Parshotam Lal Dhingra

Vs

Union of India

Civil Appeal No. 65 of 1957

(CJI S. R. Dass, S. K. Das, Vivian Bose, A. K. Sarkar, T. L. Venkatarama Ayyar JJ)

01.11.1957

JUDGMENT

DAS C.J. -

This appeal has been filed with a certificate of fitness granted by the Punjab High Court on August 20, 1956. It is directed against the judgment and order passed by a Division Bench of that court on January 19, 1956, in Letters Patent Appeal No. 28 of 1955, reversing the judgment and order of Mr. Justice Harnam Singh pronounced on April 15, 1955, whereby his Lordship had allowed the appellant's application being Civil Writ No. 36-D of 1955 and set aside the order passed by the General Manager, Northern Railway on August 19, 1953, reverting the petitioner from the post of Signal and Tele-communication Engineer, (Telegraphs) in Class II service where the appellant was officiating to his substantive post in Class III service. This appeal raises a very important question about the construction of art. 311 of the Constitution.

The facts are shortly as follows :- In August 1924 the appellant joined the railway service as a Signaller (Telegraphist). As a result of selection, he was promoted as Section Controller in 1942 and as Deputy Chief Controller in 1947 and as the Chief Controller in 1950. All these posts were in Class III service. On March 31, 1951, seven candidates including the appellants, appeared before a section board constituted for selecting a candidate for the post of Assistant Superintendent Railway Telegraphs, which was a gazetted post in class II Officer's cadre. The appellant was selected out of the seven candidates for this post. On July 2, 1951, a notice of appointment was issued from the headquarters of the East Punjab Railway, Delhi, notifying that "Mr. Parshotam Lal, Officiating Chief Controller, is appointed to officiate in Class II service as Asstt. Spdt. Rly. Telegraphs. Headquarters Office vice Mr. Sahu Ram whose term of temporary re-employment expires on the afternoon of 3rd July, 1951". The applicant actually relieved Mr. Sahu Ram in the afternoon of July 3, 1951. It appears that on April 28, 1953, one Gouri Shankar S.S.T.E.I./Hd. Qrs. made certain adverse remarks against the appellant in his confidential report for the year ending March 31, 1953. This confidential report came before Shri S. Sen, C.S.T.E., on May 25, 1953, who confirmed the views expressed by Shri Gouri Shankar and added his own opinion which was also adverse to the appellant. According to the usual practice obtaining in the office the aforesaid remarks were placed before the General Manager, Shri Karnail Singh, who on June 11, 1953, remarked thereon as follows :

> "I am disappointed to read these reports. He should revert as a subordinate till he makes good the short-comings noticed in this chance of his as an officer. Portions underlined red to be communicated."

The adverse remarks against the appellant in the confidential report for the year ending March 31, 1953, which were communicated to the appellant for his information by a confidential letter No. E-106/180 dated June 29, 1953, were as follows :

> ".....He is, however, inclined to be hasty in his decisions. His office work is scrappy and does not show attention to detail. His relations with staff as well as officers have not been happy. He has displayed a tendency to resort freely to transfers and punishment of staff, as a means of correcting their faults and in regard to officers has not maintained the proper tone and approach in official notings, discussions and letters to Divisions.
>
> The above short-comings have been brought to his notice on a number of occasions both in person and in writing, without any improvement."

Remarks of Shri S. Sen, C.S.T.E.

> ".....This officer suffers from an inflated idea of self importance. His ways and manners require radical change if he desires to have a successful career as an officer."

Remarks of the General Manager.

> "I am disappointed to read these reports....."

On July 24, 1953, the appellant, who had by this time earned two increments on July 4, 1952 and July 4, 1953, made a representation against the remarks made against him. On August 19, 1953, however, notice No. 940-E/14 (E.I.A.) was issued by the General Manager (P) to the following effect :

> "Shri Bishambar Nath Chopra, Instructor Railway Training School, Saharanpur, is transferred to Headquarters office and appointed to officiate in Class II service as Assistant Signal and Tele-communication Engineer (Telegraphs) vice Shri Parshotam Lal Dhingra, who on relief reverts to Class III appointment."

The appellant on August 20, 1953, appealed to the General Manager for reconsideration and thereafter on October 19, 1953, appealed to the Railway Board and made a representation also to the President of India. On February 2, 1955, the Railway Board wrote to the General Manager as follows :

> "With reference to your letter No. 3780 dated 30th December, 1953, the Board desires that you should inform Shri Parshotam Lal Dhingra that his reversion for generally unsatisfactory work will stand, but that this reversion will not be a bar to his being considered again for a promotion in the future if his work and conduct justify. He should also be informed that he has, in his representation, used language unbecoming of a senior official, and that he should desist from this in future.
>
> You may watch his work up to the end of March, 1955 and judging from his work and conduct, you may treat him as eligible for being considered for promotion as Assistant Transportation Superintendent in the Selection that may be made after March 1955."

This was communicated to the petitioner on February 17, 1955.

In the meantime the petitioner had on February 9, 1955, filed his writ petition under Art. 226 of the Constitution. Mr. Justice Harnam Singh took the view that the petitioner had been punished by being reduced in rank without being given an opportunity to show cause against the action proposed to be taken in regard to him and that consequently the order was invalid for non-compliance with the provisions of Art. 311(2) of the Constitution. On a Letters Patent Appeal filed by the Union of India, a Division Bench (Bhandari C.J. and Falshaw J.) reversed the order of Harnam Singh J. and dismissed the petitioner's writ application. The High Court having subsequently certified that it was a fit case for appeal to this Court, the petitioner has now come up on appeal before us and the question for our decision is whether the order passed by the General Manager on August 19, 1953, amounted to a reduction in rank within the meaning of Art. 311(2) of the Constitution, for if it did then the order must be held to be invalid as the requirements of that article had admittedly not been complied with.

Under the English Common Law all servants of the Crown held office during the pleasure of the Crown and were liable to be dismissed at any time and without any reason being assigned for such dismissal. No action lay against the Crown in respect of such dismissal, even though it were contrary to the express term of the contract of employment, for the theory was that the Crown could not fetter its future executive action by entering into a contract in matters which concerned the welfare of the State. A servant of the Crown could not at Common Law sue the Crown even for the arrears of his salary, and his claim could be only on the bounty of the Crown. The established notion was that the implied condition between the Crown and its servant was that the latter held his office during the pleasure of the Crown, no matter whether it had been referred to when the engagement had been made or not and that public policy demanded this qualification. (See per Lord Blackburn in Mulvenna v. The Admiralty [(1926) S.C. 842]). This rule was applied in full force in Lucas v. Lucas and High Commissioner for India [L.R. (1943) P. 68], where it was held that the sterling overseas pay of an Indian Civil Servant was not a debt which could be attached in satisfaction of an order for the payment of alimony. In the State of Bihar v. Abdul Majid [[1954] S.C.R. 786], however, this Court held, for reasons stated in the judgment delivered by Mahajan C.J. that the Indian Law has not adopted the rule of English Law on the subject in its entirety.

