

*Before Ranjit Singh, J.*

**BALBIR SINGH,—Petitioner**

*versus*

**STATE OF HARYANA AND ANOTHER,—Respondents**

**C.W.P. No. 11434 of 2009**

26th October, 2010

*Constitution of India, 1950—Art.226—Haryana Civil Services (Punishment & Appeal) Rules, 1987—Rl. 7—Allegations against an Executive Engineer of presenting fake Diploma and AMIE Degree—Registration of criminal case—Departmental proceedings also initiated—Inquiry report holding petitioner guilty of charges based on report of Vigilance—Penalty of dismissal from service—Rule 7 provides that no order imposing major penalty be passed against a person unless he is given a reasonable opportunity of showing cause against action proposed to be taken against him—No opportunity to prove degree given to petitioner—Clear case of violation of procedure prescribed under 1987 Rules—Inquiry report only on basis of report given by Vigilance—Mandatory procedural safeguards available under 1987 Rules not followed—Order of dismissal from service not sustainable in law—Petition allowed, order punishing petitioner set aside while granting liberty to respondents to proceed with enquiry proceedings.*

*Held* that the procedure for holding enquiry for imposing major penalty is regulated by Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987. As provided in this Rule, no order of imposing major penalty shall be passed against a person to whom these rules are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Various provisions are then made for regulating the manner of proceedings against the person who is charged with for the purpose of imposing major penalty. The person is required to be given a reasonable time to state in writing whether he admits the truth of all or any of the charges and what explanation for defence, if any, he has to offer. The delinquent employee is also required

to be asked if he desires to be heard in person. The authorities, if not satisfied with the explanation given by the delinquent employee, shall direct an enquiry to be held, at which all evidence shall be heard as to such charges as are not admitted. The person charged is entitled to cross-examine the witnesses, to give evidence in person and to call such witnesses as he may wish, provided that the officer conducting the enquiry for reasons to be recorded in writing refused to call any witness. Importantly, the proceedings shall contain a sufficient record of the evidence and the statement of finding and the grounds thereof. The person charged is also permitted to obtain the assistance of Government employee or a retired Government employee, if he so desires. Accordingly, detailed procedure has been prescribed in Rule 7, which is mandatorily required to be followed before imposing any major penalty. The enquiry Officer has failed to observe the procedure as given in Rule 7 and apparently has given no opportunity to the delinquent employee for defending himself. The evidence, which was recorded, was in the absence of the petitioner and he was not given any chance either to give his defence or to contest the evidence that was led in his absence. To record the evidence in the absence of the petitioner, the Enquiry Officer was first required to take a decision to proceed *ex parte*, which was never done. Rather, no record of the proceedings was ever made about the transactions on 8th and 28th of February, 2006. There is a clear case of violation of procedure prescribed under the Rules and this violation has resulted in serious civil consequences for the petitioner. Petitioner has been dismissed from service on the basis of this enquiry and the finding. The mandatory procedural safeguards available under the Rules were not followed, rendering the impugned order to be bad on that count and the same, thus, cannot be sustained.

(Para 15)

*Further held*, that to be fair both to the petitioner and the Organization, it would be appropriate to permit the respondents to hold an enquiry from the stage where the violation of the procedure has taken place and to continue with the same by giving adequate and fair opportunity to the petitioner to defend himself. The respondents would also be at liberty to lead into evidence any material that is available in support of the charges levelled against the petitioner. The petitioner shall be afforded fair opportunity

to defend himself and to lead evidence in terms of Rule 7 of the Rules and thereafter the Enquiry Officer would be at liberty to give his finding on the basis of the material for the respondents to continue further with the action in accordance with law.

(Para 17)

J. S. Maanipur, Advocate, *for the petitioner.*

Harish Rathee, Sr. DAG, Haryana, *for the State.*

**RANJIT SINGH, J.**

(1) The petitioner has filed this writ petition to impugn the order of his dismissal dated 16th/17th July, 2009. The impugned order of dismissal was passed on the basis of enquiry report dated 10th March, 2006. The main grievance of the petitioner is that the enquiry held in this case was contrary to the mandatory provisions of Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules 1987 (for short, "the Rules").

(2) Having passed his matriculation from Board of School Education, Haryana, the petitioner joined P.W.D. (B&R) Department on 7th December, 1979. In the year 1984, the petitioner acquired Diploma in Civil Engineering from Central Polytechnic, Sector 26, Chandigarh, by attending evening classes. On the basis of this diploma, the petitioner was promoted as Road Inspector on 3rd November, 1986. In the year 1988, the petitioner passed A.M.I.E. Degree.

