement of Claim and further aver that the Plaintiff was also subject to the Public Officers (Conduct and Discipline) (General Order Cap. 'D') Regulations, 1969.

3. The Defendants admit paragraphs 4, 5, 6 and 7 of the Statement of Claim.

4. The Defendants admit paragraph 8 of the Statement of Claim and further aver that the Plaintiff was dismissed by the Police Force Commission. 30

5. The Defendants admit paragraph 9 of the Statement of Claim and say that the Plaintiff was dismissed under the Public Officers (Conduct and Discipline) (General Orders Cap. 'D') Regulations, 1969. Therefore regulation (2) of the Police Regulations 1970 does not arise.

In the High
Court of
Malaya

—
No. 4

Amended
Defence
5th June 1973
(continued)

6. The Defendants admit paragraph 10 of the Statement of Claim and repeat the argument in paragraph 5 above.

10 7. With regard to paragraph 11 of the Statement of Claim the Defendants aver that the Plaintiff was given the opportunity to make representations and to be heard under the provisions of the said General Orders.

8. The Defendants deny paragraph 12 of the Statement of Claim.

9. The Defendants deny paragraph 13 of the Statement of Claim as the dismissal of the Plaintiff was done in accordance with the law.

20 9A. The Defendants contend that the power of dismissal under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970 is ultra vires the Police Act, 1967 and as such the power of dismissal still remains with the Police Force Commission. Consequently, the dismissal of the Plaintiff is valid in law.

10. The Defendants deny that the Plaintiff has suffered any damage.

30 11. Wherefore, the Defendants pray that the Plaintiff's claim be dismissed with costs.

Dated this 19th day of February, 1973.

Sd. S. Augustine Paul,
Federal Counsel,
for and on behalf of the Defendants
whose address for service is c/o
the Attorney-General's Chambers,
Kuala Lumpur.

In the High Court of Malaya

No. 4

Amended Defence

5th June 1973

(continued)

To:

Tetuan Lovelace & Hastings,
Peguambela & Peguamcara,
57, Jalan Klyne,
Kuala Lumpur.

(Solicitors for the Plaintiff.)

Re-dated this 5th day of June, 1973.

Sd.

Federal Counsel,
for and on behalf of the Defendants
whose address for service is c/o
the Attorney-General's Chambers,
Kuala Lumpur.

10

No. 5

Reply

19th June 1973

No. 5

Reply

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 758 OF 1972

BETWEEN

Najar Singh

Plaintiff

AND

20

1. The Government of Malaysia
2. Police Public Services Commission

Defendants

R E P L Y

1. In reply to paragraphs 2 and 7 of the Defence the Plaintiff denies that he was subject to the Public Officers (Conduct and Discipline) (General Orders Cap. D.) Regulations 1969 for purposes of discipline and denies that he was afforded an opportunity of being heard under the provisions of the said General Orders and says that in any event by denying him the right of being heard under Regulation 27 of the aforesaid General Orders, the order for dismissal was contrary to the

30

principles of natural justice. The Plaintiff will plead further that the procedure laid down in Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970 should have been followed.

In the High Court of Malaya

No. 5

Reply
19th June 1973

(continued)

10

2. In reply to paragraph 9A of the Amended Defence the Plaintiff will plead that in the event of the power of dismissal under the aforesaid Police Regulations 1970 being held to be ultra vires the Police Act 1967 then in such case the Police Regulations 1952 would apply either alone or in co-existence with Regulation 27 aforesaid.

Dated this 19th day of June, 1972.

Sd. Lovelace & Hastings
Solicitors for the Plaintiff

No. 6

No. 6

Notes of Proceedings

Notes of Proceedings

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

17th September 1973

IN OPEN COURT

20

BEFORE ABDUL HAMID, J.

THIS 17TH DAY OF SEPTEMBER, 1973

Civil Suit No. 758/72:

Mr. N.A. Marjoribanks with Mr. Lall Singh for Plaintiff.

Encik Mokhtar Sidin, Senior Federal Counsel for Defendants.

Plaintiff opens case:

30

Mr. Marjoribanks refers to Chapter D of General Orders, 1969 [F.U.(A)2737]. Regulation 30(2) - plaintiff concedes receiving statement in writing - in accordance with provisions set out in Regulation 30(2).

Defendants concede that plaintiff did send a reply. Defendants further concede there was no formal enquiry.

In the High
Court of
Malaya

No. 6

Notes of
Proceedings

17th
September
1963

(continued)

- (1) Police Regulations should reply. [sic]
(2) No reasonable opportunity of being heard.

It is agreed that Police Force Commission is the only authority with power to dismiss.

Both counsel indicate that no evidence will be adduced from either side.

Refers to Police Regulations, 1952 - Regulation 4 - "Orderly Room Procedure". Refers to B. Surinder Singh Kanda v. The Government of the Federation of Malaya, (1962) (28) M.L.J. p.169. (See p.170 first column line E). 10

Police Regulations remained in force until repealed in 1970. Law was changed by Police Act, 1967. Police Ordinance, 1952 repealed but Regulations, 1952 were saved.

Section 18 of the Act - police officers are subject to the provisions applicable to public officers. Police regulations remained in force under Section 98.

General Orders 1968 - Chapter D - under (1)(a) - conduct and discipline - comes under Police Regulations, 1952. 20

P.U.(A) 273 - 1969 Regulations - it is still in force. 1968 General Orders still suspended.

Under Regulation 2 - "disciplinary authority" defined.

In 1970 Police Regulations 1970 - Regulation 9 repeals Police Regulations, 1952.

Under P.U.(A) 103 - 1970 - there was an amendment and only Part I of the Police Regulations, 1952 revoked. 30

Conduct and Police Regulations, 1970 - 1(2) states - "These Regulations shall apply"

Refers to Halsbury's Laws of England Vol.36 p.433. Page 655 - imperative not permissive.

Plaintiff was then a Sergeant Major - a junior police officer. (See Police Act, 1967 - First Schedule).

Refers to Police Regulations, 1970. Regulation 6 - "Orderly Room Procedure". Plaintiff is replying on the Regulation - it should have been complied with.

In the High Court of Malaya

No. 6

In passing says under Regulation 5 subject of charge has a right to be represented.

Notes of Proceedings

Submits Police Regulations, 1970 should have been invoked.

17th September 1973

10 Question is did the 1969 Regulations repeal the 1952 Regulations?

(continued)

Refers to Craies on Statute Law 7th ed. p.377.

Latter general legislation does not revoke earlier special legislation - submits Police Regulations, 1952.

Encik Mokhtar Sidin says that the defendants are contending that Regulations, 1970 including Regulation 6 are ultra vires except the power of dismissal is only vested in Police Force Commission.

20 Mr. Marjoribanks submits that Regulations, 1970 can live in peaceful co-existence with the 1969 General Orders Chapter D. Orderly Room Procedure should be invoked.

View is fortified by Ridge v. Baldwin (1964) A.C. p.40 at p.42. Judgment of Lord Morris of Borth-y-Gest at p.109 last paragraph. (See p.105/106).

Refers to p.133/4. Page 135 - "Once invalid."

Encik Mokhtar Sidin submits:

30 Defendants are not relying on Regulations, 1952 as they have been revoked. Regulations 1970 are still in force except the power of dismissal which is vested in the Police Force Commission.

Says 1970 Regulations should not apply because firstly the power of dismissal is not vested in the adjudicating authority. "Orderly Room Procedure" is to be applied only in cases where the adjudicating authority has the power to impose

In the High Court of Malaya

No. 6

Notes of Proceedings

17th September 1973

(continued)

punishment. Since he has no power to dismiss the procedure should not apply.

Secondly under Regulations 1970 - under the Schedule - junior police officers can only be charged for these offences. The conduct of the plaintiff was not one covered by the schedule.

Submits that procedure to be followed in Chapter D of the 1969 General Orders - P.U.(A) 273 - Regulation 3(a). The charge could therefore be made under General Orders.

10

The procedure is under Regulation 30 of the 1969 Regulations - 30(2). This procedure has been followed.

Defendants contend that in this case only Chapter D applies and Regulations 30(2) was properly invoked.

On rules of natural justice refers to Local Government Board vs. Aldrige, (1915) A.C. p.120 at p.133 - "I concur"

Refers to (1949) All England Law Reports p.109 at p.118 line E - "The requirements"

20

Mr. Marjoribanks:

Refers to Regulation 27 - P.U.(A) 273. This is ingrained in the Constitution - Article 135(2).

Refers to Police Regulations 1970 - P.U.(A) 86 - see paragraph (65).

Encik Mokhtar Sidin applies for paragraph 9A of Defence to be amended by deleting the words "ultra vires the Police Act 1967 and" and "such" and adding therefor the words "inapplicable and/or inoperative."

30

Mr. Marjoribanks has no objection to the amendment.

Reserve judgment.

Certified true copy
Sd.
Secretary to Judge
Kuala Lumpur.

Sgd. ABDUL HAMID
JUDGE,
HIGH COURT,
MALAYA.

30 OCT 1973

15.

No. 7

Judgment

In the High
Court of
Malaya

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

No. 7

Civil Suit No. 758 of 1972

Judgment
25th
September
1973

Between

Najar Singh

Plaintiff

And

1. The Government of Malaysia
 2. The Chairman,
Police Force Commission
- Defendants

10

JUDGMENT OF ABDUL HAMID, J.

The Plaintiff's claim is for -

- (i) a declaration that his dismissal from the Polis Diraja Malaysia purported to be effected by the Police Force Commission on August 18, 1971 was void;
- (ii) an order that defendants do pay the plaintiff all arrears of pay, allowances and other emoluments due and owing to him as a Sergeant Major in the said Polis Diraja Malaysia from the date of the dismissal; and
- (iii) an account of what is due to the plaintiff from the defendants in respect of his salary and all other emoluments found to be due to him as a Sergeant Major of the Polis Diraja Malaysia and an order for payment by the Defendants to the plaintiff of any sum upon checking such account.

