Union of India and Another

Vs

Tulsiram Patel

Union of India and Others

Vs

Sadanand Jha and Others

Union of India and Others

Vs

G. P. Koushal

And

Biswaroop Chatterjee and Others

Vs

Union of India and Others

Achinta Kumar Biswas and Others

Vs

Union of India and Others

Nabendu Bose and Others

Vs

Union of India and Others

And

Laxmi Narayan and Others

Vs

State of Madhya Pradesh

Civil ppeals Nos. 6814 and 4067 of 1983; 3484, 3512 of 1982 and 3231 of 1981 and Writ Petitions Nos. 2267, 2268, 2269, 2273, 3349, 3350, 3351, 3352, 3353, 6500, 8120 of 1982; 562 of 1983 and 1953 of 1981 and Transferred Cases Nos. 6 to 70, 73, 74 and 85 of 1982 and 34 to 40 of 1983

(CJI Y.V. Chandrachud, V.D. Tulzapurkar, R.S. Pathak, M.P. Thakkar, D.P. Madon JJ)

11.07.1985

JUDGMENT

D. P. MADON, J. -

1. The above appeals by special leave granted by this Court in the above writ petitions filed either in this Court under Article 32 of the Constitution of India or in different High Courts under Article 226 and transferred to this Courts raise a substantial question of law as to the interpretation of Articles 309, 310 and 311 of the Constitution and in particular of what is now, after the amendment of clause (2) of Article 311 by the Constitution (Forty-second Amendment) Act, 1976, the second proviso to that clause.

The Genesis of the Appeals and Writ Petitions :

2. To understand what questions fall for determination by this Court in these appeals and writ petitions, it is first necessary to sketch briefly how they have come to be heard by this Constitution Bench.

3. Article 311 of the Constitution confers certain safeguards upon parsons employed in civil capacities under the Union of India or a State. The first safeguard [which is given by clause (1) of Article 311] is that such person cannot be dismissed or removed by an authority subordinate to that by which he was appointed. The second safeguard [which is given by clause (22) of Article 311] is that he cannot be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The second safeguard is, however, not available to him when he is dismissed, removed or reduced in rank in any of the three cases mentioned in the second proviso to Article 311(2). These three cases are set out in clauses (a) to (c) of the second proviso. Under clause (a), such person can be dismissed, removed or reduced in rank without any inquiry on the ground of conduct which has led to his conviction on a criminal charge. Under clause (b), any of these three penalties can be imposed upon him where the authority empowered to impose any of these penalties is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry. Under clause (c), any of the above penalties can be imposed upon him where the President or the Governor of State, as the case may be, is satisfied that in the interest of the security the State it is not expedient to hold such inquiry.

4. All the government servants in the above appeals and writ petitions have been either dismissed or removed from service without holding any inquiry. They have not been informed of the charges against them not been given any opportunity of being heard in respect of those charges. The penalty of dismissal or removal, as the case may be, has been imposed upon them under one or the other of the three clauses of the second proviso to Article 311(2) or under similar provisions in rules made under the proviso to Article 309 or in rules made under an Act referable to Article 30, for instance, Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, and Rule 37 of the Central Industrial Security Force Rules, 1969, or under such a rule read with one of the clauses of the second proviso to Article 311(2).

5. Aggrieved by these orders of dismissal and removal, several government servants filed writ petitions under Article 226 of the Constitution in different High Courts. Some of these writ petition

were allowed, mainly on the basis of a decision of a three-Judge Bench of this Court in Divisional Personnel Officer, Southern Rly. v. T. R. Challappan ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) given on on September 15, 1975, while a few were dismissed. Appeals by special leave against those judgments were filed in this Court. In three other similar appeals, namely, Civil Appeals 1088, and 1120 of 1975, another three-Judge Bench of this Court felt that there was a conflict between Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) and an earlier decision of another three-Judges Bench of this Court, namely, M. Gopala Krishna Naidu v. State of M. P. ((1968) 1 SCR 355 : AIR 1968 SC 240 : (1968) 2 LLJ 125 : 1968 Lab IC 216) and directed on November 18, 1976, that the papers in those three appeals be placed before the learned Chief Justice to enable him to refer those appeals to a larger Bench. The said appeals were thus referred to Constitution Bench. Because of the said order all the above appeals and writ petitions were also placed before this Constitution Bench. During the course of hearing of all these matters by this Constitution Bench, the said Civil Appeals 1088, 1089 and 1120 of 1975 were, however, got dismissed on March 29, 1984, but the above appeals and writ petitions were fully heard and are being disposed of by this Judgment.

Civil Servants :

6. Justice Oliver Wendell Holmes in his book "The Common Law", consisting of lectures delivered by him while teaching law at Harvard and published just one year before he was appointed in 1882 an Associate Justice of the Massachusetts Supreme Judicial Court, said :

> The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is we must know what it has been and what it tends to become.
>
> It will not, therefore, be out of place to begin this Judgment with a brief historical sketch of the civil services in India as also of the law applicable to civil servants and the changes which have taken place in it from time to time.

7. Civil servants, that is, persons who are members of a civil service of the Union of India or an all-India service or a civil service of a State or who hold a civil post under the Union or a State, occupy in law a special position. The ordinary law of master and servant does not apply to them. Under that law, whether the contract of service is for a fixed period or not, if it contains a provision for its termination by notice, it can be so terminated. If there is no provision for giving a notice and the contract is not for a fixed period, the law implies an obligation to give reasonable notice. Where no notice in the first case or no reasonable notice in the second cases is given, the contract is wrongfully terminated and such wrongful termination will give rise to a claim for damages. This is subject to what may otherwise be provided in industrial and labour laws where such laws are applicable. The position of civil servants both in England and in India is, however, vastly different.

The Civil Service in England :

8. Our civil services are modelled upon the British pattern though in some respects there are important deferences between the two. In England, except where otherwise provided by statute, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown or durante bene placito ("during good pleasure" or "during the pleasure of the appointor ") as opposed to an office held dum bene gesserit ("during good conduct"), also called quadiu se bene gesserit ("as

long as he shall behave himself well"). When a person holds office during the pleasure of the Crown, his appointment can be terminated at any time without assigning cause. The exercise of pleasure by the Crown can, however, be restricted by legislation enacted by Parliament because in the United Kingdom Parliament is sovereign and has the right to make or unmake any law whatever and all that court of law can do with an Act passed by Parliament is to interpret its meaning but not to set it aside or declare it void. Blackstone in his Commentaries has thus described the unlimited legislative authority of Parliament. (1 B1. Comm. pp. 160, 161) :

> It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal : this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or new-model the succession to the Crown; as was done in the reign of Henry VIII and William III. It can alter the established religion of the land; as was done in a variety of instances, in the reigns of king Henry VIII and his three children. It can change and create afresh even the constitution of the constitution of the kingdom and of parliaments themselves; as was done by the act of union, and the several statutes for triennial and septennial; elections. It can, in short, do everything that is not naturally impossible; and therefor some have not scrupled to call its power, by a figure father to bold, the omnipotence of Parliament. True it is, that what the Parliament doth, no authority upon earth can undo.
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> Jean Louis De Lolme, the eighteenth-century Swiss constitutionalist in his Constitution de l' Angleterre (Constitution of England), which gave many on the Continent their ideas of the British Constitution, summed up the position of Parliament in the English constitutional law in the following apophthegm quoted in Dicey's Introduction to the Study of the Law of the Constitution (see 10th Edition, p. 43) :
>
> It is a fundamental principle with English lawyers, that Parliament can do everything but make a woman a man, and a man a woman.

9. So far as the pleasure doctrine in English is concerned, Lord Diplock in Chelliah Kodeeswarn v. Attorney-General of Ceylon (LR 1970 AC 1111, 1118 (PC) : (1970) 2 WLR 456) has succinctly stated its position in English law as fellows :

> It is now well established in British constitutional theory, at any rate as it has developed since the eighteenth century, that any appointment as a Crown servant, however subordinate, is terminable at will unless it is expressly otherwise provided by legislation.
>
> In practice, however, a dismissal would take place only as the result of well-established disciplinary processes.

10. In recent years, though the Crown still retains the right to dismiss at pleasure, the legal position of civil servants has radically changed as a result of legislation, and legally binding collective

agreements can be entered into between the Crown and representatives of its staff and those representatives can sue for breaches of any conditions of service covered by these agreements. Further, a civil servant can bring an action for unfair dismissal or sue on his conditions of service. But just as an ordinary employee cannot insist on continuing in employment, so also a civil servant cannot insist on continuing in employment. The remedy in both cases is to recover damages for wrongful dismissal. (See Halsbury's Laws of England, Fourth Edition, Volume 8, paras 1106 and 1303)

The Pre-Constitution Civil Services in India :

11. It is unnecessary to go back more than two centuries to trace the origin and development of the civil service in India. The East India Company sent out to India its own servant and so did the Crown, and from the earliest times, under the various Charters given to the East India Company, the Crown could at its pleasure remove any person holding office, whether civil or military, under the East India Company. The Court of Directors of the East India Company had also the power to remove or dismiss and of its officers or servants not appointed by the Crown. Section 35 of the Act of 1793 (33 Geo. III, c. 52) made it lawful to and for the King's Majesty, his heirs and successors, by any writing or instrument under his or their sign manual, countersigned by the President of the Board of Commissioners for the affairs of India, to remove or recall any person holding any office, employment or commission, civil or military, under the East India Company; while Section 36 of that Act provided that nothing contained in that Act should extend, or be construed to extend, to preclude or take away the power of the Court of Directors of the East India Company from removing or recalling any of its officers or servants and that the Court of Directors shall and may at all times have full liberty to remove, recall or dismiss any of such officers or servants at their will and pleasure in the like manner as if that Act had not been passed. Similar provisions were made in the Act of 1833 (3 & 4 Will. IV, C. 85) by Sections 74 and 75 of that Act. Section 74 made it lawful "for his Majesty by any Writing under His Manual, countersigned by the President of the said Board of Commissioners, to remove or dismiss any person holding any office, employment or commission, civil or military, under the said Company in India, and to vacate any Appointment or Commission of any person to any such office or employment". Section 75 provided that nothing contained in that Act would take away the power of that Court of Directors to remove or dismiss any of the officers or servants of the Company "but that the said Court shall and may at all times have full liberty to remove or dismiss any of such officers or servants at their will and pleasure".

12. By the end of the nineteenth century a well-organized civil service had developed in India, the control over it being vest in the executive, and the members of the "civil service of the Crown in India" were governed in the matter of their appointments as also the regulation of the conditions of their service, such as, classification, methods of recruitment, pay and allowances, and discipline and conduct, by rules made by the executive.

13. The Government of India Act, 1858 (21 & 22 Vict., c. 106), which vested in the British Crown the territories under the government of East India Company, repealed certain sections of the Government of India Act, 1853 (16 & 17 Vict., c. 95) insofar as they applied to or provided for the admission or appointment of persons to the civil service of the East India Company and conferred upon the Secretary of State in Council the power to make regulations for the admission of candidates to the civil service of India as also with respect to other matters connected therewith. Three years later the Indian civil service so envisaged received statutory recognition by the enactment of the Indian Civil Service Act, 1861 (24 & 25 Vict., c. 54).

14. The above Acts were repealed by the Government of India Act of 1915 (5 & 6 Geo. V, c. 61). Part VIII of the 1915 Act conferred upon the Secretary of State in Council, with the aid and advice of the Civil Service Commissioners, the powers to make rules for the Indian civil service examination.

15. None of the above Acts nor the Government of India (Amendment) Act, 1916 (6 & 7 Geo. V, c. 37) made any reference to the tenure of members of the civil service in India. This was for the first time done by the Government of India Act, 1919 (9 & 10 Geo. V, C. 101), which introduced several amendments in the 1915 Act including the insertion of Part VII-A consisting of Sections 96-B to 96-E.

16. Section 96-B provided as follows :

> 96-B. The civil services in India. - (1) Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may one 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.
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> If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.
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> (2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of services, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matter as may be prescribed, delegate the power of making rules to the Governor-General-in Council or to local governments, or authorise the Indian Legislature or local Legislatures to make laws regulating the public services :
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> Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing right, or shall receive such compensation, for the loss of any of them as the Secretary of State in Council may consider just and equitable.
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> (3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any such variation

> or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.
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> Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pension contained in the East India Annuity Funds Act, 1874.
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> (4) For the removal of doubts it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the crown in India, were duly made in accordance with powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.
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> The Fundamental Rules, the Civil Service (Classification, Control and Appeal) Rules of 1930 and the Civil Service (Governors' Provinces Classification) Rules are instances of rules made under authority conferred by Section 96-B. Section 96-C provided for the establishment of a Public Service Commission. Sub-section (1) of Section 96-D provided for an Auditor-General to be appointed by the Secretary of State in Council who was to hold office during "His Majesty's pleasure", and conferred upon the Secretary of State in Council the power to make rules providing for the Auditor-General's pay, powers duties and conditions of employment. Sub-section (2) of Section 96-D provided that, subject to any rules made by the Secretary of State in Council, no office could be added to or withdrawn from the public service and the emoluments of no post could be varied except after consultation with such finance authority as might be designated in the rules being an authority of the Province or of the Government of India, according as the post was or was not under the control of a local Government. Under Section 96-E rules under Part VII-A could not be made except with the concurrence of the majority of votes at a meeting or the Council of India.

17. Thus, after the 1919 Act, the civil services of India continued to be under the control of the Secretary of State in Council who was to regulate by rules the classification of the civil services, the methods of recruitment, the condition of services, pay and allowances, and discipline and conduct. Such rules could also provide for delegation of the rule-making power to the Governor-Genera-in-Council or the local Government or authorise the Indian Legislature or local Legislatures to make laws regulating the public services but only by the extent and in respect of matters a were prescribed by the rules. Thus, even the power of making rules as also the authority to the Indian Legislature and the local Legislatures to enact Acts regulating the public services was derived by delegation of power made by the Secretary of State of Council.

18. What is really material for the purposes of the present appeals and writ petitions is that Section 96-B of the Government of India Act, 1919 for the first time expressly stated that every person in the civil service of the Crown in India held office "during His Majesty's pleasure". This was, however, made subject to three safeguards, namely -

> (1) a civil servant could not be dismissed by any authority subordinate to that by which be was appointed;

(2) the Secretary of State in Council had the power, unless he provided to the contrary in the rules, to reinstate any person in service who had been dismissed; and

(3) if a civil servant appointed by the Secretary of State in Council thought himself wronged by an order of an official superior in a Governor's Province and on due application made to that superior did not receive the redress to which he considered himself entitled, he could, without prejudice to any other right of redress, complain to the Governor of the Province in order to obtain justice and the Governor had to examine such complaint and require such action to be taken thereon as might appear to him to be just and equitable.

19. The position which prevailed with respect to the civil services in India during the intervening period between the Government of India Act, 1919, and the Government of India Act, 1933 (25 & 26 Geo. V. c. 42) was that the top echelons of the important services, especially those working under the Provincial Governments, consisted of what were known as the "all-India services", which governed a wide variety of departments. There were, in the first place, the Indian Civil Service and the Indian Police service, which provided the framework of the administrative machinery. In addition there were the Indian Forest service, the Indian, Educational Service, the Indian Agricultural service, the Indian Service of Engineers (consisting of an Irrigation Branch and a Roads and Buildings Branch), the Indian Veterinay Service, the Indian Forest Engineering Service and the Indian Medical Service (Civil). The initial appointments and conditions of service for all these services were made by the Secretary of State and each officer executed a covenant with the Secretary of State containing the terms under which he was to serve. In addition to the all-India services there were the central services under the Government of India and the provincial services in the Provinces; and lastly the subordinate services. [See Indian Statutory (Simon) Commission Report (1930), Vol. 1. para 290 ff.] During the years following the 1919 Act it was decided that, as a consequence of the decision to effect progressive transfer of power to Governments in India, the number of all-India services under the direct control of the secretary of State should be progressively reduced especially in those fields of administration that were transferred to ministerial control. It was now to be left to the Provincial Governments to reorganize in gradual stages the higher cadres of their services in the transferred subjects, and recruitment and control of the Secretary of State in Council were accordingly discontinued. This policy resulted by the early thirties in the Indian Civil service, the Indian Police Service, the Ecclesiastical Service and the civil branch of Indian Medical Service being retained by the Secretary of State and the rest being converted into Provincial services, safeguards being provided to secure the rights and privileges guaranteed to officers recruited earlier to the all-Indian services. [See Report of the Joint Select Committee on Indian Constitutional Reform (1934) para 277]

20. The above position received legislative recognition and sanction under the Government of India Act, 1935 (25 & 26 Ego. V, c. 42), often cited with the year and chapter of the Act in pursuance of which it was reprinted, namely the Government of India (Reprinting) Act, 1935 (26 Ego. V & 1 Edw. VIII, v. 1). Part X of the 1935 Act dealt with the services of the Crown in India. Chapter II of Part X made provision with the respect of the civil services. Section 240 provided for the tenure of the officer of person employed in civil capacities in India and conferred upon them certain statutory safeguard as regards dismissal or reduction in rank. Section 241 dealt with their recruitment and conditions of the service Under that section power to make appointments was vested in respect of the Central services in the Governor-General and in respect of the Provincial services in the respective Governors. In the same manner the power to the regulate conditions of service of the members of these services was conferred upon the Governor-General or the Governor, as the case

may be. The governor-General as also the Governor could authorize such person as he might direct to make appointments and rules with respect of the conditions of service. Provisions was also made for enactment of the Acts by appropriate Legislatures to regulate the conditions of services of person in the civil services. It is unnecessary to look into the details of these provisions as the federal structure envisaged by the 1935 Act never came into existence as it was optional for the Indian states to join the proposed Federation and they did not give their consent thereto. Chapter III of Part X provided for the setting up of a Federal Public Service Commission and a Public Service Commission for each Province. A provisions was also made for two a more Provinces to agree to have a joint Public Service Commission or for the Public Service Commission of the one of these Provinces to serve the needs of the others Provinces.

21. In the context of the present of the appeals and writ petitions, it is section 240 of the 1935 Act which is relevant. Section 240 provided as follows :

> 240. Tenure of office of persons employed in civil capacities in India -
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> (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, 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 the rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this sub-section shall not apply -

> (a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
>
> (b) where an authority empowered to dismiss a person reduce him in rank is satisfied that for some reason, to be recorded by that the authority in writing it is not reasonably, practicable to give to that the person on opportunity of showing cause.
>
> (4) Notwithstanding that a person holding in civil post under the Crown in India holds office during the His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General or as the case may be the Governor, deems it necessary in order to secure the services of a person, having special qualification provide the payment to him of compensation if before the expiration of the an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

22. While under the 1935 Act as under the 1919 Act, every person who was a member of the civil service of the Crown in India or held any civil post under the Crown in India held office 'during His Majesty's Pleasure' greater safeguards were provided for him under the 1935 Act than the under the 1919 Act. Those safeguards were :

(1) under the sub-section (2) of Section 240 such a person could not be dismissed from service by any authority subordinate to that by the which he was appointed and

(2) under sub-section (3) of Section 240 such a person could not 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.

The safeguard as regards a reasonable opportunity of showing cause provided for in section 240(3) did not exist in the 1919 Act. The proviso to sub-section (3) of Section 240 however, took away this safeguard in the two cases set out in clauses (a) and (b) of the said proviso, These two cases were :

(a) where a civil servant was dismissed or reduced in rank on ground of conduct which had led to his conviction on a criminal charge and

(b) where an authority empowered to dismiss him or reduced him in rank was satisfied that for some reason, to be recorded by that the authority in writing, it was not reasonably practicable to give to that person on opportunity of showing cause.

The Civil Services under the Constitution :

23. Provisions with respect to services under the Union and the States are made in Part XIV of the constitution of India. This part consists of the two Chapters, Chapter I dealing with services and Chapter II dealing with Public Service Commission for the Union and States. Article 308, as originally enacted defined the expression 'State' occurring in Part XIV as meaning, unless the context otherwise required "a State specified in Part A or B of the First Schedule". This Article was amended by the Constitution (Seventh Amendment) Act, 1956, which was passed in order to implement the scheme for the reorganization of States. The amended Article 308 provides, "In this Part, unless the context otherwise requires, the expressing 'State' does not include the State of Jammu and Kashmir". Article 309 provides for recruitment and conditions of service of persons serving the Union or a State, Article 310 for the tenure of office of such persons, and Article 311 for the mode of dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. Article 312 deals with all-India services and inter alia provides that where the Council of State has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament might by law provide for the creation of one or more all-India services common to the Union and the States and subject to the other provisions of Chapter I regulate the recruitment and conditions of service of persons appointed by any such service; and it further provided that the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under Article 312. Article 313 provides for the continuance in force, so far as consistent with the provisions of the Constitution, of all the laws in force immediately before the commencement of the Constitution and applicable to any public service or any post which continued to exist after the commencement of the Constitution as an all-India service or as service or post under the Union or a State until other provision was made in this behalf under the Constitution. Under clause (10) of Article 366 the expression "existing law" means "any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordains, order, bye-law, rule or regulation". Thus all Acts, rules and regulations applicable to different services immediately before the commencement of the Constitution continue to apply to such services insofar as they were consistent with the provisions of the Constitution until amended, varied, revoked or replaced by

Acts, rules or regulations made in accordance with the Provisions of the Constitutions.

24. From what has been stated above it will be seen that the provisions with respect to civil services in the Government of India Act, 1935, were taken as the basis for Chapter I of Part XIV of the Constitution.

Articles 309, 310 and 311 :

25. It is necessary for the purpose of these appeals and writ petitions to set out in extenso the provisions of Articles 309, 310 and 311.

26. Articles 309 and 310 were amended by the Constitution (Seventh Amendment) Act, 1956, to omit from these articles the reference to the Rajpramukh. Articles 309 and 310, as so amended, read as follows :

> 309. Recruitment and conditions of service of persons serving the Union or a State. - Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the union or of any State :
>
> Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.
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> 310. Tenure of office of persons serving the Union or State. - (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 of 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.
>
> (2). Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

27. Article 311 as originally enacted was in the following terms :

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. - (1) No 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 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 that this clause shall not apply -

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to 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.

The words "or Rajpramukh" in clause (c) of the proviso to Article 311(2) were omitted by the Constitution (Seventh Amendment) Act, 1956.

28. By the Constitution (Fifteenth Amendment) Act, 1963, clauses (2) and (3) of Article 311 were substituted by the following clauses :

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry :

Provided that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

29. The Constitution (Forty-second Amendment) Act, 1976, made certain amendments in the substituted clause (2) of Article 311 with effect from January 3, 1977. Article 311 as so amended reads as follows :

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. - (1) No 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 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 except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

From the original and amended Article 311 set out above it will be noticed that of the original Article 311 only clause (1) remains unaltered, while both the other clauses have become the subject of constitutional amendments. No submission was founded by either party on the substitution of the present clause (3) for the original by the Constitution (Fifteenth Amendment) Act, 1963, for the obvious reason that such substitution was made only in order to bring clause (3) in conformity with clause (2)

as substituted by the said Amendment Act.

30. A comparison of Article 311 of the Constitution with Section 240 of the Government of India Act, 1935, shows that the safeguards provided to civil servants by Article 311 are very much the same as those under Section 240 with this difference that while Article 311 also affords safeguards against removal from service, Section 240 did not. Further, though the proviso to Section 240(3) is reproduced in what originally was the only proviso and is now the second proviso to Article 311(2), an additional clause, namely, clause (c) has been added thereto. A provision similar to clause (3) of Article 311 was also absent from the Government of India Act, 1935. Thus, while on the one had Article 311 enlarges the protection afforded to civil servants, on the other hand it increases by one the number of cases in which that protection can be withdrawn.

31. With the above historical background and bearing in mind the relevant provisions of the Constitution, it will be now convenient to turn to the submissions made at the Bar with respect to the pleasure doctrine and the second proviso to Article 311(2) and test the correctness of these submissions.

The Second Proviso - Rival Submissions :

32. The arguments advanced on behalf of the government servants on the pleasure doctrine and the second proviso to Article 311(2) may be sketched in broad outlines as under :

(1) The pleasure doctrine in England is a part of the special prerogative of the Crown and has been inherited by India from England and should, therefore, be construed strictly, that is, strictly against the Government and liberally in favour of government servants.

(2) The second proviso which withdraws from government servants the safeguards provided by clause (2) of Article 311 must be also similarly construed for, unless a liberal construction were placed upon it, great hardship would result to government servants as they could be arbitrarily thrown out of employment and they and their dependents would be left without any means of subsistence.

(3) There are several stages before a government servant can be dismissed or removed or reduced in rank, namely, serving upon him of a show cause notice or a charge-sheet, giving him inspection of documents, examination of witnesses, arguments and imposition of penalty. An inquiry starts only after a show cause notice is issued and served upon a government servant. A show cause notice is thus preparatory to the holding of an inquiry and even if the entire inquiry is dispensed with, the giving of a show cause notice and asking for the explanation of the government servant with respect thereto are not excluded.