Turning to our Statute Law, we find that in the Government of India Act, 1915 (5 & 6 Geo. V. Ch. 61), as originally enacted, there was no reference to this doctrine of the English Common Law. By s. 45 of the Government of India Act, 1919 (9 & 10 Geo. V. Ch. 101) read with Part I of the second schedule to that Act several sections, including s. 96-B, were introduced into the Government of India Act, 1915 (hereinafter called the "1915 Act"). The relevant portion of s. 96-B was as follows :

> "96-B (1). Subject to the provisions of this Act and the rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed."

Sub-section (2) of that section empowered the Secretary of State in Council to make rules for regulating the classification of the Civil Services in India, the method of recruitment, the conditions of service, pay and allowances and discipline and conduct and sub-section (4) declared that all

service rules then in force had been duly made and confirmed the same. The point to be noted is that s. 96-B for the first time gave a statutory recognition and force to the English Common Law rule that the servants of the Crown held their Offices during the pleasure of the Crown and at the same time imposed one important qualification upon the exercise of the Crown's pleasure, namely, that a servant might not be dismissed by an authority subordinate to that by which he had been appointed.

Section 96-B(1) was reproduced as sub-ss. (1) and (2) of s. 240 of the Government of India Act, 1935 (26 Geo. V. Ch. II) (hereinafter referred to as the 1935 Act) and a new sub-section was added to s. 240 as sub-sec. (3). The relevant portions of s. 240 of the 1935 Act are set out below :

> "240 (1) Except as expressly provided by this Act, every person who is a member of a Civil Service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.
>
> (2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.
>
> (3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him;
>
> #....."##

Then followed a proviso which made sub-s. (3) inapplicable to certain persons and then came sub-s. (4) providing for compensation for premature termination of employment in certain cases which it is not necessary to set out here. The rule making power given by s. 96-B (2) of the 1915 Act was reproduced in s. 241 of the 1935 Act. Section 276 of the 1935 Act, like s. 96-B(4) of the 1915 Act, continued in force all the rules made under the last mentioned Act, while the existing laws were continued by s. 292. It should be noted that the opening words of s. 96-B(1), namely, "Subject to the provisions of this Act and the rules made thereunder" were substituted by the words "Except as expressly provided by this Act." The effect of this will be discussed hereafter. Sub-section (1) adopted the English Common Law rule regarding the pleasure of the Crown but imposed on it two qualifications by two separate sub-sections. Sub-section (2) reproduced the qualification which had been imposed by s. 96-B(1), namely, that a servant of the class therein mentioned must not be dismissed by an authority subordinate to that by which he had been appointed and sub-s. (3) introduced a still more important qualification on the exercise of the Crown's pleasure, namely, that no such servant must be dismissed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Reduction in rank was not referred to in s. 96-B(1) but was for the first time added to dismissal in sub-s. (3).

Then came our Constitution on January 26, 1950. Part XIV deals with "Services under the Union and the States". Chapter I contains seven sections grouped under the heading "Services". Section 240(1) of the 1935 Act has been substantially reproduced in Art. 310(1) and sub-ss. (2) and (3) of s. 240 have become Art. 311(1) and (2), while s. 276 of the 1935 Act, which continued the existing rules in force, has been embodied in Art. 313. Articles 310(1) and 311 omitting the proviso to cl. (2), are as follows :

> "310 (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India

Service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member if a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

311 (1) No person who is a member of civil service of the Union or an all-India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided.....

(3) If any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

To summarise : As under s. 96-B(1) of the 1915 Act and s. 240(1) of the 1935 Act, the persons specified therein held office during the pleasure of the Crown, so under Art. 310(1) they hold their office during the pleasure of the President or of the Governor, as the case may be. The opening words of Art. 310(1), namely, "Except as expressly provided by this Constitution", reproduce the opening words of s. 240(1) of the 1935 Act, substituting the word "Constitution" for the word "Act". The exceptions contemplated by the opening words of Art. 310(1) quite clearly refer, inter alia, to Arts. 124, 148, 218 and 324 which respectively provide expressly that the Supreme Court Judges, the Auditor-General, the High Court Judges and the Chief Election Commissioner shall not be removed from his office except by an order of the President passed after an address by each House of Parliament, supported by the requisite majority therein specified, has been presented to him in the same session for such removal on the ground of proved misbehaviour or incapacity. These are clearly exceptions to the rule embodied in Art. 310(1), that public servants hold their office during the pleasure of the President or the Governor, as the case may be. Subject to these exceptions our Constitution, by Art. 310(1), has adopted the English Common Law rule that public servants hold office during the pleasure of the President or Governor, as the case may be and has, by Art. 311, imposed two qualifications on the exercise of such pleasure. Though the two qualifications are set out in a separate article, they quite clearly restrict the operation of the rule embodied in Art. 310(1). In other words the provisions of Art. 311 operate as a proviso to Art. 310(1). All existing laws have been continued by Art. 372, some of which, e.g., the Code of Civil Procedure make it possible for a public servant to enforce his claims against the State. It has accordingly been held by this Court in the State of Bihar v. Abdul Majid (supra) that the English Common Law rule regarding the holding of office by public servants only during the pleasure of the Crown has not been adopted by us in its entirely and with all its rigorous implications. Passing on to Art. 311 we find that it gives a two fold protection to persons who come within the article, namely, (1) against dismissal or removal by an authority subordinate to that by which they were appointed and (2) against dismissal or removal or reduction in rank without giving them a reasonable opportunity of showing cause against the action proposed to be taken in regard to them. Incidentally it will be noted that the word "removed" has been added after the word "dismissed" in both cls. (1) and (2) of Art. 311. Upon Art. 311 two

questions arise, namely, (a) who are entitled to the protection and (b) what are the ambit and scope of the protection ?

Re (a) : Articles 310 and 311 are two of the articles which have been grouped under the heading "Services" in Chapter I of Part XIV which deals with the "Services under the Union and the States". It is well known that there are different species of Government services. In the absence of a contract to the contrary the terms of employment of persons in different services are governed by rules made by the appropriate authorities to which reference will hereafter be made. The strength of a service or a part of a service sanctioned as a separate unit is, in the Fundamental Rules, s. III, ch. II, r. 9(4), called the cadre. Each cadre consists of a certain number of posts. According to r. 9(22) of the Fundamental Rules, a permanent post means a post carrying a definite rate of pay sanctioned without limit of time. In each cadre there may be and often is a hierarchy of ranks. Due to rush of business or other exigencies some "temporary posts" are often created. A temporary post is defined in r. 9(30) to mean a post carrying a definite rate of pay sanctioned for a limited time. These temporary posts are very often outside the cadre and are usually for one year and are renewed from year to year, although some of them may be created for a certain specified period. The conditions of service of a Government servant appointed to a post, permanent or temporary, are regulated by the terms of the contract of employment, express or implied, and subject thereto, by the rules applicable to the members of the particular service.

