

CIVIL MISCELLANEOUS.

*Before Bal Raj Tuli, J.*RATTAN SINGH CHAUDHARY,—*Petitioner.**versus*THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 3743 of 1968.

April 5, 1971.

*Punjab Civil Services Rules, Volume I, Part I—Rule 7.3—Order under—
Whether can be passed without hearing the delinquent officer—Such order—
Whether has to be a speaking order.*

Held, that sub-rule (2) of rule 7.3. of Punjab Civil Services Rules, Volume I, Part I, specifically provides that in the case of suspension, full pay and allowances to which the Government servant would have been entitled, if he had not been suspended, are to be allowed to him if the authority mentioned in sub-rule (1) is of the opinion that his suspension was wholly unjustified. From this language it is clear that the competent authority had to come to a conclusion that the suspension of the Government servant was not wholly unjustified in order to clothe it with the jurisdiction of passing an order for not allowing the Government servant concerned full pay and allowances to which he would have been entitled had he not been suspended. On such determination also depends whether the period of suspension is to be counted as period spent on duty or not. The competent authority has, therefore, to apply its judicial mind to determine whether the suspension of the Government servant concerned was wholly justified or not and that determination has to be made in a quasi-judicial manner after giving notice to the Government servant concerned and affording him an opportunity of hearing. The order so passed must be a speaking order giving reasons in support of it. (Para 3)

Petition Under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the impugned orders dated 21st August, 1968 and 4th August, 1964

M. R. AGNIHOTRI, ADVOCATE, for the petitioner.

M. S. SANDHU, DEPUTY ADVOCATE-GENERAL (PUNJAB), for the respondents.

JUDGMENT

TULI, J.—The petitioner joined the Irrigation Department as Temporary Engineer (Mechanical) on July 21, 1951 and was promoted

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to the rank Executive Engineer on April 16, 1958. On December 29, 1961, he was placed under suspension and departmental enquiry was ordered against him. That enquiry commenced in January, 1962 and concluded in June, 1962. After a year the petitioner was served with a show-cause notice on June 11, 1963, to which he submitted a reply on July 5, 1963. After considering the explanation of the petitioner, the Government passed an order on July 21, 1964, as under:—

“Your explanation has been carefully considered and found to be unsatisfactory. The Governor of Punjab; in consultation with the Punjab Public Service Commission is, therefore, pleased to stop your next two increments without cumulative effect.”

On August 4, 1964, the following order was passed by the Governor of Punjab, under rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I:—

“The Governor of Punjab is pleased to reinstate Shri R. S. Chaudhry, Executive Engineer, with immediate effect. The period of suspension of Shri R. S. Chaudhry should not be treated as period spent on duty and he should not be paid anything beyond subsistence allowance already drawn by him.”

Against this order, the petitioner made a representation which was rejected on August 20, 1965. Still the petitioner continued making representations to the Government to the effect that the period of suspension from December 29, 1961, to August 4, 1964, should be treated as period spent on duty and that he should be allowed full emoluments for that period including the increments that he would have earned if he had not been suspended. He met with no success and his final representation was rejected in August, 1968, whereafter he filed the present petition.

(2) Written statement has been filed by the Secretary to Government, Punjab, Public Works Department.

(3) The main point argued by the learned counsel for the petitioner is that as a result of the departmental enquiry against the petitioner he was punished by awarding him a punishment of

stoppage of two next increments without cumulative effect. The result of the order dated August 4, 1964, is that his service from December 29, 1961, to August 4, 1964, has been forfeited and he has been deprived of the full emoluments for that period and the increments that he would have earned. This order, therefore, imposes a penalty on the petitioner and has been passed without any notice to him nor has any speaking order been passed giving reasons for the order. On behalf of the respondents, reliance has been placed on rule 7.3 *ibid* which reads as under:—

“7.3. (1) When a Government servant, who has been dismissed, removed, compulsorily retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation while under suspension, the authority competent to order the reinstatement shall consider and make a specific order:—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, or for the period of suspension ending with the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe :

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowances are admissible :

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Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government servant so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant."

On the basis of this rule, it is contended that an order passed under rule 7.3 is a consequential order and can be passed without hearing the delinquent officer and it is not necessary to give reasons in support of such an order. I regret my inability to agree to this submission. Sub-rule (2) of rule 7.3 specifically provides that in the case of suspension, full pay and allowances to which the Government servant would have been entitled, if he had not been suspended, are to be allowed to him if the authority mentioned in subrule (1) is of the opinion that his suspension was wholly unjustified. From this language it is clear that the competent authority had to come to a conclusion that the suspension of the Government servant was not wholly unjustified in order to clothe it with the jurisdiction of passing an order for not allowing the Government servant concerned full pay and allowances to which he would have been entitled had he not been suspended. On such determination also depends whether the period of suspension is to be counted as period spent on duty or not. The competent authority has, therefore, to apply its judicial mind to determine whether the suspension of the Government servant concerned was wholly justified or not and that determination has to be made in a quasi-judicial manner after giving notice to the Government servant concerned and affording him an opportunity of hearing. Reference may be made to a judgment of their Lordships of the Supreme Court in *Gopal Krishna Naidu v.*

The State of Madhya Pradesh (1), which supports the above view. The disallowance of full pay and allowances to the Government servant for the period of his suspension and to treat his period of absence from duty as not having been spent on duty results in serious civil consequences to the Government servant concerned in respect of his remaining service career. According to the judgment of their Lordships of the Supreme Court in *State of Orissa v. Dr. (Miss) Binapani Dei and others* (2), while passing such an order the principles of natural justice should be observed, that is, the concerned officer must be given an opportunity of hearing.

(4) In the present case, the substantive punishment imposed upon the petitioner was the stoppage of two next increments without cumulative effect, but the consequential order passed under rule 7.3. *ibid* is much more damaging than that order. It was, therefore, incumbent on the Government to issue a notice to the petitioner before passing such an order which should have been passed after affording him an opportunity of hearing.

(5) For the reasons given above, I accept this writ petition with costs and quash the order of the Governor of Punjab dated August 4, 1964, wherein it was directed that the period of suspension of the petitioner should not be treated as period spent on duty and that he should not be paid anything beyond the subsistence allowance for that period. The subsequent orders rejecting the representations of the petitioner on this point also fall and are quashed. The Government will, however, be at liberty to pass a fresh order in accordance with law and the observations made above. Counsel's fee Rs. 100.00.

(6) Before parting with this case, I may point out that the petitioner complained in his petition that he was not given any orders of posting between February 9, 1966, and May 18, 1966, and he was kept under compulsory waiting during that period. He has not been allowed the benefit of that period in his service to which he is entitled. In the return, it has been stated that this matter is under the consideration of the Government. I, therefore, refrain from expressing any opinion on this matter and direct the Government to decide the same expeditiously if not already done.

K. S. K.

(1) A.I.R. 1968 S.C. 240.

(2) A.I.R. 1967 S.C. 1269.