A

B. D. GUPTA

v.

STATE OF HARYANA

September 18, 1972

[A. N. GROVER, M. H. BEG AND A. K. MUKHERJEA, JJ.]

B *Punjab Civil Services (Punishment and Appeal) Rules, 1952 (Vol. I, Part-I)—Rules 7.2 and 7.3—Punishment of Censure—Show cause notice must indicate precisely the charges and allegations—Opportunity to show-cause necessary before the government prescribes what proportion of the pay and allowances should be paid to the delinquent officer where the suspension is held to be unjustifiable.*

In December, 1954, the appellant was arrested and prosecuted under
C section 5 (2) of the Prevention of Corruption Act. He was suspended in the same month. In November, 1956, the appellant was served with a charge-sheet under Rue 7 (2) for the departmental proceedings to be held on two charges of taking illegal gratification. The appellant submitted his explanation on December, 18, 1956. The Enquiry Officer exonerated the appellant of charge 1 (a). In 1960, the appellant was discharged in the criminal case. The appellant was, thereafter, dismissed from service, on the finding of the Enquiry Officer, that charge, 1 (b) was
D proved. The High Court of Punjab quashed the dismissal order. After reinstatement, the appellant was served with another suspension order in May, 1963. A fresh enquiry for charge 1 (b) was ordered in 1965 but the same was later on withdrawn. On October 26. 1966, the appellant was again directed to show-cause why he should not be censured for his unsatisfactory explanation dated December 18, 1956. In reply to the show-cause notice in November, 1956, the appellant's explanation was found unsatisfactory and a sentence of censure was imposed on him. Instead
E of granting full pay for the suspension period the authorities ordered that the appellant should not be paid more than the subsistance allowance received by him during the period of suspension. The writ petition filed against the said orders by appellant was dismissed by the single Judge of the Punjab High Court, and then by the Division Bench.

Allowing the appeal,

F HELD : The show-cause notice was vague, it did not indicate whether the explanation was called for regarding charge 1 (a) or charge 1 (b). As regards charge 1(b) it was finally withdrawn. The show-cause notice did not indicate which part of the explanation dated 18-12-1956 was unsatisfactory. In what way it was unsatisfactory and what was the material before the Government on which it was thought that the explanation was unsatisfactory. The notice being vague, the appellant did not get any
G chance at all to show cause that he did not deserve a censure upon his conduct. The appellant was not given an opportunity to show that the suspension order against him had been unjustified and that he was entitled to full pay and allowances. Under Rule 7 (3), the Govt. has to make two decisions (i) whether the suspension was justified and (ii) what portion of the pay and allowances should be paid to the delinquent officer? [328 C]

H HELD : Further that the order regarding pay affects the pecuniary interest of the appellant. No real opportunity was given to the appellant to make an effective representation against the said order. The order regarding pay during suspension period was not merely consequential order to the first order. [331 B]

M. Gopala Krishan Naidu v. *State of Madhya Pradesh* [1968] 1 S.C.R. 355, relied upon. A

State of Assam and another v. *Raghav Rajgopalachari* Civil Appeal No. 1561 and 1562 of 1966 decided on October 6, 1967, distinguished on facts.

The appeal was allowed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2129 of 1969. B

Appeal by special leave from the order dated January 13, 1969 of the Punjab and Haryana High Court, at Chandigarh, in L.P.A. No. 6 of 1969.

B. Sen and *G. D. Gupta*, for the appellant. C

V. C. Mahajan and *R. N. Sachthey*, for the respondent.

The Judgment of the Court was delivered by

MUKHERJEA, J. This appeal on special leave is from an order of the Division Bench of the Punjab and Haryana High Court D dismissing summarily an appeal directed against a judgment and order of a Single Judge of that Court by which a petition of the appellant under Art. 226 of the Constitution of India was dismissed. The matter arises in connection with a disciplinary proceeding under the Punjab Civil Services (Punishment and Appeal) Rules, 1952 which had a very chequered career. E