(3) In 1992, Haryana Public Service Commission advertised some posts of Sub Divisional Engineer for appointment by way of direct recruitment. The petitioner applied for the same and was selected as S.D.O. (Panchayati Raj). He joined the post on 19th May, 1993 and was promoted as Executive Engineer on 22nd July, 1998. While promoting the petitioner as Executive Engineer, his A.M.I.E. Degree was got verified from the Institution, which had issued the same. The petitioner, however, was suddenly called by D.S.P., Jhajjar on 5th June, 2002 with regard to allegations concerning his degree, which he had acquired, but as per the petitioner, he was found innocent. Again on the basis of a complaint submitted to police, investigations were carried out in regard to genuineness of the diploma and A.M.I.E. Degree and still the petitioner was found innocent. It appears that

investigations were still conducted, when the petitioner represented to Director General of Police for changing the Investigating Officer, apprehending that fair enquiry would not be conducted in the matter. Ultimately, FIR was registered against the petitioner on 6th January, 2004 with the allegation of presenting a fake diploma and degree. Simultaneously, the petitioner was also charge sheeted on the basis of enquiry conducted by Superintendent of Police, C.I.D. Crime, with the allegation that diploma and degree of the petitioner were fake, leading to causing a financial loss of Rs. 16,32,522.45P by getting an appointment to the post of S.D.O.

(4) In response to the charge sheet, the petitioner submitted reply. He also prayed for staying the departmental proceedings during the pendency of criminal case. Enquiry Officer, however, was appointed on 21st September, 2005. Later the enquiry officer was changed and the petitioner appeared before him on 12th January, 2006. As per the petitioner, without affording him proper opportunity, the Enquiry Officer submitted his report on 10th March, 2006 holding that the allegations against the petitioner were proved. The petitioner thereafter was served a show cause notice, proposing the penalty of dismissal alongwith recovery of amount. The petitioner submitted his reply on 25th January, 2007, pointing out the enquiry was held in complete violation of the procedure and of the rules. Without considering his reply, the respondents passed impugned order, dismissing the petitioner from service. As per the petitioner, he was not given any opportunity to prove that his diploma and A. M. I. E. Degree were genuine and not fake as alleged and the finding by the Enquiry Officer was only on the basis of report given by S. P., CID (Crime), without any material in support thereof. The petitioner accordingly filed this writ petition to challenge the impugned order.

(5) Written statement has been filed on behalf of the respondents. It is stated that the petitioner was appointed as S. D. E. (Panchayati Raj) on 19th May, 1993 and promoted as Executive Engineer on 22nd July, 1998. As per the reply, on 2nd January, 2004, Director General of Police had forwarded a copy of the enquiry report dated 1st December, 2003 held by S.P. (Crime), Madhuban, disclosing that diploma as well as degree certificate obtained by the petitioner were fake. The petitioner, however, statedly submitted three months' notice for his premature retirement but due

to pending enquiry his plea was rejected. On the basis of the report received by the Department, the petitioner was placed under suspension on 13th February, 2004 but was later reinstated on 20th April, 2004 without prejudice to the departmental action/criminal proceedings. The petitioner was accordingly charge sheeted under rule 7 of the Rules. As per the reply, the enquiry was got conducted and as per the enquiry report, the charges against the petitioner stood proved. Agreeing with the enquiry report, the Punishing Authority imposed the punishment of dismissal to the petitioner.

(6) It is also disclosed that prayer of the petitioner to pend the departmental proceedings during the pendency of the criminal proceedings was declined by this Court on 10th March, 2008, while dismissing Civil Writ Petition No. 3024 of 2006 filed by the petitioner in this regard. The petitioner filed S.L.P. against the same, which he withdrew. Reference is also made to a clarification report from Chandigarh College of Engineering and Technology, Sector 26, Chandigarh, disclosing that no diploma certificate and detailed marks card were issued by the Department to the petitioner. It is also mentioned that the certificates are bogus, as no authority of the said College issued said certificates. It is accordingly stated that the petitioner had committed a fraud by presenting faked documents and obtained the job, thus, causing huge loss to the Government. It is, thus, pleaded that the petitioner is not entitled to any relief.