20

30

The facts are not in dispute. The plaintiff joined the Police Force as a police constable. In February 1968 he was confirmed in the rank of Sergeant Major, a junior police officer and emplaced on the pensionable establishment.

On May 31, 1971 the Minister of Home Affairs acting under Section 8(1)(a) of the Internal

In the High
Court of
Malaya

—
No. 7

Judgment

25th
September
1973

(continued)

Security Act, 1969 served upon the plaintiff an order for detention for a period of two years commencing from June 7, 1971 at the Batu Gajah Special Detention Camp.

On representation made by the plaintiff to the Chairman of the Advisory Board on June 6, 1971, the plaintiff was unconditionally released from detention on January 25, 1972.

In July, 1971 whilst in detention the plaintiff received from the Inspector General of Police a letter dated July 5, 1971 requesting him to show cause why he should not be dismissed from the Police Force. The plaintiff forthwith sent a reply showing cause why he should not be dismissed.

10

The plaintiff was dismissed from the Police Force by the Police Force Commission on August 18, 1971.

At the hearing before me Mr. Marjoribanks counsel for the plaintiff and Encik Mokhtar Sidin, Senior Federal Counsel appearing for the Government of Malaysia and Chairman of the Police Force Commission intimated that no evidence was to be adduced by either party. It was agreed between the parties that -

20

(a) plaintiff received a statement in writing sent by the Disciplinary Authority (which is the Police Force Commission as defined under Regulation 2) pursuant to General Order 30(2) of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969 - (hereinafter referred to as "the 1969 General Orders");

30

(b) The Police Force Commission received a written reply from the plaintiff;

(c) there was no formal enquiry held; and

(d) the Police Force Commission was the proper authority with power to dismiss.

It is the plaintiff's contention that the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970 (I shall hereinafter refer to these Regulations as "the 1970 Police Regulations") apply to the

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present case and when the disciplinary action was taken against the plaintiff the procedure laid down under Regulations 3, 4, 5 and 6 should have been followed. It is the plaintiff's further contention that as a result he was deprived of the opportunity to make representation and was not afforded a reasonable opportunity of being heard.

10 It is the defendants' case that the plaintiff was dismissed under the 1969 General Orders and was given an opportunity to make representation and to be heard.

The defendants contended that the power of dismissal under the 1970 Police Regulations was inapplicable and/or inoperative as the power of dismissal was vested solely with the Police Force Commission.

20 It is, I think, convenient at this point to examine the Regulations which I think are relevant for purpose of this case. It is not in dispute that at the material time (it still is) the Police Act, 1967 was in force. The Police Act repealed the Police Ordinance, 1952. The Police Regulations, 1952, made under the 1952 Ordinance however, remained in force till they were revoked by the 1970 Police Regulations.

30 In May, 1969 the Yang diPertuan Agong being satisfied that immediate action was required for securing public safety, the defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community issued pursuant to Article 150 of the Federal Constitution a proclamation of Emergency.

40 In July, 1969 the Director of Operations in exercise of the powers conferred upon him under the Emergency (Essential Powers) Ordinance passed the Essential (General Orders, Chapter D) Regulations, 1969 setting out in the Schedule thereto the 1969 General Orders. Section 2 of the Essential (General Orders, Chapter D) Regulations, 1969 suspended the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1968.

In 1970 the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970 were made under the Police Act, 1970. At the

In the High
Court of
Malaya

—
No. 7

Judgment

25th
September
1973

(continued)

In the High
Court of
Malaya

—
No. 7

Judgment

25th September
1973

(continued)

material time therefore there were the 1970 Police Regulations and the 1969 General Orders that were in force and which could be invoked against the plaintiff in matters affecting conduct and discipline.

Now, under the Police Act, 1967 section 74, a specific provision is made to the effect that - "All members of the Police Force shall be subject to the provisions of regulations relating to discipline as may from time to time be made by the Yang diPertuan Agong under the Article 132(2) of the Federal Constitution or under section 96 of the Act." In terms of that section it seems clear that the plaintiff shall be subject to either the 1970 Police Regulations or the 1969 General Orders.

10

In passing I would hasten to add that after the Police Act was passed and before the proclamation of the Emergency, the relevant Disciplinary Regulations applicable to a Sergeant Major were the Police Regulations, 1952 and the 1968 General Orders made under Article 132(2) of the Federal Constitution. The 1968 General Orders provided that insofar as conduct and discipline the provisions of the General Orders shall apply subject to the provisions of the written law applicable to the police officers. The Police Force Commission was, however, the only authority empowered to make an order for dismissal.

20

The existence of grave Emergency brought about by the May 13 incident posed a threat to the security of Malaysia. Under the Emergency (Essential Powers) Ordinance (No. 1 and No. 2 of 1969) both the executive as well as the legislative powers were vested in the Director of Operations. Laws made by the Director of Operations were called Essential Regulations. It would seem that the primary aim of the Government was to take immediate action to secure public safety and maintain public order. It is in this light that I shall determine the disciplinary procedure applicable to the present case.

30

40

I shall commence by considering whether the Police Force Commission had acted properly and rightly in invoking the procedure laid down under General Order 30 of the 1969 General Orders against the plaintiff for the disciplinary offence.

Incidentally, Mr. Marjoribanks urged the Court to hold that by reason of paragraph 65 of the Schedule to the 1970 Police Regulations which states that -

"Any police officer or constable who -
'(65) is guilty of any act or neglect of duty, or of any act, conduct or disorder or neglect to the prejudice of good order and discipline, not hereinafter specified.

shall be guilty of an offence"

In the High
Court of
Malaya

No. 7

Judgment
25th
September
1973

(continued)

10 the plaintiff could have been charged under that paragraph invoking the provisions of the 1970 Police Regulations. With respect I do not share that view. The Court is in no position to say whether or not the disciplinary offence committed by the plaintiff could fall under the scope of paragraph 65 of the 1970 Police Regulations. The nature of the offence committed has not been revealed to this Court. The Court is also in no position to determine
20 whether the plaintiff could or ought to have been charged under the Police Regulations as the grounds upon which the order for the plaintiff's dismissal was made are also not disclosed to the Court. The plaintiff could have produced the letter sent to him but he has not done so. And furthermore he does not seem to challenge the validity of the order on either insufficient grounds or for want of grounds.

30 May I also say that not knowing the exact nature of the allegation, it is impossible for the Court to say whether it was an act or neglect of duty, or conduct or neglect to the prejudice of good order or discipline, or otherwise. In other words, the plaintiff has failed to satisfy this Court that the Police Force Commission had acted wrongly in not invoking the disciplinary procedure under the 1970 Police Regulations. On the contrary I am satisfied that the Police Force Commission had acted correctly. I mentioned
40 earlier that in regard to a disciplinary offence the plaintiff was, by reason of section 74 of the Police Act, subject to disciplinary action either under the 1970 Police Regulations or the 1969 Orders. The Police Force Commission had chosen to institute proceedings for disciplinary action against the plaintiff under the 1969 General Orders. This is allowed by law and unless the contrary is shown to the Court, it is reasonable to assume that it was a perfectly valid act.

In the High
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Judgment

25th
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(continued)

It must also be remembered that to invoke the 1970 Police Regulations the disciplinary offence ought to be one of those specified in the Schedule. It is only when the offence comes within the scope of the Regulations that the charge shall be framed and the procedure laid down therein observed.

In this regard Mr. Marjoribanks seriously argued that the 1970 Police Regulations can live in peaceful co-existence with the 1969 General Orders and in any event the Orderly Room Procedure could have been invoked. He cited the case of Ridge v. Baldwin (1964) A.C. p.40 in support of his argument.

10

I have very carefully examined Ridge v. Baldwin (supra). In that case a Chief Constable was appointed under section 191 of the Municipal Corporations Act, 1882 by a watch committee. Disciplinary action was taken against the Chief Constable and he was dismissed by the watch committee for negligence in the discharge of his duties.

20

It was held that the appointment was subject to Police Acts and Regulations. Lord Devlin in the course of his judgment on page 42 said -

"I cannot regard the power of dismissal under article 11(1) of the Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables and Chief Constables) Regulations, 1952, as something distinct from the power of dismissal under section 191(4), and I think that the effect of article 11(1) is to make the power of dismissal conditional on the receipt of the report submitted to the police authority by the tribunal appointed under the regulations."

30

In that case one of the arguments advanced was that the Police Disciplinary Regulations did not apply and that the Disciplinary Code did not cover the gravamen of the charge against the Chief Constable. It was held that the Disciplinary Code expressly made applicable to the Chief Constable and had therefore to be construed accordingly. At page 137 Lord Devlin referring to the Disciplinary Code said -

40

".... It contains a number of specific offences which a chief constable could hardly commit, but also a number which he certainly could. There are specific matters put against the appellant in this case which I think certainly fall under the head of "discreditable conduct", if not also of "neglect of duty". In my judgment, the Disciplinary Code should be regarded as a compendium covering all ranks from chief constable downwards. I find it impossible to believe that there was intended to be a residue of neglect to be dealt with at large and in relation to which the offender is deprived of the protection afforded by the regulations. If a case of inefficiency or inadequacy can be made without proof of misconduct or neglect, the regulations do not apply; but if the case involves an allegation (and I use that word, as will be seen hereafter in its widest sense) of a disciplinary offence the procedure laid down by the regulations must be followed."

After observing that one of the grounds given for the appellant's dismissal in that case was the "neglect of duty" Lord Devlin on p.137/8 went on to say that -

"... The watch committee ought not to have reached a decision on this ground without following the regulations, unless it can be said (and this is the second point to be considered) that the regulations are by their own terms inapplicable on the facts of this case."

It seems clear from the judgment of Lord Devlin that the Police Regulations were to be read into the Act of 1882 as rules that the committee was required to observe.

One of the reasons that led to this finding was because the appointment of the Chief Constable was subject to Police Acts and Regulations. Primarily the finding was arrived at after considering the grounds upon which the watch committee acted. According to Lord Devlin there were specific matters put against the Chief Constable that he thought could fall under the head of "discreditable conduct" if any, and also "neglect of duty".

