

# The Indian Law Reports

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

KALYAN SINGH,—*Petitioner*

*versus*

STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 2523 of 1965

November 22, 1966

*Constitution of India (1950)—Article 311—Natural justice—Departmental enquiry—Delinquent officer exonerated by Head of the Department—Officer of co-ordinate rank—Whether can take disciplinary action against him subsequently—Punishing authority different from the report of Enquiry Officer and awarding punishment without giving reasons—Order of punishment—Whether valid—Article 311(2) of the Constitution of India—Punjab Civil Service (Punishment and Appeal) Rules (1952)—Rules 7 and 8—Scope of—Copy of Complaint and reports of the Head of the Department exonerating the delinquent not supplied—Personal hearing specifically asked but not given—Whether adequate or reasonable opportunity can be said to have been given—Order of punishment—Whether valid.*

*Held*, that it has been recognised as a principle of natural justice, equity and good conscience that once a public servant has been enquired against and exonerated of the charge levelled against him he should not, in the absence of any statutory rules to that effect be allowed to be vexed and harrassed again on the same charges by an officer who is not even superior in rank to the one who originally exonerated him. If there are more than one Chief Engineers in a Department, it is the Chief Engineer under whom the delinquent officer is serving, who is the Head of his Department and no other Chief Engineer even though senior to that Chief Engineer can, in the absence of any specific rule to that effect, deal with him, particularly after his own Chief Engineer has decided the matter in his favour.

*Held*, that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though it is not necessary that the reasons should be detailed or elaborate.

*Held*, that as the punishment inflicted on the petitioner is not one of the three major penalties referred to in article 311(2) of the Constitution of India or even in rule 7 of the Punjab Civil Service (Punishment and Appeal) Rules, the question of the competent authority giving any reasons for differing with the report of the Superintending Engineer does not arise. Rule 7 almost reproduces the provisions of sub-article (2) of Article 311, and the various steps which have to be taken for satisfying the said provisions in accordance with the law laid down from time to time. The difference between rule 7 and rule 8 is this, whereas under rule 7 like Article 311(2) of the Constitution, two opportunities have to be afforded to a delinquent officer, the requirement of the first opportunity is not mandatory in case of imposition of penalties referred to in rule 8. The enquiry envisaged by the first part of clause (2) of Article 311 in which the delinquent officer has to be informed of the charges against him and to be given a reasonable opportunity of being heard in respect of those charges is not made obligatory under rule 8. The later part of clause (2) of Article 311 is substantially incorporated in rule 8. In the constitutional provision, the imposition of the relevant penalties is prohibited without giving "a reasonable opportunity of making representation" against the penalty proposed. This requirement entitles the delinquent officer to represent not only against the quantum of punishment, but also against his alleged guilt, irrespective of the earlier opportunity which the officer may have availed of. The very language of rule 8 of the disciplinary rules shows that the "adequate opportunity of making any representation" envisaged by that rule has, in the nature of things, to be a real opportunity to represent against the alleged guilt of the official as well as against the quantum of the punishment proposed if any such proposal has been made in the 'show-cause' notice.

*Held*, that the non-furnishing of a full copy of the complaint and of the absolute withholding of the two reports of the Superintending Engineer exonerating the petitioner and denying to him the personal hearing specifically asked for by him, show, that the Punishing Authority did not conform to judicial norms required of him in departmental proceedings, which have been repeatedly held to be of quasi-judicial nature and this has resulted in denying to the delinquent an adequate and real opportunity of representing against the proposed action to which he was entitled under rule 8, the requirements of which rule are mandatory.

*Petition under Articles 226/227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued, quashing the impugned order of respondent imposing the penalty of*

Kalyan Singh *v.* State of Punjab, etc. (Narula, J.)

*stoppage of two increments with future effect, and to remove all restrictions on the promotion of the petitioner to the higher grades in service and further praying that till the final disposal of the above-noted writ petition the respondents be restrained from giving promotions to employees junior to the petitioner over the head of the petitioner.*

ABNASHA SINGH, ADVOCATE, for the Petitioner.

PARTAP SINGH, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents..

### ORDER

NARULA, J.—Kalyan Singh petitioner has called in question in this case under Article 226 of the Constitution, the order of Shri G. S. Sidhu, Chief Engineer (Drainage), Irrigation Works, Punjab, Chandigarh, dated May 21/23, 1964. (Annexure 'F') under rule 4(ii) of the Punjab Civil Service (Punishment and Appeal) Rules, 1952, hereinafter called the disciplinary rules, whereby it was decided to impose upon the petitioner the penalty of stoppage of his two increments with future effect.

