CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

B. D. GUPTA,—*Petitioner*

versus

THE STATE OF HARYANA,—*Respondent*

Civil Writ No. 2645 of 1967

September 6, 1968

Punjab Civil Services (Punishment and Appeal) Rules (1952)—Rules 7 and 8—Enquiry against a Government officer under rule 7—Government—Whether can drop such enquiry and impose minor punishment under rule 8—Before the imposition of minor punishment—Such officer—Whether can claim regular enquiry as contemplated by rule 7—Enquiry under rule 8—Government officer—Whether entitled to personal hearing under rules of natural justice.

Punjab Civil Services Rules, Volume I, Part I—Rule 7.3—Reinstatement of a suspended officer after due enquiry—Order under rule 7.3 cutting down salary and allowances payable during the period of suspension—Show-cause notice to the officer before the order—Whether necessary—Such order—Whether a consequential order.

Held, that rules 7 and 8 of Punjab Civil Services (Punishment and Appeals) Rules (1952) have completely a different field of operation and do not overlap each other. If the Government decides to impose the major punishment of dismissal or removal from service or reduction in rank against a civil servant and initiates proceedings under rule 7 of the Rules, which envisages the same enquiry as contemplated in Article 311 of the Constitution, it is open to it to drop that enquiry and decide to impose any of the minor punishments mentioned in rule 8, as the circumstances of the case may warrant. All that is intended by the use of the expression 'without prejudice to the provisions of rule 7' in rule 8 is that the State Government may take action under any of those provisions and action under one does not bar the other. The words 'wthout prejudice' only imply this much that rule 8 should operate without detriment to the operation of rule 7 and whether action should be taken under rule 7 or 8 is entirely within the discretion of the competent authority.

(Para 16)

Held, that the imposition of minor penalty, unless it is proved to be *mala fide,* is within the power of the appointing authority with this much over-riding condition that before any such penalty is imposed, the delinquent officer is to be given a reasonable opportunity to make a representation under rule 8 of the Rules. It is true that the requirement of a reasonable opportunity of making representation against the proposed imposition of a

minor penalty includes an opportunity both against the alleged guilt and also the quantum of punishment and it has to be real. This does not, however, mean that an enquiry on the same lines as contemplated by rule 7 is to be held. All that is required is that the delinquent officer must know the case which he has to meet including the details of the material or evidence on which the case against him is based. It is only an opportunity to make a representation and not that the delinquent officer is entitled to get witnesses summoned, cross-examine them and then expect a finding as in an elaborate enquiry contemplated by rule 7 or Article 311 of the Constitution.

(Paras 17 and 18)

Held, that in the absence of any statutory provision, a personal hearing is not necessary element of rules of natural justice. Hence personal hearing is not necessary when the rules of natural justice are invoked. If the competent authority after giving the show-cause notice under rule 8 obtains detailed explanation, awards minor punishment, there is no violation of any rule of natural justice if personal hearing is not given and rule 8 of the Rules is in such a case complied with both in letter and spirit.

(Paras 19 and 20).

Held, that where no enquiry whatsoever has been held and after suspension the delinquent officer is reinstated, and on such reinstatement the emoluments of this officer during the period of suspension are cut down, it is necessary to give him an opportunity to show-cause against the proposed action. No such necessity, however, arises when a regular enquiry has already been held in which he was afforded an adequate opportunity to defend himself in respect of the charges levelled against him and on the termination of the enquiry he is reinstated with an order passed under rule 7.3 of Punjab Civil Services Rules, as regards the amount of salary and allowances payable to him during the period of suspension. In such a case the order regarding the emoluments to be paid to him for the period of suspension can legitimately be said to be a consequential order. The competent authority has before it the entire record of the enquiry proceedings including the explanation of the officer on which an assessment can be made as to whether the suspension is wholly justified or not. The order so passed under rule 7.3 after an enquiry and the reinstatement of the delinquent officer will be said to be a consequential order.