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(continued)

There is hardly any doubt in my mind that the present case differs in many respects from the case cited. I would emphasize that to determine the Regulations applicable serious consideration must be given to the condition prevailing in this country then. The exact nature of the complaint against the plaintiff had to be taken into account. I do not think it is erroneous to assume that when the Police Force Commission decided to proceed under the 1969 General Orders they did so after giving due consideration to the facts and the circumstances surrounding this particular case. If indeed this was the case it must be deemed that the 1970 Police Regulations cannot by their own terms be said to apply to the case in hand. Clearly it was a matter solely for the Police Force Commission to judge whether in the circumstances the misconduct was one that warranted dismissal. I am of the opinion that disciplinary procedure for misconduct founded upon facts judged in the light of the condition prevailing during the Emergency was not within the scope of the 1970 Police Regulations.

10

20

In the circumstances it is evident that the nature of the misconduct was the factor that governed the Commission's decision. This Court will not indulge in speculation but it feels certain that in its deliberation the Commission seriously considered the complaint against the plaintiff in the light of the code of conduct expected from a public officer as set out in the 1969 General Orders. As a public officer the plaintiff was required on all occasions to give his undivided loyalty and devotion to the Yang diPertuan Agong, the country and the Government. Whether there was a breach of that code of conduct is strictly a matter of inference. It is not disputed that on May 31, 1971 by order of the Minister of Home Affairs exercising his power under the Internal Security Act, 1960 ordered the plaintiff to be detained. It was during his detention that disciplinary proceedings under the 1969 General Orders were instituted against him.

30

40

It shall be recalled that during the Emergency the legislative authority was vested in the Director of Operations. It is not open to the Court, even though I do find that the procedure provided under General Order 30(2) falls short of and had not fully complied with the requirements

of the rules of natural justice in the sense that he had not been accorded with full opportunity of being heard, to question the wisdom of the law maker. In effect I am even prepared to deny that the procedure was somewhat inconsistent with Article 135 of the Federal Constitution but the Court cannot ignore that the 1969 General Orders were made pursuant to section 2 of the Emergency (Essential Powers) Ordinance, 1969 exercisable by the Director of Operations pursuant to section 8 of the Emergency (Essential Powers) Ordinance, No. 2 of 1969. Clause 6 of the Article 150 states -

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Malaya

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25th
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1973

(continued)

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"(6) Subject to Clause (6A), no provisions of any ordinance promulgated under this Article, and no provision of any Act of Parliament which is passed while a Proclamation of Emergency is in force and which declares that the law appears to Parliament to be required by reason of the Emergency, shall be invalid on the ground of inconsistency with any provision of the Constitution."

I also refer to Eng Keock Vheng v. P.P.(F.C.) (1966) 1 M.L.J. p.18 where it was held that -

30

"the true effect of Article 150 of the Federal Constitution is that, subject to certain exceptions set out therein, Parliament has, during the emergency power to legislate on any subject and to any effect even if inconsistencies with articles of the Constitution (including the provisions for fundamental liberties) are involved;"

Subsection 4 of section 2 of the Emergency (Essential Powers) Ordinance, 1969 No.1 of 1969 provides that -

40

"(4) An Essential Regulation, shall have effect notwithstanding anything inconsistent therewith contained in any written law, including the Constitution ..."

In the light of these provisions the procedure laid down under the 1969 General Orders shall not be held to be invalid on the ground of inconsistency with Article 135 of the Federal Constitution.

Mr. Marjoribanks urged the Court to consider the effect of General Order 27 which states that -

In the High
Court of
Malaya

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September
1973

(continued)

"In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard."

I think it is manifestly clear that General Order 27 must not be read in isolation but must be considered subject to General Order 30(2), a special procedure to be followed in a case where the Police Force Commission found an officer guilty of unsatisfactory work or misconduct and such unsatisfactory work or misconduct in the opinion of the Police Force Commission merits dismissal. Fundamentally the procedure laid down in General Order 30(2) is a departure from the established procedure usually followed before the proclamation of Emergency. However, I am unable to hold that such procedure was void and of no effect.

10

20

Perhaps I may mention at this point that Article 310 of the Indian Constitution does lay down that the services of a civil employee are at the pleasure of the Presiding or Governor as the case may be and not during good behaviour on the part of the employee and subject to what was contained in Article 311. I may mention at this point that Lord Reid in Ridge v. Baldwin (supra) speaking of the category of persons holding office at pleasure said at page 65 -

30

"Then there are many cases where a man holds an office at pleasure. Apart from Judges and others whose tenure of office is governed by statute, all servants and officers of the Crown hold office at pleasure, and this has been held even to apply to a colonial judge (Terrel v. Secretary of State for the Colonies) (1809) 11 East 176. It has always been held, I think rightly, that such an officer has no right to be heard before he is dismissed, and the reason is clear. As the person having the power of dismissal need not have anything against the officer, he need not give any reason. That was stated as long ago as 1670 in Rex v. Stratford-on-Avon Corporation (1844) 6 Q.B.682, where the corporation dismiss a town clerk who

40

held office durante bene placito. The leading case of this matter appears to be Reg. v. Darlington School Governors (1870) L.R.Ch.489 although that decision was doubted by Lord Hatherley L.C. in Dean v. Bennett (1851) 13 Beav.117 and distinguished on narrow grounds in Willis v. Childa (1615) 11 Co.Rep.936. I fully accept that where an office is simply held at pleasure the person having power of dismissal cannot be bound to disclose his reasons. No doubt he would in many cases tell the officer and hear his explanation before deciding to dismiss him. But if he is not bound to disclose his reason and does not do so, then, if the Court cannot require him to do so, it cannot determine whether it would be fair to hear the officer's case before taking action."

In the High Court of Malaya

No. 7

Judgment

25th September 1973

(continued)

10

20

Now, the relevant portion of Article 311 of the Indian Constitution runs as follows -

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

30

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

40

Provided that this clause shall not apply -

(a) xxxxxx

(b) xxxxxx

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(continued)

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final." 10

In India the position of a civil employee in the light of proviso (c) to Article 311(2) is as summarised by the learned author in "Disciplinary Action against Government Servants and its Remedies, 3rd ed." - D.K. Srivastava, page 62 -

"As a result of proviso (c) to Article 311(2) and Article 310 of the Constitution, the President is now free to remove or dismiss a person holding a civil service under the Union at his pleasure and can even deprive him of the guarantee embodied in clause (2) of Article 311 in respect of the opportunity to defend himself against such dismissal or removal provided the President is satisfied that in the interest of the security of the State it is not expedient to give that person such an opportunity." 20

Although there is no provision similar to proviso (c) of Article 311 in our Constitution, it is however clear that under our Constitution every person who is a member of any of the services mentioned in paragraphs (a) to (f) of Article 132(1) holds office during the pleasure of the Yang di-Pertuan Agong. Hence law made during the Emergency for purposes of protecting the interest of the security of the country passed under the Emergency (Essential Powers) Ordinance although the effect may be to deprive an officer of the guarantee embodied under Article 135(2) so long as the dismissal is made by the appropriate commission empowered under the constitution, even though no enquiry is held, is perfectly valid and effective. 30 40

In my judgment the claim must necessarily

fail. I therefore dismiss the claim with costs.

Sd: (ABDUL HAMID)
JUDGE
HIGH COURT
MALAYA.

In the High
Court of
Malaya

No. 7

Judgment

25th
September
1973

(continued)

Kuala Lumpur,
Dated this 25th day of September, 1973.

Mr. N.A.Marjoribanks with Mr. Lall Singh of M/S.
Lovelace & Hastings, Kuala Lumpur, for the
plaintiff.

10

Encik Mokhtar Sidin, Senior Federal Counsel for
the defendants.

Certified true copy

Sd:

Secretary to Judge
Kuala Lumpur.

29 SEP 1973

No. 8

Order

No. 8

Order

25th
September
1973

20

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO.758 OF 1972

Between

Najar Singh

Plaintiff

And

1. The Government of Malaysia
2. The Chairman,
Public Service Commission Defendants

BEFORE THE HONOURABLE MR. JUSTICE ABDUL HAMID
THIS 25TH DAY OF SEPTEMBER, 1973 IN OPEN COURT

30

O R D E R

UPON THIS SUIT coming on for hearing on the
17th day of September, 1973 in the presence of Mr.
N.A.Marjoribanks and Mr. Lall Singh Muker of

In the High
Court of
Malaya

No. 8

Order
25th
September
1973
(continued)

Counsel for the Plaintiff and Encik Mokhtar bin Maji Sidin, Senior Federal Counsel appearing for and on behalf of the Defendants AND UPON READING the pleadings herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that this suit be adjourned for judgment AND THIS SUIT coming on for judgment on the 25th day of September, 1973 in the presence of Mr. Lall Singh Muker of Counsel for the Plaintiff and Encik Mokhtar bin Haji Sidin, Senior Federal Counsel appearing for and on behalf of the Defendants IT IS ORDERED that this suit be and is hereby dismissed AND IT IS FURTHER ORDERED that the costs of this suit be taxed by the proper officer of the Court.

10

GIVEN under my hand and the Seal of the Court this 25th day of September, 1973.

(L.S.) Sd:
Senior Assistant Registrar,
High Court, Malaya,
Kuala Lumpur.

20

In the
Federal Court
of Malaysia

No. 9

Notice of Appeal

No. 9
Notice of
Appeal
22nd October
1973

IN THE FEDERAL COURT OF MALAYSIA (APPELLATE
JURISDICTION)

CIVIL APPEAL NO. 126 OF 1973

BETWEEN

Najar Singh

Appellant

AND

1. The Government of Malaysia
2. The Chairman,
Police Public Service Commission Respondents

30

(In the matter of Civil Suit No.758 of 1972
In the High Court in Malaya at Kuala Lumpur

BETWEEN

Najar Singh

Plaintiff

AND

1. The Government of Malaysia
2. The Chairman,
Police Public Service Commission Defendants

In the
Federal Court
of Malaysia

No. 9

Notice of
Appeal

22nd October
1973

(continued)

NOTICE OF APPEAL

10 TAKE NOTICE that Najjar Singh the Appellant abovenamed being dissatisfied with the decision of the Honourable Mr. Justice Abdul Hamid given at Kuala Lumpur on the 25th September, 1973, appeals to the Federal Court against the whole of the said decision.

