PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
JOGENDRA SINGH

DATE OF JUDGMENT:
04/03/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1963 AIR 1618 1964 SCR (2) 197
CITATOR INFO :
F 1977 SC 740 (10)
F 1977 SC1516 (2)
RF 1992 SC 320 (47)

ACT:
Public Servant--Disciplinary proceedings--Procedure--"May"-Construction of--U.P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, r. 4 (2).

HEADNOTE:
The respondent was appointed a Naib Tehsildar under the appellant, in the year 1937. On August 4, 1952, he was suspended on complaints received against him and his case was referred for investigation to the Administrative Tribunal appointed under the Rules. While the proceedings were pending, additional complaints were received by the appellant against his conduct and they were communicated to the Tribunal with an intimation that the appellant proposed to send those further charges against the respondent for enquiry. The Tribunal did not wait for receipt of the said additional charges and on enquiry exonerated him from the charges framed against him, in August, 1952. On October 28, 1956, the respondent was again suspended and the charges framed on the additional complaints were delivered to him. The respondent submitted his explanation and pleaded that the enquiry might be entrusted to the Administrative Tribunal in accordance with the Rules; but his request was rejected and the case was entrusted to the Commissioner with directions to take disciplinary proceeding-, against him. The High Court allowed the writ petition of the respondent and the order directing the enquiry to be held by the appointed authority under r. 55 of the said Civil Services Rules was quashed.
The question for decision in this Court was, whether like the word "may" in r. 4 (1) which confers the discretion on the Governor, the word "may" in sub-r. (2) confers discretion on him, or does the word "may" in sub r.(2) really mean "shall" or "must".
Held, that the whole purpose of r. 4 (2) would be frustrated if the word ,may" in the said rule receives the same construction as in sub-r. (1). The plain and unambiguous

object of enacting rule 4 (2) is to provide an option to the 198 .
Gazetted Government servants to request the Governor that their cases should be tried by a Tribunal and not otherwise. Thus r. 4 (2) imposes an obligation on the Governor to grant a request made by the Gazetted Government Servant and such a request not having been granted in the present case, the appeal must fail.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 301 of 1961.
Appeal from the judgment and order dated March 10, 1960, of the Allahabad High Court (Lucknow Bench) in Special Appeal No. 40 of 1959.
K. S. Hajela, and C. P. Lal, for the appellant.
K. L. Gosain and Naunit Lal, for the respondent.
1963. March 4. The judgment of the Court was delivered by
GAJENDRAGADKAR J .-The short point of law which arises in this appeal relates to the construction of Rule 4 (2) of the Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 (hereinafter called the Rules). That question arises in this way. The respondent Jogendra Singh was appointed a Naib Tehsildar under the appellant, the State of U. P. in the year 1937. On August 4, 1952, he was suspended as complaints had been received against him and an enquiry into the said complaints was contemplated. Accordingly, charges were framed against him and his case was referred for investigation to the Administrative Tribunal appointed under the Rules. The Tribunal held an enquiry and exonerated the respondent from the charges framed against him, in August 1953.
While the proceedings before the Tribunal were pending, additional complaints were received by the
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appellant against the respondent's conduct, and they were communicated by the appellant to the Tribunal with an intimation that the appellant proposed to send those further charges against the respondent for enquiry. The Tribunal did not wait for receipt of the said additional charges because it was asked by the government to proceed with the charge already with it and concluded its enquiry. That is why on October 28, 1955, the respondent was again suspended and charges framed on the additional complaints received against him were delivered to him on October 29, 1956. On November 12, 1956, the respondent submitted his explanation and pleaded that in case the appellant wanted to pursue the enquiry against him, it might be entrusted to the Administrative Tribunal in accordance with the Rules.
On June 28, 1958, the Deputy Secretary, Board of Revenue, U. P., informed the respondent that in accordance with the orders passed by the appellant his case had been entrusted to the Commissioner, Gorakhpur Division, with directions to take disciplinary proceedings against him, and his request that the charges against him, should be entrusted for investigation to the Administrative Tribunal had been rejected.
Thereupon, the respondent filed a writ petition in the High Court of judicature at Allahabad on July 14, 1958, and prayed that a writ, or a direction or an appropriate order should be passed against the appellant quashing the proceedings intended to be taken against him before the enquiring officer appointed by the appellant under Rule 55 of the Civil Services (classification, Control and Appeal)

Rules. The learned single judge who heard the writ petition held that the respondent being a gazetted officer, the appellant was bound to grant his request that the enquiry against him should be
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held by the Administrative Tribunal appointed Under the Rules. That is why the writ petition was allowed and the order directing the enquiry to be held by the appointed authority under Rule 55 of the said Civil Services Rules was quashed.