(4) It is not obligatory upon the disciplinary authority to dispense with the whole of the inquiry. Depending upon the circumstances of the case, the disciplinary authority can dispense with only a part of the inquiry.

(5) Imposition of penalty is not a part of the inquiry and once an inquiry is dispensed with, whether in whole or in part, it is obligatory upon the disciplinary authority to give an opportunity to the penalty proposed to be imposed upon him.

(6) Article 311 is subject to Article 14. Principles of natural justice and the audi alteram partem rule are part of Article 14 and therefore, a show cause notice asking for the explanation of the government servant with respect to the charges against him as also a notice to show cause with respect to the proposed penalty are required to be given by Article 14 and the not giving of such notices or either of them renders the order of dismissal, removal or reduction in rank invalid.

3. The submissions on behalf of the Union of India can be thus summarized.

(1) The second proviso must be construed according to its terms. It is unambiguous and does not admit of any such interpretation as canvassed for on behalf of the government servants.

(2) Where under the second proviso, clause (2) of Article 311 is made inapplicable, there is no scope for holding any partial inquiry.

(3) In any event, the very contents of the three clauses of the second proviso show that it is not necessary or not practicable or not expedient that any partial inquiry could be or should be held, depending upon which clause applies.

(4) Article 14 does not govern or control Article 311. The Constitution must be read as a whole. Article 311(2) embodies the principles of natural justice including the audi alteram partem rule. It thus expressly states what is required under Article 14 as a result of the interpretation placed upon it by recent decisions of this Court. Once the application of clause (2) is expressly excluded by the Constitution itself, there can be no question of making applicable what has been so excluded by seeking recourse to Article 14.

(5) Consideration of sympathy for the government servants who may be dismissed or removed or reduced in rank are irrelevant to the construction of the second proviso. The doctrine of tenure at pleasure in Article 310 and the safeguards given to a government servant under clauses (1) and (2) of Article 311 as also the withdrawal of the safeguard under clause (2) by the second proviso are all enacted in public interest and where public interest conflicts with private interest, the latter must yield to the former.

The Pleasure Doctrine :

34. The concept of civil service is not new or of recent origin. Governments - whether monarchial, dictatorial or republican - have to function; and for carrying on the administration and the varied functions of the government a large number of persons are required and have always been required, whether they are constituted in the form of a civil service or not. Every kingdom and country of the world throughout history had a group of persons who helped the ruler to administer the land, whether according to modern notions we may call that group a civil service or not, because it is not possible for one man be himself to rule and govern the land and look after and supervise all the details of administration. As it was throughout history, so it has been in England and in India.

35. In England, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown and their services can be terminated at will without assigning any cause. By the expression "the pleasure doctrine" is conveyed this right of the Crown. This right is, however,

subject to what may be provided otherwise by legislation passed by Parliament because in the United Kingdom, Parliament has legislative sovereignty.

36. The foundations of modern European civil services were laid in Prussia in the late seventeenth and eighteenth centuries and by Napoleon's development of a highly organized hierarchy (a model copied by many countries in the nineteenth century); and they are the basis of modern European civil services. In England civil servants were originally the monarch's personal servants and members of the King's household. Clive's creation from 1765 of a civil service to govern such parts of India as were under the dominion of the East India Company and Macaulay's report on recruitment to the Indian civil service provided the inspiration for the report of 1854 on the organization of the permanent civil service in Britain which recommended recruitment by open competitive examination, the selection of higher civil servants on the basis of general intellectual attainment, and the establishment of a Civil Service Commission to ensure proper recruitment.

37. In the United Kingdom, until about the middle of November 1981, the Civil Service Department, which was set up in 1968 with the Prime Minister, as Minister for the Civil Service, as its Head, looked after the management and personnel functions in connection with the civil service which were until then being looked after by the Treasury. These functions included the organization and conduct of the civil service and the remuneration, conditions of service, expenses and allowances of persons serving in it; mode of recruitment of persons to the civil service; the pay and allowances of, and the charges payable by, members of the armed forces; with certain exceptions, superannuation and injury payments, compensation for loss of employment or loss or diminution of emoluments or pension rights applicable to civil servants and others in the public sector and to members of the armed forces; the exercise by other persons and bodies of powers to determine, subject to the minister's sanction, the pay or conditions of service of members of public bodies (excluding judicial bodies), or the numbers, pay or conditions of service of staff employed by such bodies or by the holders of certain non-judicial offices; and the appointment or employment and the remuneration, conditions of service, personal expenses or allowances of judges and judicial staff, (See Halsbury's Laws of England, Fourth Edition, Volume 8, para 1162)

38. The Permanent Secretary to the Civil Service Department was the Head of the Home Civil Service and gave advice to the Prime Minister as to civil service appointments, decorations, etc. The Civil Service Department was abolished on November 12, 1981, and its functions, instead of reverting to the Treasury, were divided between the Treasury and the newly created Management and Personnel Office.

39. In India, the pleasure doctrine has received constitutional sanction by being enacted in Article 310(1). Unlike in the United Kingdom, in India it is not subject to any law made by Parliament but is subject only to what is expressly provided by the Constitution.

40. The pleasure doctrine relates to the tenure of a government servant. 'Tenure' means "manner, conditions or term of holding something" according to Webster's Third New International Dictionary, and "terms of holding; title; authority" according to the Oxford English Dictionary. It, therefore, means the period for which an incumbent of office holds it. It is for this reason that the statement of law relating to the pleasure doctrine in England is given in Halsbury's Laws of England, Fourth Edition, Volume 8, para 1106, under the heading "Tenure of office".

41. The first time that a statute relating to the Government of India provided that civil servants hold office during His Majesty's pleasure was the Government of India Act of 1919 in Section 96-B of

the Act. The marginal note to Section 96-B did not, however, refer to the tenure of civil servants but stated "The Civil Services in India". This was because Section 96-B in addition to dealing with the tenure of civil servants also dealt with matters relating to their recruitment, conditions of service, pay, allowances, pensions, etc. The marginal note to Section 240 of the Government of India Act, 1935, however, was "Tenure of office of persons employed in civil capacities in India". The marginal note to Article 310 of the Constitution also refers to 'tenure' and states "Tenure of office of persons serving the Union or a State". Thus, it is the tenure of government servants which Article 310(1) makes subject to the pleasure of the President or the Governor of a State, except as expressly provided by the Constitution.

42. While it was vehemently contended on behalf of the government servants that the pleasure doctrine is a relic of the feudal age - a part of the special prerogative of the Crown - which was imposed upon India by an imperial power and thus is an an anachronism in this democratic, socialist age and must, therefore, be confined within the narrowest limits, it was submitted on behalf of the Union of India that this doctrine was a matter of public policy, and it was in public interest and for public good that the right to dismiss at pleasure a government servant who has made himself unfit to continue in office, albeit subject to certain safeguards, should exist and be exercisable in the constitutional sense by the Crown in England and by he President or the Governor of a State in India. It is not possible to accept the arguments advanced on behalf of the government servants for all the authoritative judicial dicta are to the contrary. As pointed out by Lord Hobhous in Shenton v. Smith (LR 1895 AC 229 (PC), the pleasure doctrine is founded upon the principle that the difficulty which would otherwise be experienced in dismissing those whose continuance in office is detrimental to the State would be such as seriously to impede the working of the public service. In Dunn v. Queen (LR (1896) 1 QB 116 : (1895-96) 73 LT 695 and sub nomine Dunn v. Regem in (1895-1899) All ER Rep 907) the Court of Appeal in England held that it was an implied term of every contract of service that servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown. In that case Lord Herschell observed (pages 119-120) :

> It seems to me that it is the public interest which has led to the term which I have mentioned being imported into contracts for employment in the service of the Crown. The cases cited show that, such employment being for the good of the public, it is essential for the public good that it should be capable of being determined at the pleasure of the Crown, except in certain exceptional cases where it has been deemed to be more for the public good that some restrictions should be imposed on the power of the Crown to dismiss its servants.
>
> In the same case Kay, L.J., said (page 120) :
>
> It seems to me that the continued employment of a civil servant might in many cases be as detrimental to the interests to the State as the continued employment of a military officer.
>
> In this case as reported in the Times Law Reports series the judgments of the three learned judges who decided the case (Lord Esher, M.R., being the third judge), though in substance the same, are given in very different language and the passages extracted above do not appear in that report. The report of the case in the All England Law Reports Reprint series is with very minor variations the same as the report in the Times Law Reports series but somewhat abridged. This is because the

> All England Law Reports Reprint series is a revised and annotated reprint of a selection from the Law Times Reports for the years 1843 to 1935. The report from which the above extracts are given is the one in the Law Reports series published by the Incorporated Council of Law Reporting which was established in 1865 and which report is, therefore, more authoritative. In Gould v. Stuart (LR (1896) AC 575, 578-9 (PC)) the Judicial Committee of the Privy Council further held that where by regulations a civil service is established prescribing qualifications for its members and imposing some restriction on the power to dismiss them, such regulations should be deemed to be made for the public good.

43. The position that the pleasure doctrine is not based upon any special prerogative of the Crown but upon public policy has been accepted by this Court in State of U. P. v. Babu Ram Upadhya ((1961) 2 SCR 679, 696 : AIR 1961 SC 751 : (1970) 1 LLJ 670) and Moti Ram Deka v. General Manager, N. E. F. Rly ((1964) 5 SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467). This Court has also accepted the principle that society has an interest in the due discharge of their duties by government servants. In Roshan Lal Tandon v. Union of India ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 LLJ 576), Ramaswami, J., speaking for the Court, said (at page 195) :

> It is true that the origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the government servant acquires a statues and his rights and obligations are no longer determined by consent of both parties but by the statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the government servant and his terms of service are governed by stature or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned.

44. Ministers frame policies and Legislatures enact laws and lay down the mode in which such policies are to be carried out and the object of the legislation achieved. In many cases, in a Welfare State such as ours, such policies and statutes are intended to bring about socio-economic reforms and the uplift of the poor and disadvantaged classes. From the nature of things the task of efficiently and effectively implementing these policies and enactments, however, rests with the civil services. The public is, therefore, vitally interested in the efficiency and integrated of such services. Government servants are after all paid from the public exchequer to which everyone contributes either by way of direct or indirect taxes. Those who are paid by the public and are charged with public administration for public good must, therefore, in their turn bring to the discharge of their duties a sense of responsibility. The efficiency of public administration does not depend only upon

the top echelons of these services. It depends as much upon all the other members of such services, even on those in the most subordinate posts. For instance, railways do not run because of the members of the Railway Board or the General Managers of Different railways or the heads of different departments of the railway administration. They run also because of engine-drivers, firemen, signalmen, booking clerks and those holding hundred other similar posts. Similarly, it is not the administrative heads who alone can see to the proper functioning of the post and telegraph service. For a service to run efficiently there must, therefore, be a collective sense of responsibility. But for a government servant to discharge his duties faithfully and conscientiously, he must have a feeling of security of tenure. Under our Constitution, this is provided for by the Acts and rules made under Article 309 as also by the safeguards in respect of the punishments of dismissal, removal or reduction in rank provided in clauses (1) and (2) of Article 311. It is, however, as much in public interest and for public good that government servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service and that the protection afforded to them by the Acts and rules made under Article 309 and by Article 311 be not abused by them to the detriment of public interest and public good. When a situation as envisaged in one of the three clauses of the second proviso to clause (2) of Article 311 arises and the relevant clause is properly applied and the disciplinary inquiry dispensed with, the concerned government servant cannot be heard to complain that he is deprived of his livelihood. The livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood is provided by the public exchequer and the taking away of such livelihood is in the public interest and for public good, the former must yield to the latter. These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown which has been inherited by India and transposed into our Constitution adapted to suit the constitutional set-up of our Republic but because public policy requires, public interest needs and public good demands that there should be such a doctrine.

45. It is thus clear that the pleasure doctrine embodied in Article 310(1), the protection afforded to civil servants by clauses (1) and (2) of Article 311 and the withdrawal of the protection under clause (2) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good.

The Scope of the Pleasure Doctrine :

46. While under Section 96-B(1) of the Government of India Act of 1919 the holding of office in the civil service of the Crown in India "during His Majesty's pleasure" was "Subject to the provisions of this Act and the rules made thereunder", under Section 240(1) of the Government of India Act, 1935, the holding of such office during His Majesty's pleasure was "Except as expressly provided by this Act". Similarly, the pleasure doctrine as enacted in Article 310(1) is not an absolute one and is not untrammeled or free of all fetters, but operates "Except as expressly provided by this Constitution". The constitutional restrictions on the exercise of pleasure under Article 310(1) other than those contained in Article 311 will be considered later but what is immediately relevant is the group of articles consisting of Articles 309, 310 and 311. These three articles are interlinked and form an integrated whole. There is an organic and thematic unity running through them and it is now necessary to see the interplay of these three articles.

47. These articles occur in Chapter I of Part XIV of the Constitution. Part XIV is entitled "Services under the Union and the States" and Chapter I thereof is entitled "Services". While Article 309 deals with the recruitment and conditions of service of persons appointed to the public services and posts in connection with the affairs of the Union or a state, Article 310 deals with the tenure of office of

members of the defence services and of civil services of the Union and the States and Article 311 provides certain safeguards to persons employed in civil capacities under the Union or a State but not to members of the defence services. The first thing which is required to be noticed about Article 309 is that it itself makes no provision for recruitment or condition of service of government servants but confers power upon the appropriate Legislature to make laws and upon the President and the Governor of a State to make rules in respect of these matters. The passing of these Acts and the framing of these rules are, however, made "subject to the provisions of this Constitution". This phrase which precedes and qualifies the power conferred by Article 309 is significantly different from the qualifying phrase in Article 310(1) which is "Except as expressly provided by this Constitution".

48. With reference to the words "condition of service" occurring in Section 243 of the Government of India Act, 1935, under which the conditions of Service of subordinate ranks of the various police forces in India were to be determined by or under Acts relating to those forces, the Judicial Committee of the Privy Council held in North West Frontier Province v. Suraj Narain Anand (LR (1947-48) 75 IA 343, 352-3 : AIR 1949 PC 112 : 1948 FCR 103) that this expression included provisions which prescribed the circumstances under which the employer would be entitled to terminate the service of an employee, whether such provisions were constitutional or statutory.

49. In State of M. P. v. Shardul Singh ((1970) 3 SCR 302, 305-6 : (1970) 1 SCC 108, 111) this Court held that the expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment until his retirement and even beyond it in matters like pension etc., and would include the right to dismiss such persons from service. Thus as pointed out in Sardari Lal v. Union of India ((1971) 3 SCR 461, 465 : (1971) 1 SCC 411, 414-15) a law can be made by the appropriate Legislature or a rule by the appropriate executive under Article 309 prescribing the procedure and the authority by whom disciplinary action can be taken against a government servant. Thus the functions with respect to the civil service which in English until 1968 were being performed by the Treasury and thereafter by the Civil Service Department and from mid-November 1981 are being performed partly by the Treasury and partly by the Management & Personal Office are in India under Article 309 of the Constitution to be performed with respect to not only persons employed in civil capacities but with respect to all persons appointed to public services and posts in connection with the affairs of the Union or any State by authorities appointed under or specified in Acts made under Article 309 or rules made under such Acts or made under the proviso to that article.

50. As the making of such laws and the framing of such rules are subject to the provisions of the Constitution, if any such Act or rule violates any of the provisions of the Constitution, it would be void. Thus, as held in Moti Ram Deka case ((1964) 5 SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467) if any such Act or rule trespasses upon the rights guaranteed to government servants by Article 311, it would be void. Similarly, such Acts and rules cannot abridge or restrict the pleasure of the President or the Governor of State exercisable under article 310(1) further than what the Constitution has expressly done. In the same way, such Act or rule would be void if it violates any Fundamental Right guaranteed by Part III of the Constitution. Two instances of this may be given by way of illustration. In Kameshwar Prasad v. State of Bihar (1962 Supp 3 SCR 369 : AIR 1962 SC 1166 : (1962) 1 LLJ 294 : 22 FJR 50), Rule 4-A of the Bihar Government Servants' Conduct Rules, 1956, insofar as it prohibited any form of demonstration was struck down by this Court as being violative of sub-clauses (a) and (b) of clause (1) of Article 19. In O. K. Ghosh v. E. X. Joseph (1963 Supp 1 SCR 789 : AIR 1963 SC 312 : (1962) 2 LLJ 615 : 24 EJR 115) this Court struck down Rule 4-A of the Central Civil Services (Conduct) Rules, 1955, on the ground that it violated sub-

clause (c) of clause (1) of Article 19 of the Constitution and that portion of Rule 4-A which prohibited participation in any demonstration as being violative of sub-clauses (a) and (b) of clause (1) of Article 19. Further, the application of Article 309 is excluded by certain provisions of the Constitution itself which empower authorities other than those specified in Article 309 to make appointments or to make rules relating to the conditions of service of certain classes of public service, such as, Article 146(1) with respect to the officers and servants of the Supreme Court, Article 148(5) with respect to persons serving in the Indian Audit and Accounts Department, Article 229 with respect to the officers and servants of the High Court, Article 324(5) with respect to Election Commissioners and Regional Commissioners.

51. Which would be the appropriate Legislature to enact laws or the appropriate authority to frame rules would depend upon the provisions of the Constitution with respect to legislative competence and the division of legislative powers. Thus, for instance, under Entry 70 in List I of the Seventh Schedule to the Constitution, Union Public Services, all-India Services and Union Public Service Commission are subjects which fall within the exclusive legislative field of Parliament, while under Entry 41 in List II of the Seventh Schedule to the Constitution, State public services and State Public Service Commission fall within the exclusive legislative field of the State Legislatures. The rules framed by the President or the Governor of a State must also, therefore, conform to these legislative powers. It is, however, not necessary that the Act of an appropriate Legislature should specifically deal with a particular service. It is sufficient if it is an Act as contemplated by Article 309 by which provision is made regulating the recruitment and conditions in a service. (See Ram Pal Chaturvedi v. State of Rajasthan ((1970) 2 SCR 559, 564 : (1970) 1 SCC 75))

52. It was at one time thought that the right of a government servant to recover arrears of salary fell within the ambit of the pleasure doctrine and a servant of the Crown, therefore, cannot sue for his salary, it being a bounty of the Crown and not a contractual debt. This was so stated in the judgment of Lord Blackburn in the Court of Session (the supreme civil court of Scotland) in the case of Mulvenna v. Admiralty (1926 SC (i.e. Sessions Cases) 842). Relying heavily upon this decision, the Judicial Committee of the Privy Council in High Commissioner for India v. I. M. Lall (ER (1947-1948) 75 IA 225, 243-3 : AIR 1948 PC 121 : 1948 FCR 44), though it held that Lall's dismissal was contrary to Section 240(3) of the Government of India Act, 1935, negatived his claim or arrears of pay. In State of Bihar v. Abdul Majid (1954 SCR 786 : AIR 1954 SC 245 : (1954) 2 LLJ 678) a Constitution Bench of this Court pointed out that the attention of the Judicial Committee was not drawn to Section 60 and the other relevant provisions of the Code of Civil Procedure, 1908, and that the rule of English law that a Crown servant cannot maintain a suit against the Crown for recovery of arrears of salary did not prevail in India as it had been negatived by the provisions of statutory law in India. It may be mentioned that in its subsequent decision in Chelliah Kodeswaran v. Attorney-General of Ceylon (LR 1970 AC 1111, 1118 (PC) : (1970) 2 WLR 456) in appeal from the Supreme Court for Ceylon, the Judicial Committee held that Lord Blackburn's reasoning in Mulvenna case (1926 SC (i.e. Sessions Cases) 842) had not been concurred in by the other two members of the Scottish Court of Session, namely, Lord Sands and Lord Ashmore, and had not been subsequently treated in Scotland as correctly laying down the law and that it was defective and the conclusion reached by Lord Blackburn was contrary to authority and was wrong. It further pointed out that there was a current of authority for a hundred years before 1926 (that being the year in which Mulvenna case (1926 SC (i.e. Sessions Cases) 842) was decided) to the effect that the arrears of salary of a civil servant of the Crown, as distinguished from a member of the armed services, constituted a debt recoverable by a petition of right. According to the Privy Council, as the relevant and prestigious authorities to the contrary did not appear to have been cited before the Judicial Committee in Lall case (LR (1947-1948) 75 IA 225, 243-4 : AIR 1948 PC 121 : 1948 FCR 44), this

part of the judgment in that case must be regarded as given per incuriam.

53. As seen earlier, in India for the first time a fetter was imposed upon the pleasure of the Crown to terminate the service of any of its servants by Section 96-B of the Government of India Act, 1919, but that was only with respect to the authority which could dismiss him. In that section the holding of office "during His Majesty's pleasure" was made subject to both the provisions of the Act and the rules made thereunder. Under the Government of India Act, 1935, the reference to the rules to be made under the Act was omitted and the tenure of office of a civil servant was to "during His Majesty's pleasure except as expressly provided" by that Act. Article 310(1) adopts the same phraseology as in Section 240 of the 1935 Act. Under it also the holding of an office is during the pleasure of the President or the Governor "Except as expressly provided by this Constitution". Therefore, the only fetter which is placed on the exercise of such pleasure is when it is expressly so provided in the Constitution itself, that is, when there is an express provision in that behalf in the Constitution. Express provisions in that behalf are to be found in the case of certain constitutional functionaries in respect of whose tenure special provision is made in the Constitution as, for instance, in clauses (4) and (5) of Article 124, with respect to Judges of the Supreme Court, Article 218 with respect to judges of the High Court, Article 148(1) with respect to the Comptroller and Auditor-General of India, Article 324(1) with respect to the Chief Election Commissioner, and Article 324(5) with respect to the Election Commissioners and Regional Commissioners.

54. Clause (1) and (2) of Article 311 impose restrictions upon the exercise by the President or the Governor of a State of his pleasure under Article 310(1). These are express provisions with respect to termination of service by dismissal or removal as also with respect to reduction in rank of a civil servant and thus came within the ambit of the expression "Except as expressly provided by this Constitution" qualifying Article 310(1). Article 311 is thus an exception to Article 310 and was described in Parshottam Lal Dhingra v. Union of India (1958 SCR 828, 829 : AIR 1958 SC 36 : (1958) 1 llj 544) as operating as a proviso to Article 310(1) though set out in a separate article. Article 309 is, however, not such an exception. It does not lay down any express provision which would derogate from the amplitude of the exercise of pleasure under Article 310(1). It merely confers upon the appropriate Legislature or executive the power to make laws and frame rules but this power is made subject to the provisions of the constitution. Thus, Article 309 is subject to Article 310(1) and any provision restricting the exercise of the pleasure of the President or Governor in an Act or rule made or framed under Article 309 not being an express provision of the Constitution, cannot fall within the expression "Except as expressly provided by this Constitution" occurring in Article 310(1) and would be in conflict with Article 310(1) and must be held to be unconstitutional. Clauses (1) and (2) of Article 311 expressly restrict the manner in which a government servant can be dismissed, removed or reduced in rank and unless an Act made or rule framed under Article 309 also conforms to these restrictions, it would be void. The restriction placed by clauses (1) and (2) of Article 311 are two : (1) with respect to the authority empowered to dismiss or remove a government servant provided for in clause (1) of Article 311; and (2) with respect to the procedure for dismissal, removal or reduction in rank of a government servant provided for in clause (2). The second proviso to Article 311(2), which is the central point of controversy in these appeals and writ petitions, lifts the restriction imposed by Article 311(2) in the cases specified in the three clauses of that proviso.

55. None of these three articles (namely, Articles 309, 310 and 311) sets out the grounds for dismissal, removal or reduction in rank of a government servant or for imposition of any other penalty upon him or states what those other penalties are. These are matters which are let to be dealt with by Acts and rules made under Article 309. There are two classes of penalties in service

jurisprudence, namely, minor penalties and major penalties. Amongst minor penalties are censure, withholding of promotion and withholding of increments of pay. Amongst major penalties are dismissal or removal from service, compulsory retirement and reduction in rank. Minor penalties do not affect the tenure of a government servant but the penalty of dismissal or removal does because these two penalties bring to an end the service of a government servant. It is also now well established that compulsory retirement by way of penalty amounts to removal from service. So this penalty also affects the tenure of a government servant. Reduction in rank does not terminate the employment of a government servant, and it would, therefore, be difficult to say that it affects the tenure of government servant. It may, however, be argued that it does bring to an end the holding of office in a particular rank and from that point of view it affects the government servant's tenure in the rank from which he is reduced. It is unnecessary to decide this point because Article 311(2) expressly gives protection as against the penalty of reduction in rank also.