Dated this 22nd day of October, 1973.

Sd. Lovelace & Hastings
Solicitors for the Appellant.

To: The Registrar,
Federal Court,
Kuala Lumpur.

20 and to: The Senior Assistant Registrar,
High Court,
Kuala Lumpur.

and to: Federal Counsel,
for and on behalf of the Defendants
whose address for service is c/o
the Attorney-General's Chambers,
Kuala Lumpur.

The address for service for the Appellant is care of Messrs. Lovelace & Hastings, Advocates & Solicitors, No. 57, Jalan Klyne, Kuala Lumpur.

In the
Federal Court
of Malaysia

No. 10

Notes of Proceedings

No.10

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (APPELLATE JURISDICTION)

Notes of
Proceedings
recorded by
Azmi L.P.

FEDERAL COURT CIVIL APPEAL NO. 126/1973

11th January
1974

Between

Najar Singh

Appellant

and

1. The Government of Malaysia
2. The Chairman, Police Public
Service Commission

Respondents

10

Kuala Lumpur, 11th January 1974

Coram: Azmi, Lord President, Malaysia,
Suffian, Chief Justice, Malaya,
H.S. Ong, Judge, Federal Court.

Notes of Argument recorded by
Azmi, Lord President

Mr. N.A. Marjoribanks (Mr. Lall Singh Mukher with
him) for appellant.

Encik Mokhtar Sidin (Mr. Lim Beng Choon with him)
for respondents.

20

Marjoribanks: Issue (1) Which of two regulations
apply i.e. Cap. D or Police Regulations 1970.

Law: - Police Act 1967.
Cap. D of 1969.
Police Regulations of 1970.

Judge held Cap. D applied and therefore 2nd
respondent was right in applying Cap. D.

Public Officers (Conduct and Discipline) (General
Orders, Chapter "D") Regulations, 1969.

30

Part II Regulation 27:- "In all disciplinary
proceedings under this Part no officer shall be
dismissed or reduced in rank unless he has been

informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard."

In the
Federal Court
of Malaysia

Article 135(2) of Federal Constitution applies to proceedings under Cap. D.

No.10

Respondents conceded there had been no hearing.

Notes of
Proceedings
recorded by
Azmi L.P.

Applicant gave ground of complaints to exculpate himself. He put up his grounds but they were dismissed.

11th January
1974

(continued)

10 Regulation 30(1)
(2)

My case: There was no formal inquiry.

To return to General Order 30(4).

At this stage there should have been a hearing and evidence taken. That is to say second respondent must hold an inquiry and witnesses called.

Surinder Singh Kanda v. The Government of the Federation of Malaya - (1962) M.L.J. 169.

20 Page 172: "If the right to be heard is to be a real right which is worth anything, it must carry with it to know the case which is made against him."

Ridge v. Baldwin (1964) A.C. 40.

Page 113: "It is well established that the essential requirements of natural justice see Kanda v. Government of the Federation of Malaya."

Durayappah v. Fernando (1967) 2 A.C. 337.

30 Notwithstanding powers to Minister to dissolve, the Council should be given an opportunity of being heard.

Page 345 - Lord UpJohn at page 346: "Their Lordships will only state that while great urgency may rightly limit such opportunity timeously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable."

In the
Federal Court
of Malaysia

—
No.10

Notes of
Proceedings
recorded by
Azmi L.P.

11th January
1974

(continued)

Page 195 of Suffian's Constitution of Malaya.

Page 28F of Record of Appeal. (No state of
Emergency) (Page 25 - Police Services Commission
dismissed it).

Page 35
37C
38.

Judge overlooked General Order 27 of Cap. D -
30(3) - which was put in as a safeguard.

Page 39 - C - D - E.

10

I repeat - 1st issue - Appellant has had no
opportunity of being heard as provided under
Regulation 30(2) of Cap. D.

My second ground: Procedure under Police Regula-
tion 1970 should have been adopted - P.U.A. 86/70.

Regulation 3 and Regulation 4 - ordinary rule of
Procedure.

Page 673 - gives punishments, including dismissal.

Having concluded inquiry officer would send
decision to the disciplinary authority i.e. Police
Commission.

20

Page 21.

Regulation 44 - power to dismiss.

Gould v. Stuart (1896) A.C. 575.

We have our Constitution.

Mokhtar: Four issues of appeal.

(1) Whether powers under Regulation 30(2) of
Cap. D could be so exercised without
regard to Regulation 1970.

(2) Whether if these provisions could be so
exercised, Respondent bound to comply with
the disciplinary procedure of Regulations
1970 or whether it must comply with
Regulation 30(5) of Cap. D, or whether it
must stick to rule of natural justice.

30

(3) Whether principles of natural justice have been complied with in this case.

In the Federal Court of Malaysia

(4) On the question of Emergency - not seriously taken up by appellant.

No.10

1st issue - it cannot be denied that the members of Police Force are within Public Service under Article 132(a) of Constitution.

Notes of Proceedings recorded by Azmi L.P.

10 Police officers are subject to General Orders i.e. Code of conduct of all public officers, i.e. Cap.D. Police Regulations 1970, equally to all junior Police Officers and constables but only in so far as those regulations are not inconsistent with the Constitution.

11th January 1974

(continued)

In both Regulations - Cap.D and Police Regulations 1970 two separate procedures for dismissal.

In present case the choice is with the Police Forces Commission, who has the power to dismiss.

It is up to them to consider whether to proceed under one or the other.

20 The choice cannot be challenged under Court of Law.

Karuanidhi v. A.P.C. (1968) All I.R. Madras 54.

Page 58 - para.6 - It is urged decide question."

It is perfectly legal for the Authority based on available facts to decide.

Judge had that in mind when he said at page 31 - A - D.

30 Police Act section 74: "All members of the Force shall be subject to the provisions of regulations relating to discipline as may from time to time be made under Article 132(2) of the Federal Constitution or under section 96 of this Act."

Regulation 27 of Cap. D.

Procedure is given in Regulation 30 -.

Choice under the rules and regulations (1) or (2) or (3).

In the
Federal Court
of Malaysia

No.10

Notes of
Proceedings
recorded by
Azmi L.P.

11th January
1974

(continued)

(2) - asked again to state grounds why he should not be punished.

This is a limb of Regulation 27.

Regulation 30(4).

Under (5) only if the Disciplinary Authority considers that further clarification is required, then only he would appoint a committee and the rest of regulation would refer to that inquiry.

I would submit the Police Commission was satisfied in respect of appellant's grounds against dismissal. Therefore not necessary to go further than 30(2). 10

I would try to show whether that would be sufficient to comply with principles of natural justice.

Sd. Azmi

(Lim takes over).

Regulation 30 has two procedures:

Paragraphs 1 - 4 - are complete by themselves. 20

Then 5 - 10 another complete procedure.

All the Disciplinary Authority has to do is to comply with (1) - (4) - notice of grounds of dismissal be given to appellant.

(2) Opportunity to appellant to make representation within 14 days to exculpate himself.

Under (4) if officer fails to do so to the satisfaction of the Disciplinary Authority latter then to consider and decide on the dismissal or reduction in rank. 30

Marjoribanks raised question of Regulation 27 -

Article 135 of Constitution - "Opportunity to be heard."

Scope and extent of Constitution 135(2).

Nowhere stated that the officer must be given

opportunity of having a formal inquiry or opportunity to make oral representation.

In the
Federal Court
of Malaysia

No.10

Distinction to be made in Article 5 which provides provisions.

Opportunity to be heard and Clause 135 is indefeasible and the extent and scope to be heard on circumstances and various other factors.

Notes of
Proceedings
recorded by
Azmi L.P.

The basis is nothing more than (1) Notice to him

11th January
1974

(2) Opportunity to make representations.

(continued)

10 These are all that are required under that Article.

Local Government Board v. Arlidge 1914/1915 All E.R.

Reprint Page 1.

Page 6 - "When the duty of deciding an appeal"

Page 7 - When, therefore, the Board is directed to dispose"

Pearlberg v. Varty (1972) 2 All E.R. 6.

Page 11 "Despite"

(Passage from Russell v. Duke of Norfolk (1949) 1 All E.R. 118).

20 15 - D "Emergency"

Natural Justice"

Principle laid out: As long as the statutory procedure is laid down, Court should hesitate to interfere unless manifestly insufficient.

Here Regulation 30(2) - (4) clearly set out the procedure.

I submit this procedure gives the opportunity to the officer to be heard.

30 Officer cannot demand having regard to facts and circumstances of case, more than what had been done i.e. gave notice and opportunity to reply.

In the
Federal Court
of Malaysia

No.10

Notes of
Proceedings
recorded by
Azmi L.P.

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1974

(continued)

Byrne v. Kinematograph Renters Society (1958)
2 A.E.R. 579 599 - D. "What then are the require-
ments of natural justice

University of Ceylon v. Fernando (1966) 1 All E.R.
631.

Sums up: It is apparent that the requirement of
natural justice (1) differs from tribunal to
tribunal. (2) Basically it means nothing more than
that an aggrieved person must be made aware of the
grounds upon which action is to be taken against
him and to give him an opportunity to reply to
those grounds. (3) If the tribunal derives its
power from a statute it must follow the procedures
laid out in the statute.

10

All these requirements have been fully complied
with in the present case.

Appellant has been made aware of the action to be
taken against him.

He had made representations by letter upon those
grounds.

20

Since the Disciplinary Authority gets its power
of dismissal from Cap. D all it needs do is to
comply with requirement of 30(2) - (4).

I submit the compliance of those provisions are
sufficient compilation to requirements of
natural justice.