(Para 21).

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued, quashing the impugned orders of respondent, dated 27th February, 1967 and directing them to pay full pay and allowances to the petitioner for the period from 31st of May, 1963 to June, 1966.

RAJINDER SACHAR AND S. P. GOYAL, ADVOCATES, for the Petitioner.

ANAND SWAROOP, ADVOCATE-GENERAL, HARYANA, WITH I. S. SAINI, ADVOCATE, for the Respondents.

JUDGMENT

SODHI, J.—This writ petition is directed against two orders of the same date 27th February, 1967, annexures A-17 and A-18 filed with the writ petition, whereby the Governor of Haryana ordered that the penalty of censure be imposed on the petitioner and that he was not to be allowed to get anything more than what had already been paid to him as his subsistence allowance during the period of his suspension from 31st May, 1963 to 6th January, 1966. The period of suspension was to be treated as a period spent on duty for all other purposes.

(2) The petitioner is the Executive Engineer, P.W.D. (Irrigation Branch) allocated to the State of Haryana. He joined the Punjab Irrigation Department as temporary Engineer on 4th July, 1939 and was later promoted as an officiating Executive Engineer on 2nd May, 1952. There was one Shri K. R. Sharma, Superintending Engineer, working in Narwana Circle, and the petitioner was posted as his Personal Assistant on 8th October, 1953. A case was registered on 4th July, 1954 under section 5(2) of the Prevention of Corruption Act against the said Shri K. R. Sharma, who has since died, Shri Sat Dev Khanna, Sub-Divisional Officer, and some other officers. The petitioner was also an accused person in that case, arrested on 30th December, 1954 and suspended from that date. He had, of course, been released on bail. He was still on bail when the Government started departmental proceedings against him. An enquiry was started somewhere in November, 1956 and a charge-sheet was given to the petitioner under rule 7.2 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, hereinafter called the Disciplinary Rules. There were two charges against him, which may be described as charge No. 1(a) and charge No. 1(b). Charge No. 1(a) related to an alleged demand having been made by the petitioner for illegal gratification from some contractors in order to show them undue favour and that he actually accepted the gratification on 17th January, 1954, when he inspected the Tangri Bund. The amount alleged to have been taken by him was about Rs. 2,000. The other charge No. 1(b), which alone is relevant for this case, was that the petitioner on being deputed by the Superintending Engineer inspected Saraswati Feeder on 1st October, 1953 and demanded illegal gratification from contractors at the rate of Rs. 500 per Burji for getting sanctioned for them a higher rate of earthwork which caused loss to the Government to the tune of Rs. 32,000. The petitioner, it was alleged, actually accepted a sum

of Rs. 9,000 from the contractors whose names had been mentioned in the charge-sheet.

(3) The petitioner gave the reply to both the charges on 11th December, 1956 and his detailed explanation is annexure A-3 with the writ petition. It is not necessary to state his defence, though it may be mentioned that he denied the charges. In regard to charge No. 1(b), it was submitted by him that no alleged excessive rates were got sanctioned by him from the Superintending Engineer, who sanctioned the same after satisfying himself.

(4) Shri Rattan Singh Guleria was appointed as an Enquiry Officer sometime in October, 1957 and on 18th February, 1558 the petitioner was reverted from the post of the officiating Executive Engineer to a temporary Engineer. He challenged this order in a civil suit where his claim was decreed and I am told by the learned counsel for the petitioner that the appeal is pending in the High Court and that it is not necessary for the purposes of the present writ petition to make any reference to the pleadings in that case. The Enquiry Officer Shri Guleria recorded prosecution evidence with regard to charge No. 1(a) and about sixteen witnesses were examined with regard to charge No. 1(b), but the remaining enquiry with regard to the latter charge was deferred. Shri Guleria submitted his report only with regard to charge No. 1(a) and the case of the petitioner is that he was exonerated of this charge by the Enquiry Officer.

