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<th>Price</th>
</tr>
</thead>
<tbody>
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<td>Payment of Wages Act</td>
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<td>Under Preparation</td>
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SERVICE LAWS IN INDIA
(AS VIEWED BY THE SUPREME COURT)

IN PRIVATE SECTORS & GOVERNMENT SECTORS

EJAZ AHMAD,
B.Sc., LL.B.

1973

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PREFACE

The author has been prompted to write this book because of his some acquaintance with the subject. The subject is so vast and the theme of the book is so varied that any claim to deal it exhaustively would appear stupendous. However, an attempt has been made to provide to the reader, as far as possible complete material on the subject. There is a full-fledged discussion of the basic features of the law and the main principles in all the chapters to enable the reader to have a clear idea of the subject. There has been an abundance of decisions of the Supreme Court on the subject since the coming into force of the Constitution of India and in these decisions almost every aspect of the rights, privileges and liabilities, has been dealt with. The entire subject-matter has been brought in closer accord with the latest judicial pronouncements of the Supreme Court.

The book deals with both Government and private employment. The implications of various constitutional provisions relating to public employment have been explained. The book also deals with the general law relating to Master and Servant. The rights, privileges and liabilities of the Industrial Workers have also been discussed. This book has a novelty of presentation inasmuch as it pre-eminently covers all the topics in a very orderly manner. The author has included in this book all the important decisions pronounced by the Privy Council and the Supreme Court. The expositions are not merely reproduction of Case-law but analytical and critical as well as a source of practical guidance.

The author is confident that the book will be of immense use to all concerned viz., lawyers, Judges, Public servants, Industries, firms etc.

The author is conscious that in spite of his best efforts there might be certain errors and omissions in this edition. The author would, therefore, request his readers to favour him with their valuable suggestions which might help the author in improving the quality of work and in rectifying the discrepancies that might have crept in the book.

The author wishes to acknowledge his gratitude to Sri D. C. Gogia and G. D. Kataria for their valuable help and co-operation during the preparation of the book.

Author
GENERAL CONTENTS
OF
Service Laws in India
(As viewed by Supreme Court)
In 2 VOLUMES
VOLUME I

Chapter I—Introductory.
Chapter II—Government Employment and Constitutional Guarantees.
Chapter III—Tenure of Pleasure.
Chapter IV—Public Service Commission.
Chapter V—Appointments.
Chapter VI—Conditions of Service.
Chapter VII—Disciplinary Proceedings.
Chapter VIII—who can dismiss or remove?
Chapter IX—who can claim protection of Article 311?
Chapter X—Special Services.
Chapter XI—Dismissal and Removal.
Chapter XII—Compulsory Retirement.
Chapter XIII—Reduction and Reversion.
Chapter XIV—Suspension.
Chapter XV—Promotions.
Chapter XVI—Seniority and Merit.

VOLUME II

Chapter XVII—Resignation.
Chapter XVIII—Efficiency Bar.
Chapter XIX—Conduct and Misconduct.
Chapter XX—Prevention of Corruption.
Chapter XXI—Pension.
Chapter XXII—Probation.
Chapter XXIII—Departmental Rules.

Private Employees

Chapter I—General Law of Master and Servant.
Chapter II—Relationship of Master and Servant.
Chapter III—Duration of Contract of Service.
Chapter IV—Termination of Service.
Chapter V—Remedies for wrongful dismissal.
Industrial and Factory Workers

Chapter I—General.
Chapter II—Disciplinary Action.
Chapter III—Punishments.
Chapter IV—Retrenchment and lay-off.
Chapter V—Strikes and lock out.

Miscellaneous

Chapter I—Limitation and condonation of delay.
Chapter II—Remedies.
Chapter III—Constitutional provisions.
Appendices.
## CONTENTS

### CHAPTER I

#### Introductory

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Employment : Meaning and scope</td>
</tr>
<tr>
<td>2.</td>
<td>Written and unwritten Code of Conduct of Government servants</td>
</tr>
<tr>
<td>3.</td>
<td>What conduct can be treated as misconduct</td>
</tr>
<tr>
<td>4.</td>
<td>When a departmental action is justiciable</td>
</tr>
<tr>
<td>5.</td>
<td>Natural justice and domestic tribunal</td>
</tr>
<tr>
<td>6.</td>
<td>What is a quasi-judicial act</td>
</tr>
<tr>
<td>7.</td>
<td>Actionable wrong, what is</td>
</tr>
<tr>
<td>8.</td>
<td>Classification of servants</td>
</tr>
<tr>
<td>9.</td>
<td>Liability in tort of State for acts of its servants</td>
</tr>
<tr>
<td>10.</td>
<td>Vicarious liability of State for wrongful acts of its servants</td>
</tr>
</tbody>
</table>

### CHAPTER II

#### Government Employment and Constitutional Guarantees

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>General</td>
</tr>
<tr>
<td>2.</td>
<td>Equality of opportunity in matters of employment</td>
</tr>
<tr>
<td>3.</td>
<td>Equality before law : Articles 14 and 311 of the Constitution</td>
</tr>
<tr>
<td>3-a.</td>
<td>Articles 14 to 16 and Article 311</td>
</tr>
<tr>
<td>4.</td>
<td>Government servants and fundamental rights : Articles 19 and 309</td>
</tr>
<tr>
<td>5.</td>
<td>Article 32 and Article 311</td>
</tr>
<tr>
<td>6.</td>
<td>Extent of Executive power of State and constitutional guarantees</td>
</tr>
<tr>
<td>7.</td>
<td>Conduct of Government business under Article 166 and service matters</td>
</tr>
<tr>
<td>8.</td>
<td>Article 311</td>
</tr>
<tr>
<td>9.</td>
<td>Rule 12 (4), Central Services (Classification, Control and Appeal) Rules, 1957, if contravenes Articles 142, 144 and 311</td>
</tr>
</tbody>
</table>

### CHAPTER III

#### Tenure of Pleasure

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Historical background</td>
</tr>
<tr>
<td>2.</td>
<td>Position under the present law</td>
</tr>
</tbody>
</table>
3. Whether pleasure is controlled by Article 311? ... 96
4. Whether pleasure extends to compelling servants to continue in service even after the age of superannuation? ... 101

CHAPTER IV
Public Service Commission

1. General ... 103
2. Provisions, if mandatory ... 103
3. Dismissal of Registrar of High Court: Consultation with Public Service Commission, if necessary ... 106
4. Termination of service on the month's notice—Public Service Commission not consulted—Effect ... 106

CHAPTER V
Appointments

1. General ... 107
2. Qualifications for appointment ... 107
3. Reservation of appointments and posts ... 109
4. Law as to residence for appointment in a particular part of State—Section 3, Andhra Pradesh Public Employment (Requirement as to Residence) Act, 1957 ... 119
5. Reservation by Government of right of appointment to any particular cadre irrespective of merit position—Rule 9, Mysore Recruitment of Gazetted Probationers Rules, 1959, if violative of Articles 14 and 16 ... 120

CHAPTER VI
Conditions of Service

1. General ... 123
2. Power of Legislature to make laws ... 132
3. Service Rules and Executive Instructions ... 133
4. Whether Service Rules constitute terms of a contract ... 136
5. Making of regulations: Exigencies of service are guiding factors ... 138
6. Service Rules constitutional provisions ... 138
7. Statutory force of rules ... 162
8. Enforceability of Service Rules—
   (a) Salary.
   (b) Scale of pay.
   (c) Dearness allowance.
   (d) Bonus.
   (e) Pension.
   (f) Seniority.
(g) Promotion.
(h) Deputation.
(i) Cadre.
(j) Transfer.
(k) Disciplinary action.
(l) Retirement.
(m) Suspension.

9. Discrimination in matters relating to conditions of service

10. Alteration in Service Rules

11. Service Rules and retrospective operation

CHAPTER VII

Disciplinary proceedings

1. General

2. Reasonable opportunity

3. Natural Justice

4. *Mala fides*

5. Departmental Enquiry: Nature and scope

A. First Stage enquiry—
   (a) Preliminary enquiry.
   (b) Charge-sheet.
   (c) Notice to delinquent officer.
   (d) Oral enquiry.
   (e) Facilities for inspection and copies of documents.
   (f) Reply to the delinquent employee.
   (g) Appointment of Enquiry Officer.
   (h) Legal Assistance for defence.
   (i) Examination of witnesses.
   (j) Cross-examination of witness.
   (k) Defence evidence.
   (l) Admission of relevant facts enough to establish charge, whether admission of guilt.
   (m) Findings and report of Enquiry Officer: How far binding on Disciplinary Authority.
   (n) Enquiry by a Tribunal having no jurisdiction.
   (o) Ex parte enquiry.
   (p) Departmental enquiry: Bias.
   (q) Whether Enquiry Officer need make recommendations as to punishment.

B. Second Stage enquiry—
   (a) Competent authority to be satisfied.
(b) Satisfaction of the Enquiring Officer is immaterial
(c) Notice to show cause—
   (i) Punishing authority failing to indicate in notice, its concurrence with conclusion of Enquiry Officer.
   (ii) Reasons for agreeing with Enquiry Officer need not be given unless rules specifically require.
   (iii) Show-cause notice against any of three major punishments—Effect.
   (iv) Disciplinary authority tentatively determining to impose particular punishment before explanation to show-cause notice, if illegal.
(d) Non-supply of copy of Enquiry Officer's report : Effect.
(e) Reply to show-cause notice.
(f) Personal hearing.
(g) Previous record when can be taken into consideration to determine punishment.
(h) Consultation with Public Service Commission.
(i) Enquiry Officer acquitting employee of first two charges and finding him guilty of third charge—Punishing authority relying on charges on which employee was acquitted : Effect.
(j) Order of dismissal based on several grounds some of which unsustainable—Order if bad.
(k) Punishment.
(l) Punishment order : Communication.

6. Power of Civil Court to interfere

7. Exceptions—
   (a) Conviction on criminal charge [Proviso (a) to Article 311 (2) of the Constitution]
   (b) Proviso (b) to Article 311 (2), Constitution.
      (i) Whether President or the Governor is bound to give reasons for his satisfaction.
      (ii) Whether personal satisfaction of President or Governor essential.

8. Whether fresh proceeding can be started in respect of same matter : Double jeopardy

9. Discretion of Government to hold enquiry or launch prosecution : Provision of discriminatory

10. Departmental Enquiry and Criminal Prosecution

11. Initiation of Departmental Proceedings : Cancellation of leave preparatory to retirement

12. Notice terminating his service given by servant during period of suspension—Legality—Disciplinary proceedings, if valid
CHAPTER VIII
Who can dismiss or remove

1. Authority who can dismiss or remove a Government servant ... 309
2. Appointing authority ... 309
3. No dismissal or removal by an authority subordinate to appointing authority ... 319

CHAPTER IX
Who can claim protection of Article 311

1. Protection not limited to permanent employees: If it extends to temporary employees also:
   (a) Procedure and Principles for disciplinary action against a temporary public servant. ... 321
   (b) Preliminary enquiry against a temporary public servant—Scope—Article 311 (2) is not attracted.
2. Probations:
   (a) Period of probation ... 335
3. Officiating persons ... 345
4. Quasi-permanent employees ... 350
5. Civil Post:
   (a) Civil post: Meaning ... 355
6. Village Munsifs ... 355
7. Mauzadars ... 357
8. Tahsildars ... 358
9. Servants of Life Insurance Corporation ... 358
10. Civilians in Defence Service ... 358

CHAPTER X
Special Services

1. Judiciary—High Court Judges ... 363
   (i) Determination of age.
   (ii) Question of deciding age—Consultation with Chief Justice of India.
   (iii) Whether Judge whose age is in dispute is entitled to personal hearing.
2. Subordinate Judiciary:
   (a) Scope of Articles 233 to 237.
   (b) Consultation with High Court; if necessary.
   (c) Appointment and Promotion of persons as District Judge—Order of Governor, if legal.
   (d) Posting, transfer, etc.
(e) Recruitment of persons other than District Judges.
(f) Consultation with State Public Service Commission is not nominal.

(g) Combined cadre comprising District Judges, Registrar, High Court—Judicial Officers in Secretariat—Procedure to be followed in appointment, posting and transfer, etc.

(h) High Court: Meaning of.
(i) Rules: Validity of.
(j) Control over Subordinate Courts.
(k) Reduction in Rank.

3. Staff of the Supreme Court and High Courts ... 383

1. Police Services:

(a) History of the Status of the Subordinate Police Force.

(b) U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 and Power to dismiss.

(c) Procedure followed in enquiry after Constitution, if discriminatory.

(d) Para 486 of U. P. Police Regulations: Scope and Effect.

(e) Reasonable opportunity to Police Officers.

(f) Re-organisation of States—Reversion of officiating Sub-Inspector of Police to the post of Head Constable.

(g) Compulsory retirement of Police Officer—Section 10, Madras District Police Act (24 of 1959).

(h) Power of Government to invoke Revisional Jurisdiction.

(i) Holding of departmental enquiry for the same offence.

(j) Prosecution under section 29, Police Act, is not necessary before taking departmental proceedings.

5. Railway Services: ...

(a) Rules 148 (3) and 149 (3), Railway Establishment Code, if violate Article 311.

6. I. C. S. Officers ...

7. Servants of Statutory Companies and Corporations, etc. 412

CHAPTER XI
Dismissing and Removal

1. General ...

2. Termination of Service—When would amount to removal or dismissal ...

385

383

407

421

422
3. Mere transfer of Government servant holding permanent post to new post, if removal .... 425
4. Words "dismissal" and "removal": Meaning and Scope... 426
5. Termination of Probationer's service as per Rules ... 432
6. Termination of service due to abolition of post—If Article 311 applies. ... 433
8. Termination of service under rules ... 441
8-a. Absence from duty without leave—Removal—Order of removal followed by grant of leave—Whether removal invalid ... 446
9. Dismissal or discharge after resignation ... 447
10. President's power to dismiss Civil Servant : Article 311 (2) (c) ... 448
11. Dismissal order, when takes affect ... 448
12. Order of dismissal with retrospective effect, if valid ... 448
13. Order terminating service based on events prior to coming into force of Rules ... 449

CHAPTER XII

Compulsory Retirement

1. Compulsory, retirement, what is ... 450
2. Compulsory retirement, when punishment : Applicability of Article 311 ... 450
3. Compulsory retirement, when no punishment ... 461
4. Rule as to age of retirement, classification in fixing age of retirement : Validity ... 465
5. Rules for retirement : Public interest : Validity ... 467
6. Fundamental Rule 56 (j) : Validity : Adverse entries in Confidential Report : Whether an opportunity to be heard to be given ... 472
7. Right of Government to continue the employee in service pending enquiry—Rule : Validity of ... 482
8. Rules fixing no minimum service period for retirement : Validity ... 483
9. Permission to retire : Government servant can change his mind subsequently ... 488
10. Retirement due to of age of superannuation ... 488
11. Compulsory retirement after enquiry : No reasons for agreeing with findings of Enquiry Tribunal : Effect ... 492
12. Temporary appointment : Continuance of person after superannuation without approval of Government, if proper ... 493
13. Dispute regarding date of birth ... 498
14. Order extending service unilaterally, if valid ... 503
CHAPTER XIII

Reduction and Reversion

1. Reduction in rank: Meaning and scope
   .....
2. Reversion of persons working in officiating capacities
   .....
3. Reduction in rank when a punishment
   .....
4. Reduction due to integration of States
   .....
4-a. Losing some places in seniority list, if amounts to reduction
   .....
4-b. Confirmation of officiating tahsildars—Pepsu State merged with Punjab—Cancellation of order of confirmation deconfirming concerned tahsildars, whether amounts to reduction in rank
   .....
4-c. Reversion of persons promoted earlier on ad hoc and out of seniority basis—Subsequent reversion on account of return of senior incumbents from deputation
   .....
5. Reduction of pension, if amounts to reduction in rank
   .....
6. Reversion from temporary or officiating post
   .....
6-a. Transfer from one post to another carrying the same scale of pay does not amount to reduction in rank
   .....
7. Reversion when punishment
   .....
8. Government’s order of repatriation to parent department, if reversion
   .....

CHAPTER XIV

Suspension

1. Suspension: Meaning and scope
   .....
2. Kinds of suspension
   .....
3. Power to suspend employee
   .....
4. Interim suspension can be passed even when no enquiry is pending
   .....
5. Appointing authority can suspend
   .....
6. Dismissal declared illegal, if suspension revived
   .....
7. Suspension of Public Servant—Suspension declared invalid by Court—if Fundamental Rule 54 applicable
   .....
8. “Disciplinary matters”, if includes suspension
   .....
9. No suspension by extending service unilaterally
   .....
10. Suspension: Subsistence allowance, quantum of
    .....
11. Government servant on leave preparatory to retirement, if can be suspended—Punjab Civil Services Rules, 1959
    .....
12. No order of suspension can be passed during post-retirement leave
    .....