The appointment of a Government servant to a permanent post may be substantive or on probation or on an officiating basis. A substantive appointment to a permanent post in public service confers normally on the servant so appointed a substantive right to the post and he becomes entitled to hold a "lien" on the post. This "lien" is defined in Fundamental Rule s. III, ch. II, r. 9(13) as the title of a Government servant to hold substantively a permanent post, including a tenure post, to which he has been appointed substantively. The Government cannot terminate his service unless it is entitled to do so (1) by virtue of a special term of the contract of employment, e.g., by giving the requisite notice provided by the contract or (2) by the rules governing the conditions of his service, e.g., on attainment of the age of superannuation prescribed by the rules, or on the fulfilment of the conditions for compulsory retirement or, subject to certain safeguards, on the abolition of the post or on being found guilty, after a proper enquiry on notice to him, of misconduct, negligence, inefficiency or any other disqualification. An appointment to a permanent post in Government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial. The period of probation may in some cases be for a fixed period, e.g., for six months or for one year or it may be expressed simply as "on probation" without any specification of any period. Such an employment on probation, under the ordinary law of master and servant, comes to an end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice. An appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post. Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or on a substantive appointment being made to that permanent post in the latter case or on the service of a notice of termination as agreed upon or as may be reasonable under the ordinary law. It is, therefore, quite clear that appointment to a permanent post in a Government service, either on probation, or on an officiating basis, is, from the very nature of such employment, itself of a transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on

an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time. Likewise an appointment to a temporary post in a Government service may be substantive or on probation or on an officiating basis. Here also, in the absence of any special stipulation or any specific service rule, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case, namely, when the appointment to a temporary post is for a definite period. In such a case the servant so appointed acquire a right to his tenure for that period which cannot be put an end to unless there is a special contract entitling the employer to do so on giving the requisite notice or the person so appointed is, on enquiry held on due notice to the servant and after giving him a reasonable opportunity to defend himself, found guilty of misconduct, negligence, inefficiency or any other disqualification and is by way of punishment dismissed or removed from service or reduced in rank. The substantive appointment to a temporary post, under the rules, used to give the servant so appointed certain benefits regarding pay and leave, but was otherwise on the same footing as appointment to a temporary post on probation or on an officiating basis, that is to say, terminable by notice except where under the rules promulgated in 1949 to which reference will hereafter be made, his service had ripened into what is called a quasi-permanent service.

The position may, therefore, be summarised as follows : In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service. The question for our consideration is whether the protections of Art. 311 are available to each of these several categories of Government servants.

A number of decisions bearing on the question of construction of Arts. 310 and 311 have been cited before us which indicate that there is some difference of opinion between the Judges of the different High Courts and in some cases amongst the Judges of the same High Court. Thus it has been held in some cases that Arts. 310 and 311 do not make any distinction between Government servants who are employed in permanent posts and those who are employed in temporary posts. See Jayanti Prasad v. The State of Uttar Pradesh [A.I.R. (1951) All. 793], G.P. Oak v. The State of Bombay [A.I.R. (1957) Bom. 175], Kishanlal Laxmilal v. The State of Madhya Bharat [A.I.R. (1956) M.B. 100], Gopi Kishore Prasad v. The State of Bihar [A.I.R. (1955) Pat. 372], Punit Lal Saha v. The State of Bihar [A.I.R. (1957) Pat. 357] and Yusuf Ali Khan v. Province of the Punjab [A.I.R. (1950) Lah. 59]. On the other hand it has been held in some cases that a Government servant cannot be deemed to be a member of a service unless he is permanently absorbed therein, nor can he be deemed to be a holder of such post unless he holds it permanently and that such a Government servant is not entitled to claim the benefit of Art. 311. See Laxminarayan Chiranjilal Bhargava v. The Union of India [I.L.R. (1955) Nag. 893; A.I.R. (1956) Nag. 113], Engineer-in-Chief, Army Head Quarters v. C. A. Gupta Ram [A.I.R. (1957) Punj. 42], State of Punjab v. S. Sukhbans Singh [A.I.R. (1957) Punj. 191] and Chiranjilal v. Union of India [A.I.R. (1957) Raj. 81]. The cases cited

before us also indicate that the preponderance of view is that only a dismissal or removal or reduction in rank by way of penalty attracts the operation of Art. 311(2), but that a termination of service brought about otherwise than by way of punishment, e.g., by the exercise of the right under the terms of employment or under the relevant rules regulating the conditions of service which form part of the terms of employment does not. See Jayanti Prasad v. The State of Uttar Pradesh (supra), Shrinivas Ganesh v. Union of India [L.R. 58 Bom. 673; A.I.R. (1956) Bom. 455]; Jatindra Nath Biswas v. R. Gupta [A.I.R. (1954) Cal. 383], Rabindra Nath Das v. The General Manager, Eastern Railway [(1955) 59 C.W.N. 859], Jatindra Nath Mukherjee v. The Government of the Union of India [(1957) 61 C.W.N. 815], Ahmad Sheikh v. Ghulam Hassan [A.I.R. (1957) J. & K. 11], Ganesh Balkrishna Deshmukh v. The State of Madhya Bharat [A.I.R. (1956) M.B. 172], D.P. Ragunath v. The State of Coorg [A.I.R. (1957) Mys. 8], M.V. Vichoray v. The State of Madhya Pradesh [A.I.R. (1952) Nag. 288], Kamta Charan Srivastava v. Post Master General [A.I.R. (1955) Pat. 381] and Sebastian v. State [A.I.R. (1955) Tr. Co. 12]. The cases, however, do not lay down or clearly indicate any test for ascertaining whether in any particular case a termination of service is inflicted by way of penalty so as to amount to dismissal, removal or reduction in rank within the meaning of Art. 311(2) or is brought about by the exercise of the right to terminate it arising out of the terms of employment agreed upon between the parties or contained in rules regulating the conditions of service subject to which the employment was made. Further a certain amount of confusion arises because of the indiscriminate use of the words "temporary", "provisional", "officiating" and "on probation". We, therefore, consider it right to examine and ascertain for ourselves the scope and effect of the relevant provisions of the Constitution.