The petitioner who had originally joined service in the Irrigation Department of the Punjab Government as a tracer in 1946, has become a Divisional Head Draftsman by 1953. An adverse entry made against the petitioner by one Shri I. P. S. Sandhu, Executive Engineer, in June, 1961, was negated by Shri Jogindera Nath, Superintending Engineer, Sirhind Canal Circle, Ludhiana. On the recommendation of the Superintending Engineer, the petitioner was promoted in or about November, 1961, as Circle Head Draftsman. On April 17, 1963, one Karnail Singh of Kot Gangu Rai Co-operative Labour and Construction Society Ltd. submitted a written complaint (Annexure R-II) to Shri Kapur Singh, the then Chairman of the Punjab Legislative Council, to the effect that the petitioner was demanding Rs. 100 as illegal gratification for arranging payment of Rs. 1,100 due from the Irrigation Department to the Co-operative Society and praying for arranging an early payment of the same. As per contents of a subsequent letter of Shri Kapur Singh, to which reference is hereinafter made, he forwarded the complaint with his own D.O. letter No. PSC/63/192, dated the 17th April, 1963, to Shri V. P. Goel, Chief Engineer, North, and requested him in the said letter to look into the matter and to fix the responsibility for the alleged non-payment of the dues of the Society. The D.O. letter was addressed to Shri V. P. Goel, Chief Engineer, as he happened to be the Head of the petitioner's Department at that time. The Chief Engineer got an investigation made (into the allegation against

the petitioner having demanded illegal gratification) through the Superintending Engineer concerned. The Superintending Engineer, after investigation, reported that the complaint against the petitioner was incorrect and thereupon the Chief Engineer (Shri V. P. Goel) exonerated the petitioner and filed away the papers in so far as they related to action against the petitioner. This decision was conveyed to Shri Kapur Singh by Shri R. N. Pandit, Executive Engineer (Central), by his D.O. letter, dated the 10th June, 1963 (referred to in Annexure R-1). A copy of the letter has not been produced, but Sardar Partap Singh, the learned counsel for the respondents, has read out the same to me. It is stated in the letter that the payment of the disputed items, as claimed by the Society, had been approved, but so far as the complaint of the alleged corruption against the petitioner was concerned, the matter had been investigated, and it had been found that nothing could be suspected. On the receipt of the above-mentioned communication from the Executive Engineer, Shri Kapur Singh wrote D.O. letter, dated 1st/3rd July, 1963 (Annexure R-1), to Shri G. S. Sidhu, Chief Engineer (Administration), Irrigation Works, Chandigarh, referring to his earlier D. O. letter to Mr. Goel and to the intimation received by him from Shri R. N. Pandit about the action taken on his said earlier letter, and adding as follows :—

“I have not been able to understand as to how the Executive Engineer has come to this conclusion when it is a fact that the payment was withheld for a long time without any sufficient cause. I would like to know whether any inquest was made and if so was the statement of the complainant recorded or not and also was he not able to bring sufficient evidence on the record to prove his allegations.

I do hope that you will please call for the case and look into the matter as to why this payment was being delayed and also let me know about the personal integrity of this particular official. An early reply will be appreciated.”

A second investigation was then got made by the Chief Engineer through Jogindera Nath, Superintending Engineer. According to the petitioner, Shri Jogindera Nath again exonerated the petitioner of the charge levelled against him by Karnail Singh. Copy of the report of Jogindera Nath was not made available to the petitioner at any stage and has not even been produced by the respondents in these proceedings. On the receipt of the Superintending Engineer's report about the enquiry held by him, during the course of which enquiry, the respondents stated to have examined the complainant

Kalyan Singh v. State of Punjab, etc. (Narula, J.)

and two other witnesses behind the back of the petitioner, and admittedly without any notice to him, the Chief Engineer (Drainage) issued a 'show-cause' notice, dated February 19, 1964 (Annexure 'A'), to the petitioner wherein it was stated that on the basis of the statement of allegations annexed to the notice, it was proposed to impose a penalty of stoppage of two increments with future effect upon him. The notice then stated that the petitioner was given an opportunity envisaged by rule 8 of the disciplinary rules for showing cause against the action proposed to be taken against him, and that the petitioner might submit any representation which he may like to make in that connection, which would be considered before taking the proposed action. It was specifically stated in the notice that if for the purpose of preparing written statement, the petitioner wished to have access to the relevant records, he could inspect the same in the office of the Chief Engineer, Irrigation Works, Chandigarh, after making prior appointment with him. In the statement of allegations (Annexure 'B') attached to the 'show-cause' notice, it was stated as follows:—

