

## CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

BISHAMBAR LAL,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Civil Writ No. 1422 of 1962.

1964

November, 30th.

*Constitution of India (1950)—Art. 311—Punjab Civil Services (Punishment and Appeal) Rules (1952)—Rule 14—Whether violative of Art. 311—Government—Whether can enhance punishment imposed by, a subordinate authority—Civil servant—Whether entitled to a de novo inquiry or a personal hearing or representation through counsel—Criminal misconduct—Helping a wrong person to obtain payment—Whether amounts to criminal misconduct—Getting a false voucher attested by an officer—Whether amounts to forgery.*

*Held*, that Rule 14 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, does not in any way conflict with Article 311 of the Constitution. All that this Article enjoins is that no person shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. This Rule also envisages that before the penalty is enhanced, the person concerned would be given an opportunity to show cause why such penalty should not be increased as provided in Rule 11(1) of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, which applies to cases where enhanced punishment is to be awarded under Rule 14.

*Held*, that a bare reading of Rule 14 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, shows that the Government was competent to increase the penalty and pass an order of dismissal without holding a *de novo* enquiry and giving a fresh charge-sheet to the person concerned. No penalty can, however, be increased, unless opportunity is given to the person concerned to show cause against such increase. There is no rule under which personal hearing is necessary to be given to the civil servant concerned. All that is needed is that reasonable opportunity of showing cause against the action proposed to be taken should be given. There is also no rule which entitles the civil servant concerned to be represented through a counsel at the show-cause notice stage. Even at the time of the enquiry, under Rule 7(5) it is within the discretion of the Enquiry Officer to permit him to be represented by a counsel.

*Held*, that the dishonest production of a wrong person before the Sub-Divisional Officer by the petitioner in the discharge of his duty and getting him paid Rs. 55 which he was not entitled to receive, amounted to "criminal misconduct" and was thus covered by the term "corruption". The petitioner's securing the attestation of the Sub-Divisional Officer on the voucher fraudulently by false representation that the payee had brought a chit from his overseer to the effect that he, in fact, was Harlal, had an element of forgery in it, because the petitioner was instrumental in getting a false voucher prepared by getting the same attested by his Sub-Divisional Officer by making false representation and thus helping a wrong person to receive the payment, to which he was not entitled.

*Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus, or any other Writ, Order or Direction be issued quashing the order of the respondent, dated 16th July, 1962, and also directing the respondent to treat the petitioner as still continuing in the service of Punjab Government.*

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

M. S. PUNNU, DEPUTY ADVOCATE-GENERAL, for the Respondent.

#### ORDER

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PANDIT, J.—This is a petition under Articles 226 and 227 of the Constitution filed by Bishamber Lal, against the State of Punjab, challenging the legality of the order, dated 16th July, 1962, passed by the Secretary to the Government, Punjab, Irrigation and Power Department, dismissing him from service.

According to the allegations of the petitioner, he joined as a Store-keeper in the Irrigation Department in 1951 and was posted in Hissar-II-Bhakra. In 1954, he was transferred to the Bighar Sub-Division. On 7th September, 1956, a payment of Rs. 55 was made to one Harlal, Beldar, by the Sub-Divisional Officer, Bighar Sub-Division. Soon after it came to light that this payment was made wrongly, because the person, who posed to be Harlal, was, in fact, not that person since Harlal, had died long ago. The petitioner was not responsible for getting this wrong payment made, because this was not part of his duty, but even then the Sub-Divisional Officer and the Executive Engineer, Fatehabad Division, Hissar, asked his explanation about the circumstances in which the said payment was made. On 13th October, 1956, the petitioner submitted his