Article 311 does not, in terms, say that the protections of that article extend only to persons who are permanent members of the services or who hold permanent civil posts. To limit the operation of the protective provisions of this article to these classes of persons will be to add qualifying words to the article which will be contrary to sound principles of interpretation of a Constitution or a statute. In the next place, cl. (2) of Art. 311 refers to "such person as aforesaid" and this reference takes us back to cl. (1) of that article which speaks of a "person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State". These persons also come within Art. 310(1) which, besides them, also includes persons who are members of a defence service or who hold any post connected with defence. Article 310 also is not, in terms, confined to persons who are permanent members of the specified services or who hold permanent posts connected with the services therein mentioned. To hold that that article covers only those persons who are permanent members of the specified services or who hold posts connected with the services therein mentioned will be to say that persons, who are not permanent members of those services or who do not hold permanent posts therein, do not hold their respective offices during the pleasure of the President or the Governor, as the case may be - a proposition which obviously cannot stand scrutiny. The matter, however, does not rest here. Coming to Art. 311, it is obvious that if that article is limited to persons who are permanent members of the services or who hold permanent civil posts, then the constitutional protection given by cls. (1) and (2) will not extend to persons who officiate in a permanent post or in a temporary post and consequently such persons will be liable to be dismissed or removed by an authority subordinate to that by which they were appointed or be liable to be dismissed, removed or reduced in rank without being given any opportunity to defend themselves. The latter classes of servants require the constitutional protections as much as the other classes do and there is nothing in the language of Art. 311 to indicate that the Constitution makers intended to make any distinction between the two classes. There is no apparent reason for such distinction. It is said that persons who are merely officiating in the posts cannot be said to "hold" the post, for they only perform the duties of those posts. The word "hold" is also used

in Arts. 58 and 66 of the Constitution. There is no reason to think that our Constitution makers intended that the disqualification referred to in cl. (2) of the former and cl. (4) of the latter should extend only to persons who substantively held permanent posts and not to those who held temporary posts and that persons officiating in permanent or temporary posts would be eligible for election as President or Vice-President of India. There could be no rational basis for any such distinction. In our judgment, just as Art. 310, in terms, makes no distinction between permanent and temporary members of the services or between persons holding permanent or temporary posts in the matter of their tenure being dependent upon the pleasure of the President or the Governor, so does Art. 311, in our view, make no distinction between the two classes, both of which are, therefore, within its protections and the decisions holding the contrary view cannot be supported as correct.

Re : (b) :- Clause (1) of Art. 311 is quite explicit and hardly requires discussion. The scope and the ambit of that protection are that Government servants of the kinds referred to therein are entitled to the judgment of the authority by which they were appointed or some authority superior to that authority and that they should not be dismissed or removed by a lesser authority in whose judgment they may not have the same faith. The underlying idea obviously is that a provision like this will ensure to them a certain amount of security of tenure. Clause (2) protects Government servants against being dismissed or removed or reduced in rank without being given a reasonable opportunity of showing cause against the action proposed to be taken in regard to them. It will be noted that in cl. (1) the words "dismissed" and "removed" have been used while in cl. (2) the words "dismissed", "removed" and "reduced in rank" have been used. The two protections are (1) against being dismissed or removed by an authority subordinate to that by which the appointment had been made and (2) against being dismissed, removed or reduced in rank without being heard. What, then, is the meaning of those expressions "dismissed", "removed" or "reduced in rank" ? It has been said in Jayanti Prasad v. The State of Uttar Pradesh (supra) that these are technical words used in cases in which a person's services are terminated by way of punishment. Those expressions, it is urged, have been taken from the service rules, where they were used to denote the three major punishments and it is submitted that those expressions should be read and understood in the same sense and treated as words of art. This leads us to embark upon an examination of the service rules relating to punishments to which the Government servants can be subjected.

Rule 418 of the Civil Service Regulations of 1902 (hereinafter called the 1902 Rules) provides, inter alia, that the removal of public servants from the service for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination entailed forfeiture of past services. Those 1902 rules, however, did not say under what circumstances or in what manner and by which authority public servants could be removed.

In exercise of the powers conferred by s. 96-B(2) of the 1915 Act the Secretary of State in Council framed the Civil Service (Governors' Provinces) Classification Rules (hereinafter referred to as the 1920 Classification Rules) which came into force in December, 1920 and were applicable to Government servants serving in the Governor's Provinces. Rule X of these 1920 Classification Rules laid down that a local Government might for good and sufficient reasons (1) censure, (2) reduce to a lower post, (3) withhold promotion from or (4) suspend from service, any officer of an all-India service, provided that no head of the department appointed with the approval of the Governor General in Council would be reduced to a lower post without the sanction of the Governor General in Council. Likewise r. XIII provided that, without prejudice to the provisions of any law for the time being in force, the local Government might for good and sufficient reasons (1) censure, (2) withhold promotion from, (3) reduce to a lower post, (4) suspend, (5) remove, or (6) dismiss any officer holding a post in a provincial or subordinate service or a special appointment. Rule XIV laid

down the procedure in cases of dismissal, removal or reduction in the following terms :

> "Rule XIV - Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, in all cases in which the dismissal, removal or reduction of any officer is ordered, the order shall, except when it is based on facts or conclusions established at a judicial trial, or when the officer concerned has absconded with the accusation hanging over him, be preceded by a properly recorded departmental enquiry. At such an enquiry a definite charge in writing shall be framed in respect of each offence and explained to the accused, the evidence in support of it and any evidence which he may adduce in his defence shall be recorded in his presence and his defence shall be taken down in writing. Each of the charges framed shall be discussed and a finding shall be recorded on each charge." Thus we find that these 1920 Classification Rules enumerated the different kinds of punishments that could be inflicted on the different classes of Government servants and elaborately prescribed the procedure which had to be followed before those punishments could be inflicted.

The Secretary of State in Council also promulgated, with effect from January 1, 1922, what are known and what will hereafter be referred to as the Fundamental Rules governing the conditions of service, leave, pay and pension of all Government servants whose pay was debitable to civil estimates in India and to any other class of Government servants in India to which the Secretary of State in Council might by general or special order declare them to be applicable. Like r. 418 of the 1902 Rules, r. 52 of the Fundamental Rules provided that the pay and allowances of Government servants, who were dismissed or removed from service, would cease from the day of such dismissal or removal. Thus the penal consequences of loss of pay and allowances continued to follow dismissal or removal.

On May 27, 1930, the Secretary of State for India in Council, in exercise of the powers conferred by s. 96-B(2) of the Government of India Act, 1919, made the Civil Services (Classification, Control and Appeal) Rules (hereinafter called the 1930 Classification Rules) which superseded the 1920 Classification Rules. The 1930 Classification Rules, by r. 3, applied to every person in the whole time civil employment of a Government in India (other than a person so employed only occasionally or subject to discharge at less than one month's notice) except certain classes of persons therein specified which included, inter alia, railway servants. Under r. 14 the public services in India were classified under six heads, namely, (1) All-India Services, (2) Central Services Class I, (3) Central Services Class II, (4) Provincial Services, (5) Specialist Services and (6) the Subordinate Services. Under r. 15 read with sch. I the following were the all-India services :- (1) Indian Civil Service, (2) Indian Police Service, (3) Indian Agricultural Service, (4) Indian Educational Service, (5) Indian Forest Service, (6) Indian Forest Engineering Service, (7) Indian Medical Service, (8) Indian Service of Engineers, (9) Indian Veterinary Service and (10) Indian General Service. The Indian Railway Service was not included in the list. Rule 49, as originally framed, provided as follows :

> "The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed upon members of the services comprised in any of the classes (1) to (5) specified in rule 14, namely :- (i) Censure, (ii) Withholding of increments or promotion, including stoppage at an efficiency bar, (iii) Reduction to a lower post or time-scale, or to a lower stage in a time-scale, (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders, (v) Suspension, (vi) Removal from the civil service of the Crown which does not disqualify from future employment, (vii) Dismissal from the Civil Service of the

Crown, which, ordinarily disqualifies from future employment.