Page
505
510
511
512
513
513
514
515
516
519
519
528
531
534
535
537
540
541
544
544
544
545
545
CONTENTS

13. Suspension order, when it takes effect .... 546
14. Suspension and Disciplinary Proceedings—Is intimation precedent to suspensions .... 552
15. Whether mode of suspension is different in different service .... 554

CHAPTER XV
Promotions

1. Promotion to selection posts—Legal Action--Principles .... 555
2. Promotion to selection posts—Rules not framed—Whether Government can issue administrative instructions on the point .... 557
3. Junior Scale Officer cannot claim right of officiating in a higher post merely because of his seniority .... 557
4. Selection for recruitment by competitive examination—Discrimination .... 558
5. Promotion once made, if liable to be upset on the revision of seniority—Whether order upsetting promotion violative of Article 16 .... 560
6. Deputation of public servant to another department—Promotion in parent department during period of deputation—Right of Public Servant deputation .... 561
7. Promotion on ad hoc basis or on the basis of provisional seniority list .... 562
8. Power of High Court to issue writs in the matter of promotion .... 562
9. Absence of statutory rules regulating promotions to selection grade posts—Government to issue administrative instructions .... 563
10. Departmental promotees and direct recruits .... 564
11. Directly recruited and promotee—If they from one class—No discrimination .... 565

CHAPTER XVI
Seniority and Merit

1. Considering seniority in one cadre for another cadre—Legality .... 565
2. Ignoring seniority for officiating in senior post .... 568
3. Rules prescribing different methods for determining seniority by direct recruits and promotees .... 568
4. Fixation of seniority on the basis of previous service—Rule 1 (f), (iii) and (iv) if violate Articles 14 and 16 .... 574
5. Seniority Rules framed in 1949—If seniority liable to be changed after the Constitution came into force .... 575
7. Selection post in the Indian Police Service—Promotion—Principles 576
8. Selection post—State Government is sole Judge for making appointment—High Court cannot interfere 577
9. Selection post—Punjab Medical Service Class I (Recruitment and Conditions of Service) Rules, if prohibit direct appointment to selection grade 577
10. Appointment of Directors' Grade made on basis of selection—Seniority once fixed cannot be arbitrarily disturbed 578
11. Seniority and Reversion—Rule 2 (e), Mysore Seniority Rules 583
12. Competitive examination—Governments' right of appointment of any candidate to any particular cadre irrespective of merit Articles 14 and 16, constitute if violated 584
13. Promotion in Grade based on seniority-cum-merit—Fixation of seniority, contrary to rules—Relief 586
14. Seniority after transfer Railway Fundamental Rules 586
15. How seniority is to be determined 586
16. Promotion after the commencement of the Indian Administrative Service (Regulation of Seniority) Rules, 1954 586
17. Seniority and merit—Rule regularising a particular appointment—Constitution of India, Article 309—Validity of 588
18. Whether a State Government has power to take a retrospective declaration about a post being equivalent to a senior post 589
19. Promotees promoted during a particular period—Who should be relatively regarded as being senior to them 591
20. How seniority is determined in the Electricity branch 592
# TABLE OF CASES

## A

A. C. Benjamin v. Union of India, 228  
A. I. B. E. Association v. N. I. Tribunal, 59  
A. K. Gopalan v. State of Madras, 301  
A. K. Kraipak and others v. Union of India and others, 269, 463, 464, 465, 470  
A. N. D'Silva v. Union of India, 105, 177, 193, 270, 275, 295  
A. P. Sharma v. Union of India, 138  
A. R. Percus v King, 306  
A. V. S. Narsimha Rao v. The State of Andhra Pradesh, 120  
Accountant-General, Bihar v. N. Bakshi, 133, 162, 411  
Agnani v. Badri Das, 3  
All-India Station Masters and Assistant Station Masters’ Association v. General Manager, Central Railway, 20, 29, 30, 168, 180, 182  
Amalendu Ghosh v. District Traffic Superintendent, North-Eastern Railway, Katihar, 198  
Anand Prakash Saksena v. Union of India, 154, 171, 525, 558  
Appar Apar Singh v. State of Punjab, 321, 526  
Avtar Singh v. Inspector-General of Police, Punjab, 391  
Bachan Singh v. Union of India, 564  
Bachhittar Singh v. State of Punjab, 62, 226, 296, 550  
Balakotaiah v. Union of India, 153, 164  
Balvantray Ratilal Patel v. State of Maharashtra, 536  
Basheshar Nath v. Income-tax Commissioner, 48, 53  
Behram Khurshid v. Bombay State, 48  
Bholanath J. Thaker v. State of Saurashtra, 452  
Bidi Supply Co. v. Union of India, 40  
Bidyabhusan Mahapatra v. State of Orissa, 46  
Bishan Sarup Gupta v. Union of India, 591  
Biswanath Khemka v. The King-Emperor, 103, 104  
Board of Education v. Rice, 251, 385  
Board of High School and Intermediate Education, U. P. v. Ghanshiam Das Gupta, 214  
Bombay State v. Nurul Latif Khan, 230, 233, 244  
Booj Chand v. Kurukshetra University, 309, 312  
Brooke Bond India (Private) Ltd. v Subba Raman, 240  
Budhan Chaudhary v. State of Bihar, 42, 465  

## B

B C. Dass v. State of Assam, 74  
B. P. Kapoor v. Union of India, 138  
B. P. Patel v. State of Maharashtra, 541, 545  
B. S. Vadera v. Union of India, 130, 184  

## G

C. A. Rajendra v. Union of India, 110  
C. K. Achutan v. State of Kerala, 45  
C. L. Subramaniam v. The Collector of Customs, Cochin, 238
C. Prasad v. Patna High Court and others, 368
C. Channabasaviah v. State of Mysore, 560
Calcutta's case, 418
Champaklal Chimanlal Shah v. The Union of India, 34, 228, 321, 329, 334, 349, 350, 442, 443
Chandra Mohan v. State of U. P., 155, 367, 370
Channabasappa Basappa Hapalli v. State of Mysore, 256
Charanjit Lal v. Union of India, 42
Chitra Ghosh (Kumari) v. Union of India, 115
Chitradev v. State of Mysore, 28
Col. J N. Sinha's Case, 481
Collector of Central Excise and Land Customs v. Sanawarmal Purohit, 283

D
D. R. Nim v. Union of India, 157, 175
D. S. Grewal v. State of Punjab, 130, 182, 260
Dalip Singh v. State of Punjab, 454, 486
Dalmia Cements v. Workmen, 134
Damodar Valley Corporation v. Provat Roy, 419
Dasaratha Ram Rao v. State of Andhra Pradesh, 15, 42
Debesh Chandra Das v. Union of India, 521
Delhi Cloth and General Mills Ltd. v. Kushal Bhan, 306
Delhi Transport Undertaking v. Balbir Saran Goel, 438, 446
Devadasan v. Union of India, 7
Devendra Pratap Narain Raj Sharma v. State of U. P., 303, 544
Dhingra's case, 336, 337, 506, 507, 511, 517, 518, 520, 528
Dhirendra Nath Das v. State of Orissa, 54, 152
Divisional Personnel Officer, Southern Railway v. S. Raghavendrachari, 321, 511
Dunlop Rubber Co. v. Workmen, 240
Dwarkachand's case, 304

E
Emden v. State of U. P., 7
Employees of Firestone Tyre and Rubber Co. (Private) Ltd. v. The Workmen, 188
Eshughavi Eleko v. Officer Administering Government of Nigeria, 49
Executive Committee of U. P. State Warehousing Corporation v. Chandra Kiran Tyagi, 283

F
Fugatrai Mahinchand Ajwani v. Union of India, 360

G
G. D. Kelkar v. Union of India, 115
G. S. Nagmati v. State of Mysore, 379
G. S. Ramaswamy v. Inspector-General of Police, Mysore State 515, 562, 584
Ganga Ram v. Union of India, 22, 568
Gazula-Dasaratha Ram Rao v. State of Andhra Pradesh, 355
General Manager, Eastern Railway v. Juwala Prasad Singh, 218
General Manager, North-Eastern Railway v. Sachindra Nath Sen, 143
General Manager, Southern Railway v. Rangachari 15, 16, 29, 32, 110, 113, 133, 168, 178
Ghansham Das Srivastava v. State of Madhya Pradesh, 265
Gian Singh v. State of Punjab, 157 162, 163, 317
Gold v. Stuart, 126
Gopal Krishna Potnay v. Union of India, 440
Gopi Kishore Prasad's case, 339
Government of India, Ministry of Home Affairs v. Tarak Nath Ghosh, 537, 553
Govind Dattaroy v. Chief Controller of Imports and Exports, 28
Govind Menon v. Union of India, 3
H

H. Lyngdoh v. Cromlyn Lyngdoh Judge, 493
Harkishan Singh (Dr.) v. State of Punjab, 578
Hartwell v. State of U. P., 133
Haryana State Electricity Board v. State of Punjab, 592
High Commissioner for India v. I. M. Lall, 89, 129, 189, 194, 198, 205, 227, 297, 396
High Court of Calcutta v. Amal Kumar Roy, 45, 103, 166, 168, 506, 509, 53, 557
Himansu Kumar Bose v. Jyoti Prakash Mitter, 366
Hukumchand Malhotra v. Union of India, 205, 278, 296

I

Imperial Tobacco Co. of India v. Its Workmen, 265

J

J. N. Saxena v. State of Madhya Pradesh, 136
Jagannath Prasad Sharma v. Union of India, 54
Jagdish Mitter v Union of India, 65, 329, 331, 459
Jagdish Prasad Saxena v. State of M. P., 200, 226, 258, 259
Jagdish Prasad Shastri v. State of U. P., 527
Jai Narain Misra (Dr.) v. State of Bihar, 169, 555, 576, 577
Jai Ram v. Union of India, 53, 456, 488, 494
Jaisinghani v. Union of India, 32, 115
Jang Bahadur Singh v. Bajijnath Tewari, 305
Jankinath Sarangi v. State of Orissa, 246
Jasbir Singh Bedi v. Union of India and others, 350
Jayanti Lal Amrit Lal Shodhan v. F. N. Rana, 73, 302, 303
Jeevaratnam v. State of Madras, 238

K

K. Gopaul v. Union of India, 426, 519
K. H. Pandis v. State of Maharashtra, 528
K.M. Bakshi v. Union of India, 166, 168, 180
K. S. Srinivasan v. Union of India, 325, 350, 352
K. V. Rajalakshmi Setty v. State of Mysore, 167
Kailash Chandra v. Union of India, 402, 455
Kameshwar Prasad v. State of Bihar, 55, 56, 57, 147, 148
Kanak Chandra’s case, 304
Kapur Singh v. Union of India, 44, 152, 188, 291, 390, 407
Kathi Ranning Rawat v. State of Saurashtra, 42
Kesoram Cotton Mills v. Gandhian, 241, 243
Khardah and Co. Ltd., (M/s.) v. The Workmen, 210, 243
Khem Chand v. Union of India, 59, 63, 76, 80, 139, 190, 194, 196, 198, 204, 205, 229, 233, 271, 276, 279, 290, 391, 397, 426, 541
Kishori Mohan Lal Bakshi v. Union of India, 28, 47
Krishna Chandra v. Central Tractor Organization, 15, 34, 182
Kshirode Behari Chakravarty v. Union of India, 2, 6
Kundan Sugar Mills v. Msrs. v. Ziya Uddin, 177
Kunjchari Lal v. Union of India, 21
L

Lachman Das v. State of Punjab, 466
Lachmandas Kewalram v. State of Bombay, 42
Lachmi and others v. Military Secretary to the Government of Bihar, 419
Lalit Mohan Deb v. Union of India, 134, 563, 564
Lazarus Estates Ltd. v. Beasley, 223
Lekhraj v. Deputy Custodian, Bombay, 310
Lekhraj Khurana v. Union of India, 358
Lekhraj Sathramdas v. N. M. Shah, 310
Life Insurance Corporation v. S. K. Mukerjee, 163, 183, 358
Local Government Board v. Arlidge, 252

M

M. Gopalkrishna Naidu v. State of M. P., 299
M. Narsimhachar v. State of Mysore, 498
M. Ramappa v. Government of A. P., 236
M. Verghese v. Union of India and others, 418
M. R. Balaji v. State of Mysore, 38, 39, 111, 117
Madan Gopal v. State of Punjab, 327, 330, 331
Madhav Laxman Vaikunthe v. State of Mysore, 346, 508, 520
Madhya Pradesh Industries v. Union of India, 216
Mafatlal Beror v. Divisional Controller, 416
Mahesh Prasad v. State of U. P., 319
Makeshwar Nath Srivastava v. State of Bihar and others, 393
Management of Hotel Imperial, New Delhi v. Hotel Workers' Union, 408, 532, 535
Management of Vishun Sugar Mills v. Workmen, 167
Manak Lal v. Dr. Prem Chand, 267
Matajoly v. Bhari, 7
Mathura Das Kangi v. L. D. Tribunal, 166
Menon v. Union of India, 163
Mervyn Contindo v. Collector of Customs, Bombay, 22, 27, 29, 34, 565, 566, 574
Mohan Singh Chowdhari's case, 304
Mohd. Bhakar v. Y. Krishna Reddy, 588
Mohd. Ibrahim v. The State of Andhra Pradesh, 225
Mohd. Kutubuddin v. State of Andhra Pradesh, 68
Mohd. Usman v. State of Andhra Pradesh, 162
Montreal Street Rly. Co. v. Mor C. M., 104
Moti Das v. S. P. Sahai, 41
Moti Ram Deka v. General Manager, N. E. F. Railways, Maligaon, Pandu, 72, 96, 98 131, 132, 133, 13 i, 140, 143, 144, 158, 426, 430, 433, 483, 486

N

N. Kalindi v. Messrs. Tata Locomotive and Engineering Co. Ltd., 238, 240
N. R. Co-operative Societies v. Industrial Tribunal, 265
N. V. Putta v. State of Mysore, 468
Nageshwar Rao v. A. P. S. R. T. Corporation, 266
Nageshwar Rao v. State of A. P., 266
Narasimhachar v. State of Mysore, 492, 515
Narayan Misra v. State of Orissa, 207, 294
Naresh Chandra Saha v. Union Territory of Tripura, 518
New Prakash Transport Co., Ltd. v. New Suwarna Transport Co. Ltd., 6, 208, 209, 211, 250, 252
Nobiria Ram v. Director General of Health Services, Government of India, 566
<table>
<thead>
<tr>
<th>Table of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nohiria Ram v. Union of India, 176</td>
</tr>
<tr>
<td>Norkers v. Donncaster Amalgamated Collieries, 513</td>
</tr>
<tr>
<td>North-West Frontier Province v. Suraj Narain Anand, 90, 124</td>
</tr>
<tr>
<td>Nripendranath Bagchi v. Chief Secretary, Government of West Bengal, 263</td>
</tr>
<tr>
<td>O</td>
</tr>
<tr>
<td>O. K. Ghosh v. E. X. Joseph, 57, 147</td>
</tr>
<tr>
<td>Om Prakash Gupta v. State of U. P., 544</td>
</tr>
<tr>
<td>P</td>
</tr>
<tr>
<td>P. Balakotaiah v. The Union of India, 124, 425, 441, 449, 452, 458, 461, 486</td>
</tr>
<tr>
<td>P. B. Roy v. Union of India, 157</td>
</tr>
<tr>
<td>P. C. Wadhwa v. Union of India, 517, 558</td>
</tr>
<tr>
<td>P. K. Bose v. Chief Justice, 133</td>
</tr>
<tr>
<td>P. R. Nayak v. Union of India, 553, 554</td>
</tr>
<tr>
<td>Padam Singh Fina v. Union of India, 176</td>
</tr>
<tr>
<td>Pandurangarao v. Andhra Pradesh Public Service Commission, 40, 108</td>
</tr>
<tr>
<td>Paresh Chand Nindi v. Controller of Stores, North-Eastern Frontier, 586</td>
</tr>
<tr>
<td>Partap Singh v. State of Punjab, 223</td>
</tr>
<tr>
<td>Peninsular and Oriental Steam Navigation Co., 10</td>
</tr>
<tr>
<td>Pett v. Greyhound Racing Association Ltd., 239</td>
</tr>
<tr>
<td>Phulbari Tea Estate v. Its Workmen, 209, 253</td>
</tr>
<tr>
<td>Pradyat Kumar Bose v. The Hon'ble The Chief Justice of Calcutta Hivh Court, 106, 123, 162, 163, 234, 310, 384, 385</td>
</tr>
<tr>
<td>Praga Tools Corporation v. C. V. Imanual and others, 419</td>
</tr>
<tr>
<td>Prem Nath v. State of Rajasthan, 155</td>
</tr>
<tr>
<td>Province of Bombay v. Kushasdas Advani, 6, 215, 269</td>
</tr>
<tr>
<td>Province of Punjab v. Tara Chand, 91</td>
</tr>
<tr>
<td>Q</td>
</tr>
<tr>
<td>Quasim Rizvi v. State of Hyderabad, 42, 387</td>
</tr>
<tr>
<td>R</td>
</tr>
<tr>
<td>R. v. Post-master General, 411</td>
</tr>
<tr>
<td>R. N. Nanjundappa v. T. Thino-niah, 588</td>
</tr>
<tr>
<td>R. Jeevaratnam v. State of Madras, 449</td>
</tr>
<tr>
<td>R. Venkata Rao v. Secretary of State, 360, 431</td>
</tr>
<tr>
<td>R. B. Dewan v. Industrial Tribunal, 182</td>
</tr>
<tr>
<td>R. L. Butail v. Union of India, 472, 555, 556</td>
</tr>
<tr>
<td>R. P. Kapoor v. Union of India, 305, 408, 533, 534, 535, 544</td>
</tr>
<tr>
<td>R. T. Kangarchi v. Secretary of State, 129</td>
</tr>
<tr>
<td>Rabindranath Bose v. Union of India, 576</td>
</tr>
<tr>
<td>Radheshyam v. State of M. P., 213</td>
</tr>
<tr>
<td>Raghavendra Rao v. Deputy Commissioner, South Kanara, 587, 588</td>
</tr>
<tr>
<td>Railway Board v. A. Pitchirmann, 398</td>
</tr>
<tr>
<td>Railway Board v. Niranjan Singh, 272, 294</td>
</tr>
<tr>
<td>Raj Kumar v. Union of India, 69, 131, 163</td>
</tr>
<tr>
<td>Raja Harish Chandra Rai Singh v. The Deputy Land Acquisition Officer, 549</td>
</tr>
</tbody>
</table>
S

