LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

HARBANS SINGH GREWAL,—*Appellant*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

L.P.A. No. 243 of 1967

September 4, 1968.

Punjab Civil Services (Punishment and Appeal) Rules, 1952—Rules 4, 7 and 8—Suspension of a Government servant—Opportunity of being heard before—Whether necessary.

Held, that suspension of a Government servant is of two kinds : (a) suspension as a penalty and (b) suspension as an interim measure pending departmental action for any one of the other penalties mentioned in rule 4 of Punjab Civil Services (Punishment and Appeal) Rules, 1952. Suspension as penalty in clause (v) of rule 4 does not come either under rule 7 or rule 8, so that while in the case of other six penalties mentioned in Rule 4, these two rules provide that the delinquent servant must be heard before any one of those penalties is imposed, there is no such rule with regard to penalty (v), which is suspension. When hearing before imposition of suspension as penalty under clause (v) of Rule 4 is not required under any rule, such a course cannot be considered as imperative before an interim order of suspension is made pending an inquiry against a delinquent servant. Hence, in both kinds of suspension, it is not necessary to give an opportunity of being heard to a Government servant before suspension. (Para 8)

Letters Patent Appeal under clause X of the Letters Patent against the Judgment of the Hon'ble Mr. Justice Shamsher Bahadur, dated 25th April, 1967 in Civil Writ No. 271 of 1967.

ABNASHA SINGH, ADVOCATE, for the Appellant.

S. K. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL (PUNJAB), for the Respondent.

JUDGMENT

MEHAR SINGH, C.J.—This is an appeal under clause 10 of the Letters Patent by Harbans Singh Grewal, appellant, from the order, dated April 25, 1967, of a learned Single Judge.

(2) It was on June 1, 1954, that the appellant retired from the Army, as a lieutenant-colonel. He was, on April 12, 1960, on the recommendation of the Punjab Public Service Commission, appointed a temporary Block Development Officer in the Development and Panchayat Department on a probation of two years provided the post continued, with a rider that the period of probation could be extended as and when considered necessary. His appointment was along with some twenty-nine others. Copy of the order is Annexure 'A' to his petition. In that it is also stated that the appellant was liable to be reverted even without notice or his services could be terminated and even without notice, as the case may be, if his work or conduct during the period of probation was not found satisfactory. Confirmation was to be made subject to the condition that the post was made permanent and to the appellant passing a departmental examination and 'other factors,' though this last expression does not appear to find any further elaboration in that order. The order made it clear that there could be a period after the expiry of the period of probation and before confirmation, during which the services of the appellant were liable to termination without assigning any reason or giving one month's notice. These were the conditions on which the appellant joined service. It appears that on October 12, 1961, he applied for exemption from passing the departmental examination, but that request was turned down by the Government's communication in November 1961 (copy Annexure 'AA/1' to the petition). The reason given was that exemption was available to only Block Development and Panchayat Officers who were over 45 years old or who had 20 years' service at their credit on August 10, 1960, none of the two conditions being available in the appellant's case.

(3) On December 16, 1965, a show-cause notice under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, was served on the appellant why he should not be stopped at the efficiency bar with effect from April 25, 1965, on the basis of unsatisfactory record of service and for not completing the period of probation satisfactorily, and the stoppage was to be till he passed the departmental examination and obtained certificate of completion of period of probation satisfactorily. It was suggested that the stoppage at the efficiency bar will be with cumulative effect (copy Annexure 'CC/1' to the petition). On January 14, 1966, the appellant gave his explanation to the show-cause notice (copy

Annexure 'CC/2' to the petition). On November 17, 1966, the Government proceeded to make the order (copy Annexure 'C' to the petition), after consulting the Punjab Public Service Commission, stopping the appellant at the efficiency bar, with cumulative effect, from April 25, 1965, for a period of one year, as he had not cleared the departmental examination. By a communication of October 15, 1966 (copy Annexure 'B' to the petition), the Government proceeded to certify that the appellant had completed his period of probation with effect from April 25, 1966, but made the certificate subject to the condition that on that account he could not claim confirmation. On November 25, 1966, the Government passed an order (copy Annexure 'D' to the petition) extending the period of probation of the appellant to April 24, 1967 'as he had not cleared the departmental examination'. It was said that the certificate regarding completion of his probationary period, issued on October 15, 1966, was thereby cancelled. On January 19, 1967, the appellant was placed under suspension 'pending departmental enquiry to enquire into the allegations' against him.