For a proper appreciation of the points raised in this case it is necessary to set out some of the salient facts. The appellant joined the Punjab Irrigation Department as a temporary Engineer in 1939 and in course of time became an Executive Engineer in that department. In December, 1954 he was arrested in connection with a case under Sec. 5(2) of the Prevention of Corruption Act which had been registered against one K. R. Sharma, F Superintending Engineer, with whom the appellant had been working as a Personal Assistant. The appellant was, however, enlarged on bail. About the same time the appellant was suspended with effect from 13 December 1954 and certain departmental proceedings were started against him. In November, G 1956 the appellant was served with a chargesheet under Rule 7.2 of the Punjab Civil Services (Punishment and Appeal) Rules 1952. There were two distinct charges made against the appellant which will, for the sake of convenience, be described hereinafter as Charge No. 1(a) and Charge No. 1(b). Both the charges were based on allegations that the appellant had taken H illegal gratification. We are not concerned for the purposes of this appeal with the details of the charges. On 18 December 1956 the appellant submitted a reply to the chargesheet to which

A he added certain supplementary replies between May and July, 1957. Government, it appears, appointed an Enquiry Officer as late as October, 1957. On 18 February 1958 the appellant was reverted from the post of Executive Engineer (under suspension) to that of an Assistant Engineer (under suspension). In May, 1958 Government decided to defer the enquiry in respect of B Charge 1(b) until there was a decision in regard to Charge 1(a). In October, 1958 the Enquiry Officer submitted to Government a report in respect of Charge 1(a) which exonerated the appellant completely. The Government then waited for another six months before appointing another Enquiry Officer to conduct the enquiry in regard to Charge 1(b). The appellant, it appears, C asked Government on more than one occasion to supply him with a copy of the report of the first Enquiry Officer in respect of Charge 1(a). Government, however, declined to supply any copy. In December, 1960 the criminal case which had been started against the appellant in 1954 ended in discharge of the appellant. On 19 April 1961 the appellant was dismissed from D service on the basis of a report of the second Enquiry Officer regarding Charge 1(b). This order of dismissal was, however, quashed in March, 1963 by the High Court of Punjab and Haryana. The appellant was, thereafter, reinstated and forthwith placed under another order of suspension in May, 1963. A third Enquiry Officer was appointed simultaneously for a fresh E enquiry into Charge 1(b). In February, 1965 the appellant got a decree in a civil suit by which he was allowed to recover the balance of his pay and allowances for the period of suspension and for quashing the order of reversion. Between 1963 and 1965 the appellant made various attempts through what was apparently a high-powered board called the Establishment Board to bring about a closure of the enquiry proceedings initiated F against him. Nothing happened until 15 December 1965 when, once again Government appointed a new Enquiry Officer to replace the earlier officer who had been appointed in February, 1965. In January, 1966 the appellant was reinstated as Executive Engineer and in October, the same year, the entire enquiry against the appellant was withdrawn. One would have thought G that this would be the end of the unusually protracted proceedings against the appellant. On the contrary, however, on 26 October 1966 Government served a fresh "Show Cause notice" on the appellant by which the appellant was told that his explanation of 18 December 1956 in reply to the charges and allegations levelled against him had been found unsatisfactory by Govern- H ment and that Government proposed to censure his conduct.

Immediately upon receipt of the said "Show Cause notice" the appellant asked for a copy of the statement made by one S. D.

Khanna, Sub-Divisional Officer under Sec. 164 of the Code of Criminal Procedure. The appellant justified his demand for a copy of S. D. Khanna's statement by reference to two facts. First, Charge No. 1(b) related to an alleged demand by the appellant for illegal gratification in the presence of S. D. Khanna and he was, therefore, entitled to have a copy of the statements made by S. D. Khanna before the police and the magistrate. Secondly, the appellant pointed out, under the orders of the High Court he was expecting a copy of Khanna's statement to be supplied to him on 27 October 1966. He did not, however, receive a copy because the Government withdrew the chargesheet against him on 18 October 1966. If, therefore, by a fresh "Show Cause notice" the appellant was called upon to vindicate his earlier reply to the chargesheet, he was, he claimed, entitled to a copy of the statement of S. D. Khanna. On 24 November 1966, however, Secretary to the Government of Haryana turned down the appellant's request for a copy of Khanna's statement. Thereafter, on 16 December 1966 the appellant submitted a reply to the "Show Cause notice".