S. A. Venkataraman v. Union of India, 188, 304, 306
S. Govinda Menon v. Union of India, 540
S. K. Ghosh v. Union of India, 560, 578
S. K. Mukherjee v. Chemicals and Allied Products Export Promotion Council, 414
S. G. Jaisinghani v. Union of India, 575
S. Kapur Singh v. Union of India, 262
S. Pratap Singh v. State of Punjab, 178, 482, 545, 548, 550
S Sukbans Singh v. State of Punjab, 222, 342
S. L. Agarwal, (Dr.) v. General Manager, Hindustan Steel Ltd. 416,
S. M. Pandit v. State of Gujarat, 565
S. P. Bhel v. Union of India, 360
S. R. Tewari v. District Board, Agra, 309
S. S. Srivastava v. General Manager, Railway, Gorakhpur, 170
Sajjan Singh v. State of Rajasthan, 184
Sankatanarayana v. State of Mysore, 108
Sant Ram Sharma v. State of Rajasthan, 35, 134, 169, 556, 557,
564, 576
Sardari Lal v. Union of India, 70, 300, 302, 448
Satish Chandra Anand v. Union of India, 60, 64, 133, 154, 187, 337,
426, 430
Secretary of State for India, v. I. M. Lall, 77
Secretary of State for India-in-Council v. A Cockerell, 11
Secretary of State for India-in-Council v. Shree Gobinda Chaudhry, 11
Sham Sundar v. Union of India, 20, 182
Shamji v. State of M. P., 64
Shashi Coudhary Dr. (Mrs.) v. State of Jammu and Kashmir, 448
Shenton v. Smith, 126
Shitala Sahay v. N. E. Rly., Gorakhpur, 506
Shivabhajan Durga Prasad v. Secretary of State for India, 10
Shivacharan v. State of Mysore, 467
Shyam Behari Tewari v. Union of India, 142
Shyam Lal v. State of U. P., 154,
162, 164, 187, 337, 430, 431, 451,
452, 454, 461
Sita Ram v. State, 311
Somnath Sahu v. State of Orissa, 298, 436
<table>
<thead>
<tr>
<th>State of Madhya Pradesh v. Syed Qamer Ali</th>
<th>395</th>
</tr>
</thead>
<tbody>
<tr>
<td>State of Madras v. G. Sundaram</td>
<td>218, 387, 393</td>
</tr>
<tr>
<td>State of Madras v. A. R Srinivasan</td>
<td>277, 493</td>
</tr>
<tr>
<td>State of Madras v. K. M. Rajagopalan</td>
<td>93, 407, 513</td>
</tr>
<tr>
<td>State of Maharashtra v. Bai Shankar Avalram Joshi and others, 288</td>
<td></td>
</tr>
<tr>
<td>State of Mysore v. K. Mauche Gowda</td>
<td>281, 291</td>
</tr>
<tr>
<td>State of Mysore v. P. Narasinga Rao</td>
<td>108</td>
</tr>
<tr>
<td>State of Mysore v. K. N. Chandrashekhar</td>
<td>559</td>
</tr>
<tr>
<td>State of Mysore v. M. H. Bellary</td>
<td>163, 170, 176, 361, 561</td>
</tr>
<tr>
<td>State of Mysore v. P.N. Najundiah</td>
<td>170, 562, 563</td>
</tr>
<tr>
<td>State of Mysore v. Padmanobhattacharya</td>
<td>131, 132</td>
</tr>
<tr>
<td>State of Mysore v. S. R. Jayaram</td>
<td>36, 121, 584, 585</td>
</tr>
<tr>
<td>State of Mysore v. Shivabasappa Shivappa, Makapur, 241, 242, 243, 244, 251, 252, 253</td>
<td></td>
</tr>
<tr>
<td>State of Mysore v. Syed Mahmood</td>
<td>563</td>
</tr>
<tr>
<td>State of Nagaland G. Vasanthath, 436</td>
<td></td>
</tr>
<tr>
<td>State of Orissa v. B. K. Mahapatra</td>
<td>171</td>
</tr>
<tr>
<td>State of Orissa v. Bidyabhusan Mahapatra, 46, 152, 196, 295, 296, 297</td>
<td></td>
</tr>
<tr>
<td>State of Orissa v. Binapani Dei (Dr.)</td>
<td>468</td>
</tr>
<tr>
<td>State of Orissa v. Dhirendra Nath Das</td>
<td>44</td>
</tr>
<tr>
<td>State of Orissa v. Dr. (Miss) Binapani Dei, 183, 215, 313, 464, 498</td>
<td></td>
</tr>
<tr>
<td>State of Orissa v. Durga Charan</td>
<td>170</td>
</tr>
<tr>
<td>State of Orissa v. Ram Narayan Das</td>
<td>331, 336, 340</td>
</tr>
<tr>
<td>State of Orissa v. Sudhansu Sekhar Misra and others, 373, 376</td>
<td></td>
</tr>
<tr>
<td>State of Punjab v. Amar Singh Harika</td>
<td>289, 296, 448, 551, 552</td>
</tr>
</tbody>
</table>
State of Punjab v. Diwan Chunilal, 201
State of Punjab v. Dharam Singh, 344
State of Punjab v. Jagdish Singh, 166, 514
State of Punjab v. Joginder Singh, 47, 170
State of Punjab v. Khemi Ram, 546
State of Punjab v. Shri Kishan Das, 506
State of Punjab v. Sodhi Sukhdev Singh, 62, 296
State of Punjab v. Sukhraj Bahadur, 69, 330, 333, 341, 519
State of Rajasthan v. Mst. Vidhawati, 9, 12, 13
State of Rajasthan v. Ram Saran, 393
State of Rajasthan v. Shri Fateh Chand, 438, 446
State of Rajasthan v. Sripat Jain, 456, 458
State of Tripura v. Province of East Bengal, 7
State of Uttar Pradesh v. A. N. Singh, 358
State of Uttar Pradesh v. C. S. Sharma, 199, 235, 245, 247, 269
State of Uttar Pradesh v. Abdul Khaliq, 68, 329, 443
State of Uttar Pradesh v. Ajodhya Prasad, 361
State of Uttar Pradesh v. Akbar Ali, 344
State of Uttar Pradesh v. Babu Ram Upadhyay, 97, 101, 125, 142, 162, 163, 188, 389
State of Uttar Pradesh v. Harish Chandra Singh, 293, 319, 396
State of Uttar Pradesh v. Madan Mohan, 459
State of Uttar Pradesh v. Manbodhan Lal Srivastava, 103, 105, 294
State of Uttar Pradesh v. Mohd. Nooh, 211
State of Uttar Pradesh v. Om Prakash Gupta, 189, 202, 234
State of Uttar Pradesh v. Ram Nareshimal, 315
State of West Bengal v. Anwar Ali Sarkar, 42
Subodh Ranjan Ghosh v. Sindhri Fertilizers and Chemicals Ltd., 419
Sukhbans v. State of U. P., 162
Sukhbans Singh v. State of Punjab, 526, 528
Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia, 58, 148
Suresh Chandra Chakraverty v. State of West Bengal, 208, 230
Suresh Koshy George v. University of Kerala, 188, 271
Swadeshi Cotton Mills v. State Industrial Tribunal, U. P., 277

T
T. C. Jajee v. U. Jormanik Seim, 134, 135, 408, 532, 535
T. C. M. Pillai (Dr.) v. The Indian Institute of Technology, 335
T. Deradasan v. Union of India, 113
T. G. Shivararana Singh v. The State of Mysore, 54
T. S. Makand v. State of Gujarat, 484
Tamilin v. Hennaford, 419
Tarak Nath Ghosh v. State of Bihar, 237
Tata Oil Mills Co. Ltd. v. Its Workmen, 245, 306
Terrel v. Secretary of State for the Colonies, 126, 314
Thakur v. State of Saurashtra, 484
Tookaram Gaeker v. S. N. Shukla, 306
Triloki Nath v. Union of India, 22
Tribhuvan Nath (Dr.) v. State, 232

U
U. R. Bhat v. Union of India, 5, 103, 105, 188, 198, 244, 228, 64, 291, 296
TABLE OF CASES

U. S. Menon v. State of Rajasthan, 47, 152, 156, 166, 182
Uma Prasad v. Secretary of State, 11
Union of India v. K. Rajappa Menon, 277, 282
Union of India v. H. C. Goel, 177, 193, 221, 270, 274, 275, 290, 298
Union of India v. P. K. More, 16
Union of India v. R. S. Dhabha, 70, 321, 345, 347, 511
Union of India v. T. R. Verma, 5, 198, 208, 209, 217, 232, 244, 245, 247, 248, 252
Union of India v. Col. J. N. Sinha, 462, 470, 480
Union of India v. Jeewan Ram, 397
Union of India v. Jyoti Prakash Mittar, 364
Union of India v. Prem Prakash Midha, 355, 445
Union of India v. Vasant Jayaram Karnik, 568, 586
Union Territory of Tripura v. Gopal Chandra Datt Choudhary, 210, 327, 443
V
V. K. Javali v. State of Mysore, 275
V. P. Govindoroniya v. State of M. P., 307, 534, 537
V. S. Hariharan, In re: 414
V. S. Menon v. Union of India, 458
Vadera v. Union of India, 163
Vairavelu v. Special Deputy Collector, 466
Venkata Rao v. The Secretary of State, 83, 361
Venkataraman v. Union of India, 164
Vishwanathan v. Abdul Wajid, 235, 269
CHAPTER I

INTRODUCTORY

SYNOPSIS

1. Employment: Meaning and scope.
2. Written and unwritten Code of conduct of Government servants.
3. What conduct can be treated as misconduct!
4. When a departmental action is justifiable.
5. Natural justice and domestic tribunal.
6. What is a quasi-judicial act?
7. Actionable wrong, what is?
8. Classification of servants.
10. Vicarious liability of State for wrongful acts of its servants.

1. Employment: Meaning and scope.

The concept of employment involves three ingredients: (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs, i.e., one who engages; and the employee is he who works for another for hire. The employment is the contract of service between the employer and the employee whereby the employee agrees to serve the employer subject to his control and supervision.


The Code of conduct for Government servants is both written and unwritten. The written code of conduct is not exhaustive and every employee has to be obedient, faithful, careful, honest, punctual and reasonably competent to discharge his duties. He is bound to conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force.

There are many sets of rules relating to the conduct of the Government servants. The rules have been framed by the Central Government as well as by State Governments. There are rules also for various classes of employees. Particular attention is invited to the Central Government Services (Conduct) Rules, 1964. An interpretation of these rules would reveal that it would not be possible to frame rules which may be said to be exhaustive with relation to the conduct of the Government servants. A Government servant is expected to do nothing which is unbecoming of a Government servant. It is, therefore, the exigencies of circumstances that can alone decide as to what is 'becoming' or 'unbecoming' for a Government servant to do or not to do.

The rules of conduct deal with the behaviour of a public servant not only in his official life but also in his private life. The rule is in a sense elliptic, in that it does not lay down a proper and a becoming
standard of behaviour for public servants although it requires them to
avoid impropriety or unbecomingness in behaviour. Behaviour runs
through the general course of life, in conduct, in department, in man-
ners, in dress, in speech and also in association. To leave the standard
of behaviour, pattern of public servants to the subjective satisfaction of
the disciplinary authority has its dangers. A public servant, who is
unconventional in his conduct and department, unconstrained in his
manners, original in his dress, free styled in his speech and liberal in
his association, may shock the conscience of a disciplinary authority, if
that authority be either a conservative or a conventionalist.

As already stated above the Government Servants Conduct Rules
are not exhaustive. In addition to the Code of conduct specified in
these rules, there exists what is known as an "unwritten code of conduct" which must be observed by every Government servant. Such an un-
written Code of conduct has been partially incorporated in Rule 3 of the Uttar Pradesh Government Servants Conduct Rules. Clause (2) of
this rule requires every Government servant to conduct himself not
only in accordance with any specific orders of Government regulating
behaviour and conduct which may be enforced but also in accordance
with any implied orders that is to say, he must also honour the implica-
tions of the various orders of the Government taken as a whole. There
is no doubt that this rule refers to the unwritten code of conduct and
requires Government servants to behave like decent citizens in their
private lives. But Rule 3 does not exhaust the contents of the unwritten
- code.

Government has the right to expect that every Government servant
will observe certain standards of decency and morality in his private
life. For example, the State has the power to demand that no Govern-
ment servant shall re-marry during the life-time of his first wife. It
may require its officials not to drink alcoholic liquors at social func-
tions. It may lay down rules containing injunctions against lending
and borrowing and restrictions on the acquisition and disposal of any
immovable property. It may require the Government servant so to
manage his private affairs as to avoid habitual indebtedness or insol-
veny. If Government were to permit its officials to commit any outrage
in their private lives provided it falls short of a criminal offence, the
result may very well be a catastrophic fall in the normal prestige of
the administration.

It is the duty of the servant to be loyal, diligent, faithful and
obedient. The liability to respect and the recognition of a subordinate
role on the part of an employee also flows from the nature of contract.
Thus disobedience, insubordination and acts subversive of discipline
are the recognised misconducts because these acts are contrary to the
obligations imposed on an employee but the nature of contract itself
and can freely be treated as implied. The foremost implied obligation
of a servant is obedience, fidelity and faithfulness are other implied
conditions of employment. It would be open to the employer
to consider reasonably what conduct can be properly treated
as misconduct. It would be difficult to lay down any general
rule in respect of this problem. Acts which are subversive of discipline
amongst the employees would constitute misconduct; rowdy conduct
in the course of working hours would constitute misconduct;
misbehaviour committed even outside working hours but within the precincts of the concern and directed towards the employees of the said concern may, in some cases, constitute misconduct; if the conduct proved against the employee is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case. It may, however, be relevant to observe that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees' conduct in relation to strangers not employed in his concern by the use of coercive process of disciplinary jurisdiction—Agnani v. Badri Das, 1963 (1) LLJ 684 (SC).

3. What conduct can be treated as misconduct?

It would be open to the employer to consider reasonably what conduct can be properly treated as misconduct. It would be difficult to lay down any general rule in respect of this problem. Acts which are subversive of discipline amongst the employees would constitute misconduct: rowdy conduct in the course of working hours would constitute misconduct; misbehaviour committed even outside working hours but within the precincts of the concern and directed towards the employee of the said concern may, in some cases, constitute misconduct; if the conduct proved against the employee is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case. It may, however, be relevant to observe that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees' conduct in relation to strangers not employed in his concern by the use of the coercive process of disciplinary jurisdiction—Agnani v. Badri Das, 1963 (1) LLJ 684 (SC).

The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. What circumstances will put a servant into the position of not being able to perform, in a due manner, his duties, or of not being able to perform his duty in a faithful manner, it is impossible to enumerate. Innumerable circumstances have actually occurred which fall within that proposition, and innumerable other circumstances which never had yet occurred will occur, which also will fall within the proposition. But if a servant is guilty of such a crime outside his service as to make it unsafe for master to keep him in his employ, the servant may be dismissed by his master, and if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted, the master may dismiss him. If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct need not be misconduct in the carrying of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master—Govind Menon v. Union of India, AIR 1967 SC 1274.
4. When a departmental action is justiciable?

There is no warrant for the view that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Art. 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and if the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art. 226 of the Constitution—State of Andhra Pradesh v. Sree Rama Rao, AIR 1963 SC 1723.

In Pratap Singh v. State of Punjab, AIR 1964 SC 72, the Court observed as under:

"...the Court is not an appellate forum where the correctness of an order of Government could be canvassed and, indeed, it has no jurisdiction to substitute its own views as to the necessity or desirability of initiating disciplinary proceedings, for the entirety of the power, jurisdiction and discretion in that regard is vested by law in the Government. The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into account circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated mala fide for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event the fact that the authority concerned denies
the charge of *mala fides* or asserts the absence of oblique motives or of its having taken into consideration improper or irrelevant matter does not preclude the Court from enquiring into the truth of the allegations made against the authority and affording appropriate relief to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out........

"The Constitution enshrines and guarantees the rule of law and Art. 226 is designed to ensure that each and every authority in the State, including the Government, acts *bona fide* and within the limits of its power and we consider that when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual."

5. Natural justice and domestic tribunal.

Without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them—*See AIR 1961 SC 1623 and 1958 SCJ 142.*

In *Union of India v. T. R. Verma*, AIR 1957 SC 882, the Supreme Court laid down the requirements of natural justice as follows:

"Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act, but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of law.

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witness examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

The Enquiry Officer is not bound by the strict rules of the law of evidence and when the appellant declined to take part in the proceedings and failed to remain present, it was open to the Enquiry Officer to proceed on the materials which were placed before him.—*U. R. Bhatt v. Union of India*, AIR 1962 SC 1344.
In order to find out if there has been a failure of natural justice the relevant provisions of the statute under which action is taken shall have to be reviewed in order to find out the obligations imposed—New Prakash Transport Co. Ltd. v. The New Swarna Transport Co. Ltd., AIR 1957 SC 332.

As it has been pointed out by the Supreme Court in New Prakash Transport Co. Ltd. v. New Swarna Transport Co. Ltd., the rules of natural justice vary with varying constitution of statutory bodies, and the rules prescribed by the Legislature under which they have to function, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion but in the light of the provisions of the relevant Act.

6. What is a quasi judicial act?

In Province of Bombay v. Khushaldas, AIR 1950 SC 222, Kania C. J. defined Judicial act as follows:

"When the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi judicial. Prescribed forms of procedure are not necessary to make an enquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed."

Fazle Ali, J. expressed himself as under:

"An order will be a judicial or quasi judicial order if it is made by a Court or a Judge, or by some person or authority, who is legally bound or authorised to act as if he were a Court or a Judge. To act as a Court or a Judge necessarily involves giving an opportunity to the party who is to be affected by an order to make a representation, making some kind of enquiry, hearing and weighing evidence, if any, and considering all the facts and circumstances bearing on the merits of a controversy, before any decision affecting the rights of one or more parties is arrived at. The procedure to be followed may not be as elaborate as in Court of law, and it may be very summary, but it must contain the essential elements of judicial procedure as indicated by me."

Das, J. in the same case observed as follows:

"(1) If a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the Statute, which claim is opposed by another party and to determine the respective rights of the contending parties who are opposed to each other, there is a *lis* and *prima facie* and in the absence of anything in the Statute to the contrary, it is the duty of the authority to act judicially and the decision of the authority is a *quasi* judicial act; and

(2) that if a statutory authority has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority and the contest is..."
between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi judicial act, provided the authority is required by the Statute to act judicially."

7. Actionable wrong, what is?

In the case of State of Tripura v. Province of East Bengal, AIR 1951 SC 23, Mukherji, J. observed at page 45:

"In my opinion there can be an actionable wrong, which does not arise out of breach of contract, and at the same time does not answer to the description of "Tort" as understood in English Law.... ...The word 'wrong' in ordinary legal language means and signifies 'deprivation of right'. An act is 'wrongful' if it infringes the legal right of another. The word 'actionable' means nothing else than that it affords grounds for action in law."

8. Classification of servants.


The liability of master for torts committed by public servants in England is given by Sol mond as under:

"At Common Law the procedure by way of petition of right generally provided a remedy against the Crown in cases of breach of contract and possibly also enabled real or personal property to be recovered. But it was impossible to sue the Crown in tort, either for wrongs which it had expressly authorised or for wrongs committed by its servants in the course of their employment. Nor was it possible to sue the head of the department or other official superior of the wrong-doer, for all the servants of the Crown are fellow-servants and do not stand to each other in the relationship of master and servant. The individual wrong-doer was, of course, liable and could not plead the commands of the King or State necessity as a defence. These rules became highly unsatisfactory when the Crown became one of the largest employers of labour and occupier of property in the country. Various devices were available to ensure that substantial justice was done. Thus the Treasury might, as a matter of grace, undertake to satisfy judgment awarded against the individual Crown servant who had committed a tort in the course of his employment. These make-shifts became unnecessary when the Crown Proceedings Act, 1947 was passed." (Vide Sol mond on the Law of Torts, 12th Edition, 1957, p. 57.)

Under Article 300 of the Constitution of our country the Government of India and the Government of a State may sue or be sued in the
respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued, if the Constitution has not been enacted. Therefore, the law which prevailed before 26th January, 1950, continues, but subject to any law that may be made by the Parliament or a State Legislature by virtue of the powers conferred by the Constitution. The law before the said date was regulated by the provisions of the Government of India Acts beginning from the Act of 1858. These Acts made the Secretary of State for India in Council, and, after the 1st April 1937, the Government of India and of the provinces of British India, liable in the circumstances in which the East India Company could have been sued before 1858.