explanation to the Executive Engineer and maintained that he was completely innocent and was not at fault with regard to this payment. For over two years, the petitioner did not hear anything from his superior officers, when suddenly he received a statement of charges, dated 27th January, 1959, from the Superintending Engineer, II-Bhakra Main Line, Hissar, in regard to the payment of this sum of Rs. 55. He was also suspended with effect from the same date. In order to give an effective reply to these charges, the petitioner requested the Executive Engineer to supply him copies of certain documents. He made this application on 2nd February, 1959, and requested these copies to be supplied to him by 6th February, 1959. He did not hear anything in reply and he was, consequently, forced to submit his explanation on 5th March, 1959, without perusing these documents. The petitioner stated that the allegations against him were baseless and he was in no way responsible for the charges levelled against him. After he had sent his reply, the petitioner received a copy of the letter written by the Executive Engineer to the Sub-Divisional Officer, Bihar Sub-Division, in which it was mentioned that the documents asked for were either not in existence or were with the Anti-Corruption Department, and therefore, not available for the petitioner's inspection. Subsequently, a charge was framed against the petitioner to the effect that on 7th September, 1956, he dishonestly produced a false person before the Sub-Divisional Officer and got him paid Rs. 55 on account of the undisbursed pay of Harlal, Beldar, for the month of September, 1955, the real person having died long before. The charge further went on to say that as the Sub-Divisional Officer had missed to attest the thumb-impression of the payee on the hand receipt (voucher No. 20, dated 7th September, 1956) produced before him, the petitioner again produced the said papers before the Sub-Divisional Officer on 12th September, 1956, and on the latter's enquiry made a false statement before him alleging that the payee had brought a chit from his Overseer regarding his identity and that the said chit was lying in his office. Thus, on this false representation, he fraudulently secured the attestation of the Sub-Divisional Officer on the voucher. A departmental enquiry was then conducted against the petitioner by Shri U. S. Kohli, General Assistant to the Deputy Commissioner, Hissar, who found that the charge had been brought home against him. Thereafter, the petitioner was served with a notice, dated 17th

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September, 1959, by the Superintending Engineer, calling upon him to show cause why he should not be dismissed from Government service. In reply to this notice, the petitioner challenged the findings of the Enquiry Officer and submitted that the said officer had erred in relying upon the witnesses, who had been examined before him. It was also pointed out that the original voucher was not forthcoming and on that account he was greatly prejudiced in his defence. A prayer was made that he might be exonerated from the charge and also be given an opportunity to explain his case through a lawyer. The Superintending Engineer rejected the prayer for his representation through a lawyer and asked him to attend in person. Subsequently, on 28th March, 1960, the Superintending Engineer cancelled the order of his suspension and decided that his increment be withheld for two years with future effect. According to the petitioner, though he had been wrongly punished by the Superintending Engineer, yet considering the protracted harassment that had preceded the enquiry, he did not choose to take up this matter any further, and joined duty in the same Department. On 22nd December, 1960, he was shocked to receive another notice from the Executive Engineer under Rule 14 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, asking him to show cause as to why the penalty imposed upon him by the Superintending Engineer be not enhanced to one of dismissal. On 25th January, 1961, he sent a reply to the Secretary of the Irrigation Department, in which he gave detailed reasons for showing that he was innocent and had been a victim of conspiracy hatched by the Sub-Divisional Officer, who was the real culprit, in collusion with his subordinates, who were under his influence. He also pointed out that he had sent a reply on 5th March, 1959, to the Superintending Engineer and in that he had explained the entire position and prayed that the said reply be treated as a part of his representation. He also stated that he had submitted another letter, dated 5th October, 1959, in reply to the show-cause notice issued by the Superintending Engineer in which he had given detailed reasons to show that the report of the Enquiry Officer be not accepted, as he had come to an incorrect conclusion. Further, the petitioner gave a detailed reply explaining his position and requested that before any action was taken against him, he should be heard personally and should also be allowed to engage a counsel. He did not hear anything in reply and instead

received a notice, dated 16th July, 1962, dismissing him from service. This led to the filing of the present writ petition on 12th September, 1962.