This order was challenged by the appellant by an appeal under the Letters Patent before a Division Bench of the said High Court. The Division Bench agreed with the view taken by the learned single judge and dismissed the appeal. The appellant then applied for and obtained a certificate from the said High Court and it is with the said certificate that it has come to this Court.

Mr. Hajela for the appellant contends that the conclusion reached by the Courts below is not supported on a fair and reasonable construction of Rule 4 (2) of the Rules. The appellant's case is that in the State of U. P. it is competent to the Governor to direct that disciplinary proceedings against the officers specified in Rule 4 of the Rules should be tried before /an Administrative officer, but there is no obligation on the Governor in that behalf. The Governor may, if he so decides direct that the said enquiry may be held under Rule 55 of the Civil Services Rules and conducted by an appropriate authority appointed in that behalf. Whether the enquiry should be held by the Administrative Tribunal, or by an appropriate authority, is a matter entirely within the discretion of the Governor.

On the other hand, the High Court has held that so far as cases of gazetted government servants arc concerned, they are covered by Rule 4 (2) of the Rules and on a fair construction of the said Rule, it is clear that if @ gazetted government servant requests that the enquiry against him should be held by the Administrative Tribunal, the Governor is bound to grant his request. So, the narrow point which arises
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for our decision is which of the two views can be said to represent correctly the effect of Rule 4 (2) of the Rules.

Rule 4 reads as follows:-

> "4. (1) The Governor may refer to the tribunal cases relating to an individual government servant or class of government servants or government servants in a particular area only in respect of matters involving :-
> (a) corruption;
> (b) failure to discharge duties properly-.
> (c) irremediable general inefficiency in a public servant of more than ten years' standing; and
> (d) personal immorality.
> (2) The Governor may, in respect of a gazetted government servant on his own request, refer his case to the Tribunal in respect of matters referred to in sub-rule (1)."

It would be noticed that Rule 4 (1) confers discretion on the Governor to refer to the Tribunal cases failing under clauses (a) to (d) in respect of servants specified by the first part of sub-rule (1). In regard to these cases, the government servant concerned cannot claim that the enquiry

against him should not be held by a Tribunal and the matter falls to be decided solely in the discretion of the Governor. It is also clear that amongst the classes of servants to whom sub-rule (1) applies, gazetted government servants are included, so that if Rule 4 (1) had stood by itself, even gazetted government servants would have no right to claim that the enquiry against them should not be held by a Tribunal.

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It-is in the light of this provision that rule 4 (2) has to be considered.

Rule 4 (2) deals with the class of gazetted government servants and gives them the right to make a request to the Governor that their cases should be' referred to the Tribunal in respect of matters specified in clauses (a) to (d) of sub-rule (1). The question for our decision is whether like the word " may" in rule 4 (1) which confers the discretion on the Governor, the word ",may" in subrule (2) confers discretion on him, or does the word ,(may" in sub-rule (2) really mean "shall" or "'must" ? There is no doubt that the word "'may" generally does not mean "must" or "shall". But it is well settled that the word "may" is capable of meaning "must" or "'shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. In the present case, it is the context which is decisive. The whole purpose of rule 4 (2) would be frustrated if the word "may" in the said rule receives the same construction as in sub-rule (1). It is because in regard to gazetted government servants the discretion had already been given to the Governor to refer their cases to the tribunal that the rule-making authority wanted to make a special provision in respect of them as distinguished from other government servants falling under rule 4 (1) and rule 4 (2) has been prescribed, otherwise rule 4 (2) would be wholly redundant. In other words, the plain and unambiguous object of enacting rule 4 (2) is to provide an option to the gazetted government servants to request the Governor that their cases should be tried by a Tribunal and

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not otherwise. The rule-making authority presumably thought that having regard to the status of the gazetted government servants, it would be legitimate to give such an opinion to them. Therefore, we feel no difficulty in accepting the view taken by the High Court that rule 4(2) imposes an obligation on the Governor to grant a request made by the gazetted government servant that' his case should be referred to the Tribunal under the Rules. Such a request was admittedly made by the respondent and has not been granted. Therefore, we are satisfied that the High Court was right in quashing the proceedings proposed to be taken by the appellant against the respondent otherwise than by referring his case to the Tribunal under the Rules.

The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.