From the long catena of cases dealing with this question the following principles may be stated:

(1) The Government is liable for the tort of its servants in the course of transaction which any private person can engage in;

(2) The Government cannot be sued in respect of acts done by its servants in the exercise of its 'sovereign powers' or 'sovereign acts', e.g., the maintenance of a military road, or a national highway, or a hospital out of State revenue, as they are all acts done in the discharge of sovereign or Government functions. In the case of 'Acts of State', i.e., acts done by a Government servant under the authority of the Government with respect to a non-resident foreigner, and which are not justiciable in the ordinary Courts of law also, the Government would not be liable, e.g., making war or treaty, annexation of property belonging to an enemy country or national. That is not because the act is one committed by the public servant in the exercise of sovereign powers, but because it is in respect of a non-resident foreigner who cannot invoke the jurisdiction of the courts of this country, and for an act which is not justiciable in the municipal courts.

(3) The Government is liable for injury to any of its subjects from any act done by itself or by its servants, if such act is done under the colour of Municipal law, i.e., when it purports to be in the exercise of power conferred by statute, but is really illegal.

(4) The Government is not liable for a wrong done by the servants in the course of official duties, unless the wrong was, expressly authorised or later ratified by it.

As regards liability in tort of the State for the acts of its servants, the State is as much liable for tort in respect of a tortious act committed by its servants within the scope of his employment but wholly dissociated from the exercise of sovereign powers, as any other employer. It is well-settled that a distinction must be made between acts done by the Government in pursuance of ventures which a private individual might undertake equally well, and acts done in exercise of Government powers which could not be lawfully exercised save by the sovereign authority or persons to whom the sovereign authority might delegate those powers. Acts of the former class are mercantile operations or operations of like
kind in which the East India Company actually engaged itself before and even after it had acquired sovereignty. Acts of the second class fall under two categories. One category consists of the acts of State properly so called, such as making a treaty, commandeering private property for war purposes, or quelling civil disturbances by force, and the immunity of Government is absolute for acts in this category. The other category consists of those acts which are done under the sanction of some municipal law or statute and in exercise of powers thereby conferred. This class can be sub-divided further into two groups; (i) those consisting in detention by the Government of lands, goods or chattels belonging to the subject; and (ii) those done by officers of the Government in the discharge of their official duties. With regard to acts of group (i) an action would lie in the Courts in India, and it would seem that even in England a petition of right would lie. With regard to acts of group (ii) however, no action would lie except in cases where it can be proved that the impugned act had been expressly authorised by the Government or that the Government had profited by its performance. The reason why no right of action lies except on proof of special authorisation by the Government is that, in the absence of such proof, the act is considered to have been done in exercise of the power or the discretion vested in the officer by the relevant law and not in pursuant of any implied authority derived from the Government.—See State of Rajasthan v. Mst. Vidyawati and another, AIR 1962 SC 933 : 1962 Supp. (2) SCR 989.

Thus there are only three exceptions to the rule that Government is not liable in tort for its own act or the acts of its servants: (1) where the act complained of is of a private or commercial undertaking; (2) unlawful detention of land, goods etc. belonging to the subject under any municipal law; and (3) where the impugned act has been specifically authorised by the State or that the State has been profited by its performance.


For applying the rule of vicarious liability in relation to the State, a distinction must be made between acts of State or acts which are done by the State in exercise of what are known as it police powers, and other acts which do not fall within that category. In regard to acts of State properly so called such as making a treaty, commandeering private property for war purposes of quelling internal disturbances by force, it may be conceded that any wrong done to the person of property of a private individual does not normally afford a cause of action for compensation against the State. But in regard to another class of governmental acts which, for instances, involve detention by the State of land, goods or chattels belonging to the private individual, as also acts of mercantile or commercial nature, undertaken as measures of social welfare or social control, the State cannot claim absolute immunity from the application of the principle of vicarious liability of the master for the wrongful act of its servants.—See State of Rajasthan v. Mst. Vidyawati and another, AIR 1962 SC 933 : 1962 Supp. (2) SCR 989.

There is a great and clear distinction between acts done in the exercise of what are usually termed sovereign powers, and acts done in
the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them. Where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by sovereign, or private individual delegated by a sovereign to exercise them, no action will lie.

And, naturally it follows that where an act is done, or a contract is entered into, in the exercise of powers which cannot be called sovereign powers, action will lie. That, in brief, is the decision of the Supreme Court in the case of the Peninsular and Oriental Steam Navigation Co., 5 Bom. (HCR) App. A-1.

Thus, it is clear that this case recognises a material distinction between acts committed by the servants employed by the State where such acts are referable to the exercise of sovereign powers delegated to public servants, and acts committed by public servants which are not referable to the delegation of any sovereign powers. If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is; was the tortious act committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power an action for damages would lie. The act of the public servant committed by him during the course of his employment is, in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose. This distinction which is clear and precise in law, is sometimes not borne in mind in discussing questions of the State's liability arising from tortious acts committed by public servant.

In Shivabhajan Durga Prasad v. Secretary of State for India, ILR 28 Bom 314, this point arose for the decision of the Bombay High Court. In that case a suit had been instituted against the Secretary of State in Council to recover damages on account of the negligence of a Chief Constable with respect to goods seized; and the plaintiff's claim was resisted by the Secretary of State in Council on the ground that no action lay. The High Court upheld the plea raised by the defence on the ground that the Chief Constable seized the goods not in obedience to an order of the Executive Government, but in performance of a statutory power vested in him by the Legislature. The principle on which this decision was based was stated to be that where the duty to be performed is imposed by law and not by the will of the party employing the agent, the employer is not liable for the wrong done by the agent in such employment. In discussing this point, Jenkins, C. J., referred to the decision in the case of Peninsular and Oriental Steam Navigation Co., 5 Bom. (HCR) App. I-A, and observed that though he entertained some doubt about its correctness, the said view had stood so long unchallenged that he thought it necessary to accept it as an authority binding on the court. It is on this solitary occasion that a whisper of dissent was raised by Chief Justice Jenki's but ultimately, the Judge submitted to the authority of the said decision.
In The Secretary of State for India v. A. Cockerait, AIR 1915 Mad 993 : ILR 39 Mad 351, a claim for damages against the Secretary of State arose in respect of injuries sustained by the plaintiff in a carriage accident which was alleged to have been due to the negligent stacking of gravel on a road which was stated in the plaint to be a military road maintained by the Public Works Department of the Government. The Madras High Court held that the plaintiff had in law no cause of action against the Secretary of State for India in Council in respect of acts done by the East India Company in the exercise of its sovereign powers. The conclusion was based on the finding that the provision and maintenance of roads, especially a military road, is one of the functions of Government carried on in the exercise of its sovereign powers and is not an undertaking which might have been carried on by private persons.

In The Secretary of State for India v. Shree Gobinda Chaudhry, AIR 1932 Cal. 834 : ILR 39 Cal. 1289, it was held by the Calcutta High Court that a suit for damages does not lie against the Secretary of State for India in Council for misfeasance, wrongs, negligence or omissions of duties of managers appointed by the Court of Wards, because the acts giving rise to the claim were done by officers of Government in the course of exercise of powers which cannot be lawfully exercised save by the sovereign power. It is in this connection that Rankin, C. J., enunciated the principle that no action in tort lies against the Secretary of State for India in Council upon the 'respondent superior'. The C. J., however, recognised that a suit may lie against the Secretary of State for India in Council for torts committed by the Government in connection with a private undertaking or an undertaking not in exercise of sovereign power. The same view has been taken by the Allahabad High Court in Mohammad Murad Ibrahim Khan v. Government of U. P., AIR 1956 All. 75 : ILR (1957) 1 All. 94.

In Uma Prasad v. Secretary of State, AIR 1937 Lah. 972 : ILR (1937) 8 Lah 380, certain property which had been stolen from the plaintiff was recovered by the police and was thereafter kept in the Malkhana under orders of the Magistrate during the trial of the thieves. It appears that the receiver, H. A., the man in charge of the Malkhana, absconded with it. That led to a suit by the plaintiff for the recovery of the property, or in the alternative for its price. The Lahore High Court held that the liability in the case having clearly arisen under the provisions of the Criminal Procedure Code, the defence plea that the act was an act of State could not succeed. Even so the Court came to the conclusion that the Secretary of State could be held liable only under circumstances in which a private employer can be rendered liable. The Court then examined the question as to whether in circumstances like those which led to the claim for damages in the case before it a private employer could have been made liable and this question was answered in the negative on the ground that no liability attached to the Secretary of State on account of the criminal act of the man in charge of the Malkhana; the said act was a felonious act unauthorised by his employer. Some of the reasons given by the High Court in support of its conclusion may be open to doubt, but in substance, the decision can be justified on the basis that the act which gave rise to the claim for damages had been done by a public servant who was authorised by a statute to exercise his powers, and the discharge of the said function can be referred to the delegation of
the sovereign power of the State and as such the criminal act which gave rise to the action, could not validly sustain a claim for damages against the State. It will thus be clear that the basic principle enunciated by Peace, C. J., in 1861 has been consistently followed by judicial decisions in dealing with the question about the State’s liability in respect of negligent or tortious acts committed by public servants employed by the State.

Reverting then to the decision of the Supreme Court in the case of State of Rajasthan v. Mst. Vidyawati and another, AIR 1962 SC 933:1962 Supp. (2) SCR 989, it would be recalled that the negligent act which gave rise to the claim for damages against the State of Rajasthan in that case, was committed by the employee of the State of Rajasthan while he was driving the jeep car from the repair shop to the Collector’s residence, and the question which arose for decision was: Did the negligent act committed by the Government employee during the journey of the jeep car from the workshop to the Collector’s residence for the Collector’s use give rise to a valid claim for damages against the State of Rajasthan or not? It may be pointed out that this aspect of the matter has not been clearly or emphatically brought out in discussing the point of law which was decided by the Supreme Court in that case. But when we consider the principal facts on which the claim for damages was based it is obvious that when the Government employee was driving the jeep car from the workshop to the Collector’s residence for the Collector’s use, he was employed on a task or an undertaking which cannot be said to be referable to, or ultimately based on, the delegation of sovereign or governmental powers of the State. In dealing with such cases, it must be borne in mind that when the State pleads immunity against claims for damages resulting from injury caused by negligent acts of its servants, the area of employment referable to sovereign powers must be strictly determined. Before such a plea is upheld, the court must always find that the impugned act was committed in the course of an undertaking or employment which is referable to the exercise of sovereign power, or to the exercise of delegated sovereign power; and in the case of the State of Rajasthan v. Mst. Vidyawati and another, AIR 1962 SC 933, the Supreme Court took the view that the negligent act in driving the jeep car from the workshop to the Collector’s bungalow for the Collector’s use could not claim such a status. In fact, the employment of a driver to drive the jeep car for the use of a Civil servant is itself an activity which is not connected in any manner with the sovereign power of the State at all. That is the basis on which the decision must be deemed to have been founded.

It is not difficult to realize the significance and importance of making such a distinction particularly at the present time when, a pursuit of their welfare ideal, the Government of the States as well as the Government of India naturally and legitimately enter into many commercial and other undertakings and activities which have no relation with the traditional concept of governmental activities in which the exercise of sovereign power is involved. It is necessary to limit the area of these affairs of the State in relation to the exercise of sovereign power, so that if acts are committed by Government employees in relation to other activities which may be conveniently described as non-governmental or non-sovereign, citizens who have a cause of action for damages should not be precluded from making their claim against the State.
That is the basis on which the area of the State immunity against such claims must be limited; and this is exactly what has been done by the Supreme Court in its decision in the case of *State of Rajasthan v. Mst. Vidyawati and another*, AIR 1962 SC 933 : 1962 Supp. (2) SCR 989.

In *Kasturi Lal v. State of U. P.*, AIR 1965 SC 1039, the Supreme Court observed:

"In the present case, the act of negligence was committed by the Police Officers while dealing with the property of Ralia Ram which they had seized in exercise of their statutory powers. Now, the power to arrest a person, to search him, and to seize property found with him, are powers conferred on the specified officers by statute and in the last analysis, they are powers which can be properly characterised as sovereign powers; and so, there is no difficulty in holding that the act which gave rise to the present claim for damages has been committed by the employee of the respondent during the course of its employment; but the employment in question being of the category which can claim the special characteristic of sovereign power, the claim cannot be sustained; and so, we inevitably hark back to what Chief Justice *Macco* decided in 1861 and hold that the present claim is not sustainable.

"Before we part with this appeal, however, we ought to add that it is time that the Legislators in India should seriously consider whether they should not pass legislative enactments to regulate and control their claim from immunity in cases like this on the same lines as has been done in England by the *Crown Proceedings Act, 1947*. It will be recalled that this doctrine of immunity is based on the Common law principle that the King commits no wrong and that he cannot be guilty of personal negligence or misconduct, and as such cannot be responsible for the negligence or misconduct of his servants. Another aspect of this doctrine was that it was an attribute of sovereignty that a State cannot be sued in its own courts without its consent. This legal position has been substantially altered by the *Crown Proceedings Act, 1947* (10 and 11 Geo. 6c, 44). As *Halsbury* points out:

'Claims against the Crown which might before 1st January, 1948 have been enforced, subject to the grant of the royal fiat, by petition of right may be enforced as of right and without a fiat by legal proceedings taken against the Crown.'

"That is the effect of Sec. 1 of the said Act. Section 2 provides for the liability of the Crown in tort in six clauses of cases covered by its clauses (1) to (6). Clause (3), for instance, provides that where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the Common law or by Statute, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown. Section 2 provides for saving in respect of acts
done under prerogative and statutory powers. It is necessary to refer to the other provisions of this Act. Our only point in mentioning this act is to indicate that the doctrine of immunity which has been borrowed in India in dealing with the question of the immunity of the State in regard to claims made against it for tortious acts committed by its servants, was really based on the Common law principle which prevailed in England; and that principle has now been substantially modified by the Crown Proceedings Act.”

In order that the rule of vicarious responsibility may apply, two conditions must co-exist: (i) there must exist the relationship of master and servant between the persons sued and the person who has committed the wrong; and (ii) the person committing the wrong, that is, the servant, must have been at the time acting in the course of his employment. Such a servant must be subject to the control and direction of his employer in respect of the manner in which the work is or be done.
CHAPTER II
GOVERNMENT EMPLOYMENT AND CONSTITUTIONAL GUARANTEES

SYNOPSIS

1. General.
2. Equality of opportunity in matters of employment.
3-a. Articles 14 to 16 and Article 311.
5. Article 32 and Article 311.
6. Extent of Executive power of State and constitutional guarantees.
7. Conduct of Government business under Article 166 and service matters.
8. Article 311.
9. Rule 12 (4), Central Services (Classification, Control and Appeal) Rules, 1957, if contravenes Articles 142, 144 and 311.

1. General

Article 16 of the Indian Constitution.

Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds—religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16, Cl. (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and Cl. (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Art. 14 guarantees the general right of equality; Arts 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Art. 16, the latter being confined to matter relating to employment or appointment to any office under the State. It is also worthy of note that Art. 15 does not mention "decent" as one of the prohibited grounds of discrimination, whereas Art. 16 does—Dasaratha Rama Rao v. State of Andhra Pradesh, AIR 1961 SC 564.

The expression "matters relating to employment or appointment" in Article 16 (1) must include all matters in relation to employment both prior and subsequent to employment which are incidental to the employment and form part of the terms and conditions of such employment—General Manager, Southern Railway v. Rangachari, AIR 1962 SC 36. Thus the guarantee in clause (1) of Article 16 will cover—

(a) Initial appointment—Krishna Chandra v. Central Tractor Organization, AIR 1962 SC 602.

(b) Promotions—General Manager, Southern Railway v. Rangachari, AIR 1962 SC 36.
(c) Termination of employment—Union of India v. P. K. More, AIR 1962 SC 630.

(d) Matters relating to the salary, periodical increments, leave, gratuity, pension, age of superannuation etc.—General Manager, Southern Railway v. Rangachari, AIR 1962 SC 36.

In General Manager, Southern Railway v. Rangachari, AIR 1962 SC 36, the Court observed:

“In deciding the scope and ambit of the fundamental right of equality of opportunity guaranteed by this Article it is necessary to bear in mind that in construing the relevant Article a technical or pedantic approach must be avoided. We must have regard to the nature of the fundamental right guaranteed and we must seek to ascertain the intention of the Constitution by construing the material words in a broad and general way. If the words used in the Article are wide in their import they must be liberally construed in all their amplitude. Thus construed it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Art. 16 (1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provisions as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression ‘matters relating to employment’ in Art. 16 (1). Similarly, appointment to any office which means appointment to an office like that of the Attorney-General or Comptroller and Auditor-General must mean not only the initial appointment to such an office but all the terms and conditions of service pertaining to the said office. What Art. 16 (1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us.

“This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is opportunity and nothing more. Article 16 (1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment, like other terms and conditions associated with, and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Art. 16 (1) guarantees is equality of opportunity to all citizens who enter service.
"In this connection it may be relevant to remember that Art. 16 (1) and (2) really give effect to the equality before law guaranteed by Art. 14 and to the prohibition of discrimination guaranteed by Art. 15 (1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

"Article 16 (2) provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. This sub-Article emphatically brings out in a negative form what is guaranteed affirmatively by Art. 16 (1). Discrimination is a double-edged weapon; it would operate in favour of some persons and against others; and Art. 16 (2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Art. 16 (1). The words ‘in respect of any employment’ used in Art. 16 (2) must, therefore, include all matters relating to employment as specified in Art. 16 (1). Therefore, we are satisfied that Mr. Sen is right when on behalf of the Attorney-General he conceded that promotion to selection posts is included both under Art. 16 (1) and (2). Broadly stated the Bombay and the Patna High Courts support the concession made by Mr. Sen, whereas the Allahabad High Court is against it.

"Let us look at the relevant provisions of the Constitution itself. Article 309 empowers the appropriate Legislature to 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. In the context ‘posts’ mean outside services. Similarly Article 310 (1) refers to every person who is a member of 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. The word ‘post’ in the context means an ex-cadre post. Likewise the expression ‘civil post’ in Article 311 (1) means a civil post under the Union. The word ‘post’ in the context means an ex-cadre post. Likewise the expression ‘civil post’ in Article 311 (1) means a civil post outside the services. Article 335 to which we have referred uses the word ‘posts’ in the same sense. But, when we go to Article 336 the word ‘post’ in the context means posts in the services therein enumerated. The position disclosed by the corresponding provisions of the Constitution Act of 1935 is substantially the same. Sections 240 and 241 for instance use the word ‘posts’ in the sense of ex-service posts; whereas section 246 refers to civil posts in the sense of posts inside the services. In our opinion, it would, therefore, be
unreasonable to treat the word "posts" as a term of Article and to clothe it inexorably with the meaning of ex-cadre posts. It is the context in which the word "posts" is used which must determine its denotation.