It was contended (5) - (6) should be followed.

(5) is only an alternative - no doubt an elabora-
tion of opportunity of being heard."

This is only a concession exercisable by the
Disciplinary Authority i.e. if Disciplinary
Authority requires further clarification. Here
Disciplinary Authority did not require such
clarification. This Court is not in a position
to discover whether such need exists because no
evidence has been brought at the trial or here
as to the ground and charge made against the
appellant.

30

Sd. Azmi

Mokhtar: Reference Ridge v. Baldwin - facts stated at page 45 show that no opportunity at all was given to the officer concerned.

In the
Federal Court
of Malaysia

Refers Kanda's case - some evidence was given behind his back.

No.10

He was not given opportunity to answer the facts.

Notes of
Proceedings
recorded by
Azmi L.P.

On question of emergency - Marjoribanks said there was no emergency. I submit the state of emergency is still in existence today.

11th January
1974

10 Stephen Kalong Ninkan's case (1968(2) M.L.J. 238.

(continued)

Sd: Azmi

Marjoribanks: Reference to choice of Police Commission to proceed under one or two orders.

There is no power to delegate Article 144(6) of Constitution.

Page 9 of Record of Appeal.

Sd: Azmi

C. A. V.

TRUE COPY

20

Sd. G.E.Tan

Secretary to Chief Justice
High Court,
Malaya
4/11/74

No. 11

No.11

Notes of Proceedings

Notes of
Proceedings
recorded by
Suffian C.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

11th January
1974

FEDERAL COURT CIVIL APPEAL NO.126 OF 1973

30 (Kuala Lumpur High Court Civil Suit No. 758 of 1972)

Between

Najar Singh

Appellant/Plaintiff

In the
Federal Court
of Malaysia

And

No.11

- | | |
|--|----------------------------|
| 1. The Government of Malaysia) | Respondents/
Defendants |
| 2. The Chairman, Police Public Services Commission) | |

Notes of
Proceedings
recorded by
Suffian C.J.

Coram: Azmi, L.P.;
Suffian, C.J., Malaya;
H.S. Ong, F.J.

11th January
1974

NOTES OF SUFFIAN, C.J., MALAYA

Friday, 11th January, 1974.

(continued)

Marjoribanks with Lall Singh Mukher for
appellant.

10

Mokhtar Sidin with Mr. Lim Beng Choon for
respondents.

Marjoribanks addresses

First issue (1) Which of the two regulations
applied - Cap D (P.U.(A)273/1969) or Police
Regulations 1970 (P.U.(A)86/1970)? If Cap D
applied, plaintiff should have been but was not
given a reasonable opportunity of being heard.

Judge found Cap D applied and PSC right in
following G.O. 30.

20

P.U.(A)273, Part II - G.O. 27 "in all
disciplinary proceedings under this Part" -
reiterates Art. 135 (2), Federal Constitution.

Here it was conceded no formal enquiry.
Plaintiff was sent a letter asking him to
exculpate and he wrote an explanatory letter.

G.O. 30(1) and (2). That was all that
happened - plaintiff was not given a hearing.

G.O. 27 gives plaintiff right to be heard.
He was not heard.

30

Plaintiff's complaint is that he was not
being given a reasonable opportunity of being
heard, he was denied natural justice.

Plaintiff was given the grounds of defendants'
complaints. See page 25B for what was agreed
between the parties.

No formal enquiry was held - I submit plaintiff was denied a hearing.

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G.O. 30(4). If Disciplinary Authority considered there was a prima facie case against the plaintiff, it must hold an enquiry at which witnesses must be called and plaintiff given opportunity to cross-examine, etc. and to refute the evidence. I refer to:-

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10 Kanda (1962) MLJ 169 172 2nd col. I onwards - plaintiff must be told case against him, etc.

Ridge(1964) A.C. 40, 113, last 4 lines - before plaintiff is condemned he must have opportunity of defending himself, must know case against him.

(continued)

20 Durayappah (1967) 2 A.C. 337, headnote. Minister must give Council opportunity to explain before Council can be dissolved - notwithstanding clear words of the statute giving Minister power to dissolve the Council, p.345. Minister there did not hear the Council because of great urgency. But in fact need for urgency immaterial.

Suffian on Constitution, p. 195.

When this case was heard, Parliament had been reconvened and there was no need for haste, plaintiff could do no harm because he was under detention.

Judgment, p.28F. Coloured by 13 May. Unnecessary.

Judgment, p.35D.

30 Order dismissed by Police Service Commission, I concede - not by Director of Operations.

In mid 1971 no need for defendants to act urgently.

Judgment, p.37C. Judge overlooked G.O.27 which reiterates Art.135(2). Government could have made order inconsistent with Art.135(2), but did not when they made G.O. 27.

Judgment, p.39C.

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Second issue: the procedure under Police Regulations 1970 (P.U.(A)86/1970) should have been adopted. The Regulations came into force on 24.2.1970.

Common ground here that plaintiff was a junior police officer.

Regulations 3 and 4 deal with orderly room procedure. They give plaintiff a full hearing for comparatively trivial offences, but not if he is to be dismissed for a very serious offence. Enquiry officer after conducting enquiry sends papers up to Commission under G.O.30(1), Cap D, and Commission then makes a decision.

10

A.R., p.21E, 22A.

Police Regulations, 1970, give plaintiff right to be heard.

My next point is that 1969 and 1970 regulations can co-exist side by side. Whichever applies, plaintiff should have been heard.

Even if plaintiff holds office during pleasure, he must still be heard.

20

Gould v. Stuart (1896) A.C. 575, headnote.

(Coffee adjournment)

Civil Appeal 126/73

Resumed from this morning.

Mokhtar addresses

There are six grounds of appeal but there are four issues:

(1) whether powers under Regulation 30(2), Cap D, could be exercised without regard to Police Regulations, 1970;

30

(2) if they can, whether defendants bound to comply with Regulation 6 of Police Regulations, 1970, or whether they must comply with Regulation 30(5), Cap D, or alternatively whether they must observe the rules of natural justice;

(3) whether principles of natural justice were in fact observed here;

(4) whether emergency important; but plaintiff did not touch on this.

First issue: plaintiff was member of public service within Art. 132(1)(d), Federal Constitution. Members of Police Force subject to G.Os.

Here Cap D of 1969 applied.

10 Police Regulations equally applicable to all junior police officers and constables but only in so far as they are not inconsistent with Federal Constitution.

Cap D and Police Regulations set out two separate procedures for dismissal. Police Force Commission can choose whether to proceed and dismiss under one or the other, on facts ascertained. This choice cannot be challenged in court of law: I refer to Karunanidhi A.I.R. (1968) Madras 54, 58, para. 6.

20 Judgment, p.31A, was quite right.

Police Act, section 74, gives Police Force Commission power to act either under Cap D or Police Regulations.

Regulation 27, Cap D, outlines the policy, and Regulation 30 gives the procedure. Under it there is a choice between para. (1) to (3) on the one hand and (4) and (5) on the other.

Para. (2) is the second limb of Regulation 27.

30 Para. (5) applies only to cases where further clarification is required. Not applicable here. Other paras. subsequent to (5) refer to (5).

Police Force Commission having considered plaintiff's written submission, was satisfied that his dismissal was justified. Therefore not necessary for them to go beyond para. (2) of Regulation 30.

Issue - whether this gave enough opportunity for plaintiff to be heard.

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,Lim for plaintiff addresses

Regulation 30 provides for two complete and separate proceedings:

- (a) under paras. 1 to 4;
- (b) under paras. 5 to 10.

All Police Force Commission is required to do under paras 1 to 4 is to give notice of grounds of dismissal, opportunity to plaintiff to make representations within 14 days to exculpate himself; the crucial provision is in para. (4). Defendants have complied with paras. 1 to 4.

10

Regulation 27, plaintiff says, repeats Art. 135 (2) providing for opportunity to be heard.

Scope of Art. 135(2). Uses word "heard", does not use words "formal enquiry" or "opportunity to make oral representations". Contra Art. 5. It can therefore be implied that "hearing" under Art. 135(2) depends on circumstances - notice of the grounds should be given to plaintiff and also reasonable opportunity to make representations. That is all.

20

Arlidge (1914-15) A.E.R. Reprint 1, 6, last para.

P.25 A.R.

Pearlberg v. Varty (1972) 2 A.E.R. 7, 11, 15E.

All the Police Force Commission had to do was to follow the procedure set out in paras. 2 to 4 of Regulation 30, Cap D.

Reasonable opportunity, not full, to make representations.

30

Byrne (1958) 2 A.E.R. 579, 599D.

University of Ceylon (1960) 1 A.E.R. 631.

Rules of natural justice, their application differs from tribunal to tribunal - they require plaintiff to be made aware of the grounds upon which action is to be taken against him and to be given a reasonable opportunity to reply. If there

is a statute governing the procedure, it must be followed. Submit that defendants here have fully complied with rules of natural justice. Plaintiff was aware of grounds (p.25), he replied to them in writing (p.25). Police Force Commission derived power of dismissal from para. (4) of Regulation 30, Cap D - all it had to do was to comply with paras. 1 to 4 - such compliance was sufficient compliance with rigid rules of natural justice.

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10 Paras. (5), (6), (7), plaintiff says, should be followed. Submit they deal with alternative procedure, alternative to procedure in previous paras., which Police Force Commission could have followed if they needed further qualification, but they needed no such need, and this court is in no position to say whether need existed because no evidence exists as to grounds or charges made against plaintiff.

Mokhtar for respondents resumes address

20 My learned friend refers to Ridge (supra). P.40. Facts p.45. There Ridge not even asked to explain, so case not applicable here.

Kanda (supra). There some evidence was taken by defendants behind plaintiff's back and plaintiff not given opportunity to explain. Not so here. P.172, 1st column, C.

Emergency. It still exists even today. Court cannot question it, (1968) 2 MLJ 238 Ningkan.