Explanation, The discharge -

(a) of a person appointed on probation, during the period of probation, (b) of a person appointed otherwise than under contract to hold a temporary appointment, on the expiration of the period of the appointment, (c) of a person engaged under contract, in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this rule."

The Explanation to r. 49 was amended on March 28, 1948, on February 28, 1950, and finally on January 28, 1955, when the Explanation was numbered as Explanation I and the words in cl. (ii) of r. 49, namely, "including stoppage at an efficiency bar" were deleted and Explanation II was added. So amended the Explanations read as follows :

"Explanation I - The termination of employment - (a) of a person appointed on probation during or at the end of the period of probation, in accordance with the terms of the appointment and the rules governing the probationary service; or

(b) of a temporary Government servant appointed otherwise than under contract, in accordance with rule 5 of the Central Civil Services (Temporary Service) Rules, 1949; or

(c) of a person engaged under a contract does not amount to removal or dismissal within the meaning of this rule or rule 55.

Explanation II : Stopping a Government servant at an efficiency bar in the time scale of his pay on the ground of his unfitness to cross the bar does not amount to withholding of increments or promotion within the meaning of this rule."

Like r. XIV of the 1920 Classification Rules, r. 55 of the 1930 Classification Rules, as originally framed in 1930, provided that, without prejudice to the Public Servants Enquiries Act, 1850, no order of dismissal, removal or reduction should be passed on a member of a service (other than an order passed on facts which had led to his conviction in a criminal court or by a court martial) unless he had been informed in writing of the grounds on which it was proposed to take action and had been afforded an adequate opportunity of defending himself. Detailed provisions were made as to the grounds on which it was proposed to take action being reduced to the form of a definite charge or charges and for the communication thereof to the officer together with a statement of the allegations on which each charge was based and further provisions were made as to the procedure relating to the filing of the defence, the right to cross-examine and to give evidence in person or to have such witnesses called as he might wish to examine in his defence. Thus in the 1930 Classification Rules, as in the 1920 Classification Rules, were enumerated the different kinds of punishments which could be inflicted on the Government servants of the class to which those rules were applicable and out of those varieties of punishment mentioned in r. 49, three of them, namely, dismissal, removal and reduction in rank, were treated as major punishments and some special procedural protection was prescribed in the interest of the Government servants.

At the date of the commencement of the Constitution the railway servants were governed by a separate set of rules collected in the two volumes of the Indian Railway Establishment Code. The petitioner is a railway servant and as such is governed by the rules of the Indian Railway Code.

Chapter XVII, which is in Volume I, regulated the conduct and discipline of the railway servants and the Railway Fundamental Rules collected in Volume II regulated their conditions of service, pay and deputation. These are similar to and are in pari materia with the 1930 Classification Rules. Rule 1702 of Chapter XVII prescribes eleven distinct penalties which may for good and sufficient reasons be imposed upon railway servants, namely, (1) censure, (2) withholding of the privilege of passes and/or privilege ticket order, (3) fines, including forfeiture or reduction of running allowances in the case of train and running staff, (4) withholding of increments or promotion including stoppage at an efficiency bar, (5) reduction to a lower post or time-scale or to a lower stage in a time scale, (6) recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders, (7) suspension, (8) removal from the service, (9) dismissal from the service, (10) withholding of the whole or part of Provident Fund and Gratuity Rules (Chapters XIII and XV) and (11) reducing or withholding the maximum pension admissible in accordance with the provisions of the rules governing the grant of pensions. There is a Note below this rule to the effect that the discharge (a) of a person appointed on probation, during the period of probation, (b) of a person engaged under contract for a specific period, on the expiration of such period in accordance with the terms of his contract, (c) of a person appointed in a temporary capacity otherwise than under a contract, in accordance with the general conditions of service applicable to temporary employment and of some other persons enumerated therein, do not amount to removal or dismissal within the meaning of r. 1702. Rule 1703 states that while dismissal from service disqualifies a railway servant from future employment, removal from service is not to be considered an absolute disqualification. Rule 1704 specifies the authority competent to impose penalties. Rule 1706 enumerates the causes for which a railway servant may be dismissed from service, namely, (1) conviction by a criminal court or by a court martial, (2) serious misconduct, (3) neglect of duty resulting in or likely to result in loss to Government or to a Railway administration, or danger to the lives of persons using the railway, or (4) insolvency or habitual indebtedness, and (5) obtaining employment by the concealment of his antecedents, which would have prevented his employment in railway service had they been known before his appointment to the authority appointing him. Procedure for dismissal is set out in r. 1707. "Removal from Service" is dealt with by r. 1708 and the procedure for removal is regulated by r. 1709. "Suspension" is the subject matter of r. 1711 and the procedure for imposing the other penalties is contained in r. 1712. "Reduction to lower post" is governed by r. 1714 which enjoins that when a railway servant is reduced for inefficiency or misconduct to a lower post in time-scale or to a lower grade or to a lower stage in a time-scale the authority ordering the reduction must state the period for which it will be effective and whether, on the expiry of that period, it will operate to postpone future increments or to affect the railway servant's seniority and, if so, to what extent. Rule 2310 provides that no pension is to be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency although compassionate allowances may be granted in deserving cases. Thus, the India Railway Establishment Code also, like the 1930 Classification Rules, provides for different punishments and the procedure to be followed for inflicting the same and the three graver punishments of dismissal, removal and reduction are dealt with separately, and special provisions are made regulating the procedure which must be followed before those graver forms of punishments can be inflicted.

In exercise of the powers conferred by sub-s. (2) of s. 241 of the 1935 Act, the Governor-General made certain rules called the Central Civil Service (Temporary Service) Rules, 1949 (hereinafter referred to as the 1949 Temporary Service Rules). These rules applied to all persons who held a civil post under the Government of India and who were under the rule-making control of the Governor-General, but who did not hold a lien on any post under the Government of India or any Provincial Government, but they did not apply to several categories of persons, including the

railway servants. By those rules some protection had been given even to persons who did not substantively hold permanent posts. Thus under r. 6 the services of those persons whose services had ripened into what was therein defined as quasi-permanent service could only be terminated in the same circumstances and in the same manner as those of Government servants in permanent service could be terminated or when the appointing authority certified that reduction had occurred in the number of posts available to Government servants not in temporary service. Further protection was given by the two provisos to that rule. By r. 5, however, the employment of persons holding temporary service could be terminated at any time by a month's notice.

Just to complete the history of the service rules reference may be made to the all-India Service (Discipline and Appeal) Rules, 1955 which were promulgated by the Central Government in September, 1955, after consultation with the State Governments. For our present purpose it is enough to say that rr. 49 and 55 of the 1930 Classification Rules were substantially reproduced in rr. 3 and 5 respectively of these 1955 rules except that the explanation to r. 49 has been elaborated and the results of the judicial decisions have been incorporated therein. In exercise of powers conferred by Art. 309 and Art. 148(5) of the Constitution the President, on February 28, 1957, made the Central Civil Services (Classification, Control and Appeal) Rules, 1957. Rule 13 of these Rules corresponds to r. 49 of the 1930 Classification Rules, and r. 3 of the 1955 Rules and r. 15 substantially reproduces r. 55 of the 1930 Classification Rules and r. 5 of the 1955 Rules.