"Therefore, the key clause of Art. 16 (4) which prescribes a condition precedent for invoking power conferred by it itself unambiguously indicates that the word "posts" cannot mean ex-cadre posts in the context. In fairness to Mr. Kumaramangalam who appeared for the respondent, we ought to add that he did not resist the contention of Mr. Chatterjee, for the appellants, that the context requires that "posts" should be deemed to be posts inside services and not outside them.

"The condition precedent for the exercising of the powers conferred by Art. 16 (4) is that the State ought to be satisfied that any backward class of citizens is not adequately represented in its services. This condition precedent may refer either to the numerical inadequacy of representation in the services or even to the qualitatives inadequacy of representation. The advancement of the socially and educationally backward classes requires not only that they should have adequate representation in the lowest rank of services but that they should aspire to secure adequate representation in selection posts in services as well.

"This construction has the merit of interpreting the words "appointments" and "posts" in their broad and liberal sense and giving effect to the policy which is obviously the basis of the provisions of Art. 16 (4). Therefore, we are disposed to take the view that the power of reservation which is conferred on the State under Art. 16 (4) can be exercised by the State in a proper case not only by providing for reservation of appointments but also by providing for reservation of selection posts. This construction, in our opinion, would serve to give effect to the intention of the Constitution-makers to make adequate safeguard for the advancement of backward classes and to secure for their adequate representation in the services. Our conclusion, therefore, is that the High Court was in error in holding that the impugned circulars do not fall within Art. 16 (4)."

American Constitution

Article 16 has been enacted on the basis of Sec. 3 of Art. VI on the basis of the Constitution of United States of America which reads as under:

"The Senators and representatives before-mentioned, and the members of the several State Legislatures and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution but no religious test shall ever be required as a qualification to any office or public trust under the United States."
Constitution of U.S.S.R.

It seems while framing this Constitution on the socialist pattern, the framers of the Constitution have based this Art. 16 on the basis of Art. 123 of the Constitution of the Union of Soviet Socialist Republics, which reads as under:

"Equality of rights of citizens of the U. S. S. R. irrespective of their nationality or race in all spheres of economic, Government, cultural, political and other social activity is indefeasible law.

Any direct or indirect restriction of the rights of, or, conversely, the establishment of any direct or indirect privileges for citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt are punishable by law."

Constitution of Australia

Article 116 of the Constitution of Common-wealth of Australia also speaks the same language and reads:

'The Common-wealth shall not make any law for establishing any religion or for imposing any religious observance or for prohibiting the free exercise of any religion and no religious test shall be required as a qualification for any office or public trust under the Common-wealth.'

Government of India Act, 1935

It will not be a gain-saying that our Constitution is the refined copy of Government of India Act, 1935. A statutory right under section 298 was also in the same terms which runs as under:

"No subject of his Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business, or profession in British India."

Section 275 of Government of India Act, 1935 also says:

"A person shall not be disqualified by sex for being appointed to any civil service of, or civil post, under the Crown in India other than such a service or post as may be specified by any general or special order made:

(a) by the Governor-General in the case of services and posts in connection with the affairs of Federation;

(b) by the Governor of a province in the case of services and posts in connection with the affairs of the province;

(c) by the Secretary of State in relation to appointments made by him."

2. Equality of opportunity in matters of employment.

Article 16 is a natural corollary to Article 15 of the Constitution relating to prohibition of discrimination on grounds of religion, race,
caste, sex or place of birth, and to Article 14, relating to equality before law, of the Constitution.

Equality of opportunity in matters of employment means equality as between members of the same class of employees and not equality between members of separate independent classes.—Sham Sunder v. Union of India, AIR 1969 SC 212 : (1969) 1 SCWR 294.

It extends to every citizen and every employment or appointment to office, whether permanent or temporary. It does not depend upon the nature or tenure of the employment or appointment.

The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment. Equality of opportunity in matters of promotion must mean equality as between members of the same class of employees and not equality between members of separate independent classes.—All India Station Masters & Assistant Station Masters Association, Delhi v. G M., Central Rly., AIR 1960 SCJ 314 : AIR 1960 SC 384 : (1960) 1 SCA 700 : (1960) 2 SCR 311.

Article 16 of the Constitution is reproduced below:

"16 (1) There shall be equality of opportunity for all citizens in matters relating to employment of appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment of office under the State.

(3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory prior to such employment or appointment.

(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

In B. N. Nagarajan v. State of Mysore, AIR 1960 SC 1942, it had been held that it was not obligatory under the proviso to Article 309 of Constitution to make rules of recruitment etc. before a service could be constituted or a post created or filled and that the omission to make rules of recruitment would not amount to discrimination under Articles 14 and 16.
Discrimination in service matters like seniority, etc. was considered by the Supreme Court in *State of Punjab v. Jogender Singh*, AIR 1963 SC 913. In that case under a scheme of nationalising school, the Punjab Government by an executive order took over the schools run by Municipal Boards and District Boards in certain areas. The teachers then employed in those schools were also taken over, becoming State employees. The order provided that the teachers taken over by the State called "provincialised", teachers would be given the same grades of pay and other allowances as were given to their counterparts in Government employment. The teachers in the State employment were governed by the Punjab Educational Service Class III School Cadre Rules. Subsequently certain rules were issued. The effect of these rules was: (1) the provincialised teachers were treated as falling under cadre separate and distinct from the teachers in the State cadre, and (2) though the proportion of the lower grade teachers who would be promoted to higher grade was the same in both the cadres, it operated differently as regards the members in the two cadres. This was due to the fact the Government decided that the provincialised teachers were to be a diminishing class to become extinct in course of time, whereas a member equivalent to that which the provincial cadre lost by promotion, death or retirement was to be added to the State cadre. Under this scheme a member of a State cadre stood a better chance of promotion that did a teacher belonging to this provincialised cadre. It was contended that the executive order completely integrated the two cadres and that the Punjab Educational Service (Provincialised Cadre) Class III Rules 1961, brought about a division in the united or unified service by creating the two new cadres with differences between the members of the service based on intelligible differentia which was violative of Art. 14 and as the same adversely affected the chance of promotion of the provincialised cadre *vis-a-vis* the State cadre, they infringed Art. 16 (1). It was held that by the executive order teachers in erstwhile Board Schools became employees of Government and were given the same scales and grades of pay as were applicable to their counterparts in the State cadre but except this equality of grade and pay there was nothing more that was contemplated or provided for by that order. There was no integration of the two cadres either expressly or by necessary implication.

The court proceeded to observe that the two services started as independent services; the qualifications prescribed for entry into each were different; the method of recruitment and the machinery for the same were also different and the general qualifications possessed by and large, by the members of each class being different they started as two distinct classes. If they were distinct services, there was no question of *inter se* seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Art. 14 or Art. 16 (1).

In *Kunj Behari Lal v. Union of India*, AIR 1963 SC 518, there were two categories of temporary employees. The question of integrating these two services was considered and in 1949 a common roll was prepared. No provision was, however, made for the determination of seniority *inter se* between members of the two services thus integrated. It was, however, decided in 1955 that for the purposes of seniority in respect of clerks of one category, one half of the continuous service rendered prior to 1st August, 1949 in the concerned grade should be counted
while the clerks belonging to the other category could count their entire service. It was contended that as the clerks in both the categories possessed the same qualifications, discharged the same duties and were governed by the similar service conditions, the distinction drawn by them for the purposes of seniority amounted to discrimination under Article 14. The Supreme Court repelled the contention and observed that the two services had no common origin but were recruited on different basis, that members of the two parallel services had different rates of pay and conditions of services, that prior to the order dated 1st August, 1949, the distinction between them was maintained, that on the basis of the rules temporary clerks could claim to have been in the same service from even before that date whereas extra temporary clerks could claim to belong to the unified service only from 1st August, 1949, and that in the absence of an express provision providing for a common basis of seniority, based on the length of service of the personnel falling under the two groups, there was no intention of providing a common roll of seniority. Therefore, the impugned order allowing the clerks of one category to count half of their continuous service rendered prior to 1st August 1949 was held to be a concession to them.

In Mervyn v. Collector of Customs, AIR 1967 SC 52, the Supreme Court held that where recruitment to a cadre was from two services namely, direct recruits and promotoes and rotational system was in force, seniority had to be fixed as provided in the explanation by alternately fixing a promotee and a direct recruit in the seniority list and that there was no violation of the principles of equality of opportunity enshrined in Article 16 (1) by following the rotational system of fixing seniority in a cadre half of which consisted of direct recruits and the other half of promotoes.

In Ganga Ram v. Union of India 1970 (1) SCC 377, the petitioners were officiating clerks, Grade I, in the office of Deputy Chief Accounts Officer (Traffic Accounts Branch) Northern Railway. They were promoted from Grade II after passing the departmental qualifying examination described as Appendix 2 examination. They claimed that their seniority should be determined as from the date of their appointment as officiating Clerks Grade I and not on the basis of their position in the gradation list of Clerks, Grade II. Their grievance was that they were appointed as officiating clerks, Grade I, after passing the Appendix 2 examination long before respondents but the respondents were shown as senior to the petitioners on the ground of their seniority in Grade II. The petitioners sought to support their claim by relying on Articles 14 and 16 of the Constitution. The seniority of the direct recruits to Grade I, the petitioners complained, was determined on the basis of their appointment, whereas the seniority of the petitioners, who were promotoes from Grade II to officiate in Grade I, continued to be determined on the basis of their seniority in Grade II. It was emphasised that both the direct recruits and the promotoes, like the petitioners, had to pass the Appendix 2 examination. But their seniority was determined by different methods. It was further complained that Grade II clerks who passed the qualifying Appendix 2 examination were not promoted immediately. They had to wait till a vacancy occurred and even at the time of filling the vacancy the seniors most qualified clerk was selected for promotion without giving any preference to those who had qualified earlier in point of time. Again, when a permanent post fell vacant all the eligible clerks in Grade II were considered at par
without giving any credit or preference to those who had already officiated as clerks, Grade I. A junior clerk, Grade II, qualifying earlier, according to the petitioners’ grievance, continued to remain junior for the purpose of promotion and confirmation in the permanent post in Grade I and a senior clerk, Grade II, qualifying later retained his seniority for this purpose. Similarly, in filling leave vacancies it was complained that if a clerk was appointed to officiate in short term leave vacancy, then on the return of the incumbent of the post, instead of reverting the clerk so appointed to officiate, the juniormost according to the gradation list in Grade II, officiating in Grade I, was reverted even though he may have qualified earlier than the former and may also have officiated for some time against a regular post in Grade I. The petitioner's right of equality before the law and equality of opportunity in matters of public, employment was stated thus to have been violated.

_Dua J._ while delivering the judgment observed:

"The right of equality is guaranteed by Arts. 14 to 16 of our Constitution. The petitioners rely on Arts. 14 and 16 (1). Article 14 is an injunction to both the legislative and the executive organs of the State and other subordinate authorities not to deny to any person equality before the law or the equal protection of the laws. Article 16 is only an instance of the general rule of equality laid in Art. 14. Sub-article (1) of Art 16 guarantees to every citizen equality of opportunity in matters of public employment thereby serving to give effect to the equality before the law guaranteed by Art. 14. The equality of opportunity in the matter of services undoubtedly takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group. Mere production of inequality is not enough to attract the constitutional inhibition because every classification is likely in some degree to produce some inequality. The State is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not be scientifically perfect or logically complete. In applying the wide language of Articles 14 and 16 to concrete cases a doctrinaire approach should be avoided and the matter considered in a practical way, of course, without whitewashing down the equality clauses. The classification, in order to be outside the vice of inequality, must, however, be founded on an intelligible differentia which on rational grounds distinguishes persons grouped together from those left out. The differences which warrant a classification must be real and substantial and must bear a just and reasonable relation to the object sought to be achieved. If this test is satisfied then the classification cannot be hit by the vice of inequality. It is in the background of this broad principle that the petitioners' grievance is to be considered.

"The relevant provisions in the Indian Railways Establishment Manual directly applicable to the petitioners' case may now
be seen. They are contained in Paras 48 and 49, Chapter I, Section B and Paras 16 and 20 (b) of Chapter II. As the petitioners also rely upon Paras 17 to 19 and 21 of Chapter II in support of the argument that Para 20 (b) is discriminatory it is desirable to reproduce all these paragraphs.

48. The classes included in this group and the normal channel of their promotion are as under:

- Clerks, Grade II (Rs. 110—180)
- Clerks, Grade I (Rs. 130—300)
- Sub-Heads (Rs. 210—380)
- Stock Verifiers (Rs. 210—380)
- Junior Accountants (Rs. 270—435)
- Junior Inspectors of Station Accounts (Rs. 270—435)
- Junior Inspectors of Store Accounts (Rs. 270—435)
- Senior Accountant (Rs. 435—575)
- Senior Inspector of Station Accounts (Rs. 435—575)
- Senior Inspector of Stores Accounts (Rs. 435—575)

**Recruitment**.—Initially in the grade of Clerks, Grade II. Direct recruitment for 20% vacancies in the grade of Clerks, Grade I.

**Qualifications**:

(a) **Age.**—(i) For clerks, Grade II 18—21.

(ii) For clerks, Grade I 18—25.

(b) **Education.**—For Clerks, Grade II, Matriculation, till replaced by Higher Secondary. For Clerks, Grade I, University Degree, preference being given to persons with I and II Division Honours and Master’s Degree.

‘Directly recruited Clerks, Grade I, will be on probation for one year and will be eligible for confirmation only after passing the prescribed departmental examination in Appendix 2. Necessary facilities will be given to them to acquire a working knowledge of the rules and procedure.

‘49. Such of the Clerks, Grade II, as to qualify in the departmental examination as prescribed in Appendix 2 or those who may have been permanently exempted from passing the said examination will be eligible for promotion as Clerks, Grade I, and Sub-Heads. They will be eligible for a minimum starting pay of Rs. 150 per month or will be granted four advance increments on promotion to Grade I after their pay has been fixed under ordinary rules. Promotion to the grade of Sub-Heads will be by seniority-cum-suitability.’
Chapter II

'17. Subject to what is stated in Paragraphs 18 and 19 below, where the passing of a departmental examination or trade test has been prescribed as a condition precedent to the promotion to a particular non-selection post, the relative seniority of the railway servants passing the examination/test in their due turn and on the same date or different dates which are treated as one continuous examination, as the case may be, shall be determined with reference to their substantive or basic seniority.

'18. A railway servant who, for reasons beyond his control is unable to appear in the examination/test in his turn along with others, shall be given the examination/test immediately he is available and if he passes the same, he shall be entitled for promotion to the post as if he had passed the examination/test in his turn.

'19. Seniority for promotion as Junior Accountants, Junior Inspectors of Station or Stores Accounts.—Seniority for promotion to the rank of junior accountant or junior inspector of station or stores accounts should count entirely according to the date of passing the examination qualifying for promotion to those ranks. Candidates who pass the examination in a year are ipso facto senior to those who qualify in subsequent years irrespective of their relative seniority before passing the examination. In the case of staff of ex-Company or Railways, who are exempted from passing the examination, the date on which they are declared fit for promotion to the rank of Accountant or Inspector should be considered as the date of their passing. On receipt of the result of the above examination each railway administration should immediately hold a selection test of the candidates declared successful along with any eligible ex-Company or ex-State Railway Staff, who may be asked to appear before the selection board in accordance with the procedure laid down by the Railway Board from time to time. While the selection board will determine in the case of the ex-Company or ex-State Railway Staff, their suitability for promotion as Accountant/Inspector before placing them on the panel, no candidate who has qualified in the said examination will be declared ineligible for promotion as a junior Accountant/Inspector, the selection board only assigning a suitable place to each such candidate in order of merit. The staff placed on the panel in any year will rank senior to those empanelled in subsequent years.

20'. Date of passing the departmental examination/test to regulate seniority.—(a) Except as provided for in sub-paragraph (b) below, seniority of two or more railway servants, who pass the departmental examination/test on different dates, not treated as one continuous
examination, will be regulated entirely by the date of passing the examination or test.

(b) The seniority of Accounts Clerks, Grade I and Stock Verifiers is to be determined with reference to their substantive or basic seniority in Grade II irrespective of the dates they qualify for promotion as Clerks Grade I by passing the examination prescribed for the purpose.

21. Seniority on promotion to non-selection posts.—Promotion to non-selection posts shall be on the basis of seniority-cum-suitability being judged by the authority competent to fill the post, by oral and/or written test or a departmental examination as considered necessary and the record of service. The only exception to this would be in cases where for administrative convenience, which should be recorded in writing, the competent authority considers it necessary to appoint a railway servant other than the senior most suitable railway servant to officiate in a short term vacancy not exceeding two months as a rule and 4 months in any case. This will, however, not give the railway servant any advantage not otherwise due to him.”

Appendix 2, in addition to the syllabus for the examination, provides:

3. The examination will be conducted by the Head of each office, who will also decide the intervals at which it should be held.

4. (a) Normally no railway servant will be permitted to take the examination more than three; but the Financial Adviser and Chief Accounts Officer may in deserving cases permit a candidate to take the examination for a fourth time, and, in very exceptional cases, the General Manager may permit a candidate to take the examination for the fifth and the last time.

(b) No railway servant, who has less than six months' service in a Railway Accounts Office or who has not a reasonable chance of passing the examination will be allowed to appear in the examination prescribed in this Appendix.

In exceptional circumstances, the condition regarding six months' minimum service may be waived by the General Manager.

(c) Temporary railway servants may be permitted to sit for the examination but it should be clearly understood that the passing of this examination will not give them a claim for absorption in the permanent cadre.