Marjoribanks for appellant replies

30 Police Force Commission has power to delegate its power to dismiss, etc., under Art.144(6). If Police Force Commission has a choice, it is hard on plaintiff that Police Force Commission chose procedure which deprived him of a hearing.

C.A.V.

Signed (M.Suffian)

Certified true copy

Sd.

40 Secretary to Lord President Suffian,
Federal Court, Malaysia
Kuala Lumpur
4 NOV 1974

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No. 12

Notes of Proceedings

No.12

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (Appellate Jurisdiction)

Notes of
Proceedings
recorded by
Ong F.J.

FEDERAL COURT CIVIL APPEAL NO.126 OF 1973

Between

Najar Singh

Appellant

And

1. The Government of Malaysia
2. The Chairman,
Police Public Service Commission Respondents

10

(In the Matter of Civil Suit No. 758 of 1972
in the High Court in Malaya at Kuala Lumpur

Between

Najar Singh

Plaintiff

And

1. The Government of Malaysia
2. The Chairman, Police
Public Service Commission Defendants)

Coram: Azmi, L.P.
Suffian, C.J.
Ong Hock Sim, F.J.

20

NOTES RECORDED BY ONG HOCK SIM, F.J.

FRIDAY, 11th JANUARY, 1974

Mr. N.A. Marjoribanks with Mr. Lall Singh Muker
for Appt.

Encik Mokhtar with Mr. Lim Beng Choon for Respt.

Mr. Marjoribanks:

Issue whether Cap D (G.O.) or Police
Regulations 1970 applies.

30

Part II P.U.(A) 273, Regulation 27:

"In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard."

See also Article 135(2).

10

Conceded there was no hearing - no formal inquiry.

P.U.(A) 86 Regulation 6(4).

B.S.S. Kanda v. Govt. of Malaya, (1962) M.L.J. 169 at p.172 (2nd col. I).

Ridge v. Baldwin, (1964) A.C.40 at p.113.

Durayappah v. W.J.Fernando & ors., (1967) 2 A.C. 337 at pp.345, 349F, 350B, 351E to 352C.

pp.28 - 29, p.35 - 36, pp.37 - 38.

20

Submit Judge overlooked G.O. Regulation 27; p.39 - 40; P.U.(A) 273 Reg. 30(2).

Submit P.U.(A) 86 - that procedure should have been adopted.

After Reg. 30 Cap D, further step is taken under Reg. 31.

Refers to submission by Respondent's counsel pp.21 - 22; Reg. 3(a) Cap. D.

Gould v. Stuart, (1896) A.C. 575.

HSO./11.1.74

Salinan yang di-akui benar

Sd.

30

Setia-usaha kepada Hakim
Mahkamah Persekutuan
Malaysia
Kuala Lumpur.

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
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FEDERAL COURT CIVIL APPEAL NO.126 OF 1973

(Kuala Lumpur High Court Civil Suit No.758 of 1972)

Between

Najar Singh

Appellant/Plaintiff

And

1. The Government of Malaysia) 10
2. The Chairman, Police Public Services Commission) Respondents/Defendants

Coram: Azmi, L.P.;
Suffian, C.J. Malaya;
H.S. Ong, F.J.

JUDGMENT OF THE COURT
(read by Suffian, C.J., Malaya)

The undisputed facts are as follows. The plaintiff (appellant before us) joined the Police Force as a Police Constable. In February 1968 he was confirmed in the rank of Sergeant Major and put on the pensionable establishment. 10

On 31st May, 1971, the Minister of Home Affairs acting under the Internal Security Act, 1960, detained him for two years from 7th June, 1971. On representations made by the plaintiff to the Chairman of the Advisory Board on 6th June, 1971, the Plaintiff was unconditionally released from detention on 25th January, 1972. (In my view nothing however turns on this). 20

In July 1971 while in detention the plaintiff received a statement in writing sent by the Police Force Commission (which had power under the Constitution to dismiss him) pursuant to General Order 30(2) of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969, published as P.U. (A) 273 of

1969. For convenience, I shall refer to these regulations as simply Cap. D. This statement dated 5th July, 1971, asked the plaintiff to show cause why he should not be dismissed from the Police Force.

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The plaintiff forthwith sent a reply attempting to show cause why he should not be dismissed.

(continued)

10 The plaintiff was dismissed from the Police Force by the Police Force Commission on 18th August, 1971.

It is admitted that there had been no formal enquiry.

The plaintiff sued the Government of Malaysia as first defendant (first respondent before us) and the Chairman of the Police Force Commission as second defendant (second respondent before us), claiming a declaration that his dismissal was void, and for consequential relief.

20 The learned trial judge dismissed his claim in a judgment that has been reported, see (1973) 2 M.L.J. 191, and the plaintiff has appealed to us.

It is common ground that there were in force at the material time Cap. D and the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, published as P.U. (A) 86 of 1970, which we shall refer to simply as the 1970 regulations.

30 The plaintiff, admittedly a junior police officer, contended that the 1970 regulations applied; that the procedure laid down in regulations 3, 4, 5 and 6 thereof should have been followed; and that as it was not followed, he had not been given a reasonable opportunity of being heard (he had not been given an oral hearing) and his dismissal was void. The defendants on the other hand contended that Cap. D applied and the plaintiff had in the circumstances been given a reasonable opportunity of making representations and being heard, and that an oral hearing was not necessary. The learned trial judge agreed with the defendants.

In our judgment there are three issues in this appeal:

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- (a) Where the defendants could have proceeded against the plaintiff either under Cap. D or the 1970 regulations, were they within their rights in choosing to proceed under Cap. D?
- (b) When proceeding against the plaintiff under Cap. D, were they under a duty to give him a reasonable opportunity of being heard?
- (c) If so, does it mean that the defendants should have given him an oral hearing?

10

Thus the court is not concerned with the question whether on the facts alleged and found by the defendants they were entitled to dismiss the plaintiff (indeed nobody has thought it necessary to tell the court what these facts were, as to which we are therefore completely in the dark); the court is concerned only with procedure and it seems to be agreed, at least by implication, that if the plaintiff had not been given a reasonable opportunity of being heard (whatever that expression means), then his dismissal is void.

20

With respect to the first issue, we are of the opinion that the learned trial judge was right in holding that where (as here) it was open to the defendants to proceed either under Cap. D or the 1970 regulations they were well within their rights in choosing to proceed under Cap. D, just as Government was within its right in HAJI ARIFFIN v. GOVERNMENT OF PANANG (1969) 1 M.L.J.6 in terminating a public servant's service rather than dismissing him when they could have done either. For this reason, we do not think it necessary to consider the plaintiff's further contention that the defendants should have proceeded under regulations 3, 4, 5 and 6.

30

With regard to the second issue, it was argued before us on behalf of the plaintiff that if Cap. D applied then nevertheless the plaintiff should under para. 27 thereof which reads -

"In all proceedings under this part no officer shall be dismissed unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard/.

40

have been allowed an oral hearing - meaning not merely that he should have been allowed (which he was) to try and exculpate himself in writing, but that he should have been allowed an opportunity of hearing and cross-examining witnesses against him, to give oral evidence himself and to call witnesses in his favour and to address the Commission, which it is admitted he was not allowed an opportunity to do.

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10 The respondents on the other hand argued before us that para. 27 merely set out the policy while para. 30 under which the plaintiff was dismissed set out the procedure and that as the plaintiff had been dismissed under para. 30 he need not have been granted an oral hearing.

20 The learned trial judge held that the procedure followed by the Commission under para. 30 was fundamentally "a departure from the established procedure usually followed", but was nevertheless valid in view of the emergency which had been proclaimed as a result of the 13 May incidents.

Now para. 30 of Cap. D reads as follows:-

30 "Procedure in dismissal and reduction in rank. 30. (1) Where it is represented to, or is found by, the appropriate Disciplinary Authority (in this case the Police Force Commission) or the Director-General of Public service that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal, or reduction in rank, the following provisions shall apply.

40 (2) The Disciplinary Authority shall after considering all the available information in its possession that there is a prima facie case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing (within) a period of not less than fourteen days a representation

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containing grounds upon which he
relies to exculpate himself.

(3) If after consideration of
the said representation furnished by
the officer that Disciplinary Author-
ity is of the opinion that the unsat-
isfactory work or conduct of the
officer is not serious enough to
warrant dismissal or reduction in
rank, the Disciplinary Authority may
impose upon the officer such
punishment as it may deem fit.

10

(4) If the officer does not
furnish any representation within the
time fixed, or if he furnishes a
representation which fails to excul-
pate himself to the satisfaction of
the Disciplinary Authority, the
Disciplinary Authority shall then
proceed to consider and decide on the
dismissal or reduction in rank of the
officer.

20

(5) Where the Disciplinary
Authority considers that the case
against the officer requires further
clarification, it may appoint a
Committee of Inquiry consisting of
not less than two senior Government
officers who shall be selected with
due regard to the standing of the
officer concerned and to the nature
and gravity of the complaints which
are the subject of the inquiry, pro-
vided that an officer lower in rank
than the officer who is the subject
of the inquiry or the Officer's Head
of Department shall not be selected
to be a member of the Committee.

30

(6) The Officer shall be informed
that, on a specified day, the question
of his dismissal or reduction in rank
will be brought before the Committee
and that he will be allowed and, if
the Committee shall so determine,
shall be required to appear before
the Committee and exculpate himself.

40

(7) If witnesses are examined by the Committee, the officer shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.

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10

(8) The Committee may, in its discretion, permit the Government or the officer to be represented by an officer in the Public Service or, in exceptional cases, by an advocate and solicitor and may at any time, subject to such adjournment as is reasonably necessary to enable the officer to present his case in person, withdraw such permission: Provided that where the Committee permits the Government to be represented, it shall also permit the officer to be similarly represented.

20

30

(9) If, during the course of the inquiry, further grounds of dismissal are disclosed, and the Disciplinary Authority thinks fit to proceed against the officer upon such grounds, the officer shall be furnished with a written statement thereof and the same steps shall be taken as are above prescribed in respect of the original grounds.