(7) The counsel for the petitioner mainly challenged the punishment on the ground that enquiry was held in complete violation of the procedure prescribed in Rule 7 of the Rules. By making reference to this Rule, the counsel would highlight various requirements and the rights that delinquent employee is entitled to while conducting the enquiry. The counsel would highlight that the Enquiry Officer had given the report only on the basis of a report given by the Vigilance, which was even not produced and proved before the enquiry proceedings. As per the counsel, it was *ex parte* enquiry, where no opportunity was given to the petitioner to prove that degree possessed by him was not fake. The copy of the enquiry proceedings has also been placed on record to point out that no witness was examined by the Enquiry Officer and he had simply given the enquiry report without following the procedural requirements.

(8) During the course of arguments, the State counsel took time on more than one occasions to have instructions if any evidence was led before the Enquiry Officer to show that the degree/diploma possessed by the petitioner was fake or reliance was placed only on the vigilance enquiry held in this regard, which was also not formally got produced before the Enquiry Officer through a competent witness. An affidavit by Under Secretary to the Government Haryana, was filed on 11th August, 2010 to assert that during the enquiry proceedings, enquiry report of the Superintendent Police, CID, Haryana, and letters/communications received from the Institution were led in evidence. The counsel for the petitioner, however, still vehemently disputed this fact, when the Court considered it appropriate to summon the original record of the enquiry proceedings. After some hiccups, the entire file was produced before the Court, which contained the enquiry proceedings. To substantiate that the enquiry was held as per the rules, the State counsel could point out mainly to two documents. The first document pointed out by the State counsel is at Page 109 of the file, true translated copy of which is produced on record by the petitioner as Annexure P-13. This is the record of enquiry proceedings held on 12th January, 2006. It records the presence of the delinquent officer and the Presenting Officer. The Enquiry Officer then had questioned the delinquent officer, if he accepted the charges made against him. As per the answer, as recorded, the petitioner had described the allegations as baseless. Besides, the petitioner pleaded that the enquiry proceedings be pended during the criminal proceedings before a Criminal Court. In response, the Enquiry Officer apprised the petitioner that criminal proceedings would have no effect on the enquiry. The petitioner pleaded for being represented by a representative. Relevant documents were shown to the petitioner and 8th February, 2006 was fixed as the next date of hearing.

(9) On 8th February, 2006, no proceedings are found to have been recorded. However, on record of the file, a statement of ASI, CID is available which appears to have been recorded on the said date. There is a letter dated 1st February, 2006 on record of file, which was written by Presenting Officer to Superintendent of Police, Crime Investigation, Madhuban Haryana, asking him to attend the enquiry proceedings to be conducted on 8th February, 2006. ASI, CID, apparently had appeared in response to this communication and had given a statement. There is a copy of

communication on the file received from the petitioner, requesting for adjournment of the case, which was fixed on 8th February, 2006, as he was unwell. The communication is supported by the medical record. The Enquiry Officer had then written a letter dated 16th February, 2006 to the petitioner, stating that he had not appeared on 8th February, 2006. A receipt of fax message for adjournment on medical ground is confirmed in this communication. It is also stated that the Presenting Officer had requested for recording *ex parte* proceedings but the Enquiry Officer had instead fixed the next date of hearing on 28th February, 2006. The petitioner was accordingly directed to attend the enquiry on the said date with the rider that if he did not come present, it will have to be assumed that petitioner has nothing to say in the matter.

(10) No enquiry proceedings were recorded on 28th February, 2006. Except for the communication as referred to, no record is available in the file in this regard. It appears that the petitioner had not appeared on 28th February, 2006 as well because it is so mentioned in the enquiry report. However, no record of the proceedings was prepared. It is thereafter, that the Enquiry Officer had submitted the enquiry report on 10th March, 2006 without recording any further evidence or without affording any opportunity to the petitioner. Even no record is made of the fact that the Enquiry Officer had decided to proceed *ex parte* against the petitioner.

(11) The manner in which the enquiry has been held leaves much to be desired. The Enquiry Officer may be justified in observing that the petitioner was not entitled to seek deferment of the enquiry during the pendency of the criminal case but yet he was bound to give fair opportunity to the petitioner to defend himself. The petitioner appeared before the Enquiry Officer on 12th January, 2006, when the proceedings were adjourned to 8th February, 2006. Even if the petitioner had not come present on that date, the Enquiry Officer was under obligation to record the proceedings, if he had decided to proceed with the matter *ex parte* or if he had decided to record the evidence of the witness, who had come present.