“Shri Kalyan Singh, Circle Head Draftsman, deliberately put the question of sanction of slush allowance to Kot Gangu Rai Co-operative Labour and Construction Society Ltd. in connection with the construction of an inlet at R.D. 183000 of Sirhind Canal, in red tapism with a view to have an illegal gratification from the Society. He demanded Rs. 100 from the Society as an illegal gratification in presence of Shri Baldev Raj Sood, S.D.O., I.B., and Shri Harbhajan Singh, Director, Labour Construction Union, who gave such evidence in definite terms against him which he could not rebut. Such corrupt practice on his part is a gross misconduct.

In order to achieve this end he has been delaying the sanction of the estimate containing the provision of the above work by suggesting piece-meal objections which aggravate the above charge and adversely reflect on his efficiency.”

On the receipt of the 'show-cause' notice, the petitioner submitted an application, dated March 14, 1964 (Annexure 'C'), expressing his surprise at the contents of the notice and its enclosure and pointing out that neither any charge-sheet was ever given to him nor his explanation obtained, nor any enquiry held into the allegations in the presence of the petitioner and praying for being supplied with

a copy of the complaint against him, copies of the statements of witnesses, who had allegedly appeared against the petitioner, and a copy of the report which might have been made by the enquiry officer in that connection. An alternative prayer for permission to thoroughly inspect the relevant records and take copies thereof was also made in the application. It was added that in the meantime, the period allowed for submitting his representation may be suitably extended. The Chief Engineer, in reply to the petitioner's request, conveyed to the Superintending Engineer, Ludhiana, to advise the petitioner to inspect the relevant records in the Chandigarh office as already stated in the 'show-cause' notice, and to tell the petitioner that his failure to inspect the records would not constitute a valid ground for delay in submission of his defence. A copy of the said communication of the Chief Engineer, dated April 1, 1964 (Annexure 'D'), was forwarded by the Superintending Engineer to the petitioner on April 4, 1964. On April 18, 1964, the petitioner submitted his written representation (Annexure 'E'), wherein he stated that his request for the grant of copies of the complaint, the statements of witnesses and his alleged explanation, and of the report of the enquiry officer had not been acceded to and that he had only been allowed to inspect the noting and letters regarding the checking of estimates and sanction of slush allowance and the statements of witnesses. He then referred to the previous decision made on the complaint wherein he was found to be innocent and expressed his apprehension about the same complaint having been pushed back again "through some political quarter", who might have been wrongly informed by persons interested against the petitioner. He specifically claimed an opportunity to be heard orally in order to explain the circumstances relating to the complaint. In the representation, he gave detailed reply to the causes of the delay in getting the payment in question sanctioned to the Society named above. He alleged enmity with Shri Baldev Raj Sood on the ground that he had incurred his displeasure in several routine matters during the course of his employment under Mr. Sood, and after criticising their alleged statements and also the improbability of the correctness of their evidence on the ground that if they had seen the petitioner asking for illegal gratification, they would have reported the matter to the superior authorities, he added a complaint to the effect that if the petitioner had been given an opportunity to cross-examine those witnesses, the petitioner would have succeeded in bringing out the falsity of their statements. The petitioner also added in his representation that if he had been shown the statement made by the complainant and if the statement could be made in the presence of the

Kalyan Singh v. State of Punjab, etc. (Narula, J.)

petitioner and he could be given an opportunity to cross-examine him, he would be able to show successfully that the complainant had been made a tool in the hands of interested parties to engineer false allegations against the petitioner. A detailed reference was made to the interested person who was alleged to have engineered the complaint and insisted on it. The petitioner denied the allegations against him and claimed to have been made a prey to an intrigue, and ultimately said that if his written explanation was not deemed to be sufficient, the petitioner should be allowed to be heard personally.

Admittedly no personal hearing was afforded to the petitioner and no further enquiry held into the matter. Straightaway the impugned order (Annexure 'F'), dated 23rd May, 1964, addressed to the petitioner was passed by the Chief Engineer (Drainage) in the following words:—

“Your explanation dated 18th April, 1964, in the case cited as subject has been considered and found unsatisfactory. It has, therefore, been decided to impose upon you penalty of stoppage of two increments with future effect. A copy of these orders has been placed in your Personal Register.”