(d) A candidate who fails in the examination but shows marked excellence by obtaining not less than 50% in any subject may be exempted from further examination in that subject in subsequent examination.
It is quite clear that Para 49 does not confer any right to immediate promotion on those Grade II clerks who pass the qualifying Appendix 2 examination. The only benefit which accrues to them is that one hurdle is removed from their way and they become eligible for being considered for promotion to Grade I. This promotion is governed by the test of seniority-cum-suitability. All those who qualify for promotion are treated at par for this purpose and they are grouped together as constituting one class. The fact that one person has qualified earlier in point of time does not by itself clothe him with a preferential claim to promotion as against those who qualify later. This examination is considered to be a continuous examination and as is clear from Para 17 success at this examination does not constitute the basis of seniority which continues to be dependent on the substantive or basic seniority in Grade II. The question which directly arises for determination is: does the procedure laid down in these instructions violate the petitioners' right as guaranteed by Arts. 14 and 16? The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible for promotion in its different departments. In the present case the object which is sought to be achieved by the provisions reproduced earlier is the requisite efficiency in the Accounts Department of the Railway establishment. The departmental authority is the proper judge of its requirements. The direct recruits and the promotees like the petitioners, in our opinion, clearly constitute different classes and this classification is sustainable on intelligible differentia which has a reasonable connection with the object of efficiency sought to be achieved. Promotion to Grade I is guided by the consideration of seniority-cum-merit. It is, therefore, difficult to find fault with the provision which places in one group all those Grade II clerks who have qualified by passing the Appendix 2 examination. The fact that the promotees from Grade II who have officiated for some time are not given the credit of this period when a permanent vacancy arises also does not attract the prohibition contained in Arts. 14 and 16. It does not constitute any hostile discrimination and is neither arbitrary nor unreasonable. It applies uniformly to all members of Grade II clerks who have qualified and become eligible. The onus in this case is on the petitioners to establish discrimination by showing that the classification does not rest upon any just and reasonable basis. The difference emphasised on behalf of the petitioners is too tenuous to form the basis of a serious argument. Their challenge, therefore, fails."

"The decision in Mervyn Contindo v. Collector of Customs, Bombay, (1966) 3 SGR 600 on which reliance has been placed on behalf of the petitioners dealt with a different problem though the principle of law laid down there seems to go against the petitioners' submission. It was expressly observed there that there is no inherent vice in the principle
of fixing seniority by rotation in a case when a service is composed in fixed proportion of direct recruits and promotees. The distinction between direct recruits and promotees as two sources of recruitment being a recognised difference, not obnoxious to the equality clauses, the provisions which concern us cannot be struck down on the ratio of this decision.”

In Chitralekha v. State of Mysore, AIR 1964 SC 1823, it was contended that the system of selection by Board on the basis of interviews being capable of abuse by manipulation was discriminatory and repugnant to the doctrine of equality in Article 14. The Supreme Court did not agree with the contention and observed:

“If there can be manipulation or dishonesty in allotting marks at the interview there can equally be manipulation in the matter of awarding marks in the written examination. In the ultimate analysis whatever method is adopted its success depends on the moral standards of the members constituting the Selection Committee and their sense of objectivity and devotion to duty. This criticism is more a reflection on the examiners than on the system itself.............that it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons this Court cannot obviously have any say in the matter.”

In Ram Sharan v. D. I. G., Police, AIR 1964 SC 1559, the question of discrimination under Article 16 in the matter of promotions and reversions was considered. In that case, the petitioner who was a sub-inspector was reverted to the post of head constable. According to the practice the promotions and reversions of staff in one range were restricted within that range and so was the case with the petitioner. The petitioner’s contention was that if the whole State were treated as one unit for the purposes of promotions and reversions, he would not have been reverted. The Supreme Court observed that the system of restricting the promotions within one range was conducive to administrative efficiency and that it could not be held discriminatory.

In Kishori Mohan Lal Bakshi v. Union of India, AIR 1962 SC 1139, certain rules made Income-tax Officers of Class I eligible for appointment as Assistant Commissioner, but made Income-tax Officers of Class II ineligible for promotion to the post of Assistant Commissioners. It was contended that the rules denied equal opportunity. The court rejected the contention and held that if, of the Income-tax Officers of the same grade some were eligible for promotion to a superior grade and others were not, the question of contravention of Art. 16 (1) might well arise but no such question could arise in the present case.

In Govind Dattatroy v. Chief Controller of Imports and Exports, AIR 1967 SC 839 the Supreme Court per Subba Rao, J. observed:

“The relevant law on the subject is well-settled and does not require further elucidation. Under Art. 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a
higher office thereunder. Art. 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Art. 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. There can be cases where the differences between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotion, and, in that event, a court may hold that there is no reasonable nexus between the differences and the recruitment. In short, whether there is a reasonable classification or not depends upon the facts of each case and the circumstances obtaining at the time the recruitment is made. Further, when a State make a classification between two sources of recruitment, unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the court that the said classification is unreasonable and violative of Art. 16 of the Constitution —See Banarsidas v. State of Uttar Pradesh, AIR 1956 SC 520:1956 SCR 357; All-India Station Masters' and Assistant Station Masters' Association, Delhi v. General Manager, Central Railway, AIR 1960 SC 384: (1960) 2 SCR 311 and General Manager, Southern Railway v. Rangachari, AIR 1962 SC 36: (1962) 2 SCR 586.

"It was then suggested that the ratio of 75 per cent for direct recruits and 25 per cent for promotion from departmental candidates was discriminatory. This point directly arose for consideration in Mervyn Coutindo v. The Collector of Customs, Bombay, (1966) 3 SCR 600. Therein, this Court accepted the validity of rotational system where the recruitment to a cadre was from two sources and held that such a system did not violate the principle of equal opportunity enshrined in Art. 16 (1) of the Constitution.

"But, it is said that if the system of rotation was necessary, the Government should have applied the ratio of 50:50 and not 75:75. When the recruitment to certain posts is from different sources, the circumstances of each case and the requirements and needs of a particular post. Unless the ratio is so unreasonable as to amount to discrimination, it is not possible for this court to strike it down or suggest a different ratio of 3:1 is so flagrant and unreasonable as to compel us to interfere with the order of the Government."
In All-India Station Masters' and Assistant Station Masters' Association v. General Manager, Central Railway, AIR 1960 SC 384, the question of applicability of Art. 16 in relation to promotion arose before the Supr-me Court. The question whether matters of promotion were included in the words "matters relating to employment" in Art. 16 (1) was not decided and the Court proceeded to deal with the scope as under:

"The impugned provisions of the channel of promotion are in respect of promotion of persons already employed under the State and not in respect of the first employment under the State. If the 'equality of opportunity' guaranteed to all citizens by Art. 16(1) does not extend to matters of promotion the petitioners' contention that the provisions are void must fail at once. If, however, matters of promotion are also 'matters relating to employment' within the meaning of Art. 16 (1) of the Constitution the next question we have to consider is whether the impugned provisions amount to denial of equality of opportunity within the meaning of that Article.

"We propose to consider the second question first, on the assumption that matters of promotion are 'matters relating to employment'. So multifarious are the activities of the State that employment of men for the purpose of these activities has by the very nature of things to be in different departments of the State and inside each department, in many different classes. For each such class there are separate rules fixing the number of personnel of each class, posts to which the men in that class, will be appointed, questions of seniority pay of different posts, the manner in which promotion will be effected from the lower grades of pay to the higher grades, e. g., whether on the result of periodical examination or by seniority or by selection or on some other basis and other cognate matters. Each such class can be reasonably considered to be a separate and in many matters independent entity with its own rules of recruitment, pay and prospects and other conditions of service which may vary considerably between one class and another. A member joins a particular class of recruitment, he leaves the class on retirement or death or dismissal, discharge, resignation or other modes of termination of service, or by joining another class of employees whether by promotion thereto or direct recruitment thereto on passing some examination or by selection in some other mode.

"It is clear that as between the members of the same class the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State? In our opinion, the answer must be in the negative. The concept of equality can have no existence except with reference to matters which are common as between individual
between whom equality predicated. Equality of opportunity in matters of employment can be predicated only as between persons who are either seeking the same employment or have obtained the same employment. It will, for example, plainly make no sense to say that because for employment as professors of colleges, a higher university degree is required than for employment as teachers of schools, equality of opportunity is being denied. Similarly, it is meaningless to say that unless persons who have obtained employment as school teachers, have the same chances of promotion as persons who have obtained employment as teachers in colleges, equality of opportunity is denied. There is, in our opinion, no escape from the conclusion that equality of opportunity, in matters of promotion, must mean equality as between members of the same class of employees and not equality between members of separate, independent classes."

The question whether Art. 16 (1) and (2) included promotions was also considered by the Supreme Court and it was observed as under:

"In the appeal before us the appellants and the respondent both conceded that cases of promotion fell within Art. 16 (1) and (2) though they differed as to whether they were included within Art. 16 (4). It would be immediately noticed that the respondent's petition postulates the inclusion of promotion in Art. 16 (1) and (2), for it is on that assumption that he challenges the validity of the impugned circulars. Similarly the appellant's defence postulates that Art. 16 (1) and (2) as well as Art. 16 (4) refer to cases of promotion, for it is on the basis that Art. 16 (4) includes promotion that they seek to support the validity of the impugned circulars. When this appeal was argued before the Constitution Bench on the first occasion, it became clear that neither party was interested in contending that the guarantee afforded by Art. 16 (1) and (2) is confined only to initial appointment and does not extend to promotion, and so notice was ordered to be issued to the Attorney-General. In response to the notice the Attorney-General has appeared...... He has also taken the same stand as the appellants have done and so in the result nobody before us is, interested in challenging the inclusion of promotion within Art. 16 (1) and (2)...

"In this connection it may be relevant to remember that Art. 16 (1) and (2) really give effect to the equality before law guaranteed by Art. 14 and to the prohibition of discrimination guaranteed by Art. 15 (1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment, both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment. . . ."
“The condition precedent for the exercise of the powers conferred by Art. 16 (4) is that the State ought to be satisfied that any backward class of citizens is not adequately represented in its services. This condition precedent may refer either to the numerical inadequacy of representation in the services or even to the qualitative inadequacy of representation. The advancement of the socially and educationally backward classes requires not only that they should have adequate representation in the lowest rung of services that they should aspire to secure adequate representation in selection posts in the services as well.

“This construction has the merit of interpreting the words ‘appointments’ and ‘posts’ in their broad and liberal sense and giving effect to the policy which is obviously the basis of the provisions of Art. 16 (4). Therefore, we are disposed to take the view that the power of reservation which is conferred on the State under Art. 16 (4) can be exercised by the State in a proper case not providing for reservation of selection posts. This construction, in our opinion, would serve to give effect to the intention of the Constitution-makers to make adequate safeguards for the advancement of backward classes and to secure their adequate representation in the services. Our conclusion, therefore, is that the High Court was in error in holding that the impugned circulars do not fall within Art. 16 (4)”

In another case of Supreme Court Jaisinghani v. Union of India, AIR 1967 SC 1427, the Supreme Court observed:

“The relevant law on the subject is well-settled. Under Art. 16 of the Constitution, there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Art. 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. Dealing with the extent of protection of Art. 16 (1) of the Constitution this court observed in General Manager, Southern Rly. v. Rangachari, AIR 1962 SC 36 : (1962) 2 SCR 586.

“It would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the
application of Art. 16 (1) to the initial employment and nothing else; but that clearly is one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression 'matters relating to employment' in Art. 16 (1). What Art. 16 (1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us. 'The three provisions of Art. 16 (1), Art. 14 and Art. 15 (1) form part of the same constitutional Code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment both prior, and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

"Article 16 (2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Art. 16 (1). The words, in respect of any employment used in Art. 16(2) must, therefore, include all matters relating to employment as specified in Art. 16 (1). Therefore, we are satisfied that promotion to selection posts is included both under Arts. 16 (1) and (2)."

The Supreme Court further observed:

"Having fixed the quota in the letter under rule 4, it is not now open to the Government of India to say that it is not incumbent upon it to follow the quota for each year and it is open to it to alter the quota on account of the particular situation. We are of opinion that having fixed the quota in exercise of their power under rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to alter that quota according to the exigencies of the situation or to deviate from the quota, in any particular year at its own will and pleasure. As we have already indicated, the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold that the seniority rule, i.e., rule 1 (f) (iii) and (iv), is not unreasonable and does not offend Art. 16 of the Constitution."

In Roshan Lal v. Union of India, AIR 1967 SC 1889, the contention that the Railway Board's notification fixing the method of promotion of Apprentice Train Examiner was invalid, was repelled by the Supreme Court and it was observed:

"In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well founded and must be accepted as correct. At the time when the petitioner and the direct recruits were appointed to Grade
there was one class in Grade ‘D’, formed of direct recruits and the promotee from grade of artisans. The recruits from both the sources to Grade ‘D’ were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade ‘C’. To put it differently, once direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade ‘C’. In the present case, it is not disputed on behalf of the first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification a discriminatory treatment is made in favour of the existing Apprentice Train Examiners who have already been absorbed in Grade ‘D’ by March 31, 1966, because the notification provides that this group of Apprentice Train Examiners should first be accommodated en bloc in Grade ‘C’ up to 80 per cent of vacancies reserved for them without undergoing any selection. As regards 20 per cent of the vacancies made available for the category of Train Examiners to which the petitioner belongs to the basis of recruitment was selection on merit and the previous test of seniority-cum-suitability was abandoned. In our opinion, the present case falls within the principle of the recent decision of this court in Mervya v. Collector of Customs, Bombay, (1966) 3 SCR 600 : AIR 1967 SC 52."

In Champaklal v. Union of India, AIR 1964 SC 1854 (1964) 5 SCR 190, the Supreme Court held that the providing of different methods of termination of service for temporary and permanent employees would not amount to discrimination and observed as under:

“It is well-recognised that the Government may have to employ temporary servants to satisfy the needs of a particular contingency and such employment would be perfectly legitimate.....there would be nothing discriminatory or violative of equal opportunity if the conditions of service of such servants are different in some respects from those of permanent employees. Further we see no denial of equal opportunity if ut of the class of temporary employees some are made quasi permanent depending upon length of service and suitability in all respects for permanent employment eventually.........”

In Krishna Chandra v. Central Tractor Organisation AIR 1962 SC : 602 : (1962) 3 SCR 187 : (1962) 1 SCJ 715 after the services of the petitioner were terminated by reason of his antecedents in accordance with Rule 5 of the Central Civil Services Temporary Service Rules, 1949 a ban was imposed by the Government against him in the matter of his employment under the Government. The petitioner prayed under Art. 32
for a direction to remove the ban. The Supreme Court after a review of facts observed as under:

"A person who has been once employed under the Government, and whose services have been terminated by reason of his antecedents, may or may not stand on an equal footing with other candidates not under such a ban. Of course, the ban imposed by Government should have a reasonable basis and must have some relation to his suitability for employment or appointment to an office. But an arbitrary imposition of a ban against the employment of a certain person, under the Government, would certainly amount to denial of right of equal opportunity of employment, guaranteed under Art. 16 (1) of the Constitution. In the instant case, the affidavit filed on behalf of the respondents does not indicate the nature of the ban, and whatever may have been the nature of the ban there does not appear to have been any proceeding taken against the petitioner giving him the opportunity of showing cause against the action proposed to be taken against him. We are, therefore, not in a position to say that the reason for the ban, whatever its nature, had a just relation to the question of his suitability for employment or appointment under the Government.

"It is clear, therefore, that the petitioner has been deprived of his constitutional right of equality of opportunity in matters of employment or appointment to any office under the State, contained in Art. 16 (1) of the Constitution. So long as the ban subsists, any application made by the petitioner for appointment under the State is bound to be treated as waste paper. The fundamental rights guaranteed by the Constitution is not only to make an application for a post under the Government but the further right to be considered on merits for the post for which an application has been made. The 'ban' complained of apparently is against his being considered on merits. It is a ban which deprives him of that guaranteed right. The inference is clear that the petitioner has not been fairly treated."

What is guaranteed by Art. 16 (1) of the Constitution is equality of opportunity in the matter of an appointment in State services and nothing more. It is open to the State Government to frame the necessary rules prescribing the requisite qualifications and it is also open to the authorities to lay down such perquisite conditions for appointment as would be conducive to the maintenance of proper discipline amongst Government Servants—Banarsi Das v. State of U. P., AIR 1955 SC 520.

In State of Mysore v. Narasingha Rao, decided by the Supreme Court on 31-8-1967 it was held that it is open to the Government to lay down qualifications a test for the post including general qualifications regarding suitability for public service.

In Santaram v. State of Rajasthan, AIR 1967 SC 1910 it was contended that the petitioner was entitled, as of right, to be promoted on the ground that his name stood first in the gradation list prepared
under Rule 6 of the Indian Police Service (Regulation of Seniority) Rules, 1954. The Court repelled the contention and observed:

"The three posts of Inspector-General of Police, Additional Inspector-General of Police and Deputy Inspector-General of Police in Rajasthan State are selection posts and outside the junior or senior time-scales of pay. If these three posts are selection posts, it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Gradation list. The circumstance that these posts are classed as 'Selection Grade Posts' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation list but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the Gradation list does not confer any right on the petitioner to be promoted to selection post and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection post is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available."

But in **State of Mysore v. Jayaram**, decided, on 23-8-1967, the Supreme Court struck down the rule which vested in the Government an arbitrary power to appoint any candidate if considered suitable. In that case, the Govt. appointed the first three and the fifth candidates in an approved list and ignored the fourth on the ground that he was not suitable.

Reservation of posts in favour of Hindu, Muslim and Christian is repugnant to the provisions of Art. 16 (2)—AIR 1951 SC 229 : 1951 SCJ 318.

In **Devadasan v. Union of India**, AIR 1964 SC 179 the question of reservation of vacancies for Scheduled Castes was considered by the Court. In that case on 15th September, 1950 the Government of India published a resolution indicating their policy in regard to communal representation in the services. There they stated that certain reservations, among others, for members of Scheduled Castes and Scheduled Tribes, would provisionally be made in recruitment to the posts and services under them. That resolution provided that in all cases a minimum standard of qualifications would be prescribed and that the reservations would be subject to the over-all condition that candidates of the requisite communities possessing the prescribed qualifications and suitable in all respects for, the appointments in question, were forthcoming in sufficient numbers for the vacancies reserved for them. These orders were made applicable to all services under the control of the Government of India on January 28, 1952. Those supplementary instructions, providing *inter alia* for carrying forward vacancies for one year, were given apparently because candidates from among the Schedule Castes and Tribes were not available. However, even carrying forward the vacancies for one year proved to be inadequate for giving effect to the policy of the Government of India to give
adequate representation in the services to members of the Scheduled Castes and Tribes. Then by Office Memorandum No. 2/11/55-RPS, dated May 7, 1955 the Government of India modified sub-paragraphs (3) and (4) of paragraph 5 of the supplementary instructions dated January 28, 1952. The rule as modified in 1961 provided that 17½% of the total vacancies in a year would be reserved for being filled from amongst candidates belonging to Scheduled Castes and Tribes. It further provided that if in any year suitable candidates were not available from amongst such classes the reserved posts would be dereserved, filled by candidates from other classes and a corresponding number of posts could be carried forward to the next year. If in the subsequent year the same thing happened, the posts unfilled by candidates from Scheduled Castes and Tribes could be carried forward to the third year. In the third year the number of posts to be filled from amongst candidates of Schedule Castes and Tribes would thus be 17½% of the total vacancies to be filled in that year, plus the total unfilled vacancies which had been carried forward from the two previous years. The rule thus permitted a perpetual 'carry forward' of unfilled reserved vacancies in the two years preceding the year of recruitment and provided addition to them of 17½% of the total vacancies to be filled in the recruitment year. If for two successive years no candidate from amongst the Scheduled Castes and Tribes was found to be qualified or filling any of the reserved posts, and supposing that in each of those two years the number of vacancies to be filled in a particular service was 100, by operation of the carry forward rule the vacancies to be filled by persons from amongst the Scheduled Castes and Tribes would be 54½ as against 46 by persons from amongst the more advanced classes. The reservation would thus be more than 50%. On the basis of reservation permitted by the carry forward rule as modified in 1955, in the year 1961, out of the 45 vacancies, actually filled, 29 went to members of the Scheduled Castes and Tribes. That came to about 64% of reservation. The question for consideration was whether the carry forward rule as modified in 1955 was unconstitutional either because its operation would practically destroy the fundamental right guaranteed by Art. 16(1) of the Constitution or because it was violative of the guarantee contained in Art. 14 of the Constitution. The Supreme Court after considering its other decision on the similar point came to the following conclusion:

"What is meant by equality in Art. 14 is equality amongst equals. It does not provide that what is aimed at is an absolute equality of treatment to all persons in utter disregard to every conceivable circumstances of the differences such as age, sex; education and so on and so forth as may be found amongst people in general. Indeed, while the aim of this Article is to ensure that invidious distinction of arbitrary discrimination shall not be made by the State between a citizen and a citizen who answers the same description and the differences which may obtain between them are of no relevance for the purpose of applying in particular law, reasonable classification is permissible. It does not mean anything more.