Exercise of Pleasure :

56. A question which arises in this connection is whether the pleasure of the President or the Governor under Article 310(1) is to be exercised by the President or the Governor personally or it can be exercised by a delegate or some other authority empowered under the Constitution or by an Act or Rules made under Article 309. This question came up for consideration before a Constitution Bench of this Court in Babu Ram Upadhya case ((1961) 2 SCR 679, 696 : AIR 1961 SC 751 : (1970) 1 LLJ 670). The majority of the Court (speaking through Subba Rao, J., as he then was) stated (at page 701) the conclusions it had reached in the form of seven propositions. These propositions are :

> (1) In India every person who is a member of a public service described in Article 310 of the Constitution holds office during the pleasure of the President or the Governor, as the case may be, subject to the express provisions therein.
>
> (2) The power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate officer, and can be exercised by him, only in the manner prescribed by the Constitution.
>
> (3) This tenure is subject to the limitations or qualification mentioned in Article 311 of the Constitution.
>
> (4) The Parliament or the Legislatures of States cannot make a law abrogating or modifying this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Article 310, as qualified by Article 311.
>
> (5) The Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311 thereof.
>
> (6) The Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of "reasonable opportunity" embodied in Article 311 of the Constitution; but the said law would be subject to judicial review.
>
> (7) If a statute could be made by Legislatures within the foregoing permissible limits,

> the rules made by an authority in exercise of the power conferred thereunder would likewise be efficacious within the said limits.

57. The question came to be reconsidered by a larger Bench of seven Judges in Moti Ram Deka case ((1964) 5 SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467). While referring to the judgment of the majority in Babu Ram Upadhya case ((1961) 2 SCR 679, 696 : AIR 1961 SC 751 : (1970) 1 LLJ 670) the Court observed as follows (at pp. 731-2) :

> What the said judgment has held is that while Article 310 provides or a tenure at pleasure of the President or the Governor, Article 309 enables the Legislature or the executive, as the case may be, to make any law or rule in regard, inter alia, to conditions of service without impinging upon the overriding power recognised under Article 310. In other words, in exercising the power conferred by Article 309, the extent of the pleasure recognised by Article 310 cannot be affected, or impaired. In fact, while stating the conclusions in the form of propositions, the said judgment has observed that the Parliament or the Legislature can make a law regulating the conditions of service without affecting the powers of the President or the Governor under Article 310 read with Article 311. It has also been stated at the same place that the power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate officer and can be exercised by him only in the manner prescribed by the Constitution. In the context, it would be clear that this latter observation is not intended to lay down that a law cannot be made under Article 309 or a rule cannot be framed under the proviso to the said article prescribing the procedure by which, and the authority by whom, the said pleasure can be exercised. This observation which is mentioned as proposition number (2) must be read along with the subsequent propositions specified as (3), (4), (5) and (6). The only point made is that whatever is done under Article 309 must be subject to the pleasure prescribed by Article 310.

58. While we are on this point we may as well advert to the decision of this Court in Sardari Lal v. Union of India ((1971) 3 SCR 461, 465 : (1971) 1 SCC 411, 414-15). In that case it was held that where the President or the Governor, as the case may be, if satisfied, makes an order under clause (c) of what is now the second proviso to Article 311(2) that in the interest of the security of the state it is not expedient to hold an inquiry or dismissal or removal or reduction in rank of an officer, the satisfaction of the President or the Governor must be his personal satisfaction. The correctness of this view was considered by a seven-judge Bench of this Court in Samsher Singh v. State of Punjab ((1975) 1 SCR 814 : (1974) 2 SCC 831 : 1974 SCC (L&S) 550). It was categorically stated in that case (at page 835) that the majority view in Babu Ram Upadhya case ((1961) 2 SCR 679, 696 : AIR 1961 SC 751 : (1970) 1 LLJ 670) was no longer good law after the decision in Moti Ram Deka case ((1964) 5SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467). Referring to these two cases the Court observed (at pages 834-5) : (SCC pp. 847-48, paras 50 to 53)

> This Court in State of U. P. v. Babu Ram Upadhya ((1961) 2 SCR 679, 696 : AIR 1964 SC 751 : (1970) 1 LLJ 670) held that the power of the Governor to dismiss at pleasure, subject to the provisions of Article 311, is not an executive power under Article 154 but constitutional power and is not capable of being delegated to officers subordinate to him. The effect of the judgment in Babu Ram Upadhya case ((1961) 2 SCR 679, 696 : AIR 1964 SC 751 : (1970)1 LLJ 670) was that the Governor could not delegate his pleasure to any officer nor could any law provide for the exercise of

that pleasure by an officer with the result that statutory rules governing dismissal were binding on every officer though they were subject to the overriding pleasure of the Governor. This would mean that the officer was bound by the rules but the Governor was not.

In Babu Ram Upadhya case ((1961) 2 SCR 679, 696 : AIR 1964 SC 751 : (1970) 1 LLJ 670) the majority view stated seven propositions at p. 701 of the report. Proposition No. 2 is that the power to dismiss a public servant at pleasure is outside the scope of Article 154 and therefore cannot be delegated by the Governor to a subordinate officer and can be exercised by him only in the manner prescribed by the constitution. Propositions Nos. 3 and 4 are these. The tenure of a public servant is subject to the limitations or qualifications mentioned in Article 311 of the Constitution. The Parliament or the Legislatures of States cannot make a law abrogating or modifying this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Article 310 as qualified by Article 311. Proposition No. 5 is that the Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311. Proposition No. 6 is that the Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of "reasonable opportunity" embodied in Article 311, but the said law would be subject to judicial review.

All these propositions were reviewed by the majority opinion of this Court in Moti Ram Deka case ((1964) 5 SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467) and this Court restated that proposition No. 2 must be read along with the subsequent propositions specified as propositions Nos. 3, 4, 5 and 6. The ruling in Moti Ram Deka case ((1964) 5 SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467) is that a law can be framed prescribing the procedure by which and the authority by whom the said pleasure can be exercised. The pleasure of the President or the Governor to dismiss can therefore not only be delegated but is also subject to Article 311. The true position as laid down in Moti Ram Deka case ((1964) 5 SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467) is that Article 310 and 311 must no doubt be read together but once the true scope and effect of Article 311 is determined the scope of Article 310(1) must be limited in the sense that in regard in cases falling under Article 311(2) the pleasure mentioned in Article 310(2) must be exercised in accordance with the requirements of Article 311.

The majority view in Babu Ram Upadhya case ((1961) 2 SCR 679, 696 : AIR 1961 SC 751 : (1970) 1 LLJ 670) is no longer good law after the decision in Moti Ram Deka case ((1964) 5 SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467). The theory that only the President or the Governor is personally to exercise pleasure of dismissing or removing a public servant is repelled by express words in Article 311 that no person who is a member of the civil service or holds a civil post under the Union or a State shall be dismissed or removed by authority subordinate to that by which he was appointed. The words "dismissed or removed by an authority subordinate to that by which he was appointed" indicate that the pleasure of the President or the Governor is exercised by such officers on whom the President or the Governor confers or delegates power.

The court then stated its conclusion as follows (at page 836) : (SCC P. 849, para 57)

> For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister as the head in the case of the Union end the Chief Minister at the head in the case of State in all matters which vests in the Executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally.

59. The position, therefore, is that the pleasure of the President or the Governor is not required to be exercised by either of them personally, and that is indeed obvious from the language of Article 311. Under clause (1) of that article a government servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed. The question of an authority equal or superior in rank to the appointing authority cannot arise if the power to dismiss or remove is to be exercised by the President or the Governor personally. Clause (b) of the second proviso to Article 311 equally makes this clear when the power to dispense with an inquiry is conferred by it upon the authority empowered to dismiss, remove or reduce in rank a government servant in a case where such authority is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, because if it was the personal satisfaction of the President or the Governor, the question of the satisfaction of any authority empowered to dismiss or removed or reduce in rank a government servant would not arise. Thus, though under Article 310(1) the tenure of a government servant is at the pleasure of the President or the Governor, the exercise of such pleasure can be either by the President or the Governor acting with the aid and on the advice of the Council of Ministers or by the authority specified in Acts made under Article 309 or in rules made under such Acts or made under the proviso to Article 309; and in the case of clause (c) of the second proviso to Article 311(2), the inquiry is to be dispensed with not on the personal satisfaction of the President or the Governor but on his satisfaction arrived at with the aid and on the advice of the Council of Ministers.

The Second Proviso to Article 311(2) :

60. Clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice and the audi alteram partem rule by providing that a person employed in a civil capacity under the Union or a State shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges. To this extent, the pleasure doctrine enacted in Article 310(1) is abridged because Article 311(2) is an express provision of the Constitution. This safeguard provided for a government servant by clause (2) of Article 311 is, however, taken away when the second proviso to that clause becomes applicable. The safeguard provided by clause (1) of Article 311, however, remains intact and continues to be available to the government servant. The second proviso to Article 311(2) becomes applicable in the three cases mentioned in clauses (a) to (c) of that proviso. These cases are :

> (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
>
> (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that or some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest on the security of the state it is not expedient to hold such inquiry.

The construction to be placed upon the second proviso and the scope and effect of that proviso were much debated at the Bar. In Hira Lal Rattan Lal v. State of U. P. ((1973) 2 SCR 502 : (1973) 1 SCC 216 : 1973 SCC (Tax) 307) this Court observed (at page 512) : (SCC p. 224, para 22)

In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say ? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section.

In CIT v. Madurai Mills Co. Limited ((1973) 3 SCR 662 : (1973) 4 SCC 194 : 1973 SCC (Tax) 425) this said (at page 669) : (SCC p. 199, para 14)

A proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect. Further, if the language of the enacting part of the statute is plain and unambiguous and does not contain the provision which are said to occur in it, one cannot derive these provisions by implication from a proviso.

61. The language of the second proviso is plain and unambiguous. The keywords in the second proviso are "this clause shall not apply". By "this clause" is meant clause (2). As clause (2) requires an inquiry to be held against a government servant, the only meaning attributable to these words is that this inquiry shall not be held. There is no scope for any ambiguity in these words and there is no reason to give them any meaning different from the plain and ordinary meaning which they bear. The resultant effect of these words is that when a situation envisaged in any of the three clauses of the proviso arises and that clause becomes applicable, the safeguard provided to a government servant by clause (2) is taken away. As pointed out earlier, this provision is as much in public interest and for public good and a matter of public policy as the pleasure doctrine and the safeguards with respect to security of tenure contained in clauses (1) and (2) of Article 311.

62. Before, however, any clause of the second proviso can come into play the condition laid down in it must be satisfied. The condition for the application of each of these clauses is different. In the case of clause (a) a government servant must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led to him being convicted on a criminal charge. In the case of clause (b) the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. In the case of clause (c) the President or the Governor of a State, as the case may be, satisfied that in the interest of the security of the security of the State, it is not expedient to hold an inquiry. When these conditions can be said to be fulfilled will be discussed later while dealing separately with each of the three clauses. The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is

such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry. The extent to which a government servant can be denied his right to inquiry formed the subject-matter of considerable debate at the Bar and we, therefore, now turn to the question whether under the second proviso to Article 311(2) even though the inquiry is dispensed with, some opportunity at least should not be afforded to the government servant so that he is not left wholly without protection. As most of the arguments on this part of the case were common to all the three clauses of the second proviso, it will be convenient at this stage to deal at one place with all the arguments on this part of the case, leaving aside to be separately dealt with the other arguments pertaining only to a particular clause of the second proviso.

The Extent of Denial of Opportunity under the Second Proviso :

63. It was submitted on behalf of the government servants that an inquiry consists of several stages and, therefore, every where by the application of the second proviso the all inquiry is dispensed with, there is nothing to prevent the disciplinary authority from holding at least a minimal inquiry because no prejudice can be caused by doing so. It was further submitted that even though the three clauses of the second proviso are different in their content, it was feasible in the case of each of the three clauses to give to the government servant an opportunity of showing cause against the penalty proposed to be imposed so as to enable him to convince the disciplinary authority that the nature of the misconduct attributed to him did not call for his dismissal, removal or reduction in rank. For instance, in a case falling under clause (a) the government servant can point out that the offence of which he was convicted was a trivial or a technical one in respect of which the criminal court had taken a lenient view and had sentenced him to pay a nominal fine or had given him the benefit of probation. Support for this submission was derived from Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). It was further submitted that apart from the opportunity to show cause against the proposed penalty it was also feasible to give a further opportunity in the case of each of the three clauses though such opportunity in each case may not be identical. Thus, it was argued that the charge-sheet or at least a notice informing the government servant of the charges against him and calling for his explanation thereto was always feasible. It was further argued that through under clause (a) of the second proviso an inquiry into the conduct which lead to the conviction of the government servant on a criminal charge would not be necessary, which a notice would enable him to point out that it was a case of mistaken identity and he was not the person who had been convicted but was an altogether different individual. It was urged that there could be no practical difficulty in serving such charge-sheet to the concerned government servant because even in he were sentenced to imprisonment, the charge-sheet or notice with respect to the proposed penalty can always be sent to the jail in which he is serving his sentence. So far as clause (b) is concerned, it was argued that even though it may not be reasonably practicable to hold an inquiry, the explanation of the government servant can at least be asked or with respect to the charges made against him so that he would have an opportunity of showing in his written reply that he was not guilty of any of those charges. It was also argued that assuming such government servant was absconding, the notice could be sent by registered post to his last known address or pasted there. Similar arguments as in case of clause (b) were advanced with respect to clause (c). It was submitted

that the disciplinary authority could never make up its mind whether to dismiss or remove or reduce in rank a government servant unless such minimal opportunity at least was afford to the government servant. Support for these contentions was sought to be derived from (1) the language of Article 311(2) and the implications flowing therefrom, (2) the principles of natural justice including the audi alteram partem rule comprehended in Article 14, and (3) the language of certain rules made either under Acts referable to Article 309 or made under the proviso to that article. We will consider the contentions with respect to each of these bases separately.

64. So far as Article 311(2) was concerned, it was said that the language of the second proviso did not negative every single opportunity which could be afforded to a government servant under different situations though the nature of such opportunity may be different depending upon the circumstances of the case. It was further submitted that the object of Article 311(2) was that no government servant should be condemned unheard and dismissed or removed or reduced in rank without affording him at least some chance of either showing his innocence or convincing the disciplinary authority the proposed penalty was too drastic and was uncalled for in his case and a lesser penalty should, therefore, be imposed upon him. These arguments, though attractive at the first blush, do not bear scrutiny.

65. The language of the second proviso to Article 311(2) read in the light of the interpretation placed upon clause (2) of Article 311 as originally enacted and the legislative history of that clause wholly rule out the giving of any opportunity. While construing Rule 55 of the Civil Services (Classification, Control and Appeal) Rule and the phrase "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" occurring in sub-section (3) of Section 240 of the Government of India Act, 1935, the Judicial Committee of the Privy Council in Lall case (LR (1947-1948) 75 IA 225, 243-4 : AIR 1948 PC 121 : 1948 FCR 44) stated as follows (at pages 242-3) :

> ..... sub-section (3) of Section 240 was not intended to be, and was not, a reproduction of Rule 55 which was left unaffected as an administrative rule. Rule 55 is concerned that the civil servant shall be informed "of the grounds on which it is proposed to take action," and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked contrast to the statutory provision of "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him". In the opinion of their Lordship, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Before that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives that civil servant the opportunity for which sub-section (3) makes provision. Their Lordships would only and that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an inquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry. On this view of the proper construction off sub-section (3) of Section 240, it is not disputed that the respondent has not been given the opportunity to which he is entitled thereunder, and the purported removal of the respondent on August 10, 1940, did not conform to the mandatory requirements of sub-section (3) of Section 240, and was void and

inoperative.

66. The very phrase "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" in sub-section (3) of Section 240 of the Government of India Act, 1935, was repeated in clause (2) of Article 311 as originally enacted, that is, in the said clause prior to its amendment by the Constitution (Fifteenth Amendment) Act, 1963. Approving the construction placed by the Judicial Committee upon this phrase, this Court in Khem Chand v. Union of India (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 LLJ 167) held as follows (at pp. 1095-97) :

> It is true that the provision does not, in terms, refer to different stages at which opportunity is to be given to the officer concerned. All that it says is that the government servant must be given a reasonable opportunity of showing clause against the action proposed to be taken in regard to him. He must not only be given an opportunity but such opportunity must be a reasonable one. In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite obviously necessary that the government servant should have the opportunity, to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. Both these pleas have a direct bearing on the question of punishment and may well be put forward in showing cause against the proposed punishment. If this is the correct meaning of the clause, as we think it is, what consequences follow ? If it is open to the government servant under this provision to contend, if that be the fact, that he is not guilty of any misconduct then how can he take that plea unless he is told what misconduct is alleged against him ? If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against his do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of assume misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case.
>
> To summarise : the reasonable opportunity envisaged by the provision under consideration includes :
>
> (a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the inquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.

In short the substance of the protection provided by rules, like Rule 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in Section 240(3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Article 311(2) so as to convert the protection into a constitutional safeguard.

67. While the Judicial Committee in Lall case (LR (1947-1948) 75 IA 225, 243-4 : AIR 1948 PC 121 : 1948 FCR 44) held that two opportunities were required - one under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules to show cause against the charges of misconduct made against a government servant, and the other under sub-section (3) of Section 240 of the Government of India Act, 1935, to show cause against the proposed penalty, this Court in Khem Chand case (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 LLJ 167) held that Article 311(2) bodily lifted the said Rule 55 and the additional opportunity provided for in Section 240(3) of the 1935 Act and incorporated these provisions in Article 311(2) so as to convert the protection afforded to government servants into a constitutional safeguard. This conclusion was reached by this Court every though Article 311(2) used the same language as Section 240(3). The Constitution (Fifteenth Amendment) Act, 1963, substituted the whole of clause (2). The substituted clause specifically provided for two opportunities to be given to a government servant : (1) to be informed of the charges against him and to be given a reasonable opportunity of defending himself against those charges, and (2) a reasonable opportunity of making representation on the penalty proposed where after such inquiry it was proposed to impose on him the penalty of dismissal, removal or reduction in rank. No additional rights were, however, conferred upon government servants by the above amendment because it merely declared the rights which a government servant already possessed under the original clause (2) of Article 311 as interpreted by this Court in Khem Chand case (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 LLJ 167). This amendment, therefore, was merely declaratory, but in a way it was also clarificatory because it restricted the right of representation on the proposed penalty to a representation only on the basis of the evidence adduced during the inquiry. This clarification perhaps became necessary because, as pointed out by this Court in Suresh Koshy George v. University of Kerala ((1969) 1 SCR 317, 326 : AIR 1969 SC 198) there prevailed an erroneous impression in certain quarters, evidently influenced by the provisions of the unamended Article 311(2) that every disciplinary proceeding must consist of two inquiries, one before issuing a show cause notice to be followed by another inquiry thereafter. This amendment, therefore, made it expressly clear that the inquiry to be held against a government servant was to be one in which a charge-sheet or a show cause notice was to be issued to him informing him of the charges against him and giving him a reasonable opportunity of being heard in respect of those charges and a further opportunity of making representation on the penalty proposed to be imposed on him but only on the basis of the evidence adduced during such inquiry. The substituted clause, therefore, showed that the issue of a charge-sheet or a show cause notice in respect of the charges framed against a government servant and a notice to show cause against the proposed penalty were

part of the inquiry contemplated by Article 311(2). Even assuming for the sake of argument that because Article 311(2), as substituted by the Constitution (Fifteenth Amendment) Act, spoke of "a reasonable opportunity of making representation on the penalty proposed" in a case "where it is proposed, after such inquiry, to impose on him any such penalty", the show-causenotice with respect to penalty was not a part of the inquiry, the opening words of the proviso to clause (2) (now the second proviso to that clause) namely, "Provided further that this clause shall not apply", would, where any of the three clauses of the said proviso applies, take away both the right to have an inquiry held in which the government servant would be entitled to a charge-sheet as also the right to make a representation on the proposed penalty. As mentioned above, the words "this clause shall not apply" are the keywords in the second proviso and govern each and every clause thereof and by reason of these words not only the holding of an inquiry but all the provisions of clause (2) have been dispensed with.

68. The question which then arises is, "Whether the Constitution (Forty-second Amendment) Act, 1976, which further amended the substituted clause (2) of Article 311 with effect from January 1, 1977, has made any change in the law ?" The amendments made by this Act are that in clause (2) that portion which required a reasonable opportunity of making representation on the proposed penalty to be given to a government servant was deleted and in its place the first proviso was inserted, which expressly provides that it is not necessary to give to a delinquent government servant any opportunity of making representation on the proposed penalty. Does this affect the operation of the original proviso which, by the Constitution (Forty-second Amendment) Act, became the second proviso ? Such obviously was not and could not and could not have been the intention of Parliament. The opening words of the second proviso remain the same except that the word 'further' was inserted after the word 'provided', because the original proviso by reason of the insertion of another proviso before it became the second proviso. It should be borne in mind that the show-cause notice at the punishment stage was originally there as a result of the interpretation placed by the Judicial Committee in Lall Case (LR (1947-1948) 75 IA 225, 243-4 : AIR 1948 PC 121 : 1948 FCR 44) and by this Court in Khem Chand case (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 LLJ 167) upon the phrase "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him". Clause (2) as substituted by the Constitution (Fifteenth Amendment) Act merely reproduced the substance of what was held in Khem Chand case (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 LLJ 167). The words which originally found a place in clause (2), "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him", do not any more feature in clause (2). All that clause (2) now provides is an inquiry in which the government servant is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Clause (2) taken by itself even without the first proviso does not provide, expressly or impliedly, for any opportunity to make a representation against the proposed penalty. After the Constitution (Fifteenth Amendment) Act this second opportunity formed a separate part of clause (2), which part was deleted by the Constitution (Forty-second Amendment) Act. Thus, when the second proviso states in its opening words that "Provided further that this clause shall not apply", it means that whatever safeguards are to be found in clause (2) are wholly taken away in a case where any of the three clauses of the second proviso is attracted. In this connection, the following observations of this Court in the case of Suresh Koshy George v. University of Kerala ((1969) 1 SCR 317, 326 : AIR 1969 SC 198) (at pages 326-7) are pertinent :

> There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Article 311 of the Constitution particularly as they stood before the amendment of that article that every disciplinary proceeding must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry

thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course.

In Associated Cement Companies Ltd. v. T. C. Shrivastava ((1984) 3 SCR 361, 369 : 1984 Supp SCC 87 : 1984 SCC (L&S) 488), this Court held that "neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary". Since a right to such opportunity does not exist in law, it follows that the only right which the government servant had to make a representation on the proposed penalty was to be found in clause (2) of Article 311 prior to its amendment by the Constitution. (Forty-second Amendment) Act. This right having been taken away by the Constitution (Forty-second Amendment) Act, there is no provision of law under which a government servant can claim this right.

69. As for the argument that in a case under clause (a) of the second proviso a government servant could be wrongly dismissed, removed or reduced in rank mistaking him for another with the same name unless he is given an opportunity of bringing to the notice of the disciplinary authority that he is not the individual who has been convicted, it can only be described as being to fanciful and far-fetched for though such a case of mistaken identity may be hypothetically possible, it is highly improbable. As in all other organizations, there is in government service an extremely active grape-vine, both departmental and inter-departmental, which is constantly active, humming a bumming with service news and office gossip, and it would indeed be strange if the news that a member of a department was facing prosecution or had been convicted were to remain a secret for long. Assuming such a case occurs, the government servant is not without any remedy. He can prove in a departmental appeal which service rule provide for, save in exceptional cases, that he has been wrongly mistaken for another. Similarly, it is not possible to accept the argument that unless a written explanation with respect to the charges is asked for from a government servant and his side of the case known, the penalty which would be imposed upon him, could be grossly out of proportion to his actual misconduct. The disciplinary authorities are expected to act justly and fairly after taking into account all the facts and circumstances of the case and if they act arbitrarily and impose a penalty which is unduly exercise, capricious or vindictive, it can be set aside in a departmental appeal. In any event, the remedy by way of judicial review is always open to a government servant.