(12) Incidentally, without being summoned, the Enquiry Officer had come present at the time of hearing of the case. When this fact was disclosed by the State counsel, he was asked to explain the position. The Enquiry Officer forthrightly conceded that no record of the proceedings was prepared

on 8th February, 2006. There was no decision taken to proceed in the matter *ex parte* against the petitioner. That being the position, it was not appropriate or legally permissible for the Enquiry Officer to record the statement of a witness in the absence of the petitioner/delinquent officer. The petitioner had sought extension of time on medical ground. His prayer was accepted and the case was adjourned to 28th February, 2006. Intimation in this regard accordingly was conveyed to the petitioner on 16th February, 2006. That being the position, the action of the Enquiry Officer to record the statement of the witness on 8th February, 2006 was totally unjustified and in violation of the procedure prescribed under the Rules. No record of the proceedings was made on 28th February, 2006 as well. Thus, there is no decision, which is available to ascertain if the Enquiry Officer had decided to hold *ex parte* proceedings in this case against the petitioner. The Enquiry Officer, when asked to explain this aspect, could only express his apologies. He further conceded that he was not aware of the procedure and had made no efforts to acquaint himself with the procedure for holding enquiry as given in Rule 7 of the Rules.

(13) The Enquiry Officer was holding the rank of Superintending Engineer, when he held this enquiry. Such lack of knowledge on his part and lack of efforts on his part to acquaint himself with the procedure, is clearly something, which cannot be expected from him. The result is that a senior officer of the Department had been visited with the consequences of dismissal, which has led to an over all embarrassment for the Department. It is for the department to take appropriate action against the Enquiry Officer as he is responsible for said lapse.

(14) The requirement of adhering to procedure prescribed and the procedural safeguards contemplated under a statute need not to be emphasised. It is observed that procedural safeguards should be commensurate with the sweep of the power. Wider the power, the greater the need for restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguard envisaged by the statute. In **Vitarelli versus Seaton, Secretary of the Interior (1)** it was observed that an executive agency must be rigorously held to the standards by which it



professes its action to be judged. See **Securities and Exchange Comm'n versus Chenery Corp. (2)**. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirement that bind such agency, that procedure must be scrupulously observed. See **Service versus Dulles (3)**. It is further observed that "this judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so." It is also observed that, "He, who, takes the procedural sword, shall perish with that sword." The history of liberty has largely been the history of observance of procedural safeguards. That being the importance of procedural safeguards, when the severity of the consequences is an end of one's service, adherence to the procedure would require to be scrupulous observed.

(15) The procedure for holding enquiry for imposing major penalty is regulated by Rule 7 of the Rules. As provided in this Rule, no order of imposing major penalty shall be passed against a person to whom these rules are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Various provisions are then made for regulating the manner of proceedings against the person who is charged with for the purpose of imposing major penalty. The person is required to be given a reasonable time to state in writing whether he admits the truth of all or any of the charges and what explanation for defence, if any, he has to offer. The delinquent employee is also required to be asked if he desires to be heard in person. The authorities, if not satisfied with the explanation given by the delinquent employee, shall direct an enquiry to be held, at which all evidence shall be heard as to such charges as are not admitted. The person charged is entitled to cross-examine the witnesses, to give evidence in person and to call such witnesses as he may wish, provided that the officer conducting the enquiry for reasons to be recorded in writing refused to call any witness. Importantly, the proceedings shall contain a sufficient record of the evidence and the statement of finding and the grounds thereof. The person charged is also permitted to obtain the assistance of Government employee or a retired Government employee, if he so desires. Accordingly, detailed procedure

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(2) 318 U.S. 80

(3) 354 U.S. 363

has been prescribed in Rule 7, which is mandatorily required to be followed before imposing any major penalty. The Enquiry Officer has failed to observe the procedure as given in Rule 7 and apparently has given no opportunity to the delinquent employee for defending himself. The evidence, which was recorded, was in the absence of the petitioner and he was not given any chance either to give his defence or to contest the evidence that was led in his absence. To record the evidence in the absence of the petitioner, the Enquiry Officer was first required to take a decision to proceed *ex parte*, which was never done. Rather, no record of the proceedings was ever made about the transactions on 8th and 28th of February, 2006. There is a clear case of violation of procedure prescribed under the Rules and this violation has resulted in serious civil consequences for the petitioner. Petitioner has been dismissed from service on the basis of this enquiry and the finding. The mandatory procedural safeguards available under the Rules were not followed, rendering the impugned order to be bad on that count and the same, thus, cannot be sustained.