(5) The petitioner has specifically pleaded in para 15 of the writ petition that he believes that in the enquiry made by Shri Guleria in respect of charge No. 1(a) he was exonerated and that, on the other hand, strictures were passed on the prosecution for tendering false evidence against him. The reply of the State against this allegation is in these words—

> "The petitioner was exonerated in respect of charge 1(a). It is denied that strictures were passed against the prosecution. The Inquiry Officer concluded his findings with the remarks that the prosecution has not been able to establish the allegations by independent reliable evidence."

(6) A reference in this connection is also necessary to be made to annexure A-7 filed with the writ petition. It is a letter, dated 25th July, 1960, sent by the Secretary to Government, Punjab,

Vigilance Department, to the petitioner, whereby an opportunity of showing cause against the proposed action of dismissal in regard to charge No. 1(b) was given to the petitioner. In the concluding part of that letter, it is stated as under:—

> "It is added for your information that no action is proposed to be taken against you on the basis of charge 1(a) enquired into by Shri Rattan Singh Guleria as Inquiry Officer."

(7) It is pointless now to examine whether the petitioner was exonerated under charge No. 1(a) or not when there is an admission by the State to that effect in the return filed by it duly supported by an affidavit of Shri P. N. Bhalla, Secretary to Government, Haryana, Public Works Department. It appears that the Government decided not to proceed any further against the petitioner under charge No. 1(a) but wanted to take action only under charge No. 1(b). Consequently, in April, 1959 the petitioner was informed that Shri Gobinder Singh had been appointed as an Enquiry Officer for charge No. 1(b). The petitioner asked for certain reports which were not supplied to him. The petitioner had been dismissed as a result of this enquiry and he preferred Civil Writ No. 1059 of 1961 in the High Court in which it was decided on 4th March, 1963 that it was necessary to supply the petitioner with the copies of the previous statements of the prosecution witnesses. In this view of the matter, the said writ petition was allowed and the dismissal of the petitioner set aside by an order of this Court passed on 4th March, 1963.

(8) The Government of Punjab then by its order, dated 31st May, 1963, appointed another Enquiry Officer Shri R. L. Narula to complete the departmental enquiry against the petitioner in accordance with law after giving a reasonable opportunity in the light of the decision made by the High Court. The petitioner, who was under suspension, was reinstated because of the High Court judgment but suspended again when the enquiry was ordered to be held by Shri Narula. The order of the Governor of Punjab to this effect is annexure A-9 with the writ petition. It appears that the order of the State Government, dated 31st May, 1963, was again superseded by another order, dated 8th December, 1964, whereby Shri Harnarain Singh, the then Deputy Commissioner, Gurgaon, was appointed an Enquiry Officer in addition to his own duties instead of Shri R. L. Narula. This order was also superseded on 15th

December, 1965, when Shri S. S. Sodhi was appointed the Enquiry Officer.

(9) The petitioner was, however, reinstated by an order of the State Government passed on 7th January, 1966 which is filed as annexure A-12 with the writ petition, though it was clearly mentioned in this order that reinstatement was to be without prejudice to any final decision which might be taken against the petitioner as a result of the departmental proceedings then pending against him. Some witnesses of the prosecution had been examined before Shri Sodhi, but the enquiry was later withdrawn by the State Government. The learned Advocate-General has produced the original record before me and it appears that some prosecution witnesses had been examined but their cross-examination had not yet started. In the earlier enquiry, 63 witnesses were examined. Mr. S. D. Khanna, an accomplice, who later turned approver, was one of the witnesses in the case and he had gone abroad on study leave up to 4th August, 1967. There were consequently no chances of the enquiry being finalised within a reasonable time. The administrative department was of the view that the case against the petitioner looked to be good one and could even end in conviction. The petitioner was due to attain the age of 55 years on 18th December, 1966, the administrative department therefore decided to retire him after giving him the usual notice and, it was in this background that it was thought more expedient to impose on him a minor punishment only and withdraw the enquiry.