The impugned order was sent by the Chief Engineer under his covering letter, dated 23rd May, 1964 (Annexure 'G') to the Superintending Engineer, Ferozepur Circle, under whom the petitioner was then working for being served on him. A copy of the order was actually served on the petitioner,—*vide* endorsement of the Superintending Engineer, dated June, 4, 1964 (Annexure 'G').

On the receipt of the impugned order, the petitioner submitted an application, dated July 17, 1964 (Annexure 'H'), to the Chief Engineer (Drainage) asking him to supply the petitioner with a copy of the report of the enquiry officer and of the complaint to enable the petitioner to prepare an appeal against the order of punishment. In reply, the petitioner was informed by letter, dated August 10, 1964, that he had already inspected the records. The petitioner responded by his letter, dated 10th September, 1964 (Annexure 'I'), that the complaint and the report of the enquiry officer had not been shown to him at the time of the inspection and that the petitioner had made a manuscript note in the office file to that effect at that time. He requested for inspection of the said two documents to be allowed to him. From what appears in the written statement filed in this Court it is obvious that this request of the petitioner was not granted.

In the meantime, by order, dated December 28, 1963, some other draftsmen who were junior to the petitioner, were promoted as Sub-Divisional Officers or Assistant Engineers. A copy of the office order (Annexure 'J') has been placed by the petitioner on the record of this case. On coming to know of the same, the petitioner represented to the Chief Engineer (Drainage) on January 7, 1964 (Annexure 'K'), to restore his original seniority to the petitioner as he had been superseded in the matter of the above-said promotions in spite of his being senior to the other persons. In September, 1964, the petitioner submitted his appeal to the Punjab Government (Annexure 'L') against the order of punishment. On September 28, 1965, he filed the present writ petition which was admitted on the next day by the Motion Bench. An affidavit of respondent No. 2 (Shri G. S. Sidhu, Chief Engineer), dated 15th March, 1966, was filed as written statement of the respondents, wherein Shri Kapur Singh was referred to as the Finance Minister. It is obvious that in the meantime, he had attained that position. Even a replication was filed by the petitioner in reply to the original written statement. By order, dated March 8, 1966, in C.M. 682 of 1966, P. D. Sharma, J., directed the respondents to produce all the relevant records. Later, however, the petitioner applied (C.M. 3493 of 1966) on September 12, 1966, for leave to amend the writ petition, which permission was granted by Kaushal, J., on September 23, 1966, in pursuance of which the amended petition filed with the miscellaneous application on the 12th of September, 1966, was taken on the record. A fresh written statement, dated October 11, 1966, has been filed by the respondents consisting of the affidavit of Shri G. S. Sidhu, in reply to the amended writ petition. With the permission of the Court obtained on November 10, 1966, in C.M. 4191 of 1966, the petitioner has filed a rejoinder in reply to the latest written statement of the respondents.

Sardar Abnasha Singh, the learned counsel for the petitioner, has pressed at length four grounds in support of the writ petition, namely:—

- (i) that the impugned order passed by the Chief Engineer (Drainage) on the same complaint on which the petitioner had been finally exonerated by the Head of his Department, i.e., Chief Engineer, North, on the earlier occasion, was completely without jurisdiction;
- (ii) that the 'show-cause' notice issued by the Chief Engineer (Drainage) and the subsequent impugned order of punishment passed by him is void and contrary to law, because



Kalyan Singh v. State of Punjab, etc. (Narula, J.)

the Chief Engineer having differed with the findings of the Superintending Engineer who had enquired into the matter about the guilt of the petitioner did not give any reasons for such difference in the 'show-cause' notice, thus making it impossible for the petitioner to make any adequate representation against the action proposed to be taken against him;

- (iii) that the impugned disciplinary proceedings have been taken against the petitioner in violation of the mandatory requirements of rule 8 of the disciplinary rules inasmuch as an adequate opportunity of making the representation allowed to be made by that rule was not afforded to the petitioner before inflicting the punishment in question on him; and
- (iv) that the impugned order has been passed *mala fide* by the Chief Engineer (Drainage), because of bias due to the position held at the relevant time by Shri Kapur Singh as Finance Minister and the pressure brought by the said Minister on the Chief Engineer, and also because of certain allegations made in the final replication of the petitioner, to which a reference will hereinafter be made.