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Learned counsel for the petitioner has raised the following contentions before me—

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- (1) that the Superintending Engineer was the Competent Authority under article 311(i) of the Constitution and he had imposed the penalty of withholding the increment of the petitioner. Under these circumstances, it was not permissible in law for the Government to revise the said order without giving a fresh charge-sheet to the petitioner and holding a *de novo* enquiry;
- (2) that the notice, dated 22nd December, 1960, called upon the petitioner only to show cause why the penalty imposed upon him by the Superintending Engineer be not enhanced to one of dismissal. This clearly showed that the Government was not giving an opportunity to the petitioner to deny his guilt and establish his innocence. This was clearly in violation of Article 311 of the Constitution;
- (3) that no reasonable opportunity provided under article 311 of the Constitution was offered to the petitioner, because he was neither heard in person nor allowed to be represented by a counsel;
- (4) that the petitioner, by his letter, dated 2nd February, 1959, had asked for certain documents in order to give an effective reply to the charges. Those documents were not available to him and he was, therefore, prejudiced in his defence, when replying to the Superintending Engineer and the Government;
- (5) that Rule 14 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, ~~was~~ <sup>who</sup> in conflict with Article 311 of the Constitution and was, therefore, bad;
- (6) that the order of dismissal mentioned that the petitioner was guilty of corruption and forgery.

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The said charges were absolutely new ones, which did not even form part of the charges which were the subject-matter of the enquiry held by Shri U. S. Kohli. The Government, by basing the dismissal order on the new charges, was clearly guilty of violating Article 311 of the Constitution.

As regards the first contention of the learned counsel for the petitioner, there is no merit in the same. Action was taken by the Government under Rule 14 of the Punjab Civil Service (Punishment and Appeal) Rules, 1952. This Rule runs thus—

“The Government or the Head of Department may call for and examine the records of any case in which a subordinate authority passed any order under Rule 10 or has inflicted any of the penalties specified in Rule 4 or in which no order has been passed or penalty inflicted, and after making further investigation, if any, may confirm, remit, reduce or subject to the provisions of Sub-rule (1) of Rule 11, increase the penalty or subject to the provisions of Rule 7, 8 and 9 inflict any of the penalties specified in rule 4.”

A bare reading of this Rule would show that the Government was competent to increase the penalty and pass an order of dismissal without holding a *de novo* enquiry and giving a fresh charge-sheet to the person concerned. No penalty can, however, be increased, unless opportunity is given to the person concerned to show cause against such increase. This opportunity was undoubtedly given to the petitioner in the present case. It may be mentioned that the learned counsel for the petitioner had not cited any authority or any rule in support of this contention of his. Moreover, the petitioner had not claimed a *de novo* enquiry in the explanation that he submitted in reply to the notice issued to him by the Government to show cause as to why the penalty imposed on him should not be enhanced to one of dismissal.

There is no substance in the second contention as well. According to the return of the State, the petitioner had full opportunity to deny his guilt and establish his

innocence, besides showing cause against the provisional opinion of the Government why the penalty imposed on him be not enhanced to that of dismissal. In reply to this show cause notice, the petitioner had assailed findings of the Enquiry Officer on a number of grounds and his submissions in that regard were, according to the respondent, thoroughly examined and considered by the Government. Moreover, it is pertinent to mention that the petitioner had not filed any appeal against the order of the Superintending Engineer by which he had been found guilty of the charges levelled against him and for which his increments had been stopped.

So far as the third contention is concerned, my attention was not invited to any rule under which personal hearing was necessary to be given to the petitioner. All that is needed is that a reasonable opportunity showing cause against the action proposed to be taken should be given. The enquiry had already been held against the petitioner and the Government had asked for his explanation why the penalty imposed on him by the Superintending Engineer be not enhanced to that of dismissal. He made a detailed representation in this regard which was duly considered and this, in my opinion, was a sufficient compliance with the provisions of Article 311 of the Constitution. In this view of mine I am supported by the decision of Khanna, J., in Civil Writ No. 1392 of 1963 (*Ram Sarup v. State of Punjab*, decided on 8th October, 1964). There is no rule enabling the petitioner to be represented through a counsel at the show-cause notice stage. Even at the time of the enquiry, under Rule 7(5) it was within the discretion of the Enquiry Officer to permit the petitioner to be represented by a counsel. There is thus no substance in this contention.