"It is an accepted fact that members of the Scheduled Castes and Tribes are by at large backward in comparison with other communities in the country. . . . The fact however remains
that they are backward and the purpose of Art. 16 (4) is to ensure that such people, because of their backwardness should not be unduly handicapped in the matter of securing employment in the various services of the State. This provision, therefore, contemplates reservation of appointments or posts in favour of backward classes who are not adequately represented in the services under the State. Where, therefore, the State makes a rule providing for the reservation of appointments and posts for such backward classes it cannot be said to have violated Art. 14 merely because members of the more advanced classes will not be considered for appointment to these posts even though they may be equally or even more meritorious than the members of the backward classes, or merely because such reservation is not made in every kind of service under the State. When the object of a rule is to make reasonable allowance for the backwardness of members of a class by reserving certain proportion or appointments for them in the public services of the State what the State would in fact by doing would be to provide the members of backward classes with an opportunity equal to that of the members of the more advanced classes in the matter of appointments to public services. If the reservation is so excessive that it practically denies a reasonable opportunity for employment to members of other communities the position may well be different and it would be open then for a member of a more advanced class to complain that he has been denied equality by the State.

"The problem of giving adequate representation to members of backward classes enjoined by Art. 16 (4) of the Constitution is not to be tackled by framing a general rule without bearing in mind its repercussions from year to year. What precise method should be adopted for this purpose is a matter for the Government to consider. It is enough for us to say that while any method can be evolved by the Government it must strike a reasonable balance between the claims of the backward classes and claims of other employees as pointed out in Balaji's case—AIR 1963 SC 649.

"We would like to emphasise that the guarantee contained in Art. 16 (1) is for ensuring equality of opportunity for all citizens relating to employment, and to appointments to any office under the State. This means that on every occasion for recruitment the State should see that all citizens are treated equally. The guarantee is to each individual citizen and, therefore, every citizen who is seeking employment or appointment to an office under the State is entitled to be afforded an opportunity for seeking such employment or appointment whenever it is intended to be filled. In order to effectuate the guarantee each year of recruitment will have to be considered by itself and the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities.

"Further this court has already held that Cl. (4) of Art. 16 is by way of proviso or an exception to Cl. (1). A proviso
or an exception cannot be so interpreted as to nullify or destroy the main provision. To hold that unlimited reservation of appointments could be made under Cl. (4) would in effect efface the guarantee contained in Cl. (1) or at best make illusory. No provision of the Constitution or of any enactment can be so construed as to destroy another provision contemporaneously enacted therein. It is true that effect must be given to the express words of Art. 16 (4): 'Nothing in this Article shall prevent the State from making any provision for the reservation of appointments etc.' but that does not mean that the provision made by the State should have the effect of virtually obliterating the rest of the Article, particularly Cls. (1) and (2) thereof. The overriding effect of Cl. (4) on Cls. (1) and (2) could only extend to the making of a reasonable number of reservation of appointments and posts in certain circumstances. That is all. . . . . .

"It is clear that reservation of a reasonable percentage of posts for members of the Scheduled Castes and Tribes is within the competence of the State. What the percentage ought to be must necessarily depend upon the circumstances obtaining from time to time ........

"... the Government resolution does not contemplate reservation of any posts in the service cadre but merely provides for reservation of vacancies. Even if the Government had provided for the reservation of posts for Scheduled Castes and Tribes, a cent per cent reservation of vacancies to be filled in a particular year of reservation of vacancies in excess of 50% would according to the decision in Balaji's case—AIR 1963 SC 649 not be constitutional."

The condition as to inadequacy of representation may refer either to the numerical inadequacy of representation in the service or even to the qualitative inadequacy of representation—M. R. Balaji v. State of Mysore, AIR 1963 SC 649 : (1963) 1 SCR (Supp.) 439.

The power of reservation conferred on the State could be exercised by it not only by providing for reservation of appointments, but also by providing for representation on selection posts—M. R. Balaji v. State of Mysore, AIR 1963 SC 649 : (1963) 1 SCR (Supp.) 429.

Art. 14 of the Constitution runs as under:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Art. 14 sets out an attitude of mind, a way of life, rather than a precise rule of law. It embodies a general awareness in the consciousness of the people at large of something that exists and which is very real but which cannot be pinned down to any precise analysis of fact save to say in a given case that it falls this side of the line or that, and because of that decisions on the same point will vary as conditions vary, one conclusion in one part of the country and another somewhere else; one decision today and another tomorrow when the basis of society
has altered and the structure of current social thing is different. It is not the law that alters but the changing conditions of the times and Art. 14 narrows down to a question of fact which must be determined by the highest Judges in the land as each case arises—Biddi Supply Co. v. Union of India, AIR 1956 SC 479.

The scope and effect of Art. 14 can no longer be the subject matter of any doubt or dispute. It is well-settled that though Art. 14 forbids class legislation it does not forbid reasonable classifications for purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes. Art. 14, its validity, can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second is that the differentia in question must have reasonable relation to the object sought to be achieved by the rule or statutory provision in question. As the decisions of the Supreme Court show, the classification on which the statutory provision may be founded may be referable to different considerations. It may be based on geographical considerations or it may have reference to objects or occupations or the like. In every case there must be some nexus between the basis of the classification and the object intended to be achieved by the statute—Pandurangarao v. Andhra Pradesh Public Service Commission, AIR 1963 SC 268.

It is quite clear that in testing the validity of rules, one will have to consider the true scope and effect of the impugned rule itself and the decision of the question would have to be confined to the relevant considerations in respect of the said rule and no more. Just as the presence of one invalid rule cannot invalidate the other rules which may be valid, so the presence of a number of valid rules would not help to validate an impugned rule if it is otherwise invalid.

Rule 12 (h) framed by the Governor of the Andhra Pradesh under Art. 234, and the proviso to Art. 309 of the Constitution, provides special qualifications and says that no person shall be eligible for appointment to the post of District Munsiff by the method specified in column (1) of the table given below the rule unless he possesses the qualifications specified in the corresponding entries in column (2) thereof. For direct recruitment as District Munsiff several qualifications are mentioned. One of them is that the applicant must be practising as an Advocate of the High Court, and the other is that he must be actually practising in Court of Civil or Criminal jurisdiction in India for a period not less than three years.

The above rule was challenged before the Supreme Court in Pandurangarao v. Andhra Pradesh, Public Service Commission, AIR 1963 SC 268, and it was held:

"Therefore, in our opinion, the impugned rule has introduced a classification between one class of Advocates and the rest, and the said classification must be said to be irrational inasmuch as there is no nexus between the basis of the said classification and the object intended to be achieved by the relevant scheme of the rules. That being so, it must be held that the decision of the Andhra High Court in the case of Nallanthigal Bhaktavatsalam Iyengar is not correct."
In Moti Das v. S. P. Sahai, AIR 1959 SC 942, the Supreme Court said:

"It is enough to say that it is well-settled by a series of decisions of this court that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation and in order to pass the test of permissible classification, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (2) that that differential must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases such as, geographical, or according to objects or occupations and the like. The decisions of this court further establish that there is a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional guarantee; that it must be presumed that the Legislature understands and correctly appreciate the needs of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds; and further the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest...."

Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds—religion, race, caste, sect, place of birth or any of them. It is available to citizens only, but it is not restricted to any employment or office under the State. Article 16, Cl. (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and Cl. (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Art. 14 guarantees the general right of equality, Arts. 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Art. 16, the latter being confined to matters relating to employment or appointment to any office, under the State. It is also worthy to note that Art. 15 does not mention ‘descent’ as one of the prohibited grounds of discrimination, whereas Art. 16 does. There is no reason why the full ambit of the fundamental right guaranteed by Art.16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to services or to provisions in the earlier Constitution Acts relating to the same subject. These service provisions do not enshrine any fundamental right of citizens; they relate to recruitment, conditions and tenure of service of the persons, citizens or otherwise, appointed to a civil service or to posts in connection with the affairs of the Union or any State. The word ‘State’, be it noted, has a different connotation in Part III relating to Fundamental Rights; it includes the Government and Parliament of
India, the Government and Legislature of each of the States and all local or other authorities within the territory of India, etc. Therefore, the scope and ambit of the service provisions are to a large extent distinct and different from the scope and ambit of fundamental right guaranteeing to all citizens of equality of opportunity in matters of public employment. The preamble to the Constitution states that one of its objects is to secure to all citizens equality of status and opportunity. Article 16 gives equality of opportunity in a matter of public employment. It would be wrong in principle to cut down the amplitude of a fundamental right by reference to provisions which have an altogether different scope and purpose. Article 13 of the Constitution lays down inter alia that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with fundamental rights, shall, to the extent of the inconsistency, be void. In that Article 'law' includes customs or usage having the force of law. Therefore, even if there was a custom which has been recognised by law with regard to a hereditary village office, that custom must yield to a fundamental right—Dasaratha Ram Rao v. State of Andhra Pradesh, AIR 1961 SC 564.

Equal protection of the laws does not postulate equal treatment of all persons without distinction; it merely guarantees the application of the same laws alike and without discrimination to all persons similarly situated. The power of the Legislature to make a distinction between persons or transactions based on a real differentia is not taken away by the equal protection clause. Therefore, by providing a right of appeal against the order of police authorities acting under the Police Regulations imposing penalties upon a member of the police force, and by providing no such right of appeal when the order is passed by the Governor, no discrimination inviting the application of Art. 14 is practised.

The Tribunal Rules and the Police Regulations in so far as they deal with enquiries against Police Officers are promulgated under Sec. 7 of the Police Act, and neither the Tribunal Rules nor the Police Regulations provide an appeal against an order of dismissal or reduction in rank which the Governor may pass. The fact that an order made by a police authority is made appealable is not a ground on which the validity of the Tribunal Rules can be challenged. In either case, the final order rests with the Governor who has to decide the matter himself—Jagannath Prasad v. State of Uttar Pradesh, AIR 1961 SC 1245.

In Budhan Choudhary v. State of Bihar, AIR 1955 SC 191, the Supreme Court held:

"The provisions of Art. 14 of the Constitution have come for discussion before this court in a number of cases, namely, Charanjit Lal v. Union of India, AIR 1951 SC 41; State of Bombay v. F. N. Balsara, AIR 1951 SC 313; State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75; Kathi Ran- ning Rawat v. State of Saurashtra AIR 1952 SC 123; Lach- mandas Kewalram v. State of Bombay, AIR 1952 SC 235; and Quasim Razvi v. State of Hyderabad, AIR 1953 SC 156. It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the Article in question."
"It is now well-established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely that (i), the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii), that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

In Rama Krishna Dalmia v. Justice Tendolkar, AIR 1958 SC 558: 1959 SCR 279, the Supreme Court considered the passage noted above and held:

"The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this court further establish—

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation and

(f) that while good faith and knowledge of the existing conditions on the part of the Legislature are to be presumed, if there is nothing on the face of the law or surrounding circumstances brought to the notice of the court on which the classification may reasonably
be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

In Kapur Singh v. Union of India, AIR 1960 SC 493 : 1960 SCJ 487, two sets of forum were in force at the time the enquiry was ordered. These were the Public Servant (Inquiries) Act, 1850 and Civil Services (Classification Control and Appeal) Rules. It was contended that the provisions of the Act were more drastic and prejudicial to the interests of the petitioner and that the adoption of enquiry under the Act was violation of Art. 14. The contention was repelled by the Supreme Court and it was held that the order to hold the enquiry under the Public Servants (Inquiries) Act, 1850 instead of under rule 55 of the Civil Services (Classification Control and Appeal) Rules was not discriminatory.

In State of Orissa v. Dhirendranath Das, AIR 1961 SC 1715, enquiry against the respondent was held under the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 and not under the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935, although the latter was also in force at the time the enquiry was ordered. It was contended before the Supreme Court that by holding enquiry under the Disciplinary Proceedings (Administrative Tribunal Rules), 1951 which contained more stringent provisions, Art. 14 of the Constitution was infringed when against another public servant similarly circumstanced an enquiry under Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules may be directed. The Court observed:

"Admittedly under the Tribunal Rules, the public servant against whom a penalty is imposed has no right of appeal against the finding and recommendation of the Tribunal which a person similarly situated may have if an enquiry were held under the Service Rules. The Tribunal Rules do contemplate an enquiry by a person not connected with the department of the public servant and the rules also provide that before passing an order to the prejudice of the public servant concerned, the Public Service Commission shall be consulted, but these compensatory safeguards do not, in our judgment, make the procedure prescribed by the Tribunal Rules any the less discriminatory. If it was open to the Government of Orissa to direct an enquiry against a non-gazetted public servant either under the Tribunal Rules or under the Service Rules, there being a substantial difference in the protection to which the public servant concerned was entitled, a clear case of discrimination arose. Article 14 of the Constitution enjoins the State not to deprive any person of equality before the law. If against two public servants similarly circumstanced enquiries may be directed according to procedure substantially different at the discretion of the Executive authority, exercise whereof is
not governed by any principle having any rational relation to the purpose to be achieved by the enquiry, the order selecting a prejudicial procedure, out of the two open for selection, is hit by Art. 14 of the Constitution."

In the High Court, Calcutta v. Amal Kumar Rao, AIR 1962 SC 1704, the High Court exercising its power under Art. 235 to decide the question of appointment of a Munsif to the higher rank of a Subordinate Judge considered the plaintiff's case for promotion and promoted certain Munsifs lower in order than the plaintiff in the seniority list. It was contended that the plaintiff had been discriminated against in the matter of promotion and therefore Arts, 14 and 16 (1) of the Constitution had been violated. The contention was negatived by the Court as under:

"It is difficult to see how either of these Articles can be pressed in aid of the plaintiff's case. The plaintiff's case was considered along with that of the others, and the High Court after a consideration of the relative fitness of the Munsifs chose to place a number of them on the panel for appointment as Subordinate Judges as and when vacancies occurred. He had, therefore, along with others, equal opportunity. But equal opportunity does not mean getting the particular post for which a number of persons may have been considered. So long as the plaintiff, along with others under consideration, had been given his chance, it cannot be said that he had not equal opportunity along with others, who may have been selected in preference to him. Where the number of posts to be filled is less than the number of persons under consideration for those posts, it would be a cause of many being called and few being chosen. The fact that the High Court made its choice in a particular way cannot be said to amount to discrimination against the plaintiff."

In G. K. Achutan v. State of Kerala, AIR 1959 SC 491, the Supreme Court observed:

"The gist of the present matter is the breach, if any, of the contract said to have been given to the petitioner which has been cancelled either for good or bad reasons. There is no discrimination because it is perfectly open to the Government, even as it is to a private party, to choose a person to their liking to fulfil contracts which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot claim the protection of Art. 14, because the choice of the person to fulfil a particular contract must be left to the Government. Similarly a contract which is held from Government stands on no different footing from a contract held from a private party. The breach of the contract, if any, may entitle the person aggrieved to sue for damages or in appropriate cases, even specific performance, if any, but he cannot complain that there has been a deprivation of the right to practise any profession or to carry on any occupation, trade or business, such as is contemplated by Art. 12 (1) (g). Nor has it been shown how Art. 31 of the Constitution may be invoked to prevent cancellation of a
contract in exercise of powers conferred by one of the terms of the contract itself."

In State of Orissa v. Bidyabhushan, AIR 1963 SC 779, the Supreme Court overruling Bidyabhushan Mohapatra v. State of Orissa, AIR 1960 Orissa 68, held that the Disciplinary Proceedings (Administrative Tribunal) Rule, 1951 was not ultra vires of Article 14 of the Constitution and observed as under:

"It is manifest that whereas detailed provisions are made in the Tribunal Rules as to the grounds on which an enquiry may be directed against public servant for misconduct in discharge of official duties, failure to discharge duties properly, general inefficiency or personal immorality under the classification Rules for good and sufficient reasons, penalties may be imposed. The expression used in the Classification Rules is somewhat vague but whatever other ground it may include it does include charges described in Rule 4 of the Tribunal Rules. The procedure to be followed in the enquiry under the Tribunal Rules is not described in any detail. But it is clearly indicated, that the public servant must be given a summary of the charges against him and he must be given an opportunity to submit his explanation orally or in writing in respect of the charges, and that the Tribunal must on holding the enquiry be guided by rules of natural justice, in the matter of procedure and evidence. The procedure prescribed by Rule 55 of the Civil Services (Classification, Control and Appeal) Rules which is assimilated by virtue of the note under 'Rule 2 into the Classification Rules, is set out in greater detail, but is in substance not different from the procedure under Rule 7 of the Tribunal Rules.