The only other matter to which reference was made related to the petitioner having been deprived of his normal rights of promotion to higher posts because of the impugned order and the record relating thereto.

Taking up the first point first the facts, cannot be seriously disputed. In paragraph 4 of the finally amended writ petition, it is stated as follows:—

“That in the first week of April, 1963, a complaint was filed against the petitioner by Shri Karnail Singh, Secretary, Kot Gangu Rai Co-operative Labour and Construction Society Ltd. to the effect that the petitioner had demanded a sum of Rs. 100 as illegal gratification in connection with the non-payment of slush allowance to the contractor. The said complaint was received by the Chief Engineer, North, through S. Kapur Singh, Chairman of the State Council, in fact the contractor sent the complaint to S. Kapur Singh, who forwarded it to the Chief Engineer,

North, who entrusted this complaint for investigation to Superintending Engineer (Shri Jogindera Nath) who reported that the charges are not correct. On receipt of this report the Chief Engineer (North), a Head of the Department, exonerated the petitioner completely and filed the papers. This decision is final and not liable to be reviewed or re-opened. In fact S. Kapur Singh should have not come into the picture and should have directed the complainant to approach the authority. His action is highly improper."

In reply to the above-quoted averments of the petitioner which are duly supported by an affidavit, all that has been stated by the Chief Engineer (Drainage) in the corresponding paragraph of his written statement filed on 19th of October, 1966, is quoted below:—

"The contents of the complaint given in the petition are admitted. It is within the right of every national of the Indian Union including Shri Kapur Singh to approach the competent authority for investigation of a corruption complaint. Action of Shri Kapur Singh is not objectionable before law."

A mere reading of the above-quoted pleadings of the parties would show that the definite allegations of the petitioner to the effect that the Chief Engineer (North) exonerated the petitioner completely and filed away the papers after the receipt of the report from Shri Jogindera Nath, Superintending Engineer, in petitioner's favour and the further averment to the effect that the said decision was final and not liable to be reviewed or re-opened, have not been denied by the respondents even by implication. Even if the later part of the averments of the petitioner mentioned above, may not be taken on its face value, because of its involving a pure question of law, the first part of the above-mentioned statement of the petitioner which relates to pure question of fact has to be assumed to be correct. In this factual situation, the only question that remains to be answered on the first point raised by Sardar Abnasha Singh is whether it is open to an officer of a co-ordinate rank to take disciplinary action against a delinquent official who has once been exonerated by the Head of his Department who was not lower in rank than the competent punishing authority. This question appears to me to have been already settled in various cases. In *Gursewak Singh Harnam Singh v. The State* (1), it was held by Teja Singh C. J., that when a

(1) A.I.R. 1954 Pepsu 129.

Kalyan Singh v. State of Punjab, etc. (Narula, J.)

matter has been finally disposed of by a competent authority, it cannot be re-opened by a successor except under some express provisions of law, and that this principle applies regardless of the fact whether the matter was decided in favour of one party or the other. The learned Chief Justice held that though there was no express provision in law in this respect regarding departmental enquiries, the principles of equity and justice demand that departmental actions should also be governed by a similar principle. In *Dwarkachand v. State of Rajasthan* (2), Wanchoo, C.J. (now Judge in the Supreme Court with whom Dave, J., concurred) held that once a departmental enquiry is over and a public servant has been exonerated, no second departmental enquiry on the same facts can be ordered unless there is a specific provision for reviewing an order of exoneration in the Service Rules or any law. The Division Bench of the Rajasthan High Court held that it was not the intention of the service rules that the exoneration of a public servant on a departmental enquiry should be open to review in the same manner as the acquittal of an accused is open to appeal in the Criminal Procedure Code, and that on principles of justice, equity and good conscience, it would be wrong in the absence of provision in the service rules to permit such a second departmental enquiry. A Division Bench of the Madhya Pradesh High Court held in *Ramswaroop Sharma T. T. E. Western Rly. Ratlam v. Div. Comm. Supdt., Ratlam and another* (3), that the commencement of fresh proceedings against a public servant after his being exonerated once upon the same allegations offends against the principles of natural justice. A survey of the above-mentioned cases shows that though the provisions of section 403 of the Code of Criminal Procedure and Article 20 of the Constitution have no application to departmental cases, it has been recognised as a principle of natural justice, equity and good conscience that once a public servant has been enquired against and exonerated of the charge levelled against him, he should not, in the absence of any statutory rules to that effect be allowed to be vexed and harassed again on the same charges by an officer who is not even superior in rank to the one who originally exonerated him. In this view of the matter, the impugned order cannot be sustained and on the impliedly admitted factual aspect, the subsequent order of punishment passed by respondent No. 2 has to be set aside. It has been stated, however, in paragraph 5 of the written statement that respondent No. 2 was the senior-most Chief Engineer of the Irrigation Department and that he had to take up this

(2) A.I.R. 1958 Raj. 38.