40

(10) The Committee having inquired into the matter, shall make a report to the Disciplinary Authority. If the Disciplinary Authority considers that the report should be amplified in any respect or that further inquiry is desirable, the matter may be referred back to the Committee for further inquiry and report.

(11) If, upon considering the report of the Committee, the Disciplinary Authority is of opinion -

(a) that the officer should be dismissed or reduced in rank, it shall forthwith direct accordingly;

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(b) that the officer does not deserve to be dismissed or reduced in rank, but deserves some lesser punishment, it may inflict upon the officer such lesser punishment as it may deem fit; or

(c) that the proceedings disclose sufficient grounds for requiring him to retire in the public interest, it shall recommend to the Government accordingly. The question will be dealt with under the Pensions legislation." 10

With great respect to the respondents' arguments, we think that it is necessary in proceedings under para.30 to give an accused officer a reasonable opportunity of being heard, because para. 27 of Cap. D referred to "all proceedings under this Part", meaning Part II of Cap. D, and proceedings under para. 30 are proceedings under Part II and therefore para. 27 governs proceedings even under para. 30. It will be noted that Cap. D was made by the Director of Operations under emergency powers and it was open to the Director to make any provisions of Cap. D inconsistent with clause (2) of article 135 of the Constitution, but he did not do that; instead he repeated that clause in para. 27. 20

The next question is: was the plaintiff in the circumstances of this case given a reasonable opportunity of being heard? This involves consideration of the third issue. 30

As already stated, the plaintiff, though given a chance to explain in writing, was not given an oral hearing before his dismissal and it was argued that under para. 27 of Cap. D he should have been given an oral hearing. His counsel, Mr. Marjoribanks, cited passages from three cases which, he argued, made clear that the plaintiff was entitled to an oral hearing. 40

First, there was this passage from the advice of Lord Denning at page 172 in Surinder Singh Kanda v. the Government of the Federation of Malaya (1962) M.L.J. 169:

"If the right to be heard is to be a real right which is worth anything, it must carry

with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them."

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The second passage is from the speech of Lord Morris at page 113 in Ridge v. Baldwin (1964) A.C.40 which is as follows:-

10 " It is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet; see Kanda v. Government of the Federation of Malaya."

20 Third, Mr. Marjoribanks cited Durayappah (1967) 2 A.C. 337 as authority for the proposition that even if the words of a statute clearly give a minister power to dissolve a local council, he must nevertheless give the council an opportunity to explain before dissolving it and that the fact that there was urgency in dissolving the council was immaterial.

30 The word "heard" in clause (2) of article 135 of the Constitution and in para. 27 of Cap. D, is derived from the word "hear" which is not defined in the constitution which governs this matter; in view of that we think that it should be given its ordinary everyday meaning. No doubt "to hear" is according to the Shorter Oxford Dictionary "to listen to; to give ear to; hearken to; to give audience to" -, all of which imply that the plaintiff must be given facilities to make representations that could be perceived through the Defendants' ears, not eyes, but that Dictionary also gives the following definitions of "to hear":

40 "to be informed of; to be informed; to learn."
This makes clear that a hearing does not necessarily mean an oral hearing. Thus in the ordinary way one speaks of hearing from a friend from whom one has received a letter, the words of which make an impact on one not through one's ears but through one's eyes.

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We find support for our view in the words of Lord Loreburn L.C. at page 182 in Board of Education v. Rice (1911) A.C.179

" Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

10

20

30

Here too when deciding whether or not to dismiss the plaintiff the defendants were deciding a matter to be settled by discretion, involving no law, namely an administrative matter, and they are not bound to treat such a matter as a trial, they had no power to administer an oath and need not examine witnesses; all they had to do was to give a fair opportunity to the plaintiff for correcting or contradicting any relevant statement prejudicial to his view, of which here there is no question.

40

In Mahadevan v. Anandarajan and Others (1971) P.C.22 since reported (1974) 1 M.L.J.1 unreported, an appeal from here involving the expulsion of a pupil from a school in Seremban, Lord Diplock giving the advice of the Judicial Committee said in his last paragraph -

" In relation to such administrative matters as the expulsion of a pupil from a school it would be quite inappropriate to model the procedure on that of a criminal trial. All that natural justice requires is that the person charged with making the decision should act fairly."

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Then His Lordship added significantly -

10 " What is fair depends on the circumstances and is a matter of common sense."

20 In Regina v. Aston University Senate Ex parte and Another (1969) 2 Q.B. 539, where some students had been expelled by a university for failing their examinations, counsel for the university conceded that the concept of natural justice applied and Donaldson J., delivering the main judgment of the Divisional Court, held that before expelling them the university should have given them a reasonable opportunity of being heard, but he did not say that they must necessarily be given an oral hearing; on the contrary he said at page 554 that they should be given an opportunity to be heard either orally or in writing, in person or by their representatives as might be appropriate.

30 There is no evidence here that the plaintiff ever demanded an oral hearing before his dismissal. If he had and been refused, then probably he would have had a stronger case, but as it is he is in the same weak position as Mr. Fernande in Ceylon University v. Fernande (1960) 1 W.L.R. 223 where Lord Jenkins, giving the advice of the Privy Council, quoted with approval at page 232 the following words of Harman J. (as he then was) in Byrne v. Kinematograph Renters Society Ltd. (1958) 1 W.L.R. 762, 784, (1958) 2 A.E.R. 579;

40 " What then are the requirements of natural justice in a case of this kind? First, I think that the accused person should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is anything more."

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Here the Plaintiff does not say that he did not know the nature of the accusation made against him by Government; he was given an opportunity to state his case, albeit in writing; and he does not say that the defendants did not act in good faith. His only complaint is that he was not given an oral hearing; but there is no evidence that he ever asked for one either before his dismissal or soon thereafter. Indeed he waited a year before filing his suit.

10

Therefore in our opinion the defendants have followed the correct procedure when dismissing the plaintiff and his appeal should and is accordingly dismissed, with costs.

To sum up, our answers to the three issues are as follows:-

- (a) Where the defendants could have proceeded against the plaintiff either under Cap. D, or the 1970 regulations, they were within their rights in choosing to proceed against him under Cap. D;
- (b) When proceeding against him under Cap. D; the defendants should have given him a reasonable opportunity of being heard; and
- (c) In the circumstances of this case, an oral hearing was unnecessary and the defendants have given the plaintiff a reasonable opportunity of being heard.

20

Judgment delivered in Kuala Lumpur on 15th Feb., 1974. (M. Suffian)
CHIEF JUSTICE, MALAYA.

30

Azmi L.P. and H.S.Ong F.J. concur.

Notes

1. Arguments in Kuala Lumpur on 11th January, 1974.

2. Counsel:

Mr. N.A. Marjoribanks (Mr. Lall Singh Muker with him), both of M/s. Lovelace & Hastings, Kuala Lumpur for appellant.
Encik Mokhtar Sidin (Mr. Lim Beng Choon with him), both Senior Federal Counsel, for respondents.

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3. Authorities cited other than those mentioned in Judgment:
- (1) Gould v. Stuart (1896) A.C.575, head note
 - (2) Karunanidhi A.I.R. 1968 Madras 54, 58, para. 6.
 - (3) Arlidge (1914-5) A.E.R. Reprint 1, 6 last para., p.25 A.R.
 - (4) Pearlberg v. Varty (1972) 2 A.E.R. 7, 11, 15E.
 - (5) Ningkan (1968) 2 M.L.J. 238.

In the
Federal Court
of Malaysia

No.13
Judgment
15th February
1974
(continued)

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No.14

Order

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.126 OF 1973

BETWEEN

Najar Singh

Appellant

AND

- 1. The Government of Malaysia.
- 2. The Chairman, Police Public Service Commission

Respondents

(In the matter of Civil Suit No.758 of 1972
In the High Court in Malaya at Kuala Lumpur.

BETWEEN

Najar Singh

Plaintiff

AND

- 1. The Government of Malaysia
- 2. The Chairman, Police Public Service Commission

Defendants)

No.14
Order
15th February
1974

20

In the
Federal Court
of Malaysias

No.14

CORAM: AZMI, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA.
SUFFIAN, CHIEF JUSTICE, HIGH COURT
IN MALAYA.
ONG, JUDGE, FEDERAL COURT, MALAYSIA.

Order
15th February
1974

IN OPEN COURT
THIS 15TH DAY OF FEBRUARY, 1974

(continued)

O R D E R

THIS APPEAL coming on for hearing on the 11th day of January, 1974 in the presence of Mr. N.A.Marjoribanks (with him Mr. Lall Singh Muker) of Counsel for the Appellant and Encik Mokhtar bin Haji Sidin, Senior Federal Counsel (with him Encik Lim Beng Choon) appearing for and on behalf of the Respondents AND UPON READING the record of appeal herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that this Appeal do stand adjourned for judgment AND the same coming on for Judgment this day in the presence of Mr. Marjoribanks of Counsel for the Appellant and Encik Mokhtar bin Haji Sidin, Senior Federal Counsel (with him Encik Lim Beng Choon) appearing for and on behalf of the Respondents IT IS ORDERED that this Appeal be and is hereby dismissed AND IT IS FURTHER ORDERED that the costs of this Appeal be taxed by the proper officer of this Court and be paid by the Appellant to the Respondents AND IT IS LASTLY ORDERED the deposit of \$500.00 (Ringgit Five hundred only) paid into Court by the Appellant as security for costs of this Appeal be paid to Respondents toward their taxed costs.

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GIVEN under my hand and the Seal of this Court this 15th day of February, 1974.

Sd. E.E.SIM

CHIEF REGISTRAR.

No. 15

Notes of ProceedingsIn the
Federal Court
of MalaysiaNo.15IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (Appellate Jurisdiction)Notes of
Proceedings
recorded by
Gill C.J.

