Before Hemant Gupta and Mohinder Pal, JJ.

HARPAL SINGH,—***Petitioner***

versus

HARYANA VIDYUT PRASARAN NIGAM LTD. AND ANOTHER,—***Respondents***

C.W.P. No. 10006 of 2006

21st January, 2008

Constitution of India, 1950—Art. 226—Instructions dated 7th August, 1990 issued by State of Haryana—Allegation against an Assistant Engineer for instigating and prompting workmen to go on strike—Removal from service—Appeal filed—HVPNL ordering reinstatement of petitioner—Intervening period between removal from service and reinstatement ordered to be treated as leave of kind due—Challenge thereto—Order of removal from service passed without affording any opportunity of hearing—It cannot be said that petitioner was not exonerated from alleged charge because it could only be ascertained after holding a departmental inquiry and recording evidence—Petition allowed, intervening period ordered to be deemed to be as on duty period for all intents and purposes.

Held, that if the order removing the petitioner from service was not legally sustainable as the same had been passed without affording any opportunity of hearing, the petitioner cannot be made to suffer its consequences. It cannot be said that while ordering reinstatement of the petitioner, he was not exonerated from the charge of instigating the employees to participate in the strike because it could only be ascertained after holding a departmental inquiry and recording evidence as to whether the petitioner had spread indiscipline amongst the employees of the HVPNL or not. The same having not been done, we do not find any reason to uphold the action of the respondent-Department right from issuing order, dated 30th October, 2003 to the passing of the impugned order, dated 24th January, 2006.

(Para 7)

Sanjeev Thakur, Advocate, *for the petitioner.*

None *for the respondents*

MOHINDER PAL, J.

(1) The petitioner was Assistant Engineer with the Haryana Vidyut Prasaran Nigam Limited (for short 'HVPNL') formerly known as Haryana State Electricity Board. He has since retired from service. The Workers' Union of HVPNL had given a notice for token strike on 14th March, 1989. At that time, petitioner was posted as Assistant Engineer at Gohana Sub-urban Sub-Division.

(2) On the allegation that the petitioner, instead of taking any steps to control the situation and to dissuade the workmen from going on strike, had actually instigated and prompted the workmen to go on strike resulting in a large scale absenteeism in his Sub-Division, he was removed from service with immediate effect,—*vide* order, dated 1st April, 1989 (Annexure P-1).

(3) The petitioner filed appeal against the order (Annexure P-1), which was accepted by the HVPNL,—*vide* order, dated 2nd April, 1991 (Annexure P-2) and he was ordered to be taken back on duty with immediate effect. Thereafter, the HVPNL issued order, dated 30th October, 2003 (Annexure P-3) whereby the intervening period between removal from service and taking back on duty was treated as leave of the kind due. Against the order, dated 30th October, 2003 (Annexure P-3), the petitioner filed appeal dated 29th December, 2003 (Annexure P-4) before the Director Technical of the HVPNL. When the appeal was not decided in spite of the representations dated 25th August, 2004 and 12th April, 2005 (both at Annexure P-5), made by the petitioner, he submitted review appeal dated, 20th September, 2005 ((Annexure P-6). The said review appeal was rejected by the competent authority,—*vide* order, dated 24th January, 2006 (Annexure P-7).

(4) In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari quashing the order, dated 24th January, 2006 (Annexure P-7) whereby the request of the petitioner for treating the period of service from

11th April, 1989 to 2nd April, 1991 (intervening between removal from service and taking back on duty) as on duty period was rejected.

(5) In the written statement filed on behalf of the respondents, the order, dated 24th January, 2006, has been sought to be justified on the ground that the petitioner was not exonerated from the charge of instigating and prompting the workers to go on strike when decision was taken to take him back on duty and that case of the petitioner was not covered under the instructions dated 7th August, 1990 (Annexure R-3).

(6) As the order dated 1st April, 1989 (Annexure P-1), imposing major penalty of removal from service was passed against the petitioner without affording any opportunity of being heard and even by dispensing with the established procedure of issuing show cause notice/charge sheet, taking reply from the delinquent officer and holding a regular departmental inquiry, the HVPNL rightly accepted the appeal of the petitioner against this order and ordered his reinstatement into service with immediate effect,—*vide* order, dated, 2nd April, 1991 (Annexure P-2). However, by issuing the order, dated 30th October, 2003 (Annexure 4 P-3), the intervening period between removal from service and taking back into service was treated as leave of the kind due. While passing the impugned order dismissing the reviewal appeal of the petitioner against the order, dated 30th October, 2003 (Annexure P-3), the competent authority did not furnish any valid reason except mentioning that the case of the petitioner was not covered under the instructions dated 7thAugust, 1990 (Annexure R-3) and that he was not exonerated from the charge of prompting the workers to go on strike when decision was taken him back on duty.

(7) If the order removing the petitioner from service was not legally sustainable as the same had been passed without affording any opportunity of hearing, the petitioner cannot be made to suffer its consequences. It cannot be said that while ordering reinstatement of the petitioner, he was not exonerated from the charge of instigating the employees to participate in the strike because it could only be ascertained after holding a departmental inquiry and recording evidence as to whether the petitioner had spread indicipline amongst the employees of the HVPNL or not. The same having not been done, we do not find any reason to uphold the action of the respondent-Department right from issuing order,

dated 30th October, 2003 (Annexure P-3) to the passing of the impugned order, dated 24th January, 2006 (Annexure P-7). We have perused the instructions dated, 7th August, 1990 (Annexure R-1), relied upon by the respondent-Department. These instructions do not cover the case where major penalty of removal from service was awarded without issuing any show cause notice/charge sheet and the period intervening removal from service and reinstatement into service was about one year and eleven months, as in the present case.

(8) Consequently, this writ petition is allowed. The impugned order, dated 24th January, 2006 (Annexure P-7) is quashed. It is ordered that the intervening period between removal from service of the petitioner and taking him back on duty i.e. from 11th April, 1989 to 2nd April, 1991 shall be deemed to be as on duty period for all intents and purposes. There shall be no order as to costs.

R.N.R.

Before Mahesh Grover, J

SMT. NANDITA BAKSHI AND ANOTHER,—***Petitioners***

versus

CENTRAL BUREAU OF INVESTIGATION,—***Respondent***

Crl. Revision Petition No. 2353 of 2006 &
Crl. Misc. Petition No. 11278 of 2007
30th January, 2008

Code of Criminal Procedure, 1973—S. 233—Accused filing application for summoning defence witnesses—Trial Court restricting prayer of petitioners and confining it to a certain category of witnesses—Though order of trial Court notices no one is present for accused but subsequent proceedings negate and nullify plea of petitioners that no opportunity of hearing afforded before passing order—Trial Court also granting liberty to move a subsequent application for supplying names of witnesses and summoning them—No prejudice caused to petitioners in any manner whatsoever—Trial Court after going into legality, veracity and relevance of second