(10) During the pendency of the enquiry proceedings, the petitioner had asked for a copy of the statement of Shri Sat Dev Khanna, Sub-Divisional Officer, who was an approver in the criminal case and the Enquiry Officer had ordered that the same be supplied to the petitioner, but before it could be done the Government changed its mind and decided to withdraw the enquiry.

(11) In order to impose the minor punishment by way of censure, the State Government served a show-cause notice, dated 26th October, 1966, on the petitioner under rule 8 of the Disciplinary Rules. The petitioner before giving a reply to this show-cause notice again asked for a copy of the statement of Shri Sat Dev Khanna recorded under section 164 of the Code of Criminal Procedure, but it was refused on the ground that it was not necessary to supply such a copy for the purposes of the explanation to the present show-cause notice. The petitioner then submitted his

detailed explanation covering ten typed pages and he dealt with every aspect of the charge exhaustively. The explanation related only to charge No. 1(b) and the petitioner stated in his reply that he was giving his explanation for charge No. 1(b) only, as he had been exonerated in regard to charge No. 1(a).

(12) The charge-sheet related to demand by the petitioner for illegal gratification in the presence of Shri Sat Dev Khanna, Sub-Divisional Officer, and the petitioner in his reply referred to Shri Khanna's statements both before the Police and the Magistrate. He pointed out the discrepancies in the statements of Shri Khanna before those officers. He also asked for a personal interview to explain his case. This request was refused and he got the reply from the State Government that his explanation was not found to be satisfactory and the Governor of Haryana was accordingly pleased to order that the penalty of censure be imposed on him. There was no separate explanation called from the petitioner for taking action under rule 7.3(3) of the Punjab Civil Services Rules, Volume I, Part I, hereinafter called the Rules, in the matter of allowances to be given to the petitioner during the period of his suspension from 31st May, 1963 to 6th January, 1966.

(13) It is in these circumstances that the orders of the Governor of Haryana imposing the penalty of censure and determining the emoluments payable to the petitioner during the period of his suspension, have been challenged in the present writ petition.

(14) The history of the case is no doubt a chequered one but the points involved are quite simple. The contention of Mr. Rajinder Sachar, learned counsel for the petitioner, is that it was not open to the Government, after having started the enquiry under rule 7, to withdraw the same and take action by imposing a minor punishment under rule 8, which involves serious consequences for the petitioner in the matter of his future promotion. It is further submitted by Mr. Sachar that the impugned order imposing censure is not in accordance with the principles of natural justice and it is indeed a case where the finding is based only on subjective data without there being evidence to support the same. The submission is that proceedings under rule 8 of the Disciplinary Rules are of a quasi-judicial nature and it was incumbent on the Government to have held some sort of an enquiry giving the petitioner an opportunity to cross-examine the witnesses, so that it could conform to the well established norms of the principles of natural justice.

(15) As against the decision in the matter of subsistence allowance during the period of the petitioner's suspension, it is urged that a separate show-cause notice should have been given to him to enable him to have an opportunity to satisfy the competent authority that his suspension was wholly unjustified, and this not having been done he was entitled to full pay and allowances for the period of suspension. He relies on a judgment of the Supreme Court reported as *M. Gopalkrishna Naidu* v. *The State of Madhya Pradesh* (1) where rule 54 of the Fundamental Rules, which is in the same terms as rule 7.3(2) of the Rules was being considered and interpreted.