70. The position which emerges from the above discussion is that the keywords of the second proviso govern each and every clause of that proviso and leave no scope for any kind of opportunity to be given to a government servant. The phrase "this clause shall not apply" is mandatory and not directory. It is in the nature of a constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Article 311(2) or from giving any kind of opportunity to the concerned government servant. There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity by a process of inference or implication. The maxim "expressum facit cessare tacitum" ("when there is express mention of certain things, then anything not mentioned is excluded") applies to the case. As pointed out by this Court in B. Shankara Rao Badami v. State of Mysore ((1969) 3 SCR 1, 12 : (1969) 1 SCC 1), this well-known maxim is a principle of logic and common sense and not merely a technical rule of construction. The second proviso expressly mentions that clause (2) shall not apply where one of the clauses of that proviso becomes applicable. This express mention excludes everything that clause (2) contains and there can be no scope for once again introducing the opportunities provided by clause (2) or any one of them into the second proviso. In Atkinson v. United States of America Government (LR 1971 AC 197)

Lord Reid said (at page 232) :

> It is now well recognised that the court has power to expand procedure laid down by statute if that is necessary to prevent infringement of natural justice and is not plainly contrary to the intention of Parliament.
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> Here, however, the attempt is not merely to do something contrary to the intention of 'Parliament', that is, in our case, the Constituent Assembly, but to do something contrary to an express prohibition contained in the Constitution. The conclusion which flows from the express language of the second proviso is inevitable and there is no escape from it. It may appear harsh but, as mentioned earlier, the second proviso has been inserted in the Constitution as a matter of public policy and in public interest and for public god just as the pleasure doctrine and the safeguards for a government servant provided in clause (1) and (2) of Article 311 have been. It is in public interest and for public good that a government servant who has been convicted of a grave and serious offence or one rendering him unfit to continue in office should be summarily dismissed or removed from service instead of being allowed to continue in it at public expense and to public detriment. It is equally in public interest and for public good that where his offence is such that he should not be permitted to continue to hold the same rank, that he should be reduced in rank. Equally, where a public servant by himself or in concert with others has brought about a situation in which it is not reasonably practicable to hold an inquiry and his conduct is such as to justify his dismissal, removal or reduction in rank both public interest and public good demand that such penalty should forthwith and summarily be imposed upon him; and similarly, where in the interest of the security of the State it is not expedient to hold an inquiry, it is in the public interest and for public good that where one of the three punishments of dismissal, removal or reduction in rank is called for, it should be summarily imposed upon the concerned government servant. It was argued that in a case falling under clause (b) or (c), a government servant ought to be placed under suspension until the situation improves or the danger to the security of the State has passed, as the case may be, and it becomes possible to hold an inquiry. This argument overlooks the fact that suspension involves the payment at least of subsistence allowance and such allowance is paid at public expense, and that neither public interest would be benefited nor public good served by placing such government servant under suspension because it may take a considerable time for the situation to improve or the danger to be over. Much as this may seem harsh and oppressive to a government servant, this Court must not forget that the object underlying the second proviso is public policy, public interest and public good and the Court must, therefore, repel the temptation to be carried away by feelings of commiseration and sympathy for those government servants who have been dismissed, removed or reduced in rank by applying the second proviso. Sympathy and commiseration cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a constitutional prohibition. The Court must bear in mind that the second proviso has been in the Constitution since it was originally enacted. It was not blindly or slavishly copied from Section 240(3) of the Government of India Act, 1935. Article 311 was Article 282-B of the draft Constitution of India and the draft Article 282-B was discussed and a considerable debate took place on it in the Constituent Assembly (see the Official Report of the Constituent Assembly Debates, Vol. IX, pages 1099 to

> 1116). The greater part of this debate centered upon the proviso to clause (2) of the draft Article 282-B, which is now the second proviso to Article 311. Further, the Court should also bear in mind that clause (c) of the second proviso and clause (3) of Article 311 did not feature in Section 240 of the Government of India Act, 1935, but were new provisions consciously introduced by the Constituent Assembly in Article 311. Those who formed the Constituent Assembly were not the advocates of a despotic or dictatorial form of government. They were the persons who enacted into our Constitution the Chapter or Fundamental Rights. The majority of them had fought for freedom and had suffered imprisonment in the cause of liberty and they, therefore, were not likely to introduce into our Constitution any provision from the earlier Government of India Acts which had been intended purely for the benefit of a foreign imperialistic power. After all, it is not as if a government servant is without any remedy when the second proviso has been applied to him. There are two remedies open to him, namely, departmental appeal and judicial review. The scope and extent of these remedies will be considered later in the course of this judgment.
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> Article 14 and the Second Proviso :

71. The next question which falls to be considered is, "Does Article 14 make any difference to the consequences which flow from the second proviso to Article 311(2) ?" It was submitted on behalf of the government servants that Article 14 in which the principles of natural justice are comprehended permeates the entire Constitution and, therefore, Article 14 must be read into the second proviso to Article 311(2) and accordingly, if not under that proviso read by itself, under it read with Article 14 a government servant is entitled to an opportunity both of showing cause against the charges made against him as also against the penalty proposed to be imposed upon him, though such opportunity may not extend to the holding of a complete and elaborate inquiry as would be the case where clause (2) of Article 311 applies. According to learned counsel this is what is required by the audi alteram partem rule which is one of the two main principles of natural justice. In the alternative it was submitted that though an order may be valid and supportable under the second proviso to Article 311(2), it could nonetheless be void under Article 14 on the ground that the principles of natural justice have been wholly disregarded. These arguments are based upon an imperfect understanding of the principles of natural justice in their application in courts of law to the adjudication of causes before them and the function of Article 14 vis-a-vis the other provisions of the Constitution and particularly the second proviso to Article 311(2).

72. The principles of natural justice are not the creation of Article 14. Article 14 is not their begetter but their constitutional guardian. Principles of natural justice trace their ancestry to ancient civilizations and centuries long past. Until about two centuries ago the term "natural justice" was often used interchangeably with "natural law" and at times it is still so used. The expression "natural law" has been variously defined. In Jowitt's Dictionary of English Law (Second Edition, page 1221) it is defined as "rules derived from God, reason or nature, as distinct from man-made law". Black's Law Dictionary (Fifth Edition, page 925) states :

> This expression, "natural law", or jus naturale, was largely used in the philosophical speculations of the Roman jurists of the Antonine age, and was intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his nature, meaning by that word his whole mental, moral, and

physical constitution. The point of departure for this conception was the Stoic doctrine of a life ordered "according to nature", which in its turn rested upon the purely suppostitious existence, in primitive times, of a "state of nature"; that is, a condition of society in which men universally were governed solely by a rational and consistent obedience to the needs, impulses, and promptings of their true nature, such nature being as yet undefaced by dishonesty, falsehood, or indulgence of the baser passions. In ethics, it consists in practical universal judgments which man himself elicits. These express necessary and obligatory rules of human conduct which have been established by the author of human nature as essential to the divine purposes in the universe and have been promulgated by God solely through human reason.

73. There are certain basic values which man has cherished throughout the ages. But man looked about him and found the ways of men to be cruel and unjust and so also their laws and customs. He saw men flogged, tortured, mutilated, made slaves, and sentences to row the galleys or to toil in the darkness of the mines or to fight in an arena with wild and hungry beasts of the jungle or to die in other ways a cruel, horrible and lingering death. He found judges to be venal and servile to those in power and the laws they administered to be capricious, changing with the whims of the ruler to suit his purpose. When, therefore, he found a system of law which did not so change, he praised it. Thus, the Old Testament in the Book of Ester (I, 19) speaks admiringly of the legal system of the Achaemenid dynasty (the First Persian Empire) in which "a royal commandment" was "written among the laws of the Persians and the Medes, that it be not altered". Man saw cities and town sacked and pillaged, their populace dragged into captivity and condemned to slavery - the men to labor, the women and the girls to concubinage, and the young boys to be castrated into eunuchs - their only crime being that ruler had the misfortune to be defeated in battle and to lose one of his cities or towns to the enemy. Thus, there was neither hope nor help in man-made laws or man-established customs for they were one-sided and oppressive, intended to benefit armed might and monied power and to subjugate the downtrodden poor and the helpless needy. If there was any help to be found or any hope to be discovered, it was only in a law based on justice and reason which transcended the laws and customs of man, a law made by someone greater and mightier than those men who made these laws and established these customs. Such a person could only be a divine being and such a law could only be "natural law" or "the law of nature" meaning thereby "certain rules of conduct supposed to be so just that they are binding upon all mankind". It was not "the law of nature" in the sense of "the law of the jungle" where the lion devours the lamb and the tiger feeds upon the antelope because the lion is hungry and the tiger famished but a higher law of nature or "the natural law" where the lion and the lamb lie down together and the tiger frisks with the antelope.

74. Most, if not all, jurists are agreed that 'reason' and "the nature of man" constitute the fountain-head of natural law but there is a considerable divergence of opinion amongst them as also amongst philosophers about the nature and meaning of that law and its relation to positive law. Among the ancient Greeks and Sophists, Aristotle in his treatises on 'Logic' and 'Ethics', and the Stoics developed different theories. The theory propounded by Aristotle in his 'Logic' adhered substantially to the point of view of the Sophists, namely, that man is a natural creature but is also endowed with reason. Later, in his 'Ethics', Aristotle came to distinguish between natural and legal or conventional justice and postulated that natural law had authority everywhere and was discoverable by the use of reason. The ancient Romans were not given to philosophical speculations or creative originality in art. They preferred to borrow these from the Greeks. The Romans were a hard-headed, practical race of conquerors, administrators and legislators. Roman jurists, therefore, used the concept of natural law, that is, jus natural (or ius natural as the Romans wrote it because Roman alphabet had

no letter 'J' or 'j' in it) to introduce into the body of law those parts of laws and customs of foreigners, that is, non-Roman people with whom they came in commercial contract or whom they subjugated. The rules which the Romans borrowed from these laws and customs were those which were capable of general application and they developed them into general legal principles, which came to form jus gentium or the law of nations. In doing so they acted upon the principle that any rule of law which was common to the nations (gentes) they knew of must be basically in consonance with reason and, therefore, fundamentally just. They applied jus gentium to those to whom jus civil (civil law) did not apply, that is, in cases between foreigners or between a Roman citizen and a foreigner. On this basic formulation that what was common to all known nations must be in consonance with reason and justice, the Roman jurists and magistrates proceeded to the theory that any rule which instinctively commanded itself to the sense of justice and reason would be part of the jus gentium. The jus gentium of the Romans was different from what we call international law and should not be confused with it, for the scope of the jus gentium was much wider than our international law. Because of the theory of its identity with justice and reason, the term "jus gentium" came at times to be used for acquits, that is, equity as understood by the Romans, which was the basic of praetorian law or the power of the praetors to grant remedies where none existed under the jus civil. In the Dark Ages the expression "natural law" acquired a theological base and the Fathers of the Church, particularly St. Ambrose, St. Augustine and St. Gregory, held the belief that it was the function of the Church to bring about the best possible approximation of human laws to Christian principles. As Europe emerged from the Dark Ages in about the ninth century, Christianity became substituted for reason as the supreme force in the universe, and this led to the development of a theory of law in which Christianity had the supreme spiritual and legal force and was superior to all other laws, with the Church as the authentic expositor of the law of nature. Gratian (Francisco Graziano) in the twelfth century in his 'Decretum' or "Concordia discordantium canonum" considered the law of nature as part of the law of God. According to St. Thomas Aquinas (1226-74), natural law was derived from the law of God which was supreme and such of it as was intelligible to men was revealed through Church law as the incorporation of divine wisdom. Thus, according to this theory, natural law was that part of divine law which revealed itself in natural reason, and man as a reasonable being applied this part of divine law to human affairs. This theory, though it upheld the supreme authority of the Church, made some concession to the authority of the Emperor, that is, the Holy Roman Emperor. Dante in his "De Monarchia" championed the supremacy of the Holy Roman Empire as against the Church on the ground that the Emperor was the legitimate successor of the Roman people and was chosen by God to rule the world. The authority of the law of nature or natural law was repeatedly sought support from during the centuries which saw the struggle for supremacy between the Popes and the General Councils of the Church and between the Popes and Emperors and later in the struggle between the Catholics and the Protestants. Both sides in these conflicts found in natural law the interpretation of scriptural texts which supported their respective views and were, therefore, according to them, the true interpretation. Bracton, in the thirteenth century, however, considered natural law as that which nature, that is, God, teaches to all animals, and though he tried to reconcile natural law with human law, he acknowledged the difficulty of doing so because he found rules of positive law which could hardly be so reconciled.

75. Natural law was also seized upon as furnishings arguments in the struggle between the judges and Parliament for supremacy which took place in the seventeenth century. Coke in Dr. Bonham case ((1610) 8 Co Rep 114a, 118 : 77 ER 646) said by way of obiter, "when an Act of Parliament is against common right or reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such Act to be void". There were later assertions to the same effect until the

supremacy of Parliament and the legislation enacted by it became firmly established in 1688. However, in British Railways Board v. Pickin (LR (1974) AC 765 : (1972) 3 All ER 923 (CA)) sub nominee Pickin v. British Railways Board the argument was once again advanced before the House of Lords that a court was entitled to disregard a provision in an Act of Parliament and a distinction was sought to be drawn for this purpose between a public Act and a private Act. Referring to the argument on this point, Lord Reid observed (at page 782) :

> In earlier times many learned lawyers seem to have believed that an Act of Parliament could be disregarded insofar as it was contrary to the law of God or the law of nature or natural justice, but since the supremacy of Parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete.
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> Rejecting the above argument, the House of Lords unanimously held that the function of the court was to consider and apply the enactments of Parliament, and accordingly, in the course of litigation, it was not lawful to impugn the validity of a statute by seeking to establish the Parliament, in passing it, was misled by fraud or otherwise, nor might a litigant seek to establish a claim in equity by showing that the other party, by fraudulently misleading Parliament, had inflicted damage on him; for any investigation into the manner in which Parliament had exercised its function would or might result in an adjudication by the courts, bringing about a conflict with Parliament.

76. As a result of the infusion of new ideas during the Renaissance and the Reformation, the intellectual authority of reason again came to be substituted for the spiritual authority of divine law as the basis of natural law. This new or rather resuscitated basic of natural law was laid by Grotius (Huigh de Groot) in his "De jure Belli as Pacis" - the precursor of modern public international law.

77. Reason as the theoretical basis for natural law, however, once again suffered a reversal at the hand of David Hume. According to Hume, only knowledge obtained by mathematical reasoning was certain; knowledge obtained from other sciences being only probable. His theory of justice was that it served both an ethical and a sociological function. He contended that public utility was the sole origin of legal justice and the sole foundation of its merit, and that for a legal system to be useful, it must adhere to its rules even though it may cause injustice in particular cases. He did not make a formal analysis of law but distinguished equity or the general system of morality, the legal order, and law, as a body of precepts. According to him, the authority of civil law modified the rules of natural justice according to the particular convenience of each community.

78. Blackstone, however, in his Commentaries on the Laws of England had this to say about natural law :

> This law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times : no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original.

79. In the nineteenth and twentieth centuries there was a reaction against natural law as the basis of law. The French Revolution had enthroned reason as a goddess. The excess of the French Revolution, however, led to a reaction against the theory that reason was the basis of law. The

utilitarian view was that the basis for law was the practical inquiry as to what would most conduce to the general benefit. The spirit of scientific inquiry which predominated the nineteenth and twentieth centuries could not favour hypotheses which were vague and unprovable. In the twentieth century, disillusionment with the theory that good could come out of the power of the State and positive law has, however, once again brought about a revival of interest in natural law.

80. Apart from providing the subject-matter for philosophical dissertations and speculative theories on the origin and attributes of natural law, the concept of natural law has made invaluable contribution to the development of positive law. It helped to transform the rigidity of the jus civil of the Romans into a more equitable system based on the theory of the jus gentium. It provided arguments to both sides in the struggle during the Middle Ages between the Popes and the Emperors. It inspired in the eighteenth century the movement for codification of law in order to formulate ideas derived from the concept of natural law into detailed rules. In England, the idea of natural law and natural justice has influenced its law in several respects. The origin and development of equity in England owed much to natural law. It also served as the basis for the recognition or rejection of a custom. It was looked to for support in the struggle for supremacy which took place between the judges and Parliament in the seventeenth century. The concept of natural law and natural rights influenced the drafting of the Constitution of the United States of America and many of the amendments made thereto as also the Constitutions of its various States. It has provided a basis for much of modern international law and international conventions, covenants and declarations. Above all, it has enriched positive law by introducing into it the principles of natural justice, divested of all their philosophical, metaphysical and theological trappings and disassociated from their identification with, or supposed derivation from, natural law.

81. Natural justice has been variously defined by different judges. A few instances will suffice. In Drew v. Drew and Leburn ((1855) 2 Macq 1, 8) Lord Cranworth defined it as "universal justice". In James Dunbar Smith v. Queen ((1877-78) 3 App Cas 614, 623 (PC)) Sir Robert P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase "the requirements of substantial justice", while in Arthur John Spackman v. Plumstead District Board of Works (LR (1884-85) 10 App Cas 229, 240) Earl of Selborne, L.C., preferred the phrase "the substantial requirements of justice". In Vionet v. Barrett ((1885) 55 LJ QB 39, 41) Lord Esher, M.R., defined natural justice as "the natural sense of what is right and wrong". While, however, deciding Hopkins v. Smethwick Local Board of Health (LR (1890) 24 QBD 712, 716 : 59 LJQB 250 : 62 LT 783) Lord Esher, M.R., instead of using the definition given earlier by him in Vionet v. Barrett ((1885) 55 LJ QB 39, 41) chose to define natural justice as "fundamental justice". In Ridge v. Baldwin (LR (1963) 1 AB 539, 578 : (1961) 2 All ER 523 Harman, L.J., in the Court of Appeal equated natural justice with "fair play in action", a phrase favoured by Bhagwati, J., in Maneka Gandhi v. Union of India ((1978) 2 SCR 621, 676 : (1978) 1 SCC 248). In re H.K. (An Infant) (LR (1967) 2 QB 617, 630 : (1967) 1 All ER 226 : (1967) 2 WLR 692) Lord Parker, C. J., preferred to describe natural justice as "a duty to act fairly". In Fairmount Investments Ltd. v. Secretary of State for the Environment ((1976) 1 WLR 1255, 1265-66 : (1976) 2 All ER 865 (HL)) Lord Russell of Killowen somewhat picturesquely described natural justice as "a fair crack of the whip", while Geoffery Lane, L.J., in Regina v. Secretary of State for Home Affairs, Ex parte Hosenball ((1977) 1 WLR 766, 784 : (1977) 3 All ER 452) preferred the homely phrase "common fairness".

82. As some judges, for instance, Ormond, L.J., in Lewis v. Heffer ((1978) 1 WLR 1061, 1076 : (1978) 3 All ER 354 (CA)) have found the phrase "natural justice" to be "a highly attractive and potent phrase", it may not be out of place, in order to set the balance right, to reproduce a passage, full of robust common sense and biting irony, from the judgment of Maugham, J., in Maclean v.

Workers' Union (LR (1929) 1 Ch 602, 624 : 1929 WN 59 : 141 LT 83). That passage is as follows :

> Eminent judges have at times used the phrase "the principles of natural justice". The phrase is, of course, used only in a popular sense and must not be taken to mean that there is any justice natural among men. Among most savages there is no such thing as justice in the modern sense. In ancient days, a person wronged executed his own justice. Amongst our own ancestors, down to the thirteenth century, manifest felony, such as that of a manslayer taken with his weapon, or a thief with the stolen goods, might be punished by summary execution without any form of trial. Again every student has heard of compurgation and of ordeal; and it is hardly necessary to observe that (for example) a system of ordeal by water in which sinking was the sign of innocence and floating the sign of guilt, a system which lasted in this country for hundreds of years, has little to do with modern ideas of justice. It is necessary to give further illustrations. The truth is that justice is a very elaborate conception, the growth of many centuries of civilization; and even now the conception differs widely in countries usually described as civilized.
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> In the Supreme Court of Ireland, Black, J., in William Green v. Isidore J. Black (1948 IR 242), after referring to the above passage from the judgment of Maugham, J., proceeded to state (at page 268) :
>
> I agree, but what then does it mean ? We may, if we choose, describe as 'natural' every evolutionary advance in our conception of justice. But for me, natural justice means no more than justice without any epithet. I take the essentials of justice to mean those desiderata which, in the existing stage of our mental and moral development, we regard as essential, in contradiction from the many extra precautions, helpful to justice, but not indispensable to it, which, by their rules of evidence and procedure, our courts have made obligatory in actual trials before themselves. Many advanced peoples have legal systems which do not insist on all these extra precautions, yet we would hardly say that they disregard the essentials of justice.
>
> Megarry, J., also found it necessary to sound a note of warning in Hounslow London Borough Council v. Twickenham Garden Developments Ltd. (LR (1971) Ch 233 : (1970) 3 All ER 326) wherein he said (at page 259) :
>
> The principles of natural justice are of wide application and greate importance, but they must be confused within proper limits and not allowed to run wild.

83. Some judges have been faced with the contention as Maugham, L.J., was in Errington v. Minister of Health (LR (1935) 1 KB 249, 280) that "the principles of natural justice are vague and difficult to ascertain". Referring to such contentions Lord Reid said in Ridge v. Baldwin (LR 1964 AC 40, on appeal from LR (1963) 1 QB 539) (at page 64-65) :

> In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist. The idea of negligence is equally insusepctible of exact definition, but what a reasonable man would regard as

> fair procedure in particular circumstances and what he would regard as negligence in particular circumstances are equally capable of serving as tests in law, and natural justice as it has been interpreted in the courts is much more definite than that. It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle.

84. How then have the principles of natural justice been interpreted in the courts and within what limits are they to do confined ? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative processes. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa" as stated in the Earl of Derby's case (LR 1964 AC 40, on appeal from LR (1963) 1 QB 539) that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa, quia non potest esse judex et pars" (Co. Litt. 141-a), that is, "no man ought to be a judge in his own cause, because he cannot act as a judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule-and that is the rule with which we are concerned in these appeals and writ petitions - is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries the form "audielur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely, "qui aliquid statuerit, parte inaudita altera aequum licet dixerit, haud aequum fecerit", that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right' (see Boswell case ((1606) 6 Co Rep 48-b, 52-1)) or, in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done".

85. The above two rules and their corollary are neither new nor were they the discovery of English judges. They were recognized in many civilizations and over many centuries. Roman law recognized the need for a judge to be impartial and not to have a personal interest in the case before him (Digest V. 1.17) and Tacitus in his 'Dialogues' referred to this principle. Under Roman law a judge who heard a cause in which he had an interest was liable as on a quasi-delict to the party prejudiced thereby (Justinian's Institutes IV, 5 pr.; as also Justinian's Codex III, 5, 1). Even the Kiganda tribesman of Buganda have an old proverb which literally translated means "a monkey does not decide an affair of the forest" (see Law and Justice in Buganda by E.S. Haydon, p. 333). The requirement of hearing both sides before arriving at a decision was part of the judicial oath in Athens. It also formed the subject-matter of a proverb which was often referred to or quoted by Greek playwrights, as for instance, by Aritophanes in his comedy The Wasps and Eruipides in his tragedies Heracleidae and Andromache, and by Greek orators, for instance, Demosthenes in his speech De Corona. Among the Romans, Seneca in his tragedy Medea referred to the injustice of coming to a decision without a full hearing. In fact, the corollary drawn in Boswell case ((1606) 6 Co Rep 48-b, 52-a) is taken from a line in Seneca's Medea. In The Gospel according to St. John (vii, 51), Nicodemus asked the chief priests and the Pharisees, "Doth our law judge any man, before it hear him, and know what he doeth ?" Even the proverbs and songs of African tribesmen, for instance, of the Lozi tribe in Barotseland refer to this rule (see The Judicial Process Among the Barotse of Northern Rhodesia by Max Gluckman, p. 102).

86. The two rules "nemo judex in causa sua" and "audi alteram partem" and their corollary that

justice should not only be done but should manifestly be seen to be done have been recognized from early days in English courts. References to them are to be found in the Year Books - a title preferred to the alternative one of "Books of Years and Terms" - which were a regular series, with a few gaps, of law reports in Anglo-Norman or Norman French or a mixture of English, Norman-French and French, which had then become the court language, from the 1270s to 1535 or, as printed after the invention of the printing press, from 1290 to 1535, that is, from the time of Edward II to Henry VIII. The above principles of natural justice came to be firmly established over the course of centuries and have become a part of the law of the land. Both in England and in India they apply to civil as well as to criminal cases and to the exercise of Judicial, quasi-judicial and administrative powers. The expression "natural justice" is now so well understood in England that it has been used without any definition in statutes of Parliament, for example, in Section 3(10) of the Foreign Compensation Act, 1969, and Section 6(13) of the Trade Union and Labour Reforms Act, 1974, which was later repealed by the Trade Union and Labour Relations (Amendment) Act, 1976. These rules of natural justice have been recognized and given effect to in many countries and different systems of law. They have now received international recognition by being enshrined in Article 10 of the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations by Resolution 217-A(III) of December 10, 1948, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which came into force on September 3, 1953, and Article 14 of the International Covenant on Civil and Political Rights adopted by the General Assembly Resolution 2200-A (XXI) of December 16, 1966, which came into force on March 23, 1976.

87. Article 14 does not set out in express terms either of the above two well-established rules of natural justice. The question which then arises is "Whether the rules of natural justice form part of Article 14 and, if so, how ?"

88. Article 14 of the Constitution provides as follows :

> 14. Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
>
> Article 14 thus contains an express constitutional injection against the State as defined in Article 12 prohibiting the State from denying to any person (1) equality before the law, or (2) the equal protection of the laws. Neither of these two concepts is new. They are based upon similar provisions in other Constitutions. One instance is Section 40(1) of the Constitution of Eire of 1937, which occurs in the Chapter entitled Fundamental Rights in that Constitution. The Constitution of Eire begins on a strong religious note. It starts by stating :
>
> In the name of the Most Holy Trinity, from Whom is all authority and to whom, as our final end, all actions both of men and States must be referred.
>
> We, the people of Eire,
>
> Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, who sustained our fathers through centuries of trial, ...
>
> Section 40(1) of that Constitution provides as follows :
>
> All Citizens shall, as human persons, be held equal before the law.