Between

Najar Singh

Appellant

and

8th July and
19th August
1974

1. The Government of Malaysia
2. The Chairman, Police Public
Service Commission

Respondents

10

Coram: Gill, Chief Justice, Malaya,
H.S.Ong, Federal Judge,
Wan Sulaiman, Federal Judge.Kuala Lumpur, 8th July, 1974NOTES OF PROCEEDINGS RECORDED BY
GILL, CHIEF JUSTICEEncik Lall Singh Mukher for Appellant applicant.
Encik Lim Beng Choon for Respondent.

20

Lall Singh: Although I have applied for leave to
appeal to the Agong in forma pauperis I will ask
the Court to deal with it as an application for
conditional leave to appeal.Lim: I object to the amendment of the application
at this stage.Adjourned to next list in Kuala Lumpur to enable
applicant to regularise his position.

Sd. S.S. Gill.

Kuala Lumpur

19th August 1974

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Coram: Gill, C.J., Malaya
Ali, Federal Judge,
H.S.Ong, Federal Judge.Encik Lall Singh for Appellant.
Encik Abu Talib for Respondent.

In the
Federal Court
of Malaysia

No.15

Notes of
Proceedings
recorded by
Gill C.J.

8th July and
19th August
1974

(continued)

Lall Singh: I have filed further affidavit to show that the amount involved is more than \$25,000/-. I ask the court to reduce the amount of security from \$5,000/- to \$2,000/-. The costs so far have been very great.

Abu Talib: I do not oppose leave to appeal, but I object to the application for reducing the amount of the security.

Application for conditional leave granted on usual terms. Security in the sum of \$5,000/-.

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Sd. S.S. Gill

TRUE COPY

Sd. G.E.Tan

Secretary to Chief Justice
High Court
Malaya
14/11/74.

No.16

Notes of
Proceedings
recorded by
Ali, F.J.

19th August
1974

No. 16

Notes of Proceedings recorded by Ali F.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (Appellate Jurisdiction)

20

FEDERAL COURT CIVIL APPEAL NO.126 OF 1973

BETWEEN

Najar Singh

Appellant

And

1. The Government of Malaysia
2. The Chairman, Police Public Service Commission

Respondents

(In the Matter of Civil Suit No.758 of 1972
In the High Court in Malaya at Kuala Lumpur

30

BETWEEN

Najar Singh

Plaintiff

And

- 1. The Government of Malaysia
 - 2. The Chairman,
Police Public Service Commission
- Defendants

In the
Federal Court
of Malaysia

No.16

Coram: Gill, C.J. Malaya
Ali, F.J.
Ong, F.J.

Notes of
Proceedings
recorded by
Ali, F.J.

NOTES OF ALI, F.J.

19th August, 1974

19th August
1974

Lall Singh Muker for appellant.

(continued)

- 10 Abu Talib bin Othman, Senior Federal Counsel, for respondents.

Further affidavit filed.

Asks for reduction of security of costs.

Abu Talib; not objecting to leave. But objects to reduction of security of costs.

Ali

Salinan Yang di-akui Benar.

Sd.
Setia-usaha Hakim
Kuala Lumpur.

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No. 17

No.17

Notes of Proceedings recorded by Ong, F.J.

Notes of
Proceedings
recorded by
Ong, F.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.126 OF 1973

BETWEEN

Najar Singh

Appellant

And

- 1. The Government of Malaysia
- 2. The Chairman, Police Public Service Commission

Respondents

30

In the
Federal Court
of Malaysia

(In the Matter of Civil Suit No.758 of 1972
in the High Court in Malaya at Kuala Lumpur

BETWEEN

Najar Singh

Plaintiff

And

1. The Government of Malaysia

2. The Chairman, Police Public
Service Commission

Defendants)

Coram: Gill, C.J., Malaya
Ong Hock Sim, F.J.
Wan Suleiman, F.J.

10

No.17
Notes of
Proceedings
recorded by
Ong, F.J.
8th July and
19th August
1974
(continued)

NOTES RECORDED BY ONG HOCK SIM, F.J.

MONDAY 8th JULY 1974

Mr. Lall Singh Muker for Appt/Applicant.

Mr. Lim Beng Choon for Respondents.

Mr. Lall applies to amend motion to one for
conditional leave and would abandon application
for leave to appeal in forma pauperis.

Mr. Lim objects.

Adjourned to next list for Appellant to file
fresh motion and affidavit.

20

MONDAY, 19th AUGUST, 1974

Coram: Gill, C.J. Malaya
Ali, F.J.
Ong Hock Sim, F.J.

Mr. Lall Singh Muker for Appt.

Encik Abu Talib Osman for Respts.

Mr. L.S. Muker: Further affidavit has been filed.
Applying for conditional leave - would ask
security be reduced from \$5,000/- to \$2,000/-

30

Encik Abu Talib: Do not oppose grant of conditional
leave - but would object to reduction of security
to \$2,000/-.

Application for conditional leave to appeal on usual terms.

In the Federal Court of Malaysia

No.17

Salinan yang di-akui benar.

Sd.Illegible...

Setia-usaha kapada Hakim
Kahkamah Persekutuan
Malaysia
Kuala Lumpur.
2/11/74.

Notes of Proceedings recorded by Ong, F.J.

8th July and 19th August 1974

(continued)

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No. 18

Order granting conditional leave to appeal to His Majesty the Yang diPertuan Agong

No.18

Order granting conditional leave to appeal to His Majesty the Yang diPertuan Agong

19th August 1974

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.126 OF 1973

Between

Najar Singh

Appellant

And

20

- 1. The Government of Malaysia
- 2. The Chairman, Police Public Service Commission

Respondents

(In the Matter of Civil Suit No.758 of 1972
In the High Court in Malaya at Kuala Lumpur

Between

Najar Singh

Plaintiff

And

30

- 1. The Government of Malaysia
- 2. The Chairman, Police Public Service Commission

Defendants)

Coram: S.S.GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA;
ALI HASSAN, JUDGE, FEDERAL COURT, MALAYSIA;
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA.

In the
Federal Court
of Malaysia

IN OPEN COURT

THIS 19TH DAY OF AUGUST, 1974

No.18

O R D E R

Order
granting
conditional
leave to
appeal to
His Majesty
the Yang
diPertuan
Agong

19th August
1974

(continued)

UPON MOTION made unto Court this day in the presence of Mr. Lall Singh Muker of Counsel for the Appellant abovenamed and in the presence of Encik Abu Talib bin Othman, Senior Federal Counsel for and on behalf of the abovenamed Respondents AND UPON READING the Notice of Motion dated the 8th day of June, 1974 and the supporting Affidavit of Najjar Singh sworn to on the 29th day of March, 1974 and filed herein AND UPON READING the Further Affidavit of Najjar Singh sworn to on 12th day of August, 1974 and filed herein IT IS ORDERED that conditional leave be and is hereby granted to the Appellant to appeal to His Majesty the Yang di-Pertuan Agong against the Order of the Federal Court dated the 15th day of February, 1974 upon the following conditions:-

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- (a) that the Appellant do pay into Court a sum of \$5,000/- for the due prosecution of the Appeal, and payment of all such costs as may become payable to the Respondents abovenamed in the event of the Appellant abovenamed not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty the Yang di-Pertuan Agong ordering the abovenamed Appellant to pay the Respondents costs of the Appeal as the case may be;

20

- (b) that the Appellant abovenamed do within three months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England.

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AND IT IS LASTLY ORDERED that the costs of this Application be costs in the cause.

Given under my hand and the Seal of the Court this 19th day of August, 1974.

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Sd. E.E. SIM
CHIEF REGISTRAR.

65.

No. 19

Order granting final leave to appeal to
His Majesty the Yang di-Pertuan Agong

In the
Federal Court
of Malaysia

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (Appellate Jurisdiction)

No.19

FEDERAL COURT CIVIL APPEAL NO.126 OF 1973

Order
granting
final Leave
to Appeal to
His Majesty
the Yang di-
Pertuan Agong

Between

Najar Singh

Appellant

And

- 1. The Government of Malaysia
- 2. The Chairman, Police Public Service Commission

Respondents

6th January
1975

(In the Matter of Civil Suit No.758 of 1972
In the High Court in Malaya at Kuala Lumpur

Between

Najar Singh

Plaintiff

And

- 1. The Government of Malaysia
- 2. The Chairman, Police Public Service Commission

Defendants)

20 CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT, MALAYSIA;
LEE HUN HOE, CHIEF JUSTICE, HIGH COURT IN BORNEO;
ALI, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT

THIS 6TH DAY OF JANUARY, 1975

O R D E R

30 UPON MOTION made unto Court this day of Mr. S.S. Muger of Counsel for the Appellant in the presence of Encik Abu Talib bin Othman, Senior Federal Counsel appearing for and on behalf of the Respondents AND UPON READING the Notice of Motion dated the 18th day of December, 1974 and the Affidavit of Norman Alexander Marjoribanks sworn to on the 13th day of December, 1974 and filed herein, IT IS ORDERED that final leave be and is hereby granted to the Appellant to appeal to His Majesty

In the
Federal Court
of Malaysia

No.19

Order
granting
final leave
to appeal to
His Majesty
the Yang di-
Pertuan Agong

6th January
1975

(continued)

the Yang diPertuan Agong against the Order of the
Federal Court dated the 15th day of February,
1974.

GIVEN under my hand and the Seal of the
Court this 6th day of January, 1975.

Sd. E. E. SIM

CHIEF REGISTRAR.

This Order is filed by Messrs. Lovelace &
Hastings, Solicitors for the Appellant whose
address for service is No.57 Jalan Klyne, Kuala
Lumpur.

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O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

BETWEEN

NAJAR SINGH

Appellant
(Plaintiff)

AND

1. The Government of Malaysia
2. The Chairman,
Police Public Service Commission

Respondents
(Defendants)

RECORD OF PROCEEDINGS

Bulcraig & Davis,
Solicitors,
6, Henrietta Street,
Strand,
London WC2E 8QS.

Solicitors for the Appellant

Stephenson Harwood & Tatham,
Saddlers Hall,
Gutter Lane,
Cheapside,
London EC2V 6BS.

Solicitors for the Respondents.