(16) I may first dispose of the contention as regards the legality of the action taken by the State Government under rule 8 and whether a reasonable opportunity was afforded to the petitioner or not in the instant case as regards representation made by him under the said rule. Rules 7 and 8 of the Disciplinary Rules have completely a different field of operation and do not overlap each other. It cannot be reasonably contended that if once the Government decides to impose the major punishment of dismissal or removal from service or reduction in rank and initiates proceedings under rule 7, which envisages the same enquiry as contemplated in Article 311 of the Constitution, it is not open to it to drop that enquiry and decide to impose a minor punishment by way of censure, withholding of increment or promotion, reduction to a lower post or to a lower stage in a time-scale, recovery from pay of the whole or part of any pecuniary loss to Government by negligence and breach of orders or suspension etc., as the circumstances of the case may warrant. The words in rule 8 'without prejudice to the provisions of rule 7' are the same as used in rule 7 where it reads 'without prejudice to the provisions of the Public Servants Enquiries Act, 1950. Mr. Sachar contends that the operative part of these Rules is preceded by similar expressions 'without any prejudice' and the intention is that once an action is taken under one provision of law, it connot be taken under the other. I am afraid it is not possible to accept this contention. All that is intended by the use of this expression 'without prejudice' is that the State Government may take action under any of these provisions and action under one does not bar the other. The words 'without prejudice' only imply this much that rule 8 should operate without detriment to the operation of rule 7 and whether action should be taken under rule 7 or 8 is entirely within the discretion of the competent authority. Mr. Sachar has not been able to cite

(1) A.I.R. 1968 S.C. 240.

any decided case in support of his contention. Any such interpretation of rule 8, as suggested by Mr. Sachar, will be contrary to the constitutional provision contained in Article 310 of the Constitution, according to which an officer in the civil service of a State or of the Union of India holds his office during the pleasure of the President or the Governor of the State, as the case may be. This constitutional right of the President or the Governor is subordinated only to the provisions of Article 311 or any statutory rules that may be made regulating the terms and conditions of service of such an officer. The imposition of a minor penalty, unless it is proved to be *mala fide*, is within the power of the appointing authority with this much over-riding condition that before any such penalty is imposed, the delinquent officer is to be given a reasonable opportunity to make a representation under rule 8 of the Disciplinary Rules.

(17) The next submission of Mr. Sachar that rule 8 also prostulates some sort of an objective data in the sense that there should be an enquiry so as to afford an opportunity to the petitioner to cross-examine witnesses is also devoid of force. It cannot possibly be visualised that it is open to a delinquent officer to claim under this Disciplinary Rule almost the same enquiry as contemplated by rule 7 of the Disciplinary Rules or under Article 311 of the Constitution, simply because the opportunity to make a representation as observed by Narula, J. in *Kalyan Singh* v. *The State of Punjab and another* (2), and by Grover, J. in *R. D. Rawal, Divisional Forest Officer* v. *State of Punjab* (3), has to be real and not illusive. The difference between rules 7 and 8 has been very succinctly pointed out by Narula, J. and I am in respectful agreement with the same. Rule 8 has been held to be incorporating the same provision in substance as is to be found in the later part of clause (2) of Article 311 of the Constitution. It is true that the requirement of a reasonable opportunity of making representation against the proposed imposition of a minor penalty includes an opportunity as observed by Narula, J. both against the alleged guilt and also the quantum of punishment and that it has to be real. This does not, however, mean that an enquiry on the same lines as contemplated by rule 7 is to be held. All that is required is that the delinquent officer must know the case which he has to meet including the details of the material or evidence on which the case against him is based. It is only an opportunity to make a representation and not that the delinquent officer

(2) I.L.R. (1967) 2 Pb. & Hra. 471=1967 S.L.R. 129.
(3) 1967 S.L.R. 521.