> This shall not be held to mean that the State shall not in it's enactments have due regard to difference of capacity, physical and moral, and of social functions.
>
> Another instance is Article 3(1) of the Constitution of the Federal Republic of Germany of 1948 which states :
>
> All persons shall be equal before the law.
>
> Yet another instance is Section 1 of the Fourteenth Amendment to the Constitution of the United States of America which reads :

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person with its jurisdiction the equal protection of the laws.

Constitution of some other countries also have similar provisions but as these Constitutions have suffered political vicissitudes, it is unnecessary to refer to them. Provisions similar to Article 14 are to be found in International Charters and Conventions. Thus, Article 7 of the Universal Declaration of Human Rights of 1948, provides as follows :

> All are equal before the law and are entitled without any discrimination to equal protection of the law ....

89. Article 14 is divided into twos parts. In In Re Special Courts Bill, 1978 ((1979) 2 SCR 476 : (1979) 1 SCC 380) Chandrachud, C. J., described the two parts of Article 14 as follows (at page 534) : (SCC p. 424, para 72)

> The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favoritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.

90. Article 14 contains a guarantee of equality before the law to all persons and a protection to them against discrimination by any law. Sub clause (a) of clause (3) of Article 13 defines law as follows :

> 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.
>
> What Article 14 forbids is discrimination by law, that is, treating persons similarly circumstances differently or treating those not similarly circumstances in the same way or, as has been pithily put, treating equals as unequals and unequals as equals. Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation. The propositions deducible from decisions of this Court on this point have been set out in the form of thirteen propositions in the

> Judgment of Chandrachud, C.J., in In re Special Courts Bill, 1978 ((1979) 2 SCR 476 : (1979) 1 SCC 380). The first of these propositions which describes the nature of the two parts of Article 14 has been extracted earlier. We are not concerned in these appeals and writ petitions with the other propositions set out in that judgment. In early days, this Court was concerned with discriminatory and hostile class legislation and it was to this aspect of Article 14 that its attention was directed. As fresh thinking began to take place on the scope and ambit of Article 14, new dimensions to this guarantee of equality before the law and of the equal protection of the laws emerged and were recognized by this Court. It was realized that to treat one person differently from another when there was no rational basis for doing so would be arbitrary and thus discriminatory. Arbitrariness can take many forms and shapes but whatever form or shape it takes, it is nonetheless discrimination. It also became apparent that to treat a person or a class of persons unfairly would be an arbitrary act amounting to discrimination forbidden by Article 14. Similarly, this Court, recognized that to treat a person in violation of the principles of natural justice would amount to arbitrary and discriminatory treatment and would violate the guarantee given by Article 14.

91. In State of A. P. v. Nalla Raja Reddy ((1967) 3 SCR 28 : AIR 1967 SC 1458 : (1967) 2 SCJ 857) Subba Rao, C.J., speaking for the Court, said (at page 46) :

> Official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of a statutory discrimination one knows where he stands, the wand of official arbitrariness can be waved in all directions indiscriminately.

92. While considering Article 14 and Article 16, Bhagwati, J., in E. P. Royappa v. State of T. N. ((1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165) in a passage which has become a classic said (at page 386) : (SCC p. 38, para 85)

> ..... Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Article 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspect and dimensions and it cannot be "cribbed, cabinet and confined" within traditional and doctrinaire limits. From a positive point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing

> from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

93. Bhagwati, J., reaffirmed in Maneka Gandhi case ((1978) 2 SCR 621, 676 : (1978) 1 SCC 248) what he has said in Royappa case ((1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165) in these words (at pages 673-74) : (SCC p. 283, para 7)

> Now, the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E. P. Royappa v. State of T. N. ((1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165) namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence .....

In the course of his judgment in the same case Bhagwati, J., further said (at pages 676-7) : (SCC p. 286, para 10)

> Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other ? Can it be said that the requirement of 'fair-play in action' is any the less in an administrative inquiry than in a quasi-judicial one ? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences.

94. In Ajay Hasia v. Khalid Mujib Sehravardi ((1981) 2 SCR 79 : (1981) 1 SCC 722 : 1981 SCC (L&S) 258), the same learned Judge, speaking for the Court, said (at pages 100-101) : (SCC p. 740,

para 16)

> The true scope and ambit of Article 14 has been the subject-matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that article forbids discrimination and there would be no discrimination where the classification making the differential fulfills two conditions, namely, (i) that the classification is founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differential has a rational relation to the object sought to be achieved by the impugned legislative or executive action.

95. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus : violation of a rule of natural justice results in arbitrainess which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14 : therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of 'State' in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry. If we look at clause (2) of Article 311 in the light of what is stated above, it will be apparent that that clause is merely an express statement of the audi alteram partem rule which is implicity made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that article by recent decisions of this Court. Clause (2) of Article 311 requires that before a government servant is dismissed, removed or reduced in rank, an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The nature of the hearing to be given to a government servant under clause (2) of Article 311 has been elaborately set out by this Court in Khem Chand case (1958 SCR 1080 : AIR 1958 SC 300 :

(1959) 1 LLJ 167) in the passages from the judgment extracted above. Though that case related to the original clause (2) of Article 311, the same applies to the present clause (2) of Article 311 except for the fact that now a government servant has no right to make any representation against the penalty proposed to be imposed upon him but, as pointed out earlier, in the case of Suresh Koshy Geroge v. University of Kerala ((1969) 1 SCR 317, 326 : AIR 1969 SC 198) such an opportunity is not the requirement of the principles of natural justice and as held in Associated Cement Companies Ltd. v. T. C. Shrivastava ((1984) 3 SCR 361, 369 : 1984 Supp SCC 87 : 1984 SCC (L&S) 488) neither the ordinary law of the land nor industrial law requires such an opportunity to be given. The opportunity of showing cause against the proposed penalty was only the result of the interpretation placed by the Judicial Committee of the Privy Council in Lall case (LR (1947-1948) 75 IA 225, 243-4 : AIR 1948 PC 121 : 1948 FCR 44) upon Section 240(3) of the Government of India Act, 1935, which was accepted by this Court in Khem Chand case (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 LLJ 167). If, therefore, an inquiry held against a government servant under clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purpose of invalidating it.

97. Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed. There is no difference in this respect between the law in England and in India. It is unnecessary to refer to various English decisions which have held so. It will suffice to reproduce what Ormond, L.J., said in Narrowest Holst Ltd. v. Secretary of State for Trade (LR (1978) 1 Ch 201 : (1978) 3 All ER 280 : (1978) 3 WLR 73) (at page 227) :

> The House of Lords and this Court have repeatedly emphasised that the ordinary principles of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case. One of the most important of these circumstances, as has been said throughout the argument, is, of course, the provisions of the Act in question, in this case Sections 164 and 165 of the 1948 Act.

98. In India, in Suresh Koshy George v. University of Kerala ((1969) 1 SCR 317, 326 : AIR 1969 SC 198) this Court observed (at page 322) :

> The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.
>
> After referring to this case, in A. K. Kraipak v. Union of India ((1970) 1 SCR 457 : (1969) 2 SCC 262) Hedge, J., observed (at page 469) : (SCC p. 272, para 20)

> What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

99. Again in Union of India v. Col. J. N. Sinha ((1971) 1 SCR 791 : (1970) 2 SCC 458) it was said (at page 794-5) : (SCC p. 460, para 8)

> As observed by this Court in A. K. Kraipak v. Union of India ((1970) 1 SCR 457 : (1969) 2 SCC 262) "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

100. In Swadeshi Cotton Mills v. Union of India ((1981) 2 SCR 533 : (1981) 1 SCC 664) Chinnappa Reddy, J., in his dissenting judgment summarized the position in law on this point as follows (at page 591) : (SCC p. 712, para 106)

> The principles of natural justice have taken deep rot in the judicial conscience of our people, nurtured by Binapani (Mohinder Sigh Gill v. Election Commissioner of India, (1978) 2 SCR 272), Kraipak ((1970) 1 SCR 457 : (1969) 2 SCC 262), Mohinder Singh Gill (Mohinder Sigh Gill v. Election Commissioner of India, (1978) 2 SCR 272), Maneka Gandhi ((1978) 2 SCR 621, 676 : (1978) 1 SCC 248) etc. etc. They are now considered so fundamental as to be 'implicit in the concept of ordered liberty' and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justices will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced.

101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J. Mohapatra & Co. v. State of Orissa ((1985) 1 SCR 322, 334-5 : (1984) 4 SCC 103). So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi case ((1978) 2 SCR 621, 676 : (1978) 1 SCC 248) at page 681. If legislation and the necessities of a situation can exclude the principals of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all-pervading sancity than a statutory provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its keywords "this clause shall not apply". As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to Article 14. This is, however, the only scope which Article 14 can have in relation to the second proviso, but to hold that once the second proviso is properly applied and clause (2) of Article 311 excluded, Article 14 will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public god and the Constitution makers who inserted it in Article 311(2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.

102. In this connection, it must be remembered that a government servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the President or the Governor of a State because they being the highest constitutional functionaries, there can be no higher authority to which an appeal can lie from an order passed by one of them. Thus, where the second proviso applies, though there is no prior opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice. In Maneka Gandhi case ((1978) 2SCR 621, 676 : (1978) 1 SCC 248) and in Liberty Oil Mills v. Union of India ((1984) 3 SCC 465) the right to make a representation after an action was taken was held to be a sufficient remedy, and an appeal is a much wider and more effective remedy than a right of making a representation.

103. In support of the contention that even though the second proviso to Article 311(2) excludes any right of hearing, such a right is nonetheless available under Article 14, reliance was placed on behalf of the government servants upon the case of Rustom Cavasjee Cooper v. Union of India ((1970) 3

SCR 530 : (1970) 1 SCC 248). In our opinion, this reliance is misplaced. One of the questions which arose in that case was the correctness of the majority view in A. K. Gopalan v. State of Madras (1950 SCR 88 : AIR 1950 SC 27 : 1950 SCJ 174). In Gopalan case (1950 SCR 88 : AIR 1950 SC 27 : 1950 SCJ 174) it was held by the majority that the law of preventive detention did not have to satisfy the combined test of Articles 19 and 21. According to the majority view, it was the form of the State action which would determine which article in the chapter on fundamental rights would be attracted, and that in respect of preventive detention Article 21 protected substantive rights by requiring a procedure and Article 22 laid down the minimum rules of procedure which even Parliament could not abrogate or overlook. Fazal Ali, J., in his dissenting judgment, however, took the view that preventive detention was a direct violation of sub-clause (d) of clause (1) of Article 19, even if a narrow construction were to be placed upon that sub-clause, and a law relating to preventive detention was therefore, subject to such limited judicial review as was permitted by clause (5) of Article 19. In R. C. Cooper case ((1970) 3 SCR 530 : (1970) 1 SCC 248) the majority view in Gopalan case (1950 SCR 88 : AIR 1950 SC 27 : 1950 SCJ 174) was overruled. In Sambhu Nath Sarkar v. State of W. B. ((1974) 1 SCR 1 : (1973) 1 SCC 856 : 1973 SCC (Cri) 618), after referring to both these cases, this Court observed (at page 24) : (SCC p. 879, para 39)

> In R. C. Cooper v. Union of India the aforesaid premise of the majority in Gopalan case was disapproved and therefore it no longer holds the field. Though Cooper case dealt with the interrelationship of Article 19 and Article 31, the basic approach to construing the fundamental rights guaranteed in the different provisions of the Constitution adopted in this case held the major premise of the majority in Gopalan case to be incorrect.
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> In Haradhan Saha v. State of W. B. ((1975) 1 SCR 778 : (1975) 3 SCC 198 : 1974 SCC (Cri) 816) this Court held that a law which provided for preventive detention was to be tested with regard to its reasonableness with reference to Article 19. This view was reaffirmed in Khudiram Das v. State of W. B ((1975) 2 SCR 832 : (1975) 2 SCC 81 : 1975 SCC (Cri) 435). All these decisions were again examined in Maneka Gandhi case ((1978) 2 SCR 621, 676 : (1978) 1 SCC 248). In that case, an order under clause (c) of sub-section (3) of Section 10 of the Passports Act, 1967, impounding the petitioner's passport was impugned inter alia on the ground that it violated the petitioner's fundamental right under sub-clause (a) and (g) of clause (1) of Article 19 and Article 21 and also under Article 14 because it was made in violation of the principles of natural justice inasmuch as the petitioner had not been heard before the impugned order was passed. After referring to various cases Beg, C. J., said (at page 648) : (SCC p. 394, para 202)
>
> Articles dealing with different fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial Justice (social, economic and political), Freedom (not only of thought, expression, belief, faith and worship, but also of association, movement, vocation or occupation as well as of acquisition and possession of reasonable property), of Equality (of status and of opportunity, which imply absence of unreasonable or unfair discrimination between individuals, groups and classes) and of Fraternity (assuring dignity of the individual and the unity of the nation), which our Constitution visualise. Isolation of various aspects of human freedom, for purposes of their protection, is neither realistic nor

beneficial but would defeat the very objects of such protection.

The question in Gopalan case (1950 SC 88 : AIR 1950 SC 27 : 1950 SCJ 174) and Cooper case ((1970) 3 SCR 530 : (1970) 1 SCC 248) was whether particular articles guaranteeing certain fundamental rights operated exclusively without having any interrelation with any other article in the chapter on fundamental rights. This is not the question before us. Neither Article 19 nor 21 excludes the operation of the other articles in Part III of the Constitution. Where, however, an article in the Constitution expressly excludes the application of certain fundamental rights, the view taken in Cooper case ((1970) 3 SCR 530 : (1970) 1 SCC 248) and the other cases which followed it, namely, that the articles in the chapter on fundamental rights do not operate in isolation, cannot apply. Article 13 invalidates any law which violates any of the fundamental rights.

Article 31-A(1) provides that :

Notwithstanding anything contained in Article 13, no law providing for ... shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19.

Under Article 31-B, none of the Acts and regulations specified in the Ninth Schedule to the Constitution nor any of the provision thereof are to be deemed to be void on the ground that such Act, regulation or provision is inconsistent with or takes away or abridges any of the rights conferred by any provisions of Part III. Article 31-C provides that :

Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing .... shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 .....

Can it then be contended in face of these express provisions in the Constitution that none the less Article 14 will apply to the provisions of a law specified in Article 31-A(1) or 31-B or 31-C ? Clause (2) of Article 311 is an express statement of what the right of a fair hearing guaranteed by Article 14 would require and by the opening words of the second proviso to that clause that right is expressly taken away, and R. C. Cooper case ((1970) 3 SCR 530 : (1970) 1 SCC 248) cannot be invoked to reintroduce that right on the ground that it flows by implication from Article 14. If the contention of the petitioner that in all cases there must be a right of hearing before an order is made to a person's prejudice were correct, the result would be startling and anomalous. For instance, in spite of Articles 21 and 22 no person can be taken in preventive detention unless he has been first given an opportunity of showing cause against the proposed action. Results such as these would make a mockery of the provisions of the Constitution.

104. The majority view in Gopalan case (1950 SCR 88 : AIR 1950 SC 27 : 1950 SCJ 174) was buried in R. C. Cooper case ((1970) 3 SCR 530 : (1970) 1 SCC 248); its burial services was read in Sambhu Nath Sarkar v. State of W. B. ((1974) 1 SCR 1 : (1973) 1 SCC 856 : 1973 SCC (Cri) 618), Haradhan Shah v. State of W. B. ((1975) 1 SCR 778 : (1975) 3 SCC 198 : 1974 SCC (Cri) 816) and

Khudiram Das v. State of W. B. ((1975) 1 SCR 832 : (1975) 2 SCC 81 : 1975 SCC (Cri) 435); and its funeral oration was delivered in Maneka Gandhi case ((1978) 2 SCR 621, 676 : (1978) 1 SCC 248). Let us hope and pray that the ghost of that majority view does not at some future time rise from its grave and stand, clanking its chains, seeking to block the onward march of our country to progress, prosperity and the establishment of a Welfare State. But nonetheless what was buried was the theory of exclusiveness of each fundamental right operating separately and without having any interrelation with other fundamental rights. The decisions in R. C. Cooper case ((1970) 3 SCR : (1970) 1 SCC 248) and the other cases which followed it, however, will not apply where a fundamental right, (including the audi alteram partem rule comprehended within the guarantee of Article 14) is expressly excluded by the Constitution itself. Here, we must not forget the warning given by Megarry, J., in Hounslow London Borough Council v. Twickenham Garden Developments Ltd. (LR (1971) Ch 233 : (1970) 3 All ER 326) that the principles of natural justices must be confined within their proper limits and not allowed to run wild. The concept of natural justice is a magnificent thoroughbred on which this nation gallops forward towards its proclaimed and, let us pray, its destined goal of "JUSTICE, social, economic and political". This thoroughbred must not be allowed to turn into a wild and unruly horse, careering off where it lists, unsaddling its rider, and bursting into fields where the sigh "no pasaran" is put up.

Service Rules and the Second Proviso - Challappan's Case :

105. Rules made under the proviso to Article 309 or under Acts referable to that article very often reproduce in whole or in part the provisions of the second proviso to Article 311(2) either in the same or substantially the same language or with certain variations. Such variations at times confer or have been interpreted to confer an opportunity of hearing to a government servant which is excluded by the second proviso. Three such rules are involved in the matters before us, namely, Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to in short as the "Railway Servants Rules"), Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to in short as the "Civil Services Rules") and Rule 37 of the Central Industrial Security Force Rules, 1969 (hereinafter referred to in short as "the CISF Rules"). It was submitted on behalf of the government servants that though an Act or rule restricting or taking away any safeguard provided by clauses (1) and (2) of Article 311 would be void, different considerations would apply when such an Act or rule liberalizes the exclusionary effect of the second proviso.

106. It is not possible to accept this submission. The opening words of Article 309 make that article expressly "Subject to the provisions of this Constitution". Rules made under the proviso to Article 309 or under Acts referable to that article must, therefore, be made subject to the provisions of the Constitution of they are to be valid. Article 310(1) which embodies the pleasure doctrine is a provision contained in the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to that article are subject to Article 310(1). By the opening words of Article 310(1) the pleasure doctrine contained therein operates "Except as expressly provided by this Constitution". Article 311 is an express provision of the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to Article 309 would be subject both to Article 310(1) & Article 311. This position was pointed out by Subba Rao, J., as he then was, in his separate but concurring judgment in Moti Ram Deka case ((1964) 5 SCR 683, 734 : AIR 1964 SC 600 : (1964) 2 Lab LJ 467) at page 734, namely, that rules under Article 309 are subject to the pleasure doctrine and the pleasure doctrine is itself subject to the two limitations imposed thereon by Article 311. Thus, as pointed out in that case, any rule which contravenes clause (1) or clause (2) of Article 311 would be invalid. Where, however, the second proviso applies, the only restriction

upon the exercise of the pleasure of the President or the Governor of a State is the one contained in clause (1) of Article 311. For an Act or a rule to provide that in a case where the second proviso applies any of the safeguards excluded by that proviso will be available to a government servant would amount to such Act or rule impinging upon the pleasure of the President or Governor, as the case may be, and would be void as being unconstitutional. It is, however, a well-settled rule of construction of statutes that where two interpretations are possible, one of which would preserve and save the constitutionality of the particular statutory provision while the other would render it unconstitutional and void, the one which saves and preserves its constitutionality should be adopted and the other rejected. Such constitutionality can be preserved by interpreting that statutory provision as directory and not mandatory. It is equally well-settled that where a statutory provision is directory, the courts cannot interfere to compel the performance or punish breach of the duty created by such provision and disobedience of such provision would not entail any invalidity - see Cries on Statute Law, Seventh Edition, at pate 229. In such a case breach of such statutory provision would not furnish any cause of action or ground of challenge to a government servant for at the very threshold, such cause of action or ground of challenge would be barred by the second proviso to Article 311(2).

107. On behalf of the government servants support for the above contention raised by them was sought to be derived from Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). Bearing in mind what has been stated above, we will, therefore, now examine Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). Before, however, we come to that case it would be convenient to refer to the observations in M. Gopala Krishna Naidu Case ((1968) 1 SCR 355 : AIR 1968 SC 240 : (1968) 2 LLJ 125 : 1968 Lab IC 216), because it was by reason of the conflict between those observations and what was held in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) that these matters have all come to be decided by this Constitution Bench. M. Gopala Krishna Naidu case ((1968) 1 SCR 355 : AIR 1968 SC 240 : (1968) 2 LLJ 125 : 1968 Lab IC 216) was not directly a case under the second proviso to Article 311(2). In that case the appellant, who was an overseer in the Public Works Department of the Central Province and Berar Government, was suspended from service in 1947 and prosecuted under Section 161 of the India Penal Code. Ultimately, on orders from the High Court, the prosecution was dropped. The appellant was also exonerated in a departmental inquiry held against him. Thereafter the Government by an order held that the charges against the appellant had not been proved beyond reasonable doubt and the suspension of the appellant and the departmental inquiry "were not wholly unjustified". It accordingly directed that the appellant should be reinstated in service with effect from the date of the said order and retired from that date, he having already attained the age of superannuation, and that the entire period of absence from duty should be treated as period spent on duty under Rule 54(5) of the Fundamental Rules for purposes of pension only, but that he should not be allowed any pay beyond what he had actually received or what was allowed to him by way of subsistence allowance during the period of suspension. The appellant's writ petition was dismissed by the High Court. In appeal a three-Judge Bench of this Court allowed the appeal. The Court held that Rule 54 of the Fundamental Rules contemplated a duty to act in accordance with the basic concept of justice and fair play, and the authority, therefore, had to afford a reasonable opportunity to the appellant to show cause why clauses (3) and (5) of Rule 54 should not be applied and that this not having been done, the order was invalid. While discussing the scope of Rule 54 of the Fundamental Rules the Court observed as follows (at pp. 358-9) :

> It is true that the order under Fundamental Rule 54 is in a sense a consequential order, in that it would be passed after an order of reinstatement is made. But the fact

> that it is a consequential order does not determine the question whether the government servant has to be given an opportunity to show cause or not. It is also true that in a case where reinstatement is ordered after a departmental inquiry the government servant would ordinarily have had an opportunity to show cause. In such a case, the authority no doubt would have before him the entire record including the explanation given by the government servant from which all the facts and circumstances of the case would be before the authority and from which he can form the opinion as to whether he has been fully exonerated or not and in case of suspension whether such suspension was wholly unjustified or not. In such a case the order passed under a rule such as the present Fundamental Rule might be said to be a consequential order following a departmental inquiry. But there are three classes of cases as laid down by the proviso in Article 311 where a departmental inquiry would not be held viz., (a) where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold such an inquiry, and (c) where the President or the Governor as the case may be is satisfied that in the interest of security of the State it is not expedient to hold such inquiry. Since there would be no inquiry in these classes of cases the authority would not have before him any explanation by the government servant. The authority in such cases would have to consider and pass the order merely on such facts which might be placed before him by the department concerned. The order in such a case would be ex parte without the authority having the other side of the picture. In such cases the order that such authority would pass would not be a consequential order as where a departmental inquiry has been held. Therefore, an order passed under fundamental Rule 54 is not always a consequential order a nor is such order a continuation of the departmental proceeding taken against the employee.

108. Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) decided three appeals against a common judgment of the High Court of Rajasthan allowing the writ petitions filed by three railway servants. Challappan, the respondent in one of these appeals, was a railway-pointsman. He was arrested at Olavakkot Railway Station platform for disorderly, drunken and indecent behavior and was prosecuted and convicted under Section 51(A) of the Kerala Police Act. Instead of sentencing him, the Sub-Magistrate, Palghat, released him on probation under Section 3 of the Probation of Offenders Act, 1958. There after he was removed from service by the disciplinary authority of the Department, without holding any inquiry, on the basis of his conviction in the said criminal case. The order of removal from service was made under clause (i) of rule 14 of the Railway Servants Rules. The Kerala High Court held that as no penalty was imposed upon him, clause (i) of Rule 14 did not in terms apply, and allowed his writ petition. So far as the other two railway employees were concerned, one was convicted under Sections 3 of the Railway Property (Universal Possession) Act, 1966, and the other under Section 420 of the Indian penal code. Both of them released on probation and were similarly removed from railway service.

109. The Railway Servants Rules have been made by the President in exercise of the powers conferred by the proviso to Article 309. Rule 6 specifies the penalties which can be imposed upon a railway servant. These penalties are divided into minor penalties and major penalties. Major penalties include removal from service which is not to be a disqualification for future employment under the Government or railway administration and dismissal from service which is ordinarily to be a disqualification for future employment under the Government or railway administration. Under

sub-rule (1) of rule 7, the President may impose any of the penalties specified in Rule 6 on any railway servant. Sub-rule (2) of Rule 7 states that without prejudice to the provisions of sub-rule (1), any of the penalties specified in Rule 6 may be imposed on a railway servant by the authorities specified in Schedules I, II and III to the Railway Servants Rules. Rules 9 and 10 prescribe a detailed procedure for imposing major penalties while Rule 11 prescribes the procedure for imposing minor penalties. Originally, sub-rule (5) of Rule 10 required that a notice be given to a railway servant informing him of the penalty proposed to be imposed upon him and giving him an opportunity of making a representation on the proposed penalty on the basis of the evidence adduced during the inquiry held under Rule 9. The whole of that sub-rule was substituted by the Railway servants (Discipline and Appeal) (Third Amendment) Rules, 1978, to bring sub-rule (5) in conformity with clause (2) of Article 311 as amended by the Constitution (Forty second Amendment) Act, 1976. It may be mentioned that on the respective dates of the orders impugned in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) the original sub-rule (5) in conformity with clause (2) of Article 311 in force was that clause as amended by the Constitution (Fifteenth Amendment) Act, 1963. This, however, does not make any difference to the point which falls to be decided.