(4) The appellant filed a petition under Articles 226 and 227 of the Constitution in which he challenged—(a) the stoppage of his increment with cumulative effect for one year; (b) his suspension from service; and (c) the institution of departmental enquiry against him. The learned Judge has come to the conclusion that the imposition of penalty of stoppage of increment was because the appellant had failed to clear the departmental examination and that the suspension was in the wake of enquiry into his conduct. In regard to the certification of the completion of his period of probation, the learned Judge has accepted the statement in paragraph 4 of respondent No. 1's return that the certificate for completion of his probation was issued to the appellant 'by mistake and negligence of an official' and on knowledge of the mistake the Government immediately issued the order cancelling that certificate and extending the period of his probation. It appears that no argument was urged before the learned Single Judge against the initiation of the enquiry except that a certain allegation of *mala fides* was made against Gurmej Singh, who was a respondent to the petition, that he fought election to become a member of the local legislature and as the appellant, on request, did not assist him in his election, it was he

who engineered departmental action against him. Gurmej Singh obviously did not appear and file a return and the Government gave a denial to any such influence having been responsible for its disciplinary action against the appellant. The learned Judge, in the circumstances, dismissed the petition of the appellant, with no order as to costs, on April 25, 1967.

(5) In this appeal the learned counsel for the appellant has first urged that the order stopping the appellant at efficiency bar, with cumulative effect, from April 25, 1965, cannot be sustained. The reason given is that in the show-cause notice (copy Annexure 'CC/1' to the petition) two grounds are given for the proposed action in this respect. Those grounds are—(a) unsatisfactory record of service; and (b) non-clearance of departmental examination. The learned counsel has stressed that no service record, that was unsatisfactory and in which there were adverse remarks or entries so far as the appellant is concerned, was ever shown to him, nor was he ever given an opportunity to meet any such adverse remarks or entries against him. The learned counsel has also pointed out that even before the show-cause notice was issued after that before the order was made, no such record or entries were shown to the appellant and he was not given an opportunity of meeting the same. The substance of this argument is that the appellant has not had an adequate opportunity of being heard before the action was taken against him. But the final order imposing this penalty proceeds on the ground that the appellant had not cleared the departmental examination, and this is a fact which cannot possibly be denied. In fact it was the appellant who was wanting to seek exemption from passing the departmental examination, and that was not granted to him. It has been contended by the learned counsel that the show-cause notice to the appellant was under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules of 1952, and in *Kalyan Singh* v. *State of Punjab and another* (1), the learned Judge was of the opinion that the opportunity to show-cause under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules of 1952 is the same as the opportunity to show-cause against proposed final action under Article 311(2) of the Constitution. This, the learned counsel says, has not been complied with. However, this is not correct, for the show-cause notice (copy Annexure 'CC/1' to the petition) of

(1) I.L.R. (1967)2 Pb. & Hry. 471.

December 16, 1965, clearly sets out the grounds on which action was proposed and also sets out the nature of the action that was proposed to be taken with regard to the appellant. So that in this respect no argument is available to the appellant. In the circumstances the argument on the side of the appellant that for the matter of stoppage at the efficiency bar he has not had adequate opportunity of being heard is untenable and entirely without substance.