The scheme of the Service Rules may now be broadly summarised as follows : They enumerated different punishments which, for good and sufficient reason, might be inflicted on Government servants and they prescribed special procedure which had to be followed before the three major punishments, of dismissal, removal or reduction in rank could be meted out to the Government servants. Thus rr. X and XIII of the 1920 Classification Rules prescribed several kinds of punishments to which the different classes of Government servants could be subjected and r. XIV of those rules laid down certain special procedure for cases in which the three major punishments of dismissal, removal or reduction of an officer were contemplated. Likewise r. 49 of the 1930 Classification Rules reproduced with some additions the punishments prescribed in rr. X and XIII and r. 55 of the 1930 Classification Rules provided similar procedural protection as had been prescribed by r. XIV of the 1920 Classification Rules before the punishments of dismissal, removal or reduction in rank could be inflicted. The scheme of the rules applicable to the railway servants was similar in substance. Thus rr. 1702 to 1714 and 2310 of the Indian Railway Code substantially reproduce the provisions of rr. 49 and 55 of the 1930 Classification Rules. In short, the service rules, out of the several categories of punishments, selected the three graver punishments of dismissal, removal and reduction in rank and laid down special procedure for giving protection to the Government servants against the infliction of those three major punishments.

It will be recalled that the opening words of s. 96-B(1) of the 1915 Act were - "Subject to the provisions of this Act and the Rules made thereunder" and sub-s. (4) confirmed the service rules that were then in force. In spite of this it was held in R. Venkata Rao v. Secretary of State for India [(1936) L.R. 64 I.A. 55] with reference to the rules made under s. 96-B of the 1915 Act that, while that section assured that the tenure of office, though at pleasure, would not be subject to capricious or arbitrary action but would be regulated by the rules, it gave no right to the appellant, enforceable by action, to hold his office in accordance with those rules. It was held that s. 96-B of the 1915 Act and the rules made thereunder only made provision for the redress of grievances by administrative process. As if to reinforce the effect of that decision, the opening words quoted above were, in s. 240(1) of the 1935 Act, replaced by the words "Except as expressly otherwise provided by this Act". The position of the Government servant was, therefore, rather insecure, for is office being held

during the pleasure of His Majesty under the 1915 Act as well as under the 1935 Act the rules could not over-ride or derogate from the statute and the protection of the rules could not be enforced by action so as to nullify the statute itself. The only protection that the Government servant had was that, by virtue of s. 96-B(1), they could not be dismissed by an authority subordinate to that by which they were appointed. The position, however, improved to some extent under the 1935 Act which, by s. 240(3), gave a further protection in addition to that provided in s. 240(2) which reproduced the protection of s. 96-B(1) of the 1915 Act. In other words the substance of the protection provided by r. 55 of the 1930 Classification Rules which require a special procedure to be followed before the three major punishments of dismissal, removal or reduction in rank out of the several punishments enumerated in r. 49 was bodily lifted, as it were, out of the Rules and embodied in the statute itself so as to give a statutory protection to the Government servants. These statutory protections have now become constitutional protections as a result of the reproduction of the provisions of s. 240 in Arts. 310 and 311 of our Constitution.

It follows from the above discussion that both at the date of the commencement of the 1935 Act and of our Constitution the words "dismissed", "removed" and "reduced in rank", as used in the service rules, were well understood as signifying or denoting the three major punishments which could be inflicted on Government servants. The protection given by the rules to the Government servants against dismissal, removal or reduction in rank, which could not be enforced by action, was incorporated in sub-ss. (1) and (2) of s. 240 to give them a statutory protection by indicating a procedure which had to be followed before the punishments of dismissal, removal or reduction in rank could be imposed on them and which could be enforced in law. These protections have now been incorporated in Art. 311 of our Constitution. The effect of s. 240 of the 1935 Act reproduced in Arts. 310 and 311, as explained by this Court in S.A. Venkataraman v. The Union of India [[1954] S.C.R. 1150], has been to impose a fetter on the right of the Government to inflict the several punishments therein mentioned. Thus under Art. 311(1) the punishments of dismissal, or removal cannot be inflicted by an authority subordinate to that by which the servant was appointed and under Art. 311(2) the punishments of dismissal, removal and reduction in rank cannot be meted out to the Government servant without giving him a reasonable opportunity to defend himself. The principle embodied in Art. 310(1) that the Government servants hold office during the pleasure of the President or the Governor, as the case may be, is qualified by the provisions of Art. 311 which gave protection to the Government servants. The net result is that it is only in those cases where the Government intends to inflict those three forms of punishments that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It follows, therefore, that if the termination of service is sought to be brought about otherwise than by way of punishment, then the Government servant whose service is so terminated cannot claim the protection of Art. 311(2) and the decisions cited before us and referred to above, in so far as they lay down that principle, must be held to be rightly decided.

The forgoing conclusion, however, does not solve the entire problem, for it has yet to be ascertained as to when an order for the termination of service is inflicted as and by way of punishment and when it is not. It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311(2). Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment. Again where a person is appointed to a

temporary post for a fixed term of say five years his service cannot, in the absence of a contract or a service rule permitting its premature termination be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the rules read with Art. 311(2). The premature termination of the service of a servant so appointed will prima facie be a dismissal or removal from service by way of punishment and so within the purview of Art. 311(2). Further, take the case of a person who having been appointed temporarily to a post has been in continuous service for more than three years or has been certified as the appointing authority as fit for employment in a quasi-permanent capacity, such person, under r. 3 of the 1949 Temporary Service Rules, is to be deemed to be in quasi-permanent service which, under r. 6 of those Rules, can be terminated (i) in the circumstances and in the manner in which the employment of a Government servant in a permanent service can be terminated or (ii) when the appointing authority certifies that a reduction has occurred in the number of posts available for Government servants not in permanent service. Thus when the service of a Government servant holding a post temporarily ripens into a quasi-permanent service as defined in the 1949 Temporary Service Rules, he acquires a right to the post although his appointment was initially temporary and, therefore, the termination of his employment otherwise than in accordance with r. 6 of those Rules will deprive him of his right to that post which he acquired under the rules and will prima facie be a punishment and regarded as a dismissal or removal from service so as to attract the application of Art. 311. Except in the three cases just mentioned a Government servant has no right to his post and the termination of service of a Government servant does not, except in those cases, amount to a dismissal or removal by way of punishment. Thus where a person is appointed to a permanent post in a Government service on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment, for the Government servant, so appointed, has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. Such a termination does not operate as a forfeiture of any right of the servant to hold the post, for he has no such right and obviously cannot be a dismissal, removal or reduction in rank by way of punishment. This aspect of the matter is recognised in the Explanation to r. 49 of the 1930 Classification Rules which correspond to the Note to r. 1702 of the Indian Railway Code and r. 3 of the 1955 Rules and r. 13 of the 1957 Rules, for all those rules expressly say that the termination of such an appointment does not amount to the punishment of dismissal or removal within the meaning of those rules. Likewise if the servant is appointed to officiate in a permanent post or to hold a temporary post other than one for a fixed term, whether substantively or on probation or on an officiating basis, under the general law, the implied term of his employment is that his service may be terminated on reasonable notice and the termination of the service of such a servant will not per se amount to dismissal or removal from service. This principle also has been recognised by the Explanations to r. 49 of the 1930 Classification Rules corresponding to the Note to r. 1702 of the Indian Railway Code and r. 5 of the 1949 Rules and r. 3 of the 1955 Rules and r. 13 of the 1957 Rules. Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has not right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a Government

servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Art. 311. In other words and broadly speaking, Art. 311(2), will apply to those cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Art. 311.