On 27 February 1967 the Government passed an order imposing the penalty of censure on the appellant. The substantive part of the order is in the following terms :

> "Your explanation has been duly considered and the same has been found to be unsatisfactory. The Governor of Harayana is accordingly pleased to order that the penalty of censure be imposed on you. Your conduct, is therefore, censured."

On the same day another order was communicated to the appellant by which the Governor of Haryana had directed that under Rule 7.3(3) of the Punjab Civil Services Rules, Volume I, Part I, the appellant should not be allowed anything more than what had already been paid to him as subsistence allowance during the period of his suspension from 31 May 1963 to 6 January 1966. The order included also a direction that the entire period of absence from duty of the appellant on account of suspension from 31 May 1963 to 6 January 1966 was to be treated as a period spent on duty for all other purposes.

In June, 1967 the appellant was given a notice of compulsory retirement which was subsequently withdrawn. In October, 1968, however, the appellant was compulsorily retired. In the meantime, however, in November, 1967 the appellant had filed a writ petition in the High Court of Punjab and Haryana challenging the validity of the two orders dated 27 February 1967—one inflicting on him the punishment of censure and the other withholding from him his usual pay and allowances beyond what had

been paid to him as subsistence allowance during the period of suspension. The writ petition was dismissed by a Single Judge of the High Court on 6 November 1968. The appellant then went on appeal before a Division Bench of the High Court. The appeal was, however, dismissed *in limine*. Upon being refused a certificate for appeal to this Court, the appellant asked for special leave which was granted to him on 3 October 1969.

Only two contentions were raised on behalf of the appellant before us. First, it was contended that the appellant did not get a reasonable opportunity to reply to the "Show Cause notice" dated 26 October 1966 on the basis of which he had been censured by the Government inasmuch as the notice was too vague to enable him to give an effective reply. Secondly, it was contended that the order of 27 February 1967 which withheld from the appellant any payment in excess of the subsistence allowance he had drawn during the period of his suspension was liable to be struck down on the ground that it had been passed without giving him any opportunity to make a representation against it. We shall now deal with these contentions one by one.

The appellant's complaint about the "Show Cause notice" of 26 October 1966 is one that has to be accepted as substantial. For a proper appreciation of the appellant's contention, the Memorandum containing the "Show Cause notice" may be set out *in extenso*. It was in the following terms :—

> "Your explanation dated the 18th December, 1956, in reply to the statements of charges and allegations has been considered and found to be unsatisfactory. The President of India, after taking a lenient view, has tentatively decided to censure your conduct and also to place a copy thereof on your personal file.
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> 2. Before the proposed punishment is inflicted, you are given an opportunity of making representation against the action proposed to be taken. Any representation which you make in this connection will be considered before taking the proposed action. Such representation, if any, should be made in writing and submitted so as to reach me not later than the 7th day from the receipt of this communication by you. In case no reply is received within the aforesaid period it will be presumed that you have no explanation to offer."

The only ground on which the Government proposed to censure the appellant is the fact that the appellant's explanation dated 18 December 1956 in reply to the statement of charges and

allegations had been found unsatisfactory by Government. By the expression "Charges and allegations" in this "Show Cause notice", reference obviously is to the letter of 22 October 1956. That letter, it will be remembered, contains two charges, namely, Charge 1(a) and Charge 1(b). The appellant's explanation of 18 December 1956 which is said to have been found unsatisfactory by Government was a reply not only to Charge 1(a) but also to Charge 1(b). Of these two charges, so far as Charge 1(a) is concerned the appellant had been completely exonerated in October, 1958. There is nothing, however, in the "Show Cause notice" of 26 October 1966 to indicate clearly that the dissatisfaction of Government with the appellant's reply of 18 December 1956 had nothing to do with Charge 1(a). The "Show Cause notice" merely states in vague general terms that the appellant's reply to the charges and allegations was unsatisfactory. Even if we were to assume, though there is no reasonable ground for this assumption, that Government did not have in mind the contents of Charge 1(a) while serving this "Show Cause notice", there is nothing in the "Show Cause notice" to give any indication that the particular allegations regarding which the appellant had failed to furnish a satisfactory explanation were referable only to Charge 1(b). The notice is vague on other grounds as well. As one reads the first paragraph of the notice, the questions that at once assail one's mind are many : In what way was the explanation of the appellant unsatisfactory ? Which part of the appellant's explanation was so unsatisfactory ? On what materials did the Government think that the appellant's explanation was unsatisfactory. It is to our mind essential for a "Show Cause notice" to indicate the precise scope of the notice and also to indicate the points on which the officer concerned is expected to give a reply. We have no manner of doubt that the "Show Cause notice" in the instant case did not give the appellant any real opportunity to defend himself against the complaint that his previous explanation of 18 December 1956 had been unsatisfactory. The appellant did not, therefore, get any chance at all to show that he did not deserve a censure upon his conduct.