(16) The next question that requires consideration would be the nature of relief that would be available to the petitioner on account of the violation of the procedure.

(17) The allegations made against the petitioner are rather serious. The petitioner is alleged to have entered the service on the basis of a fake diploma and a degree. If that is true, certainly the petitioner cannot be allowed to take advantage of this fraud. Merely, because the Enquiry Officer has faulted in conducting the enquiry in a proper and fair manner cannot lead to a consequence of allowing a person to continue in service on the basis of a fake or a false degree. The petitioner may be entitled to a procedural safeguard for taking action against him but on that ground alone, a serious allegation of fraud against him cannot be permitted to be ignored. To be fair both to the petitioner and the Organisation, it would be appropriate to permit the respondents to hold an enquiry from the stage where the violation of the procedure has taken place and to continue with the same by giving adequate and fair opportunity to the petitioner to defend himself. The respondents would also be at liberty to lead into evidence any material that is available in support of the charges levelled

against the petitioner. The petitioner shall be afforded fair opportunity to defend himself and to lead evidence in terms of Rule 7 of the Rules and thereafter the Enquiry Officer would be at liberty to give his finding on the basis of the material for the respondents to continue further with the action in accordance with law. This is the mode, which is clearly available in view of the law laid down by the Hon'ble Supreme Court in **Managing Director, ECIL, Hyderabad and others versus B. Karunakara and others, (4)**. Dealing with somewhat similar situation, the Supreme Court had gone into the question of the type of relief that should be granted to a person in suchlike cases. As per the Supreme Court, the answer to the same has to be relative to the punishment awarded. When an employee is dismissed or removed from the service and the enquiry is set-aside, then it is to be seen if the reasons of setting-aside of enquiry has prejudiced an employee gravely. In some cases violation may not make any difference to the ultimate punishment, which is to be awarded. Accordingly, it is observed that to direct reinstatement of an employee with back wages in all cases would amount to reducing the rules of justice to a mechanical ritual. As is observed, the theory of reasonable opportunity and principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rights to be performed on all and sundry occasions. Whether, in fact prejudice has been caused to an employee or not, has to be considered on the facts and circumstances of each case. Where it is noticed that the violation would not lead to any different consequences, it would be perversion of justice to permit an employee to resume duty and to get all consequential benefits. The Court has also observed that it amounts to rewarding the dishonest and the guilty and, thus, to stretching the concept of justice to illogical and exasperating limits. It amounts to an unnatural expansion of natural justice, which in itself is unethical to justice.

(18) Considering the nature of allegations standing against the petitioner, directing his reinstatement would amount to rewarding dishonesty, which may lead to stretching the concept of justice to illogical and unfair

limits. It is, therefore, not considered essential to direct reinstatement even when the order of punishment is required to be set-aside. As observed by the Hon'ble Supreme Court in **Managing Director, ECIL, Hyderabad** (*supra*), proper relief to be granted in such like cases should always be with a liberty to authority/management to proceed with the enquiry by placing the employee under suspension and continuing with the same from the stage where the infirmity is noticed. The question whether employee would be entitled to back wages and other benefits from the date of dismissal to the date of his reinstatement, if ultimately ordered, would invariably is to be left to be decided by the authorities concerned according to law after culmination of the proceedings and depending upon the final outcome. If the employee succeeds in the fresh enquiry and is directed to be reinstated, the authority should be at liberty to decide according to law, how it will treat the period from the date of dismissal till the reinstatement and to what all benefits, if any, and the extent of benefits, he will be entitled. The reinstatement made as a result of setting-aside of the enquiry should be treated as a reinstatement for the purpose of holding fresh enquiry and no more where such fresh enquiry is to be held. This is noted to be the correct position in law by the Hon'ble Supreme Court in **Managing Director, ECIL, Hyderabad** (*supra*).

(19) Following the same procedure, the impugned order, punishing the petitioner, is set-aside. The respondents are granted liberty to proceed with the enquiry proceedings from the stage, when the witnesses were summoned to be examined. For this purpose, the petitioner need not be reinstated into service and he would be treated as reinstated for the purpose of holding a fresh enquiry from the stage it is now to be held. Any other course would add in allowing the premium to the petitioner over his serious misconduct of entering the service with dishonesty. The right of the petitioner to the benefits would depend upon the final outcome of the enquiry now directed to be held afresh.

(20) The writ petition is accordingly disposed of in the above terms.