As regards the fourth contention, before the petitioner had submitted his reply to the charges on 5th March, 1959, he was informed by the Executive Engineer, Fatehabad Division, on 17th February, 1959, about the offices where the documents required by him were available for his inspection, excepting of course, one document which was not in existence. He was also told that he could apply for their inspection or copies in accordance with the rules, which he failed to do. No grievance was made by him about this matter at any stage of the enquiry or even at the time of the show-cause notice. Under these circumstances, no prejudice was caused to the petitioner on this account.

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The fifth contention is also without any force. Learned counsel for the petitioner could not show as to how Rule 14 was in any way in conflict with Article 311 of the Constitution. All that this Article enjoins is that no person shall be dismissed or removed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. This Rule also envisages that before the penalty is enhanced, the person concerned would be given an opportunity to show cause why such penalty should not be increased as provided in Rule 11(1) of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, which applies to cases where enhanced punishment is to be awarded under Rule 14. Moreover, in the present case, a regular enquiry was held against the petitioner, where he was given full opportunity to defend himself. He was found guilty by the Superintending Engineer and his increments were stopped. He did not file any appeal against this order. The Government then decided to enhance the penalty under Rule 14 and called upon him to show cause against this proposed action. He submitted his representation, which was duly considered by the Government and after that the impugned order was passed. Under these circumstances, the provisions of Article 311(2) have been fully complied with in the instant case.

Regarding the sixth and the last contention of the learned counsel for the petitioner, the reply put in by the Government is as under:—

“This sub-para (viii) is denied. Action against the petitioner was taken only on the basis of the charge-sheet as framed against him. It is denied that there are any new findings or any extraneous matter has weighed with the Government in passing the orders of the petitioner's dismissal. Dishonest production of a false person before his Sub-Divisional Officer by the petitioner and getting him paid Rs. 55 on account of the undisbursed pay of a dead person involves corruption and securing attestation of the Sub-Divisional Officer on the voucher fraudulently by false representation has an element of forgery in it. The facts forming the basis of the charge-sheet and the departmental inquiry against the petitioner were clearly known to him and, as stated above, no extraneous



matter was, taken into consideration by Government before passing the order of his dismissal. It is submitted that question of any new findings and charges against the petitioner does not even remotely arise."

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It is undisputed that if the allegations made against the petitioner in the charge-sheet go to show that he was guilty of 'corruption' and 'forgery', then the mere absence of these two words in the charge-sheet would not in any way afford him a ground for setting aside the order of dismissal, because he had been given ample opportunity to meet all the allegations made against him. The Government is right in saying that the dishonest production of a false person before the Sub-Divisional Officer by the petitioner in the discharge of his duty and getting him paid Rs. 55, which he was not entitled to receive, amounted to 'criminal misconduct' and was thus covered by the term 'corruption'. A public servant is said to commit an offence of criminal misconduct in the discharge of his duty, if he, by corrupt or illegal means, or by otherwise abusing his position as a public servant, obtains for himself or for any other person, any valuable thing or pecuniary advantage. Further, the petitioner's securing the attestation of the Sub-Divisional Officer on the voucher fraudulently by false representation that the payee had brought a chit from his overseer to the effect that he, in fact, was Harlal, had an element of forgery in it, because the petitioner was instrumental in getting a false voucher prepared by getting the same attested by his Sub-Divisional Officer by making false representation and thus helping a wrong person to receive the payment, to which he was not entitled. There is, thus, no merit in this contention.

The result is that this petition fails and is dismissed. The parties are, however, left to bear their own costs.

B.R.T.