We were told that since the appellant was aware of the charge and also aware of the reply he had given to the charges made against him, it was enough for Government to tell him that his answer was unsatisfactory. It was argued that since the "Show Cause notice" really pointed this out and mentioned that the very lenient sentence of censure upon the appellant's conduct was going to be imposed, there was nothing further that Government could be expected to do in this case. We have no hesitation in rejecting this contention made out on behalf of the State. It is manifestly clear that the "Show Cause notice" was too vague to

A permit the appellant to deal with it effectively and that consequently the order of censure passed on him is bad and liable to be struck down.

We now come to the second contention raised on behalf of the appellant that the order passed by the Governor of Haryana which directed the withholding from the appellant any payment B in excess of the subsistence allowance he had already received during the period of his suspension between 31 May 1963 and 6 January 1966 was bad in so far as the appellant had not been given a prior opportunity to make a representation against such order.

The relevant order was passed under Rule 7.3 of the Punjab C Civil Services Rules (Vol. I, Part I) which is in the following terms :—

"7.3 (1) When a Government servant, who has been dismissed, removed, or suspended, is reinstated, the authority competent to order the reinstatement shall consider and make a specific order :—

D

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and

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

E (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 or suspended, as the case may be. F

(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 G conditions under which such allowances are admissible.

(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 H 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."

It is clear that before passing an order under Rule 7.3, the authority concerned has to form an opinion as to whether the Government servant has been fully exonerated and, also, whether, in the case of suspension, the order of suspension was wholly unjustified.

It was urged on behalf of the appellant that before the authority formed such an opinion, it was incumbent upon it to afford him an opportunity to make suitable representations in this behalf. Reliance was placed upon the Judgment of this Court in *M. Gopala Krishna Naidu* v. *State of Madhya Pradesh*(1). The appellant in that case had been exonerated of the charges framed against him in a departmental enquiry. Government held, however, that the appellant's suspension and the departmental enquiry instituted against him "were not wholly unjustified". The relevant order, after reinstating the appellant with effect from the date of the order and directing the appellant's retirement from the same date on the ground that he had already attained the age of superannuation contained a further direction that the entire period of the appellant's absence from duty should be treated as a period spent on duty under Fundamental Rule 54(5) for the purpose of pension only, but that "he should not be allowed any pay beyond what he had actually received or were allowed to him by way of subsistence allowance during the period of his suspension". The appellant in that case contended that his case really came under Fundamental Rule 54(2) and not under Fundamental Rule 54(5) and that the Government should have granted him an opportunity to be heard before deciding as to the rule which applied to his case. It was contended on behalf of the Government that the order regarding allowances was a mere consequential order and in passing such an order it was not necessary to give a hearing to the party affected by the order. This Court, however, held that an order passed under Fundamental Rule 54 is not always a consequential order or a mere continuation of the departmental proceeding taken against the employee. Since consideration under Fundamental Rule 54 depends on facts and circumstances in their entirety and since the order may result in pecuniary loss to the Government servant, consideration under the Rule "must be held to be an objective rather than a subjective function". Shelat, J. who delivered the judgment of the Court went on to observe : "The very nature of the function implies the

(1) [1968] 1 S.C.R. 355.

A duty to act judicially. In such a case if an opportunity to show cause against the action proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice".