is entitled to get witnesses summoned, cross-examine them and then expect a finding as in an elaborate enquiry contemplated by rule 7 or Article 311 of the Constitution. There can be cases where reasonable opportunity may be said to have been denied as in the case before Narula, J. where the copy of the complaint on which the action was proposed to be taken had not been supplied to the officer concerned. In the case before us, the charge No. 1(b), served on the petitioner, for which action was proposed to be taken, was very clear and stated in most unambiguous terms giving full details. A very elaborate and detailed reply had been given by the petitioner meeting every circumstance alleged against him. It is another matter whether the Government accepted that explanation as satisfactory or not. There could possibly be something said for the petitioner in regard to the non-supply of the copy of the statement of Shri Sat Dev Khanna, Sub-Divisional Officer, recorded by the Magistrate. The learned Advocate-General has, however, taken me through the explanation of the petitioner in reply to the show-cause notice under rule 8 and just a reading of that explanation makes it abundantly clear that the petitioner had with him not only a copy of the statement of Shri Khanna as made before the Police but also of his statement before the Magistrate as well. I need not refer to the various contradictions between the different statements as pointed out by the petitioner in his explanation to the show-cause notice. When he had these copies with him and was still clamouring for a copy to be supplied by the Government, it appears that he was presumably doing so to delay the proposed action. The mere fact that the original letter of the Government calling upon him to show-cause under rule 8 made a reference to his explanation of 1956 as well is not of any significance when the whole matter was clear to the delinquent officer and he knew that the said notice was related to charge 1(b) only and he offered his explanation in that respect alone in full detail. The rules of natural justice are not intended to be applied as technical rules, but in an objective way to see that the person making the representation gets a proper opportunity and is possessed of necessary documents.

(19) Mr. Sachar next contends that under rule 8 a personal hearing was necessary to be given and since that had been denied, the order imposing censure stood vitiated. I am afraid I cannot accept this contention either. The facts of the case before Narula, J. (*Kalyan Singh's case* supra) (2), were entirely different. The delinquent officer had not been, in that case, supplied a copy of the complaint and it was in this context that the learned Judge observed

that non-supply of the copy, coupled with refusal of a personal hearing, denied to that officer a reasonable opportunity. Mr. Sachar cannot with any justification contend that the learned Judge has intended to lay down contrary to the well established proposition that in the absence of any statutory provisions a personal hearing is not a necessary element of the rules of natural justice. It is not necessary to refer to various authorities holding that the personal hearing is not necessary when the rules of natural justice are invoked and a reference in this connection may with advantage be made only to one judgment of the Supreme Court reported as *A. K. Gopalan* v. *The State of Madras* (4).

(20) The State which was the competent authority to impose the punishment, gave the show-cause notice, got the detailed explanation of the petitioner, with which it was not satisfied and it was then only that the minor punishment of censure was imposed. There has been in the circumstances of the present case, no violation of any rule of natural justice and rule 8 of the Disciplinary Rules was complied with both in letter and spirit. Mr. Sachar has not been able to show any *mala fides* on the part of the Government in imposing this punishment. As a matter of fact, he did not seriously advance any such contention except that he submitted half-heartedly that there was malice in law since the Government chose to change its line of action and finding itself unable to impose major punishment under rule 7, it decided to take action under rule 8. In my opinion, this is just the intention of rule 8 that apart from the question whether a case for imposition of a major punishment is made out or not, a minor punishment may be imposed by the competent authority on the delinquent officer but only after giving him a reasonable opportunity to make a representation. It was within the competence of the State Government to drop the proceedings under rule 7 and take action under rule 8.

(21) The last contention of Mr. Sachar is that order under rule 7.3 denying to the petitioner his full emoluments for the period of suspension having been made without giving him a separate opportunity to show cause against the proposed action is illegal. The Supreme Court judgment (*M. Gopal Krishan Naidu's case* supra) (1), relied upon by Mr. Sachar is clearly distinguishable. There is no manner of doubt that the language of Fundamental Rule 54(2) and 54(3) is the same as that of rule 7.2 and 7.3 of the Punjab Civil Services Rules, Volume I, Part I, but the facts of the case before their Lordships of the Supreme Court were wholly different. In that

(4) 1950 S.C.R. 88.