(6) There was some controversy before the learned Single Judge, to which reference has also been made during the arguments in this appeal, that a certificate was given to the appellant that he had completed his period of probation and then there was revocation of this certificate and there could be no power of revocation in the Government. The certificate (copy Annexure 'B' to the petition) was given on October 15, 1966, and it was cancelled on November 25, 1966 (copy Annexure 'D' to the petition). It was thus cancelled within about five to six weeks. The respondents have explained that the certificate was issued under a mistake and as soon as the mistake was discovered the rectification was made. This has been accepted by the learned Judge and we do not see any reason to differ from the learned Judge in this respect. The circumstances corroborate the stand on the side of the respondents, because earlier the appellant had failed in his attempts to obtain exemption from passing the departmental examination and had also been served with a show-cause notice for stoppage at the efficiency bar for the reason that he had not passed the departmental examination. The period of probation was extended for this reason only. The stand on the part of the Government is factually correct and no argument is available to the appellant, that, because his period of probation had been certified to have been completed, his non-clearance of the departmental examination could not be a ground for stopping him at the efficiency bar.

(7) The only real argument pressed by the learned counsel for the appellant has been that the order of suspension passed against the appellant pending a departmental enquiry cannot be sustained. The learned counsel first referred to copy of Government's instructions (copy Annexure 'F' to the petition) on the subject of 'Suspension of Government Servants,' and pointed out that 'no Government servant should be placed under suspension before being afforded a

reasonable opportunity of showing cause against the action proposed to be taken against him', but these instructions are not part of the Civil Services Rules and, however, desirable it is that the same be quite strictly followed, non-compliance with the same does not render the order of suspension open to attack. Reference has then been made to rule 7 of the All-India Services (Discipline and Appeal) Rules, 1955, which says that 'if having regard to the nature of the charges and the circumstances in any case, the Government which initiates any disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension the member of the Service against whom such proceedings are started that Government may' suspend him in circumstances as detailed in clauses (a) and (b). It is said by the learned counsel that this shows that suspension cannot be before an enquiry has actually been initiated. In the first place, this rule has no application to the present case, and secondly, there is nothing to show here that disciplinary proceedings had not been initiated against the appellant when he was suspended. If anything, the very order of suspension says that that had been made pending the departmental enquiry against him, apparently leading to an inference that there were departmental proceedings pending against the appellant when the order was made.

(8) The learned counsel has further referred to *Bachhittar Singh* v. *State of Punjab* (2) to show that departmental enquiries culminating in imposition of penalty, to the whole extent, are quasi-judicial proceedings and the final order is also of a quasi-judicial nature. The learned counsel then says that if that is so, the order of suspension is part of the same proceedings and could not have been passed without giving the appellant an opportunity of being heard whether such an order should or should not have been made. No such support is available to this argument of the learned counsel from *Bachittar Singh's* case and their Lordships never held so in that case. *In Balvantrai Ratilal Patel* v. *State of Maharashtra* (3), after reference to three cases already decided by the Supreme Court, their Lordships observed—"It is now well-settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature

(2) A.I.R. 1963 S.C. 395.
(3) A.I.R. 1968 S.C. 800.

either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. This principle of law of master and servant is well-established [See *Hanley* v. *Pease and Partners Ltd.* (4), *Wallwork* v. *Fielding* (5), and the judgment of Cotton, L.J. in *Boston Deep Sea Fishing and Ice Co.* v. *Ansell* (6)]. It is equally well-settled that an order of interim suspension can be passed against the employee while an inquiry is pending into his conduct, even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld". This case, though referred to by the learned counsel for the appellant, does not advance the argument on the side of the appellant. It recognises the power to order an interim suspension of a Government servant pending enquiry into his conduct. It does not say that before such order of interim suspension is made, it is necessary that hearing must be given to the delinquent servant whether he should or should not be suspended pending an enquiry. In this connection the learned counsel has also referred to *Satkari Chatterji* v. *Commissioner of Police, Calcutta* (7), and pointed out to this observation of the learned Judge at the end of the judgment that 'it is unjust that the authorities should continue the suspension order and keep a sword hanging on the head of the petitioner without serving another charge-sheet', and the learned counsel contends that in the present case no charge-sheet was served on the appellant for more than a year, and in the end he