110. Rule 14 of the Railway Servants Rules provides as follows :

> 14. Special procedure in certain cases. - Notwithstanding anything contained in Rules 9 to 13 -
>
> (i) where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge; or
>
> (ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
>
> (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;
>
> the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit :
>
> Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.
>
> Clause (b) of rule 2 of the Railway Servants Rules defines the word 'Commission' as meaning the "Union Public Service Commission".

111. Rule 17 of the Railway Servants Rules sets out the orders against which no appeal lies. Under that rule, no appeal inter alia lies against any order made by the President. Under Rule 18, subjects to the provisions of Rule 17, an appeal inter alia lies against an order imposing any of the penalties specified in Rule 6, whether made by the disciplinary authority or by any appellate or reviewing authority. Rule 20 prescribes a period of limitation for filing an appeal. The appellate authority is, however, conferred the power to condone the delay in filing the appeal if it is satisfied that the appellant had sufficient cause for not preferring the appeal. Rule 22(2) provides as follows :

> (2) In the case of an appeal against an order imposing any of the penalties specified

in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -

(a) Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of Justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders -

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case :

* * *##

Rule 25 confers power upon (i) the President, (ii) the Railway Board, (iii) the General Manager of a Zonal Railway or an authority of that status in any other Railway Unit or Administration in the case of a railway servant serving under him or its control, (iv) the appellate authority not below the rank of a Deputy Head of Department or a Divisional Railway Manager in cases where no appeal has been preferred, or (v) any other authority not below the rank of a Deputy Head of Department or a Divisional Railway Manager in the case of railway servant serving under its control, at any time, either on his or its own motion or otherwise, to call for the records of any inquiry and revise any order made under the Railway Servants Rules. Clause (c) of the first proviso to Rule 25(1) inter alia provides as follows :

Provided that -

* * *##

(c) subject to the provisions of Rule 14, the revising authority shall, -

* * *##

(ii) where an inquiry in the manner laid down in Rule 9 has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit.

112. The second proviso to Rule 25(1) provides for a period of limitation for initiating any revisional proceedings by an appellate authority other than the President or a revising authority mentioned in item (v) in the list of authorities set out above. In the case of other authorities, the

power of revision is not subject to any time-limit. Rule 25-A confers power upon the President at any time either on his own motion or otherwise to review any order passed under the Railway Servants Rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice. Rule 25 and 25-A were substituted by the Railway Servants (Discipline and Appeal) (First Amendment) Rules, 1983, for the original Rule 25 which provided for a review in somewhat similar terms as the present Rule 25.

113. In Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) the Kerala High Court allowed the writ petitions filed before it solely on the ground that the orders of the Magistrate releasing the concerned railway servants on probation did not amount to imposition of penalty as contemplated by Rule 14 of the Railway Servants Rules. Reversing that view this Court held that the word 'penalty' in clause (i) of Rule 14 of the Railway Servants Rules does not refer to a sentence awarded by the court to the accused on his conviction but it merely indicates the nature of the penalty imposable by the disciplinary authority if the delinquent employee has been found guilty of conduct which has led to his conviction on a criminal charge. The Court observed (at pages 789-790) : (SCC p 197, para 10).

> The view of the Kerala High Court, therefore, that as the Magistrate released the delinquent employee on probation no penalty was imposed as contemplated by Rule 14(i) of the Rules of 1968 does not appear to us to be legally correct and must be overruled. Nevertheless we would uphold the order of the Kerala High Court, on the ground, that the last part of Rule 14 of the Rules of 1968 which requires the consideration of the circumstances not having been complied with by the disciplinary authority, the order of removal from service of the delinquent employee was rightly quashed.
>
> The Court pointed out that clause (i) of Rule 14 merely sought to incorporate the principle embodied in clause (a) of the second proviso. The Court in the course of its judgment reproduced the provisions of clause (2) of Article 311 along with clause (a) to the proviso thereto, at that time clause (2) of Article 311 in force being that clause as amended by the Constitution (Fifteenth Amendment) Act, 1963, that is, clause (2) prior to its amendment by the Constitution (Forty-second Amendment) Act, 1976 and the proviso thereto being the same as the second proviso to clause (2) as amended by the Constitution (Forty-second Amendment) Act. The Court then pointed out that there were three stages in a departmental inquiry under Article 311(2), the third being the stage before actually imposing the penalty in which a final notice to the delinquent employee should be given to show cause why the penalty proposed against him be not imposed on him. It then stated that clause (a) of the proviso (now the second proviso) to article 311(2), however, completely dispensed with all the three stages of a departmental inquiry when an employee was convicted on a criminal charge because the employee already had in the criminal trial a full and complete opportunity to contest the allegations against him and to make out his defence. The Court pointed out that clause (a) of the proviso (now the second proviso) is merely an enabling provision and does not enjoin or confer a mandatory duty on the disciplinary authority to pass an order of dismissal, removal or reduction in rank the moment an employee is convicted. The Court then considered the extent and ambit of the last part part of Rule 14, namely, the phrase "the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit"

and stated its conclusions as follows (at pages 795-797) : (SCC pp 201-03, paras 21 & 22).

The word 'consider' has been used in contradistinction to the word 'determine'. The rule-making authority deliberately used the word 'consider' and not 'determine' because the word 'determine' has a much wider scope. The word 'consider' merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term 'consider' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under Rule 14 of Rules of the 1968 which incorporates the principle contained in Article 311(2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth. It may be that the conviction of an accused may be for a trivial offences as in the case of the respondent T. R. Challappan in Civil Appeal 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and facts rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible. This appears to us to be the scope and ambit of this provision. We must, however, hasten to add that we should not be understood as laying down that the last part of Rule 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement. The statutory provision referred to above merely imports a rule of

natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair play. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case too inflict any major penalty on the delinquent employee without any further departmental inquiry if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service.

Mr. S. N. Prasad appearing for the appellant submitted that it may not be necessary for the disciplinary authority to hear the accused and consider the matter where no provision like Rule 14 exists, because in such cases the Government can, in the exercise of its executive powers, dismiss, remove or reduce in rank any employee who has been convicted of a criminal charge by force of proviso (a) to Article 311(2) of the Constitution. In other words, the argument was that to cases where proviso (a) to Article 311(2) applies a departmental inquiry is completely dispensed with and the disciplinary authority can on the doctrine of pleasure terminate the services of the delinquent employee. We however refrain from expressing any opinion on this aspect of the matter because the cases of all the three respondents before us are cases which clearly fall within Rule 14 of the Rule of 1968 where they have been removed from service without complying with the last part of Rule 14 of the Rules of 1968 as indicated above. In none of the cases has the disciplinary authority either considered the circumstances or heard the delinquent employees on the limited point as to the nature and extent of the penalty to be imposed if at all. On the other hand in all these cases the disciplinary authority has proceeded to pass the order of removal from service straightway on the basis of the conviction of the delinquent employees by the criminal courts.

114. So far as Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) is concerned, it is not possible to find any fault either with the view that neither clause (a) of the second proviso to Article 311(2) nor clause (i) of Rule 14 of the Railway Servants Rules is mandatory or with the considerations which have been set out in the judgment as being the considerations to be taken into account by the disciplinary authority before imposing a penalty upon a delinquent government servant. Where a situation envisaged in one of the three clauses of the second proviso to Article 311(2) or of an analogous service rule arises, it is not mandatory that the major penalty of dismissal, removal or reduction in rank should be imposed upon the concerned government servant. The penalty which can be imposed may be some other major penalty or even a minor penalty depending upon the facts and circumstances of the case. In order to arrive at a decision as to which penalty should be imposed, the disciplinary authority will have to take into consideration the various factors set out in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). It is, however, not possible to agree with the approach adopted in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) in considering Rule 14 of the Railway Servants Rules in isolation and apart from the second proviso to Article 311(2), nor with the interpretation placed by it upon the word 'consider' in the last part of Rule 14. Neither Rule 14 of the Railway Servants Rules nor a similar rule in other service rules can be looked at apart from the second proviso to Article 311(2). The authority of a particular officer to act as a disciplinary authority and to impose a penalty upon a government servant is derived from rules made under the proviso to Article 309 or under an Act referable to that article. As pointed out

earlier, these rules cannot impinge upon the pleasure of the President or the Governor of a State, as the case may be, because they are subject to Article 310(1). Equally, they cannot restrict the safeguards provided by clauses (1) and (2) of Article 311 as such a restriction would be in violation of the provisions of those clauses. In the same way, they cannot restrict the exclusionary impact of the second proviso to Article 311(2) because that would be to impose a restriction upon the exercise of pleasure under Article 310(1) which has become free of the restrictions placed upon it by clause (2) of Article 311 by reason of the operation of the second proviso to that clause. The only cases in which a government servant can be dismissed, removed or reduced in rank by way of punishment without holding an inquiry contemplated by clause (2) of Article 311 are the three cases mentioned in the second proviso to that clause. A rule which provides for any other case in which any of these three penalties can be imposed would be unconstitutional. Service rules may reproduce the provisions of the second proviso authorizing the disciplinary authority to dispense with the inquiry contemplated by clause (2) of Article 311 in the three cases mentioned in the second proviso to that clause or any one or more of them. Such a rule, however, cannot be valid and constitutional without reference to the second proviso to Article 311(2) and cannot be read apart from it. Thus, while the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules, the source of his power to dispense with the inquiry is derived from the service rules, the source of his power to dispense with the inquiry is derived from the second proviso to Article 311(2) and not from any service rules. There is a well-established distinction between the source of authority to exercise a power and the source of such power. The Court in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) was, therefore, in error in interpreting Rule 14 of the Railway Servants Rules by itself and not in conjunction with the second proviso (at that time the only proviso) to Article 311(2). It appears that in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) the Court felt that the addition of the words "the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit" warranted an interpretation of Rule 14 different from that to be placed upon the second proviso. This is also not correct. It is true that the second proviso does not contain these words but from this it does not follow that when acting under the second proviso, the disciplinary authority should not consider the facts and circumstances of the case or make an order not warranted by them. It is also not possible to accept the interpretation placed upon the word 'consider' in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). According to the view taken in that case, a consideration of the circumstances of the case cannot be unilateral but must be after hearing the delinquent government servant. If such were the correct meaning of the word 'consider', it would render this part of Rule 14 unconstitutional as restricting the full exclusionary operation of the second proviso. The word 'consider', however, does not bear the meaning placed upon it in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). The word 'consider' is used in Rule 14 as a transitive verb. The meaning of the word 'consider' as so used is given in the Oxford English Dictionary as "To contemplate mentally, fix the mind upon; to think over, meditate or reflect, bestow attentive thought upon, give heed to, take note of". The relevant definition of the word 'consider' given in Webster's Third New International Dictionary is "to reflect on : think about with a degree of care or caution". Below this definition are given the synonyms of the word 'consider', these synonyms being "contemplate, study, weigh, revolve, excogitate". While explaining the exact different shades of meaning in this group of words, Webster's Dictionary proceeds to state as under with respect to the word 'consider' :

> 'Consider' often indicates little more than think about. It may occasionally suggest somewhat more conscious direction of thought, somewhat greater depth and scope, and somewhat greater purposefulness.

> It is thus obvious that the word 'consider' in its ordinary and natural sense is not capable of the meaning assigned to it in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). The consideration under Rule 14 of what penalty should be imposed upon a delinquent railway servant must, therefore, be ex parte and where the disciplinary authority comes to the conclusion that the penalty which the facts and circumstances of the case warrant is either of dismissal or removal or reduction in rank, no opportunity of showing cause against such penalty proposed to be imposed upon him can be afforded to the delinquent government servant. Undoubtedly, the disciplinary authority must have regard to all the facts and circumstances of the case as set out in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). As pointed out earlier, considerations of fair play and justice requiring a hearing to be given to a government servant with respect to the penalty proposed to be imposed upon him do not enter into the picture when the second proviso to Article 311(2) comes into play and the same would be the position in the case of a service rule reproducing the second proviso in whole or in part and whether the language used is identical with that used in the second proviso or not. There are a number of orders which are of necessity passed without hearing the party who may be affected by them. For instance, courts of law can and often do pass ex parte ad interim orders on the application of a plaintiff, petitioner or appellant without issuing any notice to the other side or hearing him. Can it, therefore, be contended that the judge or judges, as the case may be, did not apply his or their mind while passing such an order ?

115. The decision in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) is, therefore, not correct with respect to the interpretation placed by it upon Rule 14 of the Railway Servants Rules and particularly upon the word 'consider' occurring in the last part of that rule and in interpreting Rule 14 by itself and not in conjunction with the second proviso to Article 311(2). Before parting with Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398), we may, also point out that that case never held the field. The judgment in that case was delivered on September 15, 1975, and it was reported in (1976) 1 SCR at pages 783. Hardly was that case reported then in the next group of appeals in which the same question was raised, namely, the three civil appeals mentioned earlier, an order of reference to a larger Bench was made on November 18, 1976. The correctness of Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) was, therefore, doubted from the very beginning.

116. The next service rule which falls for consideration in these matters is Rule 19 of the Civil Services Rules. The Civil Services Rules are also made under the proviso to Article 309. The scheme of these rules so far as disciplinary proceedings are concerned is very similar to that of the Railway Servants Rules. Rule 11 specifies the penalties which can be imposed on a government servant. These penalties are divided into minor penalties and major penalties. Clauses (i) to (iv) of that rule specify what the minor penalties are while clauses (v) to (viii) specify what the major penalties are. The major penalties include compulsory retirement, removal from service which is not to be a disqualification for future employment under the Government. Rules 14 and 15 prescribe the procedure to be followed where a major penalty is to be imposed while Rule 16 prescribes the procedure for imposing a minor penalty. Previously, under sub-rule (4) of Rule 15 the government servant was also to be given a notice of the penalty proposed to be imposed upon him and an opportunity of making representation with respect to such proposed penalty. However, by Government of India, Ministry of Home Affairs (Department of Personnel and Administrative Reforms) Notification No. 11012/2/77-Ests. dated August 18, 1978, sub-rule (4) was substituted by

a new sub-rule to bring it in conformity with the amendment made in clause (2) of Article 311 by the Constitution (Forty-second Amendment) Act, and the opportunity to show cause against the proposed penalty was done away with. Rule 19 provides as follows :

> 19. Special procedure in certain cases. - Notwithstanding anything contained in Rule 14 to Rule 18 -
>
> (i) where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge, or
>
> (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or,
>
> (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,
>
> the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit :
>
> Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.
>
> The word 'Commission' is defined by clause (b) of Rule 2 as meaning "The Union Public Service Commission".

116-A. Under Rule 22, no appeal lies against any order made by the President or orders of certain nature specified in that rule. Subject to the provisions of Rule 22, Rule 23, provides for a right of appeal. Rule 25 provides for a period of limitation for filing an appeal but the appellate authority is conferred the power to condone the delay in filing the appeal if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time. Rule 27(2) provides as follows :

> (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -
>
> (a) whether the procedure laid down in these rules has been complied with, and it not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
>
> (b) whether the findings of the disciplinary are authority are warranted by the evidence on the record; and
>
> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;
>
> and pass orders -
>
> (i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

* * *##

Rule 29 provides for a right of revision. Under it an application for revision is to be dealt with in the same manner as if it were an appeal under the Civil Services Rules. Rule 29-A confers upon the President a power of review similar to Rule 25-A of the Railway Servants Rules.

117. It will be noticed that the language of Rule 19 of the Civil Services Rules is identical with that of Rule 14 of the Railway Servants Rules and the interpretation of Rule 19 of the Civil Services Rules would be the same as that placed by us upon Rule 14 of the Railway Servants Rules.

118. The rule which now remains to be considered is Rule 37 of the CISF Rules. The CISF Rules have been made by the Central Government in pursuance of the power conferred by Section 22(1) of the Central Industrial Security Force Act, 1968 (Act 50 of 1968) (hereinafter referred to in short as "the CISF Act"). Section 22(1) of the CISF Act confers upon the Central Government the power to make rules for carrying out the purposes of that Act. Sub-section (2) of Section 22 inter alia provides as follows :

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for -

(a) regulating the classes, ranks, grades, pay and remuneration of supervisory officers and members of the Force and their conditions of service in the Force;

* * *##

(g) regulating the punishments and prescribing authorities to whom appeals shall be preferred from orders of punishment, or remission of fines or other punishments, and the procedure to be followed for the disposal of such appeals;

* * *##

119. Before we turn to the CISF Rules, it is necessary to refer to certain other provisions of the CISF Act. Section 3 of the CISF Act provides for the constitution and maintenance by the Central Government of a Force to be called the Central Industrial Security Force (hereinafter referred to in short as "the CIS Force") for the better protection and security of industrial undertakings owned by the Government. Clause (i) of Section 2(1) of the CISF Act defines "supervisory officer" as meaning "any of the officers appointed under Section 4 and includes any other officer appointed by the Central Government as a supervisory officer of the Force". Section 4 provides for the appointment of supervisory officers and their powers and is in the following terms :

4. Appointment and powers of supervisory officers. - (1) The Central Government may appoint a person to be the Inspector-General of the Force and may appoint other persons to be Deputy Inspectors-General, Chief Security Officers or Security

Officers of the Force.

(2) The Inspector-General and every other supervisory officer so appointed shall have, and may exercise, such powers and authority as is provided by or under this Act.

Sections 8 and 9 provide as follows :

8. Dismissal, removal, etc., of members of the Force. - Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any supervisory officer may -

(i) dismiss, suspend or reduce in rank any member of the Force whom he thinks remiss or negligent in he discharge of his duty, or unfit for the same; or

* * * *##

9. Appeal and revision. - (1) Any member of the Force aggrieved by an order made under Section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed, and subject to the provisions of sub-section (3), the decision of the said authority thereon shall be final :

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) In disposing of an appeal, the prescribed authority shall follow such procedure as may be prescribed.

(3) The Central Government may call for and examine the record of any proceeding under Section 8 or under sub-section (2) of this section and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act, may pass such order thereon as it thinks fit :

Provided that no order imposing an enhanced penalty under sub-section (2) or sub-section (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.

120. We now turn to the relevant CISF Rules. Rule 29-A specifies the disciplinary authorities. Rule 31 specifies the penalties which may be imposed on a member of the CIS Force. Amongst these penalties are dismissal, removal, compulsory retirement and reduction to a lower class or grade or rank or to a lower time-scale or to a lower stage in the time-scale of pay. CISF Rules do not specify which out of the penalties specified in Rule 31 are the major penalties and which are minor penalties but as these terms are well understood in service jurisprudence the same classification as in the Civil Services Rules and the Railway Servants Rules will apply here. Rule 34 prescribes the detailed produce for imposing major penalties Rule 35 prescribes the procedure for imposing minor penalties. Rule 32 specifies what are described as "petty punishments" to be awarded ordinarily in Orderly Room for petty breaches of discipline and terrifying cases of misconduct by members of the CIS Force not above the rank of the Head Security Guard and Rule 36 prescribes the procedure for

imposing these punishments.

121. Rules 37 of the CISF Rules is as follows :

> 37. Special Procedure in certain cases. - Notwithstanding anything contained in Rule 34, Rule 35 or Rule 36, where a penalty is imposed on a member of the force -
>
> (a) on the ground of conduct which had led to his conviction on a criminal charge; or
>
> (b) where the disciplinary authority is satisfied for reasons to be recorded in writing, that it is to reasonably practicable to follow the procedure prescribed in the said rules :
>
> the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit.
>
> A member of the force who has been convicted to rigorous imprisonment on a criminal charge shall be dismissed from service. In such cases, no evidence need be given to prove the charge. Only a notice shall be given to the party charged proposing the punishment of dismissal for his having been convicted to rigorous imprisonment and asking him to explain as to why the proposed punishment of dismissal should not be imposed.
>
> Rule 42 provides for a right of appeal in the case of an order imposing any of the penalties specified in Rule 31. Rule 42-A prescribes the period of limitation for filing an appeal. The appellate authority, however, has the power to condone the delay in filing an appeal if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time. Sub-rule (2) of Rule 47 provides as follows :
>
> 47. Consideration of appeals. - (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 31, the appellate authority shall consider -
>
> (a) whether the procedure prescribed in these rules has been complied with, and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice;
>
> (b) whether the findings are justified; and
>
> (c) whether the penalty imposed is excessive, adequate or inadequate; and pass orders :
>
> (i) setting aside, reducing, confirming or enhancing the penalty;
>
> (ii) remitting the case to the authority which imposed the penalty; or to any other authority with such direction as it may deem fit in the circumstances of the case :
>
> # * * *##
>
> Rule 49 provides for suo motu revision. It inter alia enables the revising authority to take further evidence and provides that the provisions of Rule 47 relating to appeals

shall apply so far as may be to orders in revision.

122. It will be noticed that Rule 37, except the last paragraph thereof, is in pari materia with Rule 14 of the Railway Servants Rules and Rule 19 of the Civil Services Rules with this difference that a provision akin to clause (iii) of Rule 14 of the Railway Servants and clause (iii) of Rule 19 of the Civil Services Rules is not to be found in Rule 37 of the CISF Rules. The same interpretation as placed by us on the word 'consider' occurring in Rule 14 of the Railway Servants Rules and Rule 19 of the Civil Services Rules must, therefore, be placed upon the word 'consider' in Rule 37 of the CISF Rules. The last paragraph of Rule 37 of the CISF Rules is peculiar to itself and does not find a place either in the said Rule 14 or the said Rule 19. It is clumsily worded and makes little sense. To provide that a member of the CIS Force who has been convicted to rigorous imprisonment on a criminal charge "shall be dismissed from service" and at the same time to provide that "only a notice shall be given to the party charged proposing the punishment of dismissal for his having been convicted to rigorous imprisonment and asking him to explain as to why the proposed punishment of dismissal should not be imposed", is a contradiction in terms. If either of these provisions were taken as mandatory, it would be void as violating the second proviso to Article 311(2) because the penalty contemplated by the second proviso to Article 311 (2) is not the penalty of dismissal only but also of removal or reduction in rank, and to make it mandatory to issue a notice to show cause against the proposed penalty of dismissal would equally violate the second proviso because it would whittle down the exclusionary effect of the second proviso. Therefore, both these provisions in the last paragraph of Rule 37 must be read as directory and not mandatory, not only to make sense out of them but also to preserve their constitutionality. So read, a breach of these provisions would not afford any cause of action to a member of the CIS Force.

123. A conspectus of the above service rules and the CISF Act shows that a government servant who has been dismissed, removed or reduced in rank without holding an inquiry because his case falls under one of the three clauses of the second proviso to Article 311(2) or a provision of the service rules analogous thereto is not wholly without a remedy. He has a remedy by way of an appeal, revision or in some cases also by way of review. Sub-clause (ii) of clause (c) of the first proviso of Rule 25(1) of the Railway Servants Rules expressly provides that in the case of a major penalty where an inquiry has not been held, the revising authority shall itself hold such inquiry or direct such inquiry to be held. This is, however, made subject to the provisions of Rule 14 of the Railway Servants Rules. The other service rules referred to above do not appear to have a similar provision nor does the Railway Servants Rules make the same provision in the case of an appeal. Having regard, however, to the factors to be taken into consideration by the appellate authority which are set out in the service rules referred to above a provision similar to that contained in sub-clause (ii) of clause (c) of the first proviso to Rule 25(1) of the Railway Servants Rules should be read and imported into provisions relating to appeals in the Railway Servants Rules and in the other service rules and also in the provisions relating to revision in the other service rules. This would, of course, be subject to the second proviso to Article 311(2), Rule 14 of the Railway Servants Rules, Rule 19 of the Civil Services Rules and Rule 37 of the CISF Rules. Thus, such a right to an inquiry cannot be availed of where clause (a) to the second proviso of Article 311(2) or a similar provision in any service rule applies in order to enable a government servant to contend that he was wrongly convicted by the criminal court. He can, however, contend that in the facts and circumstances of the case, the penalty imposed upon him is too severe or is excessive. He can also show that he is not in fact the government servant who was convicted on a criminal charge and that it is a case of mistaken identity. Where it is a case falling under clause (b) of the second proviso or a provision in the service rules analogous thereto, the dispensing with the inquiry by the disciplinary authority was the result of the situation prevailing at that time. If the situation has changed when the appeal or

revision is heard, the government servant can claim to have an inquiry held in which he can establish that he is not guilty of the charges on which he has been dismissed, removed or reduced in rank. He, however, cannot by reason of the provisions of clause (3) of Article 311 contend that the inquiry was wrongly dispensed with and it was reasonably practicable to hold an inquiry because by the said clause (3) the decision on this point of the disciplinary authority has been made final. So far as clause (c) is concerned, dispensing with the inquiry depends upon the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State it is not expedient to hold an inquiry. In such a case, an order imposing penalty can, however, be passed by a disciplinary authority because in such a case the President or the Governor, as the case may be, can direct the disciplinary authority to consider the facts of the case and impose the appropriate penalty without holding any inquiry. Clause (iii) of Rule 14 of the Railway Servants Rules and clause (iii) of Rule 19 of the Civil Service Rules envisage this being done. In such a case the satisfaction that the inquiry should be dispensed with as not being expedient in the interest of the security of the State would be that of the President or the Governor, the selection of one of the three penalties mentioned in Article 311(2) as being the proper penalty to be imposed would be of the disciplinary authority. The satisfaction of the President or the Governor cannot be challenged in appeal or revision but the government servant can in appeal or revision ask for an inquiry to be held into his alleged conduct unless seven at the time of the appeal or revision, the interest of the security of the State makes it inexpedient to hold such an inquiry. Of course, no such right would be available to a government servant where the order imposing penalty has been made by the President or the Governor of a State, as the case may be.