B We have no doubt in our minds that in this case also justice and fair play demand that the Government should have given the appellant a reasonable opportunity to show cause why an order affecting his pay and emoluments to his prejudice should not be made.

The decision in *M. Gopala Krishna Naidu's*(1) case had been C cited before the High Court. The High Court, however, sought to distinguish that case from the instant case on facts. The High Court held that since in *M. Gopala Krishna Naidu's*(1) case the proceedings had been dropped and the officer concerned reinstated, he never got an opportunity to show to the appointing authority that his suspension had been unjustified and that he was entitled to D full pay and allowances, while in the instant case the appellant has already, according to the High Court, received all reasonable opportunity to show cause against the punishment that has been meted out against him. With respect, we do not think that there is any real difference in substance between the facts of the instant case and those in *M. Gopala Krishna Naidu's*(1) case. The E appellant in the instant case did not really get an opportunity to defend himself against Charge 1(b). It will be remembered that in this case also the Government abandoned the proceedings against the appellant with regard to Charge 1(b). Had the proceedings been completed, it is not altogether impossible that the appellant would have been exonerated also of that charge just as F he had been exonerated of Charge 1(a) earlier. To that extent the appellant did not get any opportunity to show that the suspension order against him had been unjustified and that he was, therefore, entitled to full pay and allowances. From this point of view there is really no difference between the instant case and the case of *M. Gopala Krishna Naidu*(1).

G Besides, the real ratio in *M. Gopala Krishna Naidu's*(1) case was that if an order affects the employee financially, it must be passed after an objective consideration and assessment of all relevant facts and circumstances and after giving the person concerned full opportunity to make out his own case about that order. In the instant case the order unquestionably is one that seriously H prejudices the appellant. We would further like to add that the fact that even the order of punishment was made without giving

(1) [1968] 1 S.C.R. 355.

the appellant a real opportunity to make an effective representation against it makes the second order affecting his pay and allowances still more vulnerable.

Mr. Mahajan appearing for the State sought to rely in this connection upon an unreported decision of this Court in the *State of Assam and Anr.* v. *Raghava Rajagopalachari*(1). That case was a case dealing with Fundamental Rule 54 which is more or less similar to Rule 7.3 of the Punjab Civil Services Rules, under which this second order of 27 February 1967 had been passed by the Governor. The relevant portion of Fundamental Rule 54 is in the following terms :—

> "F.R. 54. When the suspension of a Government servant is held to have been unjustifiable or not wholly justifiable; or
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> When a Government servant who has been dismissed, removed or suspended is reinstated;
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> the revising or appellate authority may grant to him for the period of his absence from duty—
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> (a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension; or
>
> (b) if otherwise such proportion of such pay and allowances as the revising or appellate authority may prescribe.
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> In a case falling under clause (a) the period of absence from duty will be treated as a period spent on duty. In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so direct."

This Court held that cl. (b) of the Fundamental Rule 54 would be applicable in all cases where the officer concerned is not honourably acquitted. Since in that case the Government servant had clearly not been fully exonerated of the charges levied against him, it was open to Government to decide what period of absence from duty during the period of suspension should be treated as period spent on duty and, also, what proportion of pay and allowances should be given to him. This decision cannot apply to the instant case for the simple reason that Government, by withdrawing the proceedings initiated against the appellant in

(1) Civil Appeals Nos. 1561 and 1562 of 1965 decided by the Supreme Court on 6 October 1967.

A respect of Charge 1(b), made it impossible for the appellant to get himself fully exonerated. Since the appellant had been exonerated of Charge 1(a) and since Charge 1(b) was withdrawn, it is impossible for Government to proceed on the basis as if the appellant has not been fully exonerated or to assume that the order of suspension was one which was not wholly unjustified. B In that view of the matter, we do not think that case of the *State of Assam and Anr.* v. *Raghava Rajagopalachari* (supra) can be of any assistance to the respondents.

In the result this appeal succeeds. The judgment and order of the High Court are set aside. The orders dated 27 February 1967 impugned in the appellant's petition before the High Court C are quashed. The appellant will get the costs of this appeal as well as the costs incurred below.

S.B.W. *Appeal allowed.*