(4) (1915) 1 K.B. 698.
(5) 1922—2 K.B. 66.
(6) (1888) 39 Ch. D. 339.
(7) A.I.R. 1965 Cal. 13.

has now put in a copy of the Government order, dated August 19, 1968, reinstating the appellant, The copy, however, shows that the reinstatement is 'without prejudice to any action to be taken against him as a result of criminal proceedings pending against him or as a result of any enquiry to be held against him.' Obviously it is not desirable that a Government servant should be kept under suspension for quite a long time without starting an enquiry, but that is far from saying that he must first be heard before an order of suspension is passed against him. In fact in *Satkari Chatterji's* case, (7), the order of suspension, without serving a charge-sheet, had been for a much longer period than in the instant case, and yet the learned Judge did not quash the order but directed that charge-sheet be served on the petitioner in that case within a month from the date of the order in that case. If the learned counsel cited this case with the intention of supporting his argument that before an order of suspension is made a Government servant must be heard, no such support is available to him from this case. It does not even support his assertion that no suspension can take place before actually a charge-sheet is served on a delinquent servant. In rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules of 1952 are given seven penalties which may, for good and sufficient reason, be imposed upon a delinquent Government servant. Of those, three penalties, No. (iii) reduction in rank, No. (vi) removal and No. (vii) dismissal, are covered by the procedure under rule 7 of those rules, and this has reference to Article 311(2) of the Constitution, so that action with regard to those penalties can only be taken after a full enquiry as envisaged by rule 7 and Article 311(2). Then rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules refers to penalties, No. (i) censure, No. (ii) withholding of increment or promotion, including stoppage at an efficiency bar, if any, and No. (iv) recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders. This accounts for six out of the seven penalties in rule 4, three directly falling within the ambit of rule 7 or Article 311(2) and the remaining three under rule 8. Now, even under rule 8, before any one of those minor penalties, which are referred to in it, is inflicted, a show-cause notice is required to be served. So that in the case of six out of the seven penalties, the rules require service of show-cause notice before the same are imposed. The seventh penalty, No. (v), is of

suspension. Now, it has been accepted at the bar that it is well-settled that this penalty, No. (v) of suspension in rule 4, is a penalty by itself and is apart from the power of the Government to make an interim order of suspension during the pendency of departmental proceedings. Therefore, suspension is of two kinds : (a) suspension as a penalty, and (b) suspension as an interim measure pending departmental action for any one of the other penalties mentioned in rule 4. Now again, suspension as penalty in clause (v) of rule 4 does not come either under rule 7 or rule 8, so that while in the case of other six penalties those two rules provide that the delinquent servant must be heard before any one of those penalties is imposed, there is no such rule with regard to penalty (v), which is suspension. It would be a strange argument that when hearing before imposition of suspension as a penalty under clause (v) of rule 4 is not required under any rule in the Punjab Civil Services (Punishment and Appeal) Rules of 1952, such a course should be imperative, as appears to be the argument of the learned counsel for the appellant, before an interim order of suspension is made pending an enquiry against a delinquent servant. I think the argument is untenable and is without force.

(9) There was some argument before the learned Single Judge on the question of *mala fides* of the impugned orders made against the appellant, but this is a matter which has not been pressed with any seriousness by the learned counsel on behalf of the appellant. Even otherwise, the allegation is without substance. In the first place, there is no material to support the correctness or truth of the allegation that Gurmej Singh asked the appellant to help him in his election and the appellant refused to do so. And secondly, even if that is true, there is nothing to show that Gurmej Singh had been able to approach anybody in the Government to take inimical or adverse attitude towards the appellant. In the return of the respondents there has been a denial that Gurmej Singh ever made such a request. To say the least, the allegation of *mala fides* in the making of the order is frivolous and entirely without basis. This appeal fails and is dismissed with costs.

BAL RAJ TULI, J.—I agree.

K. S.