case, the officer was said to have been put under suspension on the ground that some enquiry was to be made into the charges, but these proceedings were eventually dropped and he was reinstated and allowed to join duty. There was, therefore, no opportunity whatsoever given to the petitioner to show to the appointing authority that his suspension was wholly unjustified and that he was entitled to full pay and allowances. In the present case, a show-cause notice was given to the petitioner as to why the punishment of censure be not imposed upon him and he gave a detailed reply. If on a consideration of this reply the State Government came to the conclusion that a case for minor punishment was made out, the impugned order was a necessary consequence of the explanation of the petitioner having been found to be unsatisfactory. In my opinion, it was not necessary to give a fresh show-cause notice to the petitioner. There may be cases where no enquiry whatsoever has been held and after suspension the delinquent officer is reinstated. If on such reinstatement the emoluments of this officer during the period of suspension are cut down, it is necessary to give him an opportunity to show cause against the proposed action. No such necessity arises however, when an enquiry has already been held in which he was afforded an adequate opportunity to defend himself in respect of the charges levelled against him and on the termination of the enquiry he is reinstated with an order passed under rule 7.3 as regards the amount of salary and allowances payable to him during the period of suspension. In such a case the order regarding the emoluments to be paid to him for the period of suspension can legitimately be said to be a consequential order. The competent authority has before it the entire record of the enquiry proceedings including the explanation of the officer on which an assessment could be made as to whether the suspension was wholly justified or not. The order so passed under rule 7.3 after an enquiry and the reinstatement of the delinquent officer will be said to be a consequential order. Their Lordships of the Supreme Court have recognised this distinction in *M. Gopal Krishna Naidu's case* (1). I am also in respectful agreement with the observations made by P. C. Pandit, J. in *Malvinderjit Singh* v. *State of Punjab and others* (5), where such a contention raised in almost similar circumstances was repelled by the learned Judge who held the order under rule 7.3 to be a consequential order.

(22) In the circumstances of the instant case, the petitioner must be held to have been afforded a reasonable opportunity to show

(5) I.L.R. (1969) 2 Pb. & Hra. 148.

cause against the proposed action of the imposition of minor punishment of censure and also as regards the reduced emoluments directed to be payable to him for the period of his suspension. No rule of natural justice has, therefore, been violated in passing either of the impugned orders.

(23) For the foregoing reasons, the writ petition has no merit and is, hereby, dismissed. In the peculiar circumstances of this case, there will be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Ranjit Singh Sarkaria, J.

JAGMOHAN SINGH DHILLON,—*Petitioner.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents.*

Civil Writ No. 2237 of 1967

March 10, 1969

Punjab Police Rules (1934)—*Rules* 13.16 *and* 13.18—*Construction and scope of—Period of service in officiating capacity against a substantive post—Whether to be treated automatically as period on probation—Special order of the appointing authority—Whether necessary—Service Rules fixing maximum period of probation—Probationer allowed to continue in the post beyond the maximum period and to draw grade increments—Such probationer—Whether deemed to be confirmed by implicaiton.*

Held, that Punjab Police Rule 13.16 read along with Rule 13.18 indicates that all *substantive* vacancies in the rank of Inspector shall be filled by appointment on *probation,* while sub-rule (2) of Rule 13.16 indicates that only *temporary* vacancies (as distinguished from substantive vacancies) in the rank of Inspector shall be filled on *officiating* basis by promotion of officers of 'F' List. Rules 13.18, when it says that all Police Officers promoted in rank shall be on probation for two years, apparently envisages appointments by promotion to substantive vacancies spoken of in sub-rule (1) of Rule 13.16. The periods of officiating promotion which the appointing authority may by a special order direct to be counted towards the period of probation, mentioned in Rule 13.18, refer to the officiating promotion *against temporary vacancies* spoken of in sub-rule (2) of Rule 13.16. No special order of the appointing authority for converting hitherto officiating status into that of one on probation is necessary. Such change from 'officiating' capacity to that of person 'on probation' automatically comes about by the operation of Police Rule 13.18 from the date when a person becomes employed in or against a substantive vacancy. Rule 13.18 is mandatory as is indicated by