It does not, however, follow that, except in the three cases mentioned above, in all other cases termination of service of a Government servant who has no right to his post, e.g., where he was appointed to a post, temporary or permanent, either on probation or on an officiating basis and had not acquired a quasi-permanent status, the termination cannot, in any circumstance, be a dismissal or removal from service by way of punishment. Cases may arise where the Government may find a servant unsuitable for the post on account of misconduct, negligence, inefficiency or other disqualification. If such a servant was appointed to a post, permanent or temporary, either on probation or on an officiating basis, then the very transitory character of the employment implies that the employment was terminable at any time on reasonable notice given by the Government. Again if the servant was appointed to a post, permanent or temporary, on the express condition or term that the employment would be terminable on say a month's notice as in the case of Satish Chander Anand v. Union of India [[1953] S.C.R. 655], then the Government might at any time serve the requisite notice. In both cases the Government may proceed to take action against the servant in exercise of its powers under the terms of the contract of employment, express or implied, or under the rules regulating the conditions of service, if any be applicable, and ordinarily in such a situation the Government will take this course. But the Government may take the view that a simple termination of service is not enough and that the conduct of the servant has been such that he deserves a punishment entailing penal consequences. In such a case the Government may choose to proceed against the servant on the basis of his misconduct, negligence, inefficiency or the like and inflict on him the punishment of dismissal, removal or reduction carrying with it the penal consequences. In such a case the servant will be entitled to the protection of Art. 311(2).

The position may, therefore, be summed up as follows : Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. The Union of India (supra). Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2), as has also been held by this Court in Shyam Lal v. The State of Uttar Pradesh [[1955] 1 S.C.R. 26]. In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss pay, or allowances under r. 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla C.J. has said in Shrinivas Ganesh v. Union of India (supra), wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without

going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Art. 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an inedible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has not title to the post or the rank and the Government has, by contract express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Art. 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.

Applying the principles discussed above it is quite clear that the petitioner before us was appointed to the higher post on an officiating basis, that is to say, he was appointed to officiate in that post which, according to Indian Railway Code, r. 2003(19) corresponding to F.R. 9(19), means, that he was appointed only to perform the duties of that post. He had no right to continue in that post and under the general law the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government and, therefore, his reduction did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment. Nor did this reduction under Note 1 to r. 1702 amount to his dismissal or removal. Further it is quite clear from the orders passed by the General Manager that it did not entail the forfeiture of his chances of future promotion or affect this seniority in his substantive post. In these circumstances there is no escape from the conclusion that the petitioner was not reduced in rank by way of punishment and, therefore, the provisions of Art. 311(2) do not come into play at all. In this view of the matter the

petitioner cannot complain that the requirements of Art. 311(2) were not complied with, for those requirements never applied to him. The result, therefore, is that we uphold the decision of the Division Bench, although on somewhat different grounds. This appeal must, therefore, be dismissed with costs.

BOSE J. ◆

With great respect I cannot agree that Art. 311 is not attracted in this case.

I agree with my Lord that Art. 311 applies to all classes of Government servants mentioned in it and that it makes no difference whether they are permanent, quasi-permanent, officiating, temporary or on probation. There may be good reasons for having all these shades of difference in the civil services and among those who hold civil posts in the Union and the States but I am clear that the protections afforded by Art. 311 and other parts of the Constitution cannot be nullified or whittled down by clever phrasing and subtle ingenuity.

I am also clear that

> "Except as expressly provided by this Constitution, every person etc.....holds office during the pleasure of the President....."

These words are absolute and leave no room for inference or deduction. The "pleasure" can only be controlled by some express provision in the Constitution. One of them is in Art. 310(2), another in Art. 311. There are also others, such as Arts. 124(4) and 217(1)(b), but it is not necessary to enumerate them because I am only concerned with the broad principle here.

I also agree with my Lord that the words, dismissal, removal and reduction in rank, used in Art. 311 have special meaning. I would not have said this had it not been for ambiguities that arise otherwise. We were faced with that in Satish Chandra Anand v. Union of India [[1953] S.C.R. 655], where we had to construe the words "dismissal" and "removal" and to determine whether they were merely tautologous or had been introduced to emphasise a difference in meaning. According to the dictionary, they mean the same thing or, at any rate, have subtle shades of distinction that are meaningless in the context in which they are used. It was therefore necessary to look to the surrounding circumstances and determine whether they had acquired special technical significance at the date of the Constitution. For that purpose, it was necessary to examine the history of the conditions of service under the Crown and look to the various statutes and rules then in force. Except for that, I do not think it would have been proper to look at the rules for I cannot agree that the Constitution can be construed by reference to Acts of the Legislature and rules framed by some lesser authority and, in particular, to rules made and Acts passed after the Constitution.

I agree with my Lord that Art. 311 applies when penal consequences ensue from the dismissal or removal or reduction in rank, though I prefer to phrase this in wider terms and say that the Article is attracted whenever a "right" is infringed in the way in which I shall proceed to explain, for a right can be infringed in that sort of way even when no penal consequences follow.

I have used the word "right" but must hasten to explain that I use it in a special sense. The "right" need not necessarily be justiciable nor need it necessarily amount to a contract but, broadly speaking, it must be the sort of "right" which, even when not enforceable in the courts, would form a good foundation for a "Petition of Right" in England.

It is as difficult to speak of "rights" (except those expressly conferred by the Constitution) when one holds at "pleasure" as to speak of "contracts." But they are convenient expressions to convey a particular thought, provided the limitations imposed by the context are not forgotten.

The word "contract" is used in Art. 310(2), but as these "contracts" are as much subject to "pleasure" as any other engagement of service (except as otherwise provided by the Constitution) they are not contracts in the usual sense of the term; nor are the conditions of service that apply to Government servants who do not serve under a special "contract". A contract that can be determined at will despite an express condition to the contrary (and that is what Art. 310(2) contemplates) is not a contract as usually understood; nor are conditions of service that can be unilaterally varied without the consent of the other "contracting party", and even behind his back. But they are convenient terms to convey a thought and that is the sense in which "contract" is used in Art. 310(2) and the sense in which it has been used in some Privy Council rulings.