(3) A.I.R. 1964 M.P. 155.

case on a reference having been made to him by a "V.I.P." (very important personality). If there are more than one Chief Engineers in a Department, it is the Chief Engineer under whom the delinquent officer is serving, who is the Head of his Department and no other Chief Engineer can, in the absence of any specific rule to that effect, deal with him, particularly after his own Chief Engineer has decided the matter in his favour. It is not disputed that respondent No. 2 must have been senior to Chief Engineer, North, but that makes no difference as both were Chief Engineers and the Head of the petitioner's Department was the Chief Engineer, North. That the complaint emanated from a V.I.P., or was being pressed by such a person, should not have made the slightest difference. It is expected that the authorities would look into complaints from wheresoever received irrespective of the status of the person who forwards them or presses them, if some truth is found in them.

The second point raised by the learned counsel for the petitioner is based on the following observations made in the judgment of the Supreme Court in *State of Madras v. A. R. Srinivasan* (4),—

"Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate."

I do not think that the ratio of the judgment of the Supreme Court in the above case can be of any assistance to the petitioner in the present proceedings even though the Chief Engineer does appear to have differed from the findings of fact reported in the enquiry conducted by the Superintending Engineer, because the question of insisting on such a requirement arises only in cases covered by clause (2) of Article 311 of the Constitution. As the punishment inflicted on the petitioner is not one of the three major penalties referred to in that Article or even in rule 7 of the disciplinary rules, the question of the

---

(4) A.I.R. 1966 S.C. 1827.

Kalyan Singh *v.* State of Punjab, etc. (Narula, J.)

competent authority giving any reasons for differing with the report of the Superintending Engineer does not arise inasmuch as no such departmental enquiry as is envisaged in rule 7 had to be held in this case.

I, however, find some force in the third contention of the learned counsel. Rule 4 of the disciplinary rules authorises the competent authority to inflict the penalties enumerated therein, "for good and sufficient reason" upon members of the services to whom the said rules are applicable. Item No. (ii) out of the penalties enumerated under that rule relates to "withholding of increments or promotion including stoppage at an efficiency bar if any." Rule 8 is in the following terms:—

"Without prejudice to the provisions of rule 7, no order under clause (i), (ii) or (iv) of rule 4 shall be passed imposing a penalty on a Government servant, unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation has been taken into consideration:

Provided that this condition shall not apply in a case where an order based on facts has led to his conviction in a criminal court or an order has been passed superseding him for promotion to a higher post on the ground of his unfitness for the post on account of the existence of unsatisfactory record:

Provided further that the requirement of this rule may, for sufficient reasons to be recorded in writing, be waived where it is not practicable to observe them and where they can be waived without injustice to the officer concerned."

It appears that the petitioner did make a reference to rule 7 of the disciplinary rules in one of his communications, but it is now admitted by both sides that the said rule (rule 7) has no application to this case as the procedure prescribed by that rule is to be followed only for inflicting one of the major punishments that is dismissal, removal or reduction in rank. Rule 7 almost reproduces the provisions of clause (2) of Article 311, and the various steps which have to be taken for satisfying the said provisions in accordance with the law laid down from time to time. The difference between rule 7 and rule 8 is this, whereas under rule 7 like Article 311(2) of the Constitution,

two opportunities have to be afforded to a delinquent official, the requirement of the first opportunity is not mandatory in case of imposition of penalties referred to in rule 8. The enquiry envisaged by the first part of clause (2) of Article 311 in which the delinquent officer has to be informed of the charges against him and to be given a reasonable opportunity of being heard in respect of those charges is not made obligatory under rule 8. The later part of clause (2) of Article 311 is substantially incorporated in rule 8. In the constitutional provision, the imposition of the relevant penalties is prohibited without giving "a reasonable opportunity of making representation" against the penalty proposed. This requirement has been interpreted as to entitle the delinquent official to represent not only against the quantum of punishment, but also against his alleged guilt, irrespective of the earlier opportunity which the official may have availed of. The very language of rule 8 of the disciplinary rules shows that the "adequate opportunity of making any representation" envisaged by that rule has, in the nature of things, to be a real opportunity to represent against the alleged guilt of the official as well as against the quantum of the punishment proposed if any such proposal has been made in the 'show-cause' notice.