Executive Instructions and the Second Proviso :

124. In the course of the arguments certain executive instructions issued by the Government of India were referred to and relied upon on behalf of the government servants. In is unnecessary to deal with these instructions in detail. At the highest they contain the opinion of the Government of India on the scope and effect of the second proviso to Article 311(2) and cannot be binding upon the Court with respect to the interpretation it should place upon that proviso. To the extent that they may liberalize the exclusionary effect of the second proviso they can only be taken as directory. Executive instructions stand on a lower footing than a statutory rule for they do not have the force of a statutory rule. If an Act or a rule cannot alter or liberalize the exclusionary effect of the second proviso, executive instructions can do so even much less.

Omission to Mention the Relevant Clause of the Second Proviso or the Relevant Service Rule in the Impugned Orders :

125. Some of the orders impugned before us refer only to one or the other of the three clauses of the second proviso to Article 311(2) for dispensing with an inquiry without referring to the relevant service rule, some refer both to a clause of the second proviso and the relevant service rule, while the others refer only to the relevant service rule without making any mention of the particular clause of the second proviso which has been applied. The question is whether the omission to mention the particular clause of the second proviso or the relevant service rule makes any difference.

126. As pointed out earlier, the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules while the source of his power to dispense with the disciplinary inquiry is derived from the second proviso to Article 311(2). There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void.

The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. The Court's attention in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) was not drawn to this settled position in law and hence the error committed by it in considering Rule 14 of the Railway Servants Rules by itself and without taking into account the second proviso to Article 311(2). It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other sources under which were that powder exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists. (See Dr. Ram Manohar Lohia v. State of Bihar ((1966) 1 SCR 709, 712 : AIR 1966 SC 740 : 1966 Cri LJ 608) and Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal ((1983) 2 SCR 676, 681 : (1983) 2 SCC 422)). The omission to mention in the impugned orders the relevant clause of the second proviso or the relevant service rule will not, therefore, have the effect of invalidating the orders and the orders must be read as having been made under the applicable clause of the second proviso to Article 311(2) read with the relevant service rule. It may be mentioned that in none of the matters before us has it been contended that the disciplinary authority which passed the impugned order was not competent to do so.

The Second Proviso - Clause (a)

127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in Shankar Dass v. Union of India ((1985) 2 SCC 358 : 1985 SCC (L&S) 444) this Court set aside the impugned order of penalty on the ground

that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case.

The Second Proviso - Clause (b)

128. The main thrust of the arguments as regards clause (b) of the second proviso to Article 311(2) was that whatever the situation may be a minimal inquiry or at least an opportunity to show cause against the proposed penalty is always feasible and is required by law. The arguments with respect to a minimal inquiry were founded on the basis of the applicability of Article 14 and the principles of natural justice and the arguments with respect to an opportunity to show cause against the proposed penalty were in addition founded upon the decision in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). These contentions have already been dealt with and negatived by us and we have further held that Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) insofar as it held that a government servant should be heard before imposing a penalty upon him was wrongly decided.

129. The next contention was that even if it is not reasonably practicable to hold an inquiry, a government servant can be placed under suspension until the situation improves and it becomes possible to hold the inquiry. This contention also cannot be accepted. Very often a situation which makes it not reasonably practicable to hold an inquiry is of the creation of the concerned government servant himself or of himself acting in concert with others or of his associates. It can even be that he himself is not a party to bringing about that situation. In all such cases neither public interest not public good requires that salary or subsistence allowance should be continued to be paid out of the public exchequer to the concerned government servant. It should also be borne in mind that in the case of a serious situation which renders the holding of an inquiry not reasonably practicable, it would be difficult to foresee how long the situation will last and when normally would return or be restored. It is impossible to draw the line as to the period of time for which the suspension should continue and on the expiry of that period action should be taken under clause (b) of the second proviso. Further, the exigencies of a situation may require that prompt action should be taken and suspending the government servant can not serve the purposes. Sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers and agitators as a sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities or agitation. It is true that when prompt action is taken in order to prevent this happening, there is an element of deterrence in it but that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities. After all, clause (b) is not meant to be applied in ordinary, normal situations but in such situations where it is not reasonably practicable to hold an inquiry.

130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not 'impracticable'. According to the Oxford English Dictionary ' practicable' means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word 'practicable' inter alia as meaning "possible to practice or perform, : capable of being put into practice, done or accomplished : feasible"; Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New

International Dictionary defines the word 'reasonably' as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disc disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India ((1984) 3 SCR 302 : (1984) 2 SCC 578 : 1984 SCC (L&S) 290) is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

131. It was submitted that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer not any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that the administrative work carried out by senior officers should be paralysed because a delinquent government servant either by himself or through others makes the holding of

an inquiry not reasonably practicable.

132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word 'inquiry' in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention to cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the

inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons.

136. It was next submitted that though clause (b) of the second proviso excludes an inquiry into the charges made against a government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary inquiry the government servant should be given an opportunity of a hearing by issuing to him a notice to show cause why the inquiry should not be dispensed with so as to enable him to satisfy the disciplinary authority that it would be reasonably practicable to hold the inquiry. This argument is illogical and is a contradiction in terms. If an inquiry into the charges against a government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable.

137. A government servant who has been dismissed, removed or reduced in rank by applying to his case clause (b) or an analogous provision of a service rule is not wholly without a remedy. As pointed out earlier while dealing with the various service rules, he can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an inquiry at the time of the hearing of the appeal or revision. Though in such a case the government servant if dismissed or removed from service, is not continuing in service and if reduced in rank, is continuing in service with such reduced rank, no prejudice could be caused to the Government or the Department if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time.

138. Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in

the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.

139. During the course of the argument a reference was made to certain High Court decisions and their citations were given. We have carefully gone through those decisions. It is, however, unnecessary to refer to them. Insofar as what was held in those decisions or any of them is contrary to or inconsistent with what has been held by us, those decisions are not correct and are to that extent hereby overruled.

The Second Proviso - Clause (c)

140. We now turn to the last clause of the second proviso to Article 311(2), namely, clause (c). Though its exclusionary operation on the safeguards provided in Article 311(2) is the same as those of the other two clauses, it is very different in content from them. While under clause (b) the satisfaction is to be of disciplinary authority, under clause (c) it is to be of the President or the Governor of a State, as the case may be. Further, while under clause (b) the satisfaction has to be with respect to whether it is not reasonably practicable to hold the inquiry, under clause (c) if it is to be with respect to whether it will not be expedient in the interest of the security of the State of hold the inquiry. Thus, in one case the test is of reasonable practicability of holding the inquiry, in the other case it is of the expediency of holding the inquiry. While clause (b) expressly requires that the reason for dispensing with the inquiry should be recorded in writing, clause (c) does not so require it, either expressly or impliedly.

141. The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order." Thus, of these situations those which affect "security of the State" are the gravest. Danger the security of the state may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military Forces. Disaffection in any of these Forces is likely to spread for disaffected or dissatisfied members of these Forces spread such disaffection and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a para-military Force for it is charged with the duty of ensuring and maintaining law and order and public order, and branches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or para-military forces. How important the proper discharge of their duties by members of these

Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984, Article 33 provided as follows :

> 33. Power to Parliament to modify the rights conferred by this part in their application to Forces. - Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.
>
> By the Constitution (Fiftieth Amendment) Act, 1984, this article was substituted. By the substituted article the scope of the Parliaments power to so restrict or abrogate the application of any of the fundamental rights is made wider. The substituted Article 33 reads as follows :
>
> 33. Power to Parliament to modify the rights conferred by this Part in their application to Forces, etc. - Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, -
>
> (a) the members of the Armed Forces; or
>
> (b) the members of the Forces charged with the maintenance of public order; or
>
> (c) Persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter-intelligence; or
>
> (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),
>
> be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.
>
> Thus, the discharge of their duties by the members of these Forces and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred power upon Parliament to restrict or abrogate any of the fundamental rights in their application to them.

142. The question under clause (c), however is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an enquiry as contemplated by Article 311(2). The satisfaction of the President or Governor must, therefore, be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State. The shorter Oxford English Dictionary, Third Edition, defines the word 'inexpedient' as meaning "not expedient : disadvantageous in the circumstances, unadvisable,

impolitic". The same dictionary defines 'expedient' as meaning inter alia "advantageous; fit, proper, or suitable to the circumstances of the case". Webster's Third New International Dictionary also defines the term 'expedient' as meaning inter alia "characterized by suitability, practicality, and efficiency in achieving a particular end : fit, proper, or advantageous under the circumstances". It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head. Whenever, therefore, the President or the Governor in the constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing of danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding and inquiry would expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public.

143. In the case of clause (b) of the second proviso, clause (3) of Article 311 makes the decision of the disciplinary authority that it was not reasonably practicable to hold the inquiry final. There is no such clause in Article 311 with respect to the satisfaction reached by the President or the Governor under clause (c) of the second proviso. There are two reasons for this. There can be no departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor; and so far as the Court's power of judicial review is concerned, the Court cannot sit in judgment over State policy or the wisdom or otherwise of such policy. The Court equally cannot be the judge of expediency or inexpediency.

> Given a known situation, it is not for the Court to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the inquiry. The satisfaction reached by the President or Government under clause (c) is subjective satisfaction and, therefore, would not be a fit matter for judicial review. Relying upon the observations of Bhagwati, J., in State of Rajasthan v. Union of India ((1978) 1 SCR 1, 82 : (1977) 3 SCC 592), it was submitted that the power of judicial review is not excluded where the satisfaction of the President or the Governor has been reached mala fide or is based on wholly extraneous or irrelevant grounds because in such a case, in law there would be no satisfaction of the President or the Governor at all. It is unnecessary to decide this question because in the matters under clause (c) before us, all the materials, including the advice tendered by the Council of Ministers, have been produced and they clearly show that in those cases the satisfaction of the Governor was neither reached mala fide nor was it based on any extraneous or irrelevant ground.

144. It was further submitted that what is required by clause (c) is that the holding of the inquiry

should not be expedient in the interest of the security of the State and not the actual conduct of a government servant which would be the subject-matter of the inquiry. This submission is correct so far as it goes but what it overlooks is that in an inquiry into acts affecting the interest of the security of the State, several matters not fit or proper to be made public, including the source of information involving a government servant in such acts, would be disclosed and thus in cases such as these an inquiry into acts prejudicial to the interest of the security of the State would prejudice the interest of the security of the State as much as those acts would.

145. It was also submitted that the Government must produce before the court all materials upon which the satisfaction of the President or the Governor, as the case may be, was reached. So far as the advice given by the Council of Ministers to the President or the Governor is concerned, this submission is negatived by the express provisions of the Constitution. Article 74(2) of the Constitution provides :

> (2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.
>
> Similarly, Article 163(3) provides :
>
> (3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

146. It was then submitted that leaving aside the advice given by the Ministers to the President or the Governor, the Government is bound to disclose at least the materials upon which the advice of the Council of Ministers was based so that the Court can examine whether the satisfaction of the President or the Governor, as the case may be, was arrived at mala fide or based on wholly extraneous and irrelevant grounds so that such satisfaction would in law amount to no satisfaction at all. It was further submitted that if the Government does not voluntarily disclose such materials it can be compelled by the Court to do so. Whether this should be done or not would depend upon whether the documents in question fall within the class of privileged documents and whether in respect of them privilege has been properly claimed or not. It is unnecessary to examine this question any further because in the cases under clause (c) before us though at first privilege was claimed, at the hearing privilege was waived and the materials as also the advice given by the Ministers to the Governor of Madhya Pradesh who had passed the impugned orders in those cases where disclosed.

The Nature of the Challenge to the Impugned Orders :

147. In all matters before us the challenge to the validity of the impugned orders was confined only to legal grounds, the main ground being based upon what was held in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1975 SCC (L&S) 398) and the application of principles of natural justice. The contentions with respect to these grounds have been considered by us in the preceding part of this Judgment and have been negatived. In most of the matters the writ petitions contain no detailed facts. Several of the petitioners have gone in departmental appeal but that fact is not mentioned in the writ petitions nor the order of the appellate authority challenged where the appeals have been dismissed. Many government servants have combined together to file one writ petition and in the case of such of them whose departmental appeals have been allowed and they reinstated in service, the petitions have not been amended so as to delete their names and they have continued to remain on the record as petitioners. Several petitions are in identical terms, if not, almost exact

copies of other petitions. No attempt has been made in such matters to distinguish the case of one petitioner from the other. Apart from contesting the legal validity of the impugned orders, hardly anyone has even sated in his petition that he was not involved in the situation which has led to clause (b) or clause (c) of the second proviso to Article 311 being applied in his case. There is no allegation of mala fides against the authority passing the impugned orders except at times a more bare allegation that the order was passed mala fide. No particulars whatever of such alleged mala fides have been given. Such a bare averment cannot amount to a plea of mala fides and requires to be ignored. In this unsatisfactory state of affairs so far as facts are concerned, the only course which this Court can adopt is to consider whether the relevant clause of the second proviso to Article 311(2) or of an analogous service rule has been properly applied or not. If this Court finds that such provision has not been properly applied, the appellant or the petitioner, as the case may be, is entitled to succeed. If, however, we find that it has been properly applied, the appeal or petition would be liable to be dismissed, because there are no proper materials before the Court to investigate and ascertain whether any particular government servant was, in fact, guilty of the charges made against him or not. It is also not the function of this Court to do so because it would involve an inquiry into disputed questions of facts and this Court will not, except in a rare case, embark upon such an inquiry. For these reasons and in view of the directions we propose to give while disposing of these matters, we will while dealing with facts refrain from touching any aspect except whether the particular clause of the second proviso to Article 311(2) or an analogous service rule was properly applied or not.

C.A. No. 6814 of 1983 :

148. Civil Appeal 6814 of 1983 is the only matter before us under clause (a) of the second proviso to Article 311(2).

149. The respondent, Tulsiram Patel, was a permanent auditor in the Regional Audit Office, M.E.S., Jabalpur. It appears that orders were issued by Headquarters, C.D.A. C.C., Meerut, stopping the increment of the respondent for one year. One Raj Kumar Jairath was at the relevant time the Regional Audit Officer, M.E.S., Jabalpur. On July 27, 1976, the respondent went to Raj Kumar's office and demanded an explanation from him as to why he had stopped his increment where upon Raj Kumar replied that he was nobody to stop his increment. The respondent then struck Raj Kumar on the head with an iron rod. Raj Kumar fell down, his head bleeding. The respondent was tried and convicted under Section 332 of the Indian Penal Code by the First Class Judicial Magistrate, Jabalpur. The Magistrate instead of sentencing the respondent to imprisonment applied to him the provisions of Section 4 of the Probation of Offenders Act, 1958, and released him on his executing a bond of good behavior for a period of one year. The respondent's appeal against his conviction was dismissed by the Sessions Judge, Jabalpur. The Controller-General of Defence Accounts, who was the disciplinary authority in this case, imposed upon the respondent the penalty of compulsory retirement under clause (i) of Rule 19 of the Civil Services Rules. The said order was in the following terms :

> Whereas Shri T. R. Patel, Pt. Auditor (Account No. 8295888) has been convicted on a criminal charge, to wit, under Section 332 of IPC.
>
> Whereas it is considered that the conduct of the said Shri T. R. Patel, Pt. Auditor (Account No. 8295888), which has led to his conviction, is such as to render his further retention in the public service undesirable.

> Now, therefore, in exercise of the powers conferred by Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the undersigned hereby direct that the said Shri T. R. Patel, Pt. Auditor (Account No. 8295888, shall be compulsorily retired from service with effect from November 25, 1980.
>
> The respondent thereupon filed a departmental appeal which was dismissed.

150. Thereafter the respondent filed in the Madhya Pradesh High Court a writ petition under Articles 226 and 227 of the Constitution. Relying upon Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) the High Court held that no opportunity had been afforded to the respondent before imposing the penalty of compulsory retirement on him. It further held that the impugned order was defective inasmuch as it did not indicate the circumstances which were considered by the disciplinary authority except the fact of conviction of the respondent.

151. We are unable to agree with either of the two reasons given by the High Court for setting aside the order of compulsory retirement. So far as the first ground upon which the High Court proceeded is concerned, as already pointed out that part of the judgment in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) is not correct and it was, therefore, not necessary to give to the respondent any opportunity of hearing before imposing the penalty of compulsory retirement on him.

152. It was, however, argued that the penalty imposed upon the respondent was not of dismissal or removal from service but of compulsory retirement and, therefore, clause (a) of Article 311(2) did not apply. The argument cannot be accepted. The compulsory retirement of the respondent was not by reason of his reaching the age of superannuation or under other rules which provide for compulsorily retiring a government servant on his completing the qualifying period of service. The order of compulsory retirement in this case was under clause (i) of Rule 19 of the Civil Services Rules and was by way of imposing upon him one of the major penalties provided for in Rule 11. It is now well settled by decisions of this Court that where an order of compulsory retirement is imposed by way of penalty, it amounts to removal from service and the provisions of Article 311 are attracted. (See State of U. P. v. Shyam Lal Sharma ((1972) 1 SCR 184, 189 : (1971) 2 SCC 514) and the cases referred to therein).

153. The second ground upon which the High Court rested its decision is equally unsustainable. The circumstances which were taken into consideration by the disciplinary authority have been sufficiently set out in the order of compulsory retirement, they being that the respondent's conviction under Section 332 of the Indian Penal Code and the nature of The offence committed which led the disciplinary authority to the conclusion that the further retention of the respondent in the public service was undesirable. The mention of Section 332 of the Indian Penal Code in the said order itself shows that respondent was himself a public servant and had voluntarily caused hurt to another public servant in the discharge of his duty as such public servant or in consequence of an act done by that person in the lawful discharge of his duty. The facts here are eloquent and speak for themselves. The respondent had gone to the office of his superior officer and had hit him on the head with an iron rod. It was fortunate that the skull of Raj Kumar was not fractured otherwise the offence committed would have been the more serious one under Section 333. The respondent was lucky in being dealt with leniently by the Magistrate but these facts clearly show that his retention in public service was undesirable. In fact, the conduct of the respondent was such that he merited the penalty of dismissal from government service and it is clear that by imposing upon him only the penalty of compulsory retirement, the disciplinary authority had in his mind the fact that the

Magistrate had released him on probation. We accordingly hold that clause (i) of Rule 19 of the Civil Services Rules was rightly applied to the case of the respondent.

154. This appeal, therefore, requires to be allowed and the writ petition filed by the respondent in the Madhya Pradesh High Court deserves to be dismissed.

CISF Matters :

155. Civil Appeal 3484 of 1982 - Union of India and others v. Sadanand Jha and others and Civil Appeal 3512 of 1982 - Union of India and others v. G. P. Koushal - relate to the members of the CIS Force who were dismissed from the Force after dispensing with the disciplinary inquiry by applying clause (b) of Rule 37 of the CISF Rules read with clause (b) of the second proviso of Article 311(2). All except one of them filed a writ petition in the Patna High Court while the remaining one filed a writ petition in the Madhya Pradesh High Court. Both the High Courts allowed the writ petitions relying upon the decisions in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398). Civil Appeal 3484 of 1982 is directed against the judgment of the Patna High Court while Civil Appeal 3512 of 1982 is directed against the judgment of the Madhya Pradesh High Court.

156. Before dealing with the relevant facts, we may mention that the counter-affidavit filed to the writ petition in both the said High Courts were unsatisfactory. At the hearing of these appeals an application was made on behalf of the appellants for leave to file a supplementary return. This application was granted by us in the interest of justice and the supplementary return. This application was granted by us in the interest of justice and the supplementary return annexed to the said application was taken on the record. We will not briefly set out the facts which led to the passing of impugned orders. The respondents in Civil Appeal 3484 of 1982 are dismissed members of the CISF Unit at Bokaro Steel Plant of the Bokaro Steel Limited situate at Bokaro in the State of Bihar while the respondent in Civil Appeal 3512 of 1982 was temporary security guard in the CISF Unit posted at Security Paper Mill at Hoshangabad in the State of Madhya Pradesh. We will first deal with the facts of Civil Appeal 3484 of 1982. The members of the CISF Unit at Bokaro had formed in all-India association in March 1979 and one Sadanand Jha, respondent 1, was elected as its General Secretary. Thereafter, a country-wide agitation was carried on for recognition of the said association. In June 1979 some of the members of the said association were called upon to meet the Home Minister at Delhi. A delegation of the said association went to Delhi. While there they staged a demonstration, some of the demonstrators, including Sadanand Jha, were arrested. What happened thereafter can best be related by extracting paragraphs 3 to 9 of the supplementary return filed by Shri Madan Gopal, the Deputy Inspector-General, CISF Unit of Bokaro Steel Plant, Bokaro, pursuant to the leave granted by this Court. These paragraphs read as follows :

> 3. The said persons were arrested at Delhi, but subsequently released on bail. At Bokaro Steel Plant, the agitation which was going on assumed aggravated form on and from May 27, 1979. Out of 1900 persons belonging to CISF Unit, Bokaro Steel Plant, Bokaro, about 1000 persons participated in the processions and violent demonstrations. The said employee indulged in agitational acts and violent indiscipline. The said personnel unleashed a reign of terror in the unit lines and openly incited others to disobey the lawful orders. The said persons indulged in several acts of violence and created a very serious law and order problem and an atmosphere of collective violence and intimidation : The said agitation and the violent activity reached a very serious proportion in the last week of June 1979 with

the result that Army had to be called by the State Authorities on June 23, 1979. Annexed hereto and marked Annexure AFD-I is the request from the Home Commissioner, Bihar Government to the Ministry of Defence, Government of India dated June 23, 1979 requesting for the deployment of the Army so as to restore normalcy in the area. The State Government had also deployed 9 Magistrates to assist the Army authorities as also the CRPF for restoring the normal conditions at the Bokaro Steel Plant. A copy of the order is enclosed herewith and marked as Annexure AFD-II.

4. On June 24, 1979, on seeing the arrival of the Army, the agitators started making preparations for armed resistance by putting up sandbags, floodlights and barricades in the CISF Lines. They had gained the control of CISF Lines and the Officers were not allowed to have any access to the Lines or to other ranks of CISF.

5. On June 25, 1979, the Army along with 9 Magistrates took up positions round the CISF Lines in the early hours and called upon the agitators to give up charge of the armoury. In spite of giving repeated warnings by the authorities to give up charge of the armoury, the agitators did not give up arms, but, instead, resorted to violence. The agitators started firing at 0320 hours at the Army. The Army returned the fire. The said exchange of fire continued for 3 hours before the Army could quell the violent retaliation of the agitators. The said violent exchange of fire resulted in the instant death of one Army Major and 2 more Army personnel were also killed as a result of firing by the CISF personnel.

6. It may also be stated that there were 22 deaths in the course of the said pitched battle, which went on for three hours between the violent armed agitators and the Army.

7. In regard to the aforesaid violent activities and the commission of offenses, about 800 personnel were rounded up by the Army and later on arrested by the local police. It is pertinent to mention here that at the relevant time, about 1900 personnel were deployed in CISF Unit, Bokaro Steel Plant, Bokaro. More than 1000 personnel participated in the aforesaid agitational activities. Besides the persons arrested by the authorities concerned, a substantial number of agitators were at large. Most of them either fled away or went underground and large number of arms and ammunition were also with them. The search and seizure of arms and ammunition were going on and as a result thereof until July 1, 1979, 65 rifles along with large quantity of ammunition, 11 Molotov cocktails, other explosives and 1048 empties of 303 ammunition were recovered from the area after the Army action. A copy of the FIR lodged in connection with aforesaid commission of offences is annexed herewith and marked as Annexure AFD-III.