Now these "conditions of service" (and of course special "contracts" as well) confer "rights" and though the conditions can be varied unilaterally because of the "pleasure", they cannot be ignored so long as they are in force; and if a dismissal, or removal, or reduction in rank infringes one of these "rights", then, in my judgment, Art. 311 is attracted.

I said in Satish Chandra Anand case [[1953] S.C.R. 655], that the President and Government are as free to enter into special contracts as any other person provided they are consistent with the Constitution. That also applies to conditions of service where there are no special "contracts". Anything else would be anomalous especially as anyone who serves under the Union or under a State serves at "pleasure". It is, therefore, possible for the President to make "contracts" that are terminable in a particular way or at a particular time or on the happening of a given event, provided they do not offend the Constitution; and when they are so determined, they can, broadly speaking, be called "contractual terminations".

Two such cases have already been before this court. In Satish Chandra Anand's case (supra), it was a special "contract" terminable with a month's notice on either side. In Shyam Lal v. State of Uttar Pradesh [[1955] 1 S.C.R. 26] it was a condition of service that permitted compulsory retirement at a particular age. Any other variation that does not offend the Constitution would be equally permissible. These conditions confer a "right" on one side and correspondingly reduce the ambit of the "rights" conferred by the "contract" on the other. Therefore, when Government exercises one of their "rights" there is no infringement of the other party's "rights" because to that extent he has none. It follows that when, in a given case, Government has an option to adopt one of two courses as, for example, to "dismiss" or "reduce" for misconduct and at the same time to terminate or alter the service under a term of the "contract" or because of a condition of the service, then, if it chooses to act under the right conferred by the "contract", Art. 311 is not attracted even though misconduct is also present and even though that is the real reason for the action taken. But, if Government chooses to adopt such a course, it must be careful to see that no evil consequences will ensure over and beyond those that would ordinarily follow from a normal termination or alteration when there is no misconduct or blame on the part of the person affected. But I repeat that any such condition must be consistent with the Constitution and that no clever artifice or juggling with words can destroy or whittle down the guarantees of Art. 311, or any other Article for that matter.

To my mind, the test must always be whether evil consequences over and above those that would ensue from a "contractual termination" are likely to follow. Were it otherwise, the blameless man against whom no fault can be found would be at a disadvantage. It would be anomalous to hold that

a man who has been guilty of misconduct should have greater protection than a blameless individual. But any man who is visited with evil consequences that would not ensure in the case of another similarly placed, but free from blame, can, in my opinion, claim the protection of Art. 311.

Now what happened in this case ? The appellant was appointed to an All-India service of the Union in August, 1924. He has not been removed or dismissed from service, so he is still a member of an All-India service.

On July 2, 1951, he was appointed Assistant Superintendent of Railway Telegraphs in class II service. On August 19, 1953, he was relieved of this appointment and received to his substantive post in a class III appointment. There can be no doubt that this was a reduction in rank. The only question is whether it was so within the meaning of Art. 311 for, as I said earlier, these words have special meaning and do not apply in every case where a person is removed from a higher to a lower post.

The argument on behalf of the Union of India is that the higher post to which the appellant was appointed was temporary and that the appellant was only officiating in it; and rules were cited to show that Government had the right, under those rules, to shift the appellant from a higher to a lower post. I need not consider this argument because we are all agreed that Art. 311 applies even when the appointment is temporary, or officiating and, on the view I take, it does not matter whether Government had what I might call a "contractual right" to reduce because even if it had, it exercised it in a way that evoked evil consequences over and above those that would have ensured in a similar case where there was neither misconduct nor blame.

Our attention was directed to remarks in the appellant's confidential reports and to various administrative notings on his files. All these are, in my opinion, irrelevant. We are only concerned with the operative order made by the proper authority competent to make it and with the consequences that ensue from that order.

In this case, the order of reversion dated August 19, 1953, is non-committal. It merely says that Shri Bishambar Nath Chopra is appointed to officiate in the appellant's place and that on relief the appellant will revert to a lower rank. That in itself might be harmless but the order does not stand alone and though the various administrative notings are irrelevant, the General Manager's remarks on them, which form the real foundation of the order, cannot be ignored because the sting lies there and the evil consequences of which I speak flow from them. They are really part and parcel of the order and the two must be read together. I say this because, quite obviously, the constitutional guarantees of Art. 311 cannot be evaded by passing a non-committal order that is innocuous and at the same time making another order in secret that would have attracted Art. 311 had it been made openly. I am not suggesting that that was done here or that the object was to evade Art. 311 by a secret manoeuvre. All I am pointing out is that the consequences of Art. 311 cannot be evaded by cleverly splitting up an order into two parts.

Now what were those remarks ? They were endorsed on the appellant's file on June 11, 1953. The General Manager said :

> "I am disappointed to read these reports. He should revert as a subordinate till he makes good the short-comings noticed in this chance of his as an officer."

What does that mean ? In plain English it means that he is not to be promoted to a like post until

some competent officer chooses to think he has made good his previous short-comings. That is an evil consequence over and above that which would ensure in the case of what I may call again a "contractual termination" of the engagement in the higher post.

It was virtually admitted in the arguments before us that a man who is reduced in rank for misconduct for a particular period, say, one year or two years, is being "punished" and therefore Art. 311 will apply. What difference is there if the reduction is for an unspecified period instead of for one that is certain ? In both cases, the possibility of promotion is stayed and whether that is a "punishment" or a "penalty" it is, in my judgment, an evil consequence over and above that which would ensue in a case where the man "reduced" is faultless.

In view of the almost frivolous resort that is sometimes made to Art. 311 I want to guard against too wide an interpretation of what I have said. I do not mean to imply that the reasons that lead to an order of reduction are relevant when there is a "contractual right" to act in a particular way; nor do I mean to imply that a mere recording of disappointment or dissatisfaction would attract Art. 311 even if it is followed by a contractual termination of the engagement. All that is not of the essence. The real test is whether additional evil consequences are implicit in the order.

It is here that I venture to dissent, with the very greatest respect, from my Lord's construction of Art. 311. If I read his judgment aright, I gather that his view, and that of my learned brothers, is that Art. 311 is confined to the penalties prescribed by the various rules and that one must look to all the relevant rules to determine whether the order is intended to operate as a penalty or not. With deep respect, I do not think that the gist of the matter is either the form of the action or the procedure followed; nor do I think it is relevant to determine what operated in the mind of a particular officer. The real hurt does not lie in any of those things but in the consequences that follow and, in my judgment, the protections of Art. 311 are not against harsh words but against hard blows. It is the effect of the order alone that matters; and in my judgment, Art. 311 applies whenever any substantial evil follows over and above a purely "contractual one". I do not think the article can be evaded by saying in a set of rules that a particular consequence is not a punishment or that a particular kind of action is not intended to operate as a penalty. In my judgment, it does not matter whether evil consequences are one of the "penalties" prescribed by the rules or not. The real test is, do they in fact ensue as a consequence of the order made ?

I would allow the appeal with costs.

BY THE COURT. -

In accordance with the opinion of the majority, the appeal is dismissed with costs.

Appeal dismissed.

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