Sardar Abnasha Singh has cited various judgments in support of his contention that what has admittedly happened in this case, does not amount to affording "an adequate opportunity" to the petitioner to make his requisite representation. He has referred to a Full Bench judgment of this Court in *Ramesh Kapur v. The Punjab University and another* (5), wherein it was held in connection with the adequate opportunity required to be afforded by a University to an examinee in a case of unfair means that if the right of a candidate to be heard is to be a reality, he must know the case which he has to meet and if he asks the University authorities to supply him with necessary details of such material or evidence on which the case against him is based, any refusal to do so will be *prima facie* violative of the rule of natural justice.

I need not deal with the other cases to which the learned counsel has referred in this connection as they refer to the disciplinary proceedings and enquiries envisaged by the first part of clause (2) of Article 311 of the Constitution to which the authorities need not conform while imposing one of the minor punishments referred to in rule 8 of the disciplinary rules. It has been authoritatively held by

---

(5) I.L.R. (1964) 2 Punj. 955 (F.B.)=1965 P.L.R. 101(F.B.).

Kalyan Singh v. State of Punjab, etc. (Narula, J.)

a Full Bench of this Court. *Sham Lal, son of Lala Shadi Lal, Assistant Supervisor, Military Dairy Farm, Ferozepur Cantt. v. The Director, Military Farms, and others* (6), that though the pleasure of the President or the Governor cannot be controlled or fettered except to the extent provided in Article 311 of the Constitution, President or Governor may respectively direct that such pleasure must be exercised in accordance with the rules or the statutes made in that behalf under Article 309 of the Constitution and that if such rules or statutory provisions exist and the competent authority proceeds to exercise power in matter of taking disciplinary action against a Government servant, it is bound to follow the procedure prescribed by such provision and their non-compliance would be justiciable in a writ petition. The impugned disciplinary proceedings were taken by the Chief Engineer expressly under rule 8 of the disciplinary rules. I think the admitted non-furnishing of a full copy of the complaint of Karnail Singh and of the absolute withholding of the two reports of the Superintending Engineer exonerating the petitioner and denying to him the personal hearing specifically asked for by him show that the respondents have not conformed to judicial norms required of them in departmental proceedings which have been repeatedly held to be of quasi-judicial nature and this has resulted in denying to the petitioner any adequate and real opportunity of representing against the proposed action to which he was entitled under rule 8 supra, the requirements of which rule are mandatory. On this additional ground, I hold that the impugned orders are liable to be set aside.

In support of his last contention (regarding allegations of *mala fides* against respondent No. 2), Sardar Abnasha Singh has referred (i) to the contents of the letter of Shri Kapur Singh, wherein he almost demanded of the second respondent with authority to take action against the delinquent official and even to report to him about the action taken about the previous record of the petitioner, (ii) to the effect which appears to have been created by the letter of Kapur Singh, which the second respondent could not shake off even till the time he swore the affidavit in reply to the writ petition wherein he emphasised the fact of the complaint having been sent by a V.I.P., and further (iii) to the following allegations made in paragraphs 14 and 15 of the petitioner's last replication:—

“The allegations contained in paras 14 and 15 of the return are absolutely incorrect, and are not based on facts.

In fact respondent No. 2 Shri G. S. Sidhu acted in a most malicious manner and against the rules intentionally with

(6) I.L.R. (1967) 1 Punj. 649.

a view to damage the cause of the petitioner on account of strained relations of the petitioner with his son-in-law Shri I. P. S. Sandhu. The real facts are as follows:—

The petitioner's promotion fell due along with others on 28th December, 1963.

Respondent No. 2 issued provisional orders for promotion of Assistant Design Engineers/Sub-Divisional Officers on 28th December, 1963, superseding the petitioner and did not communicate the grounds of supersession to the petitioner which is mandatory under the rules.

Having come to know about his supersession the petitioner submitted an application on 7th January, 1964, with subsequent reminder on 22nd January, 1964, for communicating the reasons of his supersession. Instead of complying with the rules the respondent No. 2 kept silent over this matter but issued the impugned show-cause notice to the petitioner in March, 1964, and also inflicted the impugned punishment in May, 1964, upon him, and made an entry thereof in his personal register.