8. Notwithstanding the arrest of the said about 800 employees, as aforesaid, atmosphere at the Bokaro Steel Plant continued to be vitiated due to terror and collective fear and the functioning of the CISF Unit and its administration at Bokaro had completely broken down. It was only Army which could control the situation by its continued presence. The Army was withdrawn from the Bokaro Steel Plant only on or about July 2, 1979. However it may not be out of place to mention here that although the Army was withdrawn in the early July 1979 but atmosphere of terror

and tension continued for a couple of months. The CRPF continued performing security duties till November 1979. Besides this Bihar Military Police took charge of armoury from army and continued to perform some of armed duties of CISF as CISF Unit was not in a position to function normally for a considerable time. Even the State authority apprehended a dangerous situation after the Army action including threat to lives of senior officers of CISF.

9. In the meanwhile, having regard to the violent and disturbed situation which prevailed in the Bokaro Steel Plant as also the collective actions of violence, mass terror and intimidation and threats to supervisory and loyal staff, it was reasonably believed that any inquiry in accordance with the provisions of the Rules 34, 35 and 36 of CISF Rules, 1969 or in accordance with the requirements of Article 311(2) would be dangerous, counter-productive and would aggravate the already existing dangerous situation. It was also reasonably believed that the circumstances were such as would make the holding of any inquiry self-defeating, subversive or would result in consequent detriment to public interest. It was in these circumstances that the concerned authorities formed reasonable nexus that any inquiry in accordance with the Rules was reasonably impracticable and impugned orders were passed in view thereof.

157. We see no reason to doubt the above statements made by Shri Madan Gopal in the supplementary return for these statements are supported by documents which have been annexed to the supplementary return. The facts set out in the above paragraphs of the supplementary return are eloquent and speak for themselves. They also reflected in the impugned orders. All the impugned orders are in the same terms apart from the mention of the name and service number of the particular member of the said CISF Unit against whom the order is made. By way of a specimen we set out below the impugned order dated June 29, 1979, made in the case of Sadanand Jha. The said order is as follows :

Whereas a large group of members of Central Industrial Security Force (hereinafter referred to as the Force) of CISF Unit, Bokaro Steel Ltd., Bokaro have indulged and still continue to indulge in acts of insubordination and indiscipline, dereliction of duty, absenting from PT and parade, taking out processions and raising slogans such as 'Inqulab Zindabad', 'Vardi Vardi Bhai Bhai Larke Lenge Pai Pai', 'Jo Hamse Takrayega Choor Choor Ho Jayega' and 'Punjab Ki Jeet Hamari Hai Ab CISF Ki Bari Hai', participating in the gherao of Supervisory Officers, participating in hunger strike and 'dharna' near the Quarter Guard and Administrative Building of CISF Unit, Bokaro Steel Ltd., since May 27, 1979 in violation of the provisions of CISF Act, 1968 and instructions of the Superior Officers and in complete disregard of their duties as members of the Force;

And whereas the aforesaid group also indulged in threats of violence, bodily harm and other acts of intimidation to Supervisory Officers and loyal members of the Force;

And whereas by the aforesaid collective action, the members of the Force have created a situation whereby the normal functioning of the Force at the aforesaid CISF Unit has been rendered difficult and impossible;

> And whereas 7205199 Security Guard Sadanand Jha as an active participant of the aforesaid group has been extremely remiss and negligent in the discharge of his duty and has proved totally unfit for the same by absenting himself from parade unauthorisedly and indulging in various acts of extreme indiscipline and misconduct, as aforesaid;
>
> And whereas I am satisfied that in the facts and circumstances, any attempt to hold departmental inquiry by serving a written chargesheet and following other procedures in the manner provided in Rules 34, 35 and 36 of the CISF Rules, 1969 will be frustrated by the collective action on the part of the aforesaid group and hence it is not reasonably practicable to hold such inquiry;
>
> And whereas I am satisfied that in the facts and circumstances, any attempt to hold departmental inquiry by serving a written chargesheet and following other procedures in the manner provided in Rules 34, 35 and 36 of the CISF Rules, 1969 will be frustrated by the collective action on the part of the aforesaid group and hence it is not reasonably practicable to hold such inquiry;
>
> And whereas on a consideration of the facts and circumstances of the case I am satisfied that the penalty of dismissal from service should be imposed on 7205199 Security Guard Sadanand Jha;
>
> Now, therefore, in exercise of the powers conferred by sub-rule (b) of the Rule 37 of the CISF Rules, 1969 read with clause (b) of the second proviso to clause (2) of Article 311 of the Constitution, I hereby order that 7205199 Security Guard Sadanand Jha be dismissed from service with immediate effect.

158. The CIS Force has been constituted under the CISF Act for the better protection and security of industrial undertakings owned by the Government. Under Section 14 of the Act, the Inspector-General of the CIS Force may on a request in that behalf from the Managing Director of an industrial undertaking in public sector, showing the necessity thereof, depute such number of supervisor officers and members of the CIS Force as the Inspector-General may consider necessary for the protection and security of that industrial undertaking and any installation attached thereto. The purpose of constituting the CIS Force is set out in the Statement of Objects and Reasons to the Bill which when enacted became the CISF Act. The said Statement of Objects and Reasons is published in the Gazette of India Extraordinary dated August 2, 1966, Part II, Section 2, at page 435, and is as follows :

> At present security arrangements at important industrial undertakings in the public sector are handled by the watch and ward staff of the organization concerned. The watch and ward staff is generally engaged in guarding the entrances or the perimeter of the industrial undertaking and in preventing entry of unauthorised persons. Unplanned recruitment, inadequate supervision, training and discipline have made the existing watch and ward staff ill-equipped to discharge its responsibilities. It is considered necessary to strengthen the security arrangements in vital industrial undertakings. For that purpose it is proposed to constitute a centrally recruited, organised and trained Industrial Security Force. The Force will primarily be responsible for the watch and ward of industrial undertakings owned by the Central Government and may be deployed at the request and cost of the managements, for

security duties of industrial undertakings in public sector.

159. The CIS Force is an armed Force and the security duties to be performed by the CIS Force are of vital importance to the industrial production of the country. The CIS Force has been conferred very wide powers. Under Section 11 of the CISF Act, any supervisory officer or member of the Force may, without any order from a Magistrate and without a warrant, arrest any person who has been concerned in or against whom a reasonable suspicion exists of his having been concerned in or who is found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence relating to the property belonging to any industrial undertaking or other installations. Similarly, under Section 12 for the same purpose a supervisory officer or member of the CIS Force, not below the prescribed rank, has the power to search the person and belongings of any person whom he has reason to believe to have committed any such offence as is referred to in Section 11. From what is stated above, it is obvious that in a Force entrusted with such large responsibility, maintenance of discipline is most essential and this is made clear by Section 18(1) of the CISF Act which provides as follows :

> 18. Penalties for neglect of duty, etc. - (1) Without prejudice to the provisions contained in Section 8, every member of the Force who shall be guilty of any violation of duty or willful breach or neglect of any rule or regulation or lawful order made by a supervisory officer, or who shall withdraw from the duties of his office without permission, or who, being absent on leave, fails, without reasonable cause, to report himself for duty on the expiration of the leave, or who engages himself without authority in any employment other than his duty as a member of the Force, or who shall be guilty of cowardice, shall, on conviction, be punished with imprisonment for a term which may extend to six months.
>
> Under Section 19 of the CISF Act, the Police (Incitement to Disaffection) Act, 1922, applies to supervisory officers and members of the CIS Force as it applies to members of a Police Force. Under Section 20, neither the Payment of Wages Act, 1936, nor the Industrial Disputes Act, 1947, nor the Factories Act, 1948, nor any corresponding State Act applies to the members of the CIS Force.

160. The facts set out in the supplementary return of Shri Madan Gopal and in the impugned orders show that there was a total breakdown of discipline in the CIS Force. There was a willful and deliberate disobedience of orders of the supervisory officers and 'gherao' of such officers. There was a hunger strike, dharna, shouting of rebellious slogans and threats of violence and bodily harm to supervisory officers and acts tending to intimidate the supervisory officers and loyal members of the staff. There were acts of insubordination and deliberate neglect and willful violation of their duties by a very large section of the members of the CIS Force stationed at Bokaro. All these acts virtually amounted to a mutiny and how grave the situation was can be judged rom the fact that the Army had to be called out and a pitched battle took place between the Army and the members of the Force. No person with any reason or sense of responsibility can say that in such a situation the holding of an inquiry was reasonably practicable.

161. It was said that the impugned orders did not set out the particular acts done by each of the members of the CIS Force in respect of whom dismissal order was made, and these were merely cyclostyled orders with the names of individual members of the CIS Force filled in. Here was a case very much like a case under Section 149 of the Indian Penal Code. The acts alleged were not of any

particular individual acting by himself. These were aces of a large group acting collectively with the common object of coercing those in charge of the administration of the CIS Force and the Government in order to obtain recognition for their association and to concede their demands. It is not possible in a situation such as this to particularize the acts of each individual member who participated in the commission of these acts. The participation of each individual may be of greater or lesser degree but the acts of each individual contributed to the creation of a situation in which a security force itself became a security risk.

162. It was submitted at the Bar that the real reason for passing the orders impugned in Civil Appeal 1484 of 1982 was the encounter with the Army on June 25, 1979, and this real reason was not mentioned in the impugned order because the respondents had been arrested and were being prosecuted and, therefore, before passing the impugned orders, the disciplinary authority would have had to wait till the prosecutions were over. Such an allegation has not been made in the wit petition filed in the High Court. In fact, there is no mention in the writ petition of the help of the Army being sought or of the encounter with the Army. The impugned orders mentioned the reasons why they were passed. The supplementary return bears out these reasons. We have, therefore, no hesitation in accepting what is stated in the impugned orders. In our opinion, clause (b) of Rule 37 of the CISF Rules and clause (b) of the second proviso to Article 311(2) were properly applied to the cases of the respondents.

163. Finally, a grievance was made at the Bar that the dismissed members of the CIS Force had filed department appeals and the appeals of those who had been discharged by the Magistrate were allowed and these appellants were reinstated. We do not know how far this is correct nor the reasons for allowing such appeals, but if what is stated is true, it is not fair and the remaining appeals be disposed of as early as possible.

164. The impugned order in Civil Appeal 3512 of 1982 is in the same terms as the impugned orders in Civil Appeal 3484 of 1982. The situation at Hoshangabad was very much the same as at Bokaro and in our opinion clause (b) of Rule 37 of the CISF rules and clause (b) of second proviso to clause (2) of Article 311 were properly applied to the case of the respondent.

165. Both these appeals therefore, require to be allowed.

Railway Service Matters :

166. Civil Appeals 3231 of 1981 and 4067 of 1983 and all the writ petitions filed in this Court (except Writ Petitions 1953 of 1981, 7393, 1392 and 2022 of 1981) and all transferred cases, that is, writ petitions filed in High Courts and transferred to this Court, relate to railway servants who were either dismissed or removed from service by applying to their cases either clause (ii) of Rule 14 of the Railway Servants Rules or clause (b) of the second proviso to Article 311(2) or clause (ii) of Rule 14 read with the clause (b) of the second proviso.

167. We have carefully gone through the facts of each of these cases. The majority of the railway employees who were dismissed or removed are alleged to have been concerned in incidents which took place in all-India strikes of railway employees. Many of these employees belonged to the all-India loco-running staff.

168. The proper running of the railway service is vital to the country. Railway trains carry not only those going for a holiday but also those who comment to work or business. In certain cities, for the

instance - Bombay, lacs commute daily by train for this purpose. The railway trains also carry those going to attend the funeral or obsequial ceremonies of near and dear ones and equally they carry marriage parties. They carry those who are in urgent need of medical treatment or have been seriously injured and not having proper medical aid in the places where they reside, have to be rushed to the nearest town, city or district headquarters where such medical aid is available. They carry essential commodities like foodgrains, oil, etc. They carry equipment and machinery vital for the needs of the country. In times of disturbances they carry members of the Defence Forces and the Central Reserve Police Force. In this connection, it is pertinent to note what Shah, J., as he then was, had to say in Moti Ram Deka Case ((1964) 5 SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467) (at pages 795-6) about the railway administration and employment in railway service :

> ..... employment in the Railways is in a vitally important establishment of the Union in which the employees are entrusted with valuable equipment and a large measure of confidence had to be reposed in them and on the due discharge of the duties the safety of the public and the efficient functioning of the governmental duties depend. Not only the travailing public but the Union and the States have in a considerable measure to depend upon rail transport for the functioning of the governmental machinery and its welfare activities. It would be possible even for one or a few employees of the Railway to paralyse communications and movement of essential supplies leading to disorder and confusion. The Railway service has therefore a special responsibility in the smooth functioning of our body politic .....

169. As pointed out in Kameshwar Prasad v. State of Bihar (1962 Supp 3 SCR 369 : AIR 1962 SC 1166 : (1962) 1 LLJ 294 : 22 FJR 50) (at page 385) there is no fundamental right to resort to a strike. A strike is only legal if an Act permits it and only if it is called in compliance with the conditions prescribed by that Act. The definition of "public utility service" in clause (n) of Section 2 of the Industrial Disputes Act, 1947 includes any railway service. The terms 'strike' is defined in clause (q) of Section 2 of the said Act. The said clause (q) is as follows :

> 'strike' means a cessation of work by a body of a persons employed in any industry acting in combination, or concerted refusal, or a refusal under a common understanding of any number of persons who are to have been so employed to continue to work or to accept employment.
>
> Under sub-section (1) of Section 22 of the said Act, no person employed in a public utility service can go on strike in breach of contract without giving to his employer a notice of strike as prescribed by the section. Under Section 24 a strike is illegal if it is commenced or declared in contravention of Section 22. Under Section 26(1) any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under a the said Act, commits an offences punishable with imprisonment for a term which may extend to one month or with a fine which may extend to fifty rupees or with both. The railway strikes were all commenced without complying with the provision of Section 22. These strikes were, therefore, illegal and each of the railway servants who participated in these strikes committed an offence punishable under Section 26(1) of the said Act.

170. It may be that the railway servants went on these strikes with the object of forcing the Government to meet their demands. Their demands were for their private gain and in their private interest. In seeking to have these demands conceded they caused untold hardship to the public and

prejudicially affected public good and public interest and the good and interest of the nation.

171. It was contended that the conduct charged against all employees was not of equal gravity. This is true for in the case of some of the railway servants the acts alleged to have been committed by them would not if committed in normal times, merit the penalty of dismissal or removal from service, but when committed in furtherance of an all-India strike which has paralysed a public utility service, they cannot be viewed in the same light.

172. It was also contended that the punishments were arbitrarily meted out because in some centers the railway servants were dismissed from service while in some other centers they were removed from service. The quantum and extent of penalty would depend upon the gravity of the situation at a particular center and the extent to which the alleged acts, though not serious in themselves, in conjunction with acts committed by others, contributed to the bringing about of this situation.

173. In the context of an all-India strike where a very large number of railway servants had struck work, the railway services paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for to bring the situation to normal. In these circumstances, it cannot be said that an inquiry was reasonably practicable.

174. On a careful examination of the facts of these cases and the impugned orders, we find that in each of these cases clause (ii) Rule 14 of the Railway Servants Rules or clause (b) of the second proviso to Article 311(2) or both, as the case may be, were properly applied. All these matters therefore require to be dismissed.

The Madhya Pradesh Police Forces Matters :

175. The matters which now remain to be dealt with are Writ Petitions 1953, 7393, 1392 and 2022 of 1981. The petitioners belonged either to the Madhya Pradesh District Police Force or the Madhya Pradesh Special Armed Force. The petitioners were dismissed by orders of the Governor of Madhya Pradesh by applying clause (c) of the second proviso to Article 311(2) to them. All the orders are in the same terms except for the name and designation of the concerned policeman. One of the orders may be reproduced as a specimen. That order is follows :

> As the Governor of M.P. under Article 311(2), sub-clause (c) of the proviso of Constitution is satisfied, that it is not expedient in the interest of the security of State that in case of Shri Karansingh Const. No. 602, 2nd Bn. SAF the alleged charges to be told, inquiry to be conducted, or opportunity to show cause is to be provided as per provisions of clause (2) of the above article,
>
> And, as Governor of M.P. is satisfied that conduct, which appears from his actions or omissions, is such that it is sufficient ground for his dismissal/termination,
>
> As such, the Governor of M.P. on the ground of powers vested to him under Article 311(2)(c) read with Article 310 of the Constitution dismisses/terminates Shri Karansingh Const. No. 602, 2nd Bn. SAF., under said power, from the services, which will apply with immediate effect.
>
> # On behalf and under orders of the Governor of M.P. Sd/. (Indira Mishra) Under Secretary Govt. of M.P., Home (Police) Deptt.##

176. We have already held that in applying clause (c) of the second proviso the Governor of a State acts on his subjective satisfaction taking into consideration facts and factors which are not proper matters for judicial review. However, the claim of privilege was waived by the Government and all the materials produced at the hearing and inspection given to the other side. These materials disclose that an incident took place on January 18, 1981, at the annual Mela held at Gwalior in which one man was burnt alive. Some persons, including a constable from each of these two Forces, were arrested. These persons were remanded into judicial custody. On January 20, 1981, several members of these two Forces indulged in violent demonstrations and rioted at the Mela ground, demanding the release of their colleagues. The attacked the police station at the Mela ground, ransacked it and forced the operator to close down the wireless set. The situation became so dangerous that senior district and police officers had to approach the Judicial Magistrate at night and get the two arrested constables released on bail. This incident was discussed at a Cabinet meeting, a decision was taken and the advice of the Council of Ministers was tendered to the Governor of Madhya Pradesh who accepted it and issued the impugned orders. On further scrutiny some names were deleted from the list of dismissed personnel and some others included. As a result of this, some other members of these Forces began carrying on an active propaganda against the Government, visiting Jabalpur and other places in the State of Madhya Pradesh, holding secret meetings, distributing leaflets, and inciting the constabulary in these places to rise against the administration as a body in protest against the action taken by the Government. On this information being received, they too were similarly dismissed. These facts speak for themselves. The police normally oppose the grant of bail to an accused but here we have the paradoxical situation of some of the highest police and district officers going at midnight to the Magistrate's house to apply for bail for the accused. The police are the guardians of law and order. They stand guard at the border between the green valleys of law and order and the rough and hilly terrain of lawlessness and public disorder. If these guards turn law-breakers and create violent public disorder and incite others to do the same, we can only exclaim with Juvenile, "Quis custodiet ipsos ! Custodies ?" - "Who is to guard the guards themselves ?" (Satires, VI, 347). These facts leave no doubt that the situation was such that prompt and urgent action was necessary and the holding of an inquiry into the conduct of each of the petitioners would not have been expedient in the interest of the security of the State. All these four petitions, therefore, deserve to be dismissed.

Final Orders in the Appeals and Writ Petitions :

177. For the reasons set out above, we pass the following orders in the above matters :

(1) Civil Appeal 6814 of 1983 is allowed and the judgment and order appealed against are reversed and set aside and the writ petition filed by the respondent in the High Court is hereby dismissed.

(2) Writ Petitions 1953, 7393, 1392 and 2022 of 1981 are hereby dismissed.

(3) All the remaining writ petitions and all the transferred cases and Civil Appeals 3231 of 1981 and 4067 of 1983 are dismissed while Civil Appeals 3484 and 3512 of 1982 are allowed and the judgments and orders appealed against are reversed and set aside and the writ petitions filed by the respondents in the High Courts are hereby dismissed. We direct the appellate authority under the Central Industrial Security Force Rules, 1969, to dispose of as expeditiously as possible such appeals of the members of the Central Industrial Security Force as may still be pending. In the case of those government servants in this particular group of matters who have not filed

any appeal, in view of the fact that they were relying upon the decision of this Court in Challappan case ((1967) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398), we give them time till September 30, 1985, to file a departmental appeal, if so advised, and we direct the concerned appellate authority to condone in the exercise of its power under the relevant service rule the delay in filing the appeal and, subject to what is stated in this Judgment under the headings "Service Rules and the Second Proviso - Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398)" and "The Second Proviso - Clause (b)", to hear the appeal on merits.

(4) All interim orders made in the above matters are vacated but the government servants will not be liable to refund any amount so far paid to them.

(5) There will be no order as to costs in all the above matters.

(6) All other matters pending in this Court in which a question of the interpretation of the second proviso to clause (2) of Article 311 or of an analogous service rule is involved will stand disposed of in accordance with this Judgment.

THAKKAR, J. (dissenting). ◆

A benevolent and justice-oriented decision of a three-Judge Bench of this Court, rendered ten years back in a group of service matters, (D. P. O., Southern Railway v. T. R. Challappan ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398)), is sought to be overruled by the judgment proposed to be delivered by my learned Brother Madon, J., with which, the majority appear to agree. Challappan ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) having held the field for such a long time, it would have been appropriate if a meeting of the Judges constitution the Bench had been convened to seriously deliberate and evolve a consensus as to whether or not to overrule it. A 'give' and 'take' of ideas, with due respect for the holders of the opposite point of view (in a true democratic spirit of tolerance), with willingness to accord the consideration to the same, would not have impaired the search for the true solution. Or hurt the cause of justice. The holders of the rival view points could have, perhaps, successfully persuaded and converted the holders of the opposite point of view. Or got themselves persuaded and converted to the other point of view.

179. Brother Madon, J., to whom the judgment was assigned by the learned Chief Justice, also appears to suffer heart-ache on the same score, for, in his covering letter dated July 6, 1985 forwarding the first instalment of 142 pages he says :

> ..... I regret to state that the draft judgment could not be sent to you earlier. The reason was that as we did not have a meeting to discuss this matter, I did not know what would be the view of my other Brothers on the large number of points which fall to be determined in these cases, except partly in the case of two of my Brothers with whom by chance I got an opportunity to discuss certain broad aspects ....
>
> If only there had been a meeting in order to have a dialogue, there might have been a meeting of minds, and we might have spoken in one voice. Failing which, the holders of the dissenting view point could have prepared their dissenting opinions. That was not to be. On the other hand, it has so transpired, that, the full draft judgment running into 237 pages has come to be circulated in the morning of July 11, 1985, less than 3 hours before the deadline for pronouncing the judgment. There is a time compulsion

to pronounce the judgment, on 11th July, 1985, as the learned Chief Justice who has presided over the Constitution Bench is due to retire on that day, and the judge-time invested by the five Judges would be wasted if it is not pronounced before his retirement. The judge-time would be so wasted because the entire exercise would have to be done afresh. The neck-to-neck race against time and circumstances is so keen that it is impossible to prepare an elaborate judgment presenting the other point of view within hours and circulate the same amongst all the Judges constituting the Bench in this important matter which was heard for months, months, ago. I am, therefore, adopting the only course open to me in undertaking the present exercise.

180. 'Challappan' in my opinion, has been rightly decided. And there is compulsion to overrule it - even if the other point of view were to appear to be more 'attractive' it is neither a good nor a sufficient ground to overrule 'Challappan. After all what does 'Challappan' do ? It does no more than enjoin in the context of Rule 14(1)(a) [Sic (i)] and therefore, as a logical corollary, also in the context of Rule 14(a)(b) [Sic (ii) and (iii)] of the Railway Servants (Discipline and Appeal) Rules, 1868 that an employee must at least be heard on the question of quantum of punishment before he is dismissed or removed from service without holding any inquiry. The ratio of the decision is so innocuous that there is hardly any there is hardly any need to overturn it. Apart from the weighty reason articulated by the three-Judge Bench, there are some more which can be called into aid. But while the 'will' is very much there, not the 'time', to elaborate the reasons to buttress 'Challappan' and to counter the criticism levelled against the thesis propounded therein. Or to expound my point of view in regard to propositions in respect of which I have reservations. I propose to do so later if deemed necessary.

181. For the present, therefore, suffice it to say, I am unable to persuade myself to fall in line with the majority in overruling 'Challappan' and unable to concur with the consequential orders being passed in that context. I am also unable to associate myself with the exposition of law in regard to the true meaning and content of 'pleasure doctrine' and its implications and impact.

182. The sphere in which I am able to agree with the proposed judgment is in regard to the matters arising out of orders passed in exercise of powers under Article 311(2)(c) of the Constitution of India and the orders proposed to be passed therein.

In the result :

I

183. Following the law laid down in 'Challappan' the under-mentioned appeals are dismissed with no order as to costs :-

Civil Appeal No. 6814 of 1983

Union of India v. Tulsiram Patel

Civil Appeal No. 3484 of 1982

Union of India v. Sadanand Jha

Civil Appeal No. 3512 of 1982

Union of India v. G. P. Koushal

II

184. Following the law laid down in 'Challappan' the Writ Petitions and allied appeals and companion matters hereafter mentioned are allowed and the impugned orders against the Petitioners are declared to be void and quashed with no order as to costs :-

Writ Petitions Nos. 2267, 2268, 2269, 2273, 3349, 2250, 3351, 3352, 3353, 6500, 8120 of 1982, 562 of 1983.

Bishwaroop Chatterjee v. Union of India.

with Civil Appeal Nos. 3231 of 1981 and 4067 of 1983

Achinta Biswas v. Union of India

and other allied Transferred cases and matters arising out of Railway service matters.

III

185. The same orders dismissing the Writ Petitions coupled with the same directions as per the majority judgment in :

Writ Petition No. 1953 of 1981, 7393, 1392, 2202 of 1981 and other allied M.P. Police Force matters under Article 311(2)(c).

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