Upon this the petitioner submitted an appeal against his orders to the Secretary, Irrigation Branch, with a copy to Public Service Commission, Patiala, on 23rd September, 1964, the reply has not so far been received. After this respondent No. 2 submitted the case of the petitioner's promotion to the Public Service Commission in October, 1964, i.e., after a lapse of 10 months though in accordance with the rules contained in the decision taken by the Council of the Ministers on 1st August, 1962, copy of which was circulated to all the Departments the case must be forwarded immediately or at the latest within six months. Respondent No. 2 intentionally delayed the matter and inflicted the impugned punishment illegally and maliciously to harm the petitioner. As the punishment had already been inflicted, the Public Service Commission thought proper to approve the petitioner's supersession. In case the impugned punishment had not been inflicted then there was no impediment in the way of the petitioner to get promotion as



Kalyan Singh v. State of Punjab, etc. (Narula, J.)

and when fell due and in this case the Public Service Commission's decision would have been in favour of the petitioner. The sole ground with the Public Service Commission was the noting of this punishment inflicted on the petitioner. It is the illegal and malicious action of respondent No. 2 which has deprived the petitioner of his due right. The action on this score is liable to be quashed."

Sardar Partap Singh, the learned Counsel for the respondents, has seriously objected to this aspect of the case being considered on two grounds. He has firstly contended that the allegation of *mala fides* and the facts in support thereof were not specifically stated in the writ petition and that they cannot be taken notice of, if they are brought in for the first time in the replication. This objection is sought to be met by the learned counsel for the petitioner by referring to the judgment of the Supreme Court in *Sri Sri Subramania Desika Ghanasambanda Pandarasannidi v. State of Madras and another* (7), wherein it was held as follows:—

"That takes us to the consideration of the question as to whether the two reasons given by the High Court in support of this decision are valid. The first reason, as we have already indicated, is that the High Court thought that the plea in question had not been raised by the appellant in his writ petition. This reason is, no doubt, technically right in the sense that this plea was not mentioned in the first affidavit filed by the appellant in support of his petition, but in the affidavit-in-rejoinder filed by the appellant this plea has been expressly taken. This is not disputed by Mr. Chetty, and so, when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant challenged the validity of the impugned order was that he had not been given a chance to show cause why the said notification should not be issued. We are, therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any stage by the appellant before the matter was argued before the High Court."

I think it will depend on the facts of each case whether the respondents have or do not have sufficient notice of the allegations made

for the first time in a replication and whether it would be appropriate on the facts of a given case to permit a new point to be raised by being put in for the first time in a rejoinder. The second objection of Sardar Partap Singh is of a consequential nature. He says that though an advance copy of the replication in question was served on him by the counsel for the petitioner, he was not informed of the *ex-parte* order of the Court whereby the filing of the replication was allowed subject to just exceptions. In the view I have taken of the first and the third points raised by Sardar Abnasha Singh in this case, it does not appear to me to be necessary to go into the allegations of *mala fides* and bias which the second respondent has had no opportunity to rebut as those allegations were not contained in the writ petition of which alone a copy was served on him. *Prima facie*, I have not been impressed by the allegations of *mala fides*.

Learned counsel for the petitioner also prays that restrictions, if any, imposed against the petitioner's promotion be removed. It has been categorically stated by the respondents that no such restrictions have been imposed and that the juniors of the petitioner were promoted because of the recommendation made to that effect by the Public Service Commission. This may indeed be due to the fact that against the name of the petitioner in the record sent to the Public Service Commission, there must have been made a mention of the disciplinary action taken against him. The said order is being removed by me and as it is stated that no restrictions have otherwise been placed against the promotion of the petitioner by the competent authorities, it is needless to go into that matter.

For the foregoing reasons, this petition is allowed and the impugned order of the second respondent imposing the penalty in question on the petitioner, is set aside and quashed. The costs of the petition will be payable by respondent No. 1.

---

R.N.M.

CIVIL MISCELLANEOUS

*Before A. N. Grover, J.*

MOHAN SINGH AND OTHERS,—*Petitioners*

*versus*

THE DIVISIONAL CANAL OFFICER AND OTHERS,—*Respondents*

Civil Writ No. 1294 of 1966

November 25, 1966

*Northern India Canal and Drainage Act (VIII of 1873)—S. 30-A—Scheme under—Whether covers the change of site of an outlet from a canal.*