"[It is true that the Tribunal Rules do not set out the punishments which may be imposed whereas the Classification Rules set out the various punishments such as censure, withholding of increments or promotion, including stoppage at efficiency bar, reduction to lower post or time scale, recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order, fine, suspension, removal from the civil service, which does not disqualify from future employment and dismissal from the civil services which ordinarily disqualifies from future employment. But failure to enumerate the penalties which may be imposed also does not indicate any variation between the Tribunal Rules and the Classification Rules. Rule 2 of Classification Rules merely enumerates the diverse punishments which may be imposed. This list is exhaustive and no penalties other than those enumerated are ever imposed upon delinquent public servants. Under the Tribunal Rules there is no enumeration of penalties, but it is left to the Governor in his discretion, after considering the report of the Tribunal to select the appropriate punishment having regard to the gravity of the delinquency .... Under the classification rules there is a right of appeal from an order imposing a penalty passed by a departmental head to the latter's superior whereas there is no such right of appeal against
the order passed by the Governor imposing penalty upon a public servant. But this also cannot be regarded as a ground sustaining a plea of unlawful discrimination.”

The Court then concluded that the Tribunal Rules cannot be held to the ultra vires on the ground of their resulting in discrimination contrary to Article 14 of the Constitution.

Article 14 has no retrospective effect and it does not apply to enquiries commenced before the coming into force of the Constitution—Jagannath Prasad v. State of Uttar Pradesh, AIR 1961 SC 1245.

In U. S. Menon v. State of Rajasthan, AIR 1968 SC 81, the Supreme Court held that the different scales of pay for the post of Deputy Secretaries of the Rajasthan Secretariat for entrants recruited from Rajasthan Secretariat Service and Rajasthan Administrative Service were justified and did not offend Articles 14 and 16 of the Constitution.

The abstract doctrine of equal pay for equal work has nothing to do with Art. 14. Art. 14 therefore, cannot be said to be violated where the pay-scale of Class I and Class II Income Tax Officers are different though they do the same kind of work. Incremental scales of pay can be validly fixed dependent on the duration of an officer’s service, Kishori Mohan Lal Bakshi v. Union of India, AIR 1962 SC 1139.

In the instant case the Supreme Court held:

“The only contention raised is that there is discrimination between Cl. I and Cl. II officers inasmuch as though they do the same kind of work their pay-scales are different. This, it is said, violates Art. 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer’s service. The abstract doctrine of equal pay for equal work has nothing to do with Art. 14.”

The Government which is carrying on the administration has necessarily to have a choice in the constitution of the services to man the administration and the limitations imposed by the Constitution are not such as to preclude the creation of such services. Besides, there might for instance, be a temporary recruitment to meet an exigency which is not expected to last for any appreciable period of time. To deny to the Government the power to recruit temporary staff drawing the same pay and doing the same work as other permanent incumbents within the cadre strength but governed by different rules and conditions of service, it might be including promotions, would be to impose restraints on the manner of administration which was not intended by the Constitution—State of Punjab v. Jogender Singh, AIR 1962 SC 113.

(a) Fundamental Rights, Waiver of.—The doctrine of waiver enunciated by some American Judges in construing the American Constitution cannot be introduced in our Constitution without a fuller discussion of the matter. No inference in deciding the case should have been raised on the basis of such a theory.
Without finally expressing an opinion on this question we are not for the moment convinced that this theory has any relevancy in construing the fundamental rights conferred by Part III of our Constitution. The rights described as fundamental rights are a necessary consequence of the declaration in the preamble that the people of India have solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship equality of status and of opportunity.

These fundamental rights have not been put in the Constitution merely for individual benefit, though ultimately they come into operation in considering individual rights. They have been put there as a matter of public policy and the doctrine of waiver can have no application to provisions of law which have been enacted as a matter of constitutional policy. Reference to some of the Articles, inter alia, Arts. 15 (1), 20, and 21 makes the proposition quite plain. A citizen cannot get discriminated by telling the State "you can discriminate", or get convicted by waiving the protection given under Arts. 20 and 21. Behram Khursheed v. Bombay State, AIR 1955 SC 123.

The question of waiver of fundamental rights also came up before the Court in Basheshar Nath v. Income Tax Commissioner, AIR 1959 SC 49. The opinion of the different judges constituting bench was divided. Their Lordships expressed themselves as under:

**Per S. R. Das, C. J. and Kapur, J:**

"Article 14 is the first of the five Articles grouped together under the heading "Right to Equality." The underlying object of this Article is undoubtedly to secure to all persons, citizens or non-citizens, the equality of status and of opportunity referred to in the glorious preamble of our Constitution. It combines the English doctrine of the rule of law and the equal protection clause of the 14th Amendment to the American Federal Constitution which enjoins that no State shall "deny to any person within its Jurisdiction the equal protection of the laws." There can, therefore, be no doubt or dispute that this Article is founded on a sound public policy recognised and valued in all civilised States. Coming then to the language of the Article it must be noted, first and foremost that this Article is, in form, an admonition addressed to the State and does not directly purport to confer any right on any person as some of the other Articles e.g., Article 19, do. The obligation thus imposed on the State, no doubt, ensures for the benefit of all persons, for, as a necessary result of the operation of this Article, they all enjoy equality before the law. That is, however, the indirect, though necessary and inevitable result of the mandate. The command of the Article is directed to the State and the reality of the obligation thus imposed on the State is the measure of the fundamental right which every person within the territory of India is to enjoy. The next thing to notice is that the benefit of this Article is not limited to citizens, but is available to any person within the territory of India. In the third place it is to be observed
that, by virtue of Art. 12, 'the State' which is, by Art. 14, forbidden to discriminate between persons includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Art. 14, therefore, is an injunction to both the legislative as well as the executive organs of the State and the other subordinate authorities. As regards the legislative organ of the State, the fundamental right is further consolidated and protected by the provisions of Art. 13, Cl. (1) of that Article provides that all laws in force in the territories of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part III shall, to the extent of the inconsistency, be void. Likewise Cl. (2) of this Article prohibits the State from making any law which takes away or abridges the rights conferred by the same Part and follows it up by saying that any law made in contravention of this clause, shall, to the extent of the contravention, be void. It will be observed that so far as this Article is concerned, there is no relaxation of the restriction imposed by it such as there are in some of the other Article, e.g. Art. 19, Cls. (2) to (6). Our right to equality before the law is thus completely and without any exception secured from all legislative discrimination. It is not necessary, for the purpose of this appeal to consider whether an executive order is a "law" within the meaning of Art. 13 or even without the aid of Art. 13, our right to the equal protection of the law is protected against the vagaries, if any, of the executive Government also. In this connection the observations of Lord Atkin in Eshugbavi Eleko v. Officer Administering Government of Nigeria, 1931 AC 662: AIR 1931 PC 248, are opposite. Said his Lordship at page 670 (of AC): (at page 252 of AIR) that in accordance with British Jurisprudence no member of the executive can interfere with the liberty of property of a British subject except when he can support the legality of his act before a Court of justice. That apart, the very language of Art. 14 of the Constitution expressly directs that 'the State', which by Art. 12 includes the executive organ, shall not deny to any person equality before the law or the equal protection of the law. Thus Art. 14 protects us from both legislative and executive tyranny by way of discrimination.

"Such being the true intent and effect of Art. 14 the question arises: Can a breach of the obligation imposed on the State be waived by any person? In the face of such an unequivocal admonition administered by the Constitution, which is the supreme law of the land; is it open to the State to disobey the constitutional mandate merely because a person tells the State that it may do so? If the Constitution asks the State as to why the State did not carry out its behest, will it be any answer for the State to make that "true, you
directed me not to deny any person equality before the law, but this person said that I, could do so, for he had no objection to my doing it." I do not think the State will be in any better position than the position in which Adam himself when God asked him as to why he had eaten the forbidden fruit and the State's above answer will be as futile as was that of Adam who pleaded that the woman had tempted him and so he ate the forbidden fruit. It seems to us absolutely clear on the language of Art. 14 that it is a command issued by the Constitution of the State as a matter of public policy with a view to implement its object of ensuring the equality of status and opportunity which every Welfare State, such as India, is by her Constitution expected to do and no person can by any act or conduct, relieve the State of the solemn obligation imposed on it by the Constitution. Whatever breach of other fundamental right a person or a citizen may or may not waive, he cannot certainly give up or waive a breach of the fundamental right that is indirectly conferred on him by this constitutional mandate directed to the state."

Per Bhagwati and K Subba, JJ.

"The preamble of our Constitution, Art. 13 and the language in which the fundamental rights have been enacted lead to one conclusion and one conclusion only that whatever be the position in America, no distinction can be drawn here, as has been attempted in the United States of America between the fundamental rights which may be said to have been enacted for the benefit of the individual and those enacted in public interest or on grounds of public policy. Ours is a nascent democracy and situated as we are, socially, economically educationally and politically, it is the sacred duty of the Supreme Court to safeguard the fundamental rights which have been for the first time enacted in Part III of our Constitution. The limitations on those rights have been enacted in the Constitution itself, e.g., in Arts. 19, 33 and 34. But unless and until we find the limitations on such fundamental rights enacted in the very provisions of the Constitution, there is no justification whatever for importing any notions from the United States of America or the authority of cases decided by the Supreme Court there in order to whittle down the plenitude of the fundamental rights enshrined in Part III of our Constitution.

"This, in my opinion, is the true position and it cannot, therefore, be urged that it is open to a citizen to waive his fundamental rights conferred by Part III of the Constitution. The Supreme Court is the bulwark of the fundamental rights which have been for the first time enacted in the Constitution and it would be sacrilege to whittle down those rights in the manner attempted to be done.

"This leads me to the question whether the fundamental rights enshrined in the Indian Constitution pertain to that category of rights which could be waived. To put it differently,
whether the constitutional guarantee in regard to the fundamental right is restricted or ousts the jurisdiction of the relevant authorities under the Constitution to make laws in derogation of the said rights or whether the said rights are for the benefit of the general public. At the outset I would like to sound a note of warning. While it is true that the judgments of the Supreme Court of the United States are of a great assistance to this Court in elucidating and solving the difficult problems that arise from time to time, it is equally necessary to keep in mind the fact that the decisions are given in the context of a different social, economic and political set-up, and therefore great care should be bestowed in applying those decisions to cases arising in India with different social, economic and political conditions. While the principles evolved by the Supreme Court of the United States of America may in certain circumstances be accepted, their application to similar facts in India may not always lead to the same results. It is, therefore, necessary to consider the nature of the fundamental rights incorporated in the Indian Constitution, the conditions of the people for whose benefit and the purpose for which they were created, and the effect of the laws made in violation of those rights. The Constitution of India in its preamble promises to secure to all citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship, equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity of the nation. One of the things the Constitution did to achieve the object is to incorporate the fundamental rights in the Constitution. They are divided into seven categories:

(i) right to equality—Arts. 14 to 18;
(ii) right to freedom—Arts. 19 to 22;
(iii) right against exploitation—Arts. 23 and 24;
(iv) right to freedom of religion—Arts. 25 to 28;
(v) cultural and educational rights—Art. 29 and 30;
(vi) right to property—Arts. 31, 31-A and 31-B; and
(vii) right to constitutional remedies—Arts. 32 to 35.

Patanjali Shastri, J. as he then was, pointed out (1950 SCR 88: AIR 1950 SC 27), that fundamental rights contained in Part III of the Constitution are really rights that are still reserved to the people after the delegation of rights by the people to the institutions of Government both at the Centre and in the States created by the Constitution. Art. 13 reads:

'(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause, shall, to the extent of the contravention, be void.

"This Article, in clear and unambiguous terms, not only declares that all laws in force before the commencement of this Constitution and made thereafter taking away or abridging the said rights could be void to the extent of the contravention but also prohibits the State from making any law taking away or abridging the said rights. Part III is, therefore, enacted for the benefit of all the citizens of India, in an attempt to preserve to them their fundamental rights against infringement by the institutions created by the Constitution; for without that safeguard, the objects adumbrated in the Constitution could not be achieved. For the same purpose, the said chapter imposes a limitation on the power of the State to make laws in violation of those rights. The entire part, in my view, has been introduced in public interest, and it is not proper that the fundamental rights created under the various Articles should be dissected to ascertain whether any or which part of them is conceived for individual benefit. Part III reflects the attempt of the Constitution-makers to reconcile individual freedom with State control. While in America this process of reconciliation was allowed to be evolved by the course of judicial decisions, in India, the fundamental rights and their limitations are crystallized and embodied in the Constitution itself; while in America a free hand was given to the judiciary not only to evolve the content of the right but also its limitations in the Indian Constitution there is not much scope for such a process. The Court cannot, therefore, import any further limitations on the fundamental rights other than those contained in Part III by any doctrine, such as 'waiver' or otherwise. I would, therefore, hold that the fundamental rights incorporated in Part III of the Constitution cannot be waived."

Per S. K. Das, J.

"I do not see any such vital distinction between the provisions of the American Constitution and those of our Constitution as would lead me to the conclusion that the doctrine of waiver applies in respect of constitutional rights guaranteed by the American Constitution but will not apply in respect of fundamental rights guaranteed by the Indian Constitution. Generally speaking, the prohibition in Part III is against the State from taking any action in violation of a fundamental right. The word 'State' in that part includes the Government and Parliament of India as also the Government and Legislature of each of the States and also all local or other authorities within the territory of India or under the control of the Government of India. The American Constitution also says the same thing in effect. By Article VI it states that the Constitution and the laws of the United States which shall be made in pursuance thereof shall be the
Ch. II] GOVERNMENT EMPLOYMENT AND CONSTITUTIONAL GUARANTEE 53

supreme law of the land. It is well-settled in America that the first ten amendments to the original Constitution were substantially contemporaneous and should be construed in pari materia. In many of the amendments the phraseology used is similar to the phraseology of the provisions of Part III of our Constitution.

"The true position as I conceive it is this: where a right of privilege guaranteed by the Constitution rests in the individual and is primarily intended for his benefit and does not infringe on the right of others, it can be waived provided such waiver is not forbidden by law and does not contravene public policy or public morals."

(b) Waiver of other rights.

There can be a three-fold classification of rights. (1) a right granted by an ordinary statutory enactment; (2) a right granted by the Constitution; and (3) a right guaranteed by Part III of the Constitution. With regard to an ordinary statutory right there is no difficulty. It is well-recognized that a statutory right which is for the benefit of an individual can in proper circumstances be waived by the party for whose benefit the provision has been made. With regard to a constitutional right, it may be pointed out that there are several provisions in our Constitution which do not occur in Part III, but which yet relate to certain rights, take, for example, the rights relating to the Services under the Union and the States in Part XIV. It cannot be seriously contended that a right which is granted to a Government servant for his benefit cannot be waived by him provided no question of jurisdiction is involved.

Waiver of rights by Government employees, e.g., Rule 19 is still left open. Waiver is definitely different from the imposition of restrictions contained in the Rules. If the question arises regarding the constitutionality of any of the rules it shall be decided on the principle of reasonable restriction under Art. 19 - Basheshar Nath v. Income Tax Commissioner, AIR 1959 SC 49.

Right under Art. 311 (2) is not a fundamental right and can be waived. In Jai Ram v. Union of India, AIR 1954 SC 584, plaintiff much before his attaining the age of superannuation insisted on retiring on a preparatory leave which was accepted by the Government and he was granted leave for 11 months and 25 days. Just ten days before the expiry of this leave the plaintiff changed his mind and wanted to resume his duties. He was not allowed to do so and he filed the suit. The Court said:

"Here the plaintiff was not compelled or required to retire by anybody. If the Government required him to retire in the terms of the Fundamental Rule 56 b) (1), it might be argued that he should have been given an opportunity to show cause that he was still efficient and able to discharge his duties and consequently could not be retired at that age. But here the situation was entirely of the plaintiff's own seeking and his own creation."

3-A. Articles 14 to 16 and Article 311.

There is nothing in Art. 311 of the Constitution which takes away the power of a competent authority to terminate the services of an employee according to the terms and conditions of an agreement of service executed by him, unless such terms and conditions are repugnant either to that provision or any of the provisions in the law of contract. Thus when the service of a Government servant is terminated after notice in accordance with the contract of service no question of violation of Art. 14 can arise—Satish Chandra v. Union of India, AIR 1953 SC 250: 1953 SCR 655: 1953 SCJ 32.

In T. G. Shivacharana Singh v. The State of Mysore, AIR 1965 SC 280, the normal age of retirement of a public servant under Rule 95 (a) of the Mysore Civil Service Rules, 1958 was 55 years but under Rule 285, the Government was competent to retire compulsorily a Government servant prematurely if it was thought that such premature retirement was in the public interest, provided however the servant had completed 25 years of qualifying service or had attained 50 years of age, it was held that the rule was not invalid and did not contravene Arts. 14 and 16.

In regard to an enquiry or trial against an officer commenced before the Constitution but completed after the coming into force of the Constitution, if the substance of the special procedure followed after the Constitution is the same as in the case of a trial by a normal procedure the plea of discrimination which is prohibited by Art. 14 invalidating a trial must fail—Jagannath Prasad Sharma v. Union of India, AIR 1961 SC 1245.

If against two public servants similarly circumstanced enquiries may be directed according to procedure substantially different at the discretion of the executive authority exercise whereof is not governed by any principles having any rational relation to the purpose to be achieved by the enquiry, the order selecting a prejudicial procedure of the two open for selection is hit by Art. 14. If the two sets of rules are in operation at the material time when the enquiry is directed against a non-gazetted public servant and by order of the Governor, the enquiry is directed against a non-gazetted public servant and by order of the Governor, the enquiry is directed under the Tribunal Rules which are more drastic and prejudicial to the interests of the said servant, a clear case of discrimination arises and the order directing the enquiry against the servant and the subsequent proceedings are liable to be struck down as infringing Art. 14 Dhirendra Nath v. State of Orissa, AIR 1961 SC 1715.


Article 19 of the Constitution runs as under:

"19. (1) All citizens shall have the right—
(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India;"
(f) to acquire, hold and dispose of property; and

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of Cl. (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interest of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, or citizens or otherwise.”

The Supreme Court in Kameshwar Prasad v. State of Bihar, AIR 1962 SC 1166, held that the Constitution of India does not exclude Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons are specifically named and observed as under:

“In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Art. 33. That Article
selects two of the services under the State—members of the armed forces and forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them—from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the service members of which might be deprived of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogations might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents or the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Art. 19 (1) (e) and (g).”

In Kameshwar Prasad v. State of Bihar, AIR 1962 SC 1166, the point debated was whether Rule 4-A of the Bihar Government Servants’ Conduct Rules, 1956 infringed Art. 19 (1) (a), (b) and (c) of the Constitution. The impugned Rule which was framed under Art. 309 ran as under:

“4-A. Demonstrations and strikes—No Government servant shall partici- pate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service.”

The said point was discussed by the Court and it was observed:

“A ‘demonstration’ is defined in the Concise Oxford Dictionary as ‘an outward exhibition of feeling as an exhibition of opinion on political or other question especially a public meeting or procession’. In Webster it is defined as ‘a public exhibition by a part, sect or society........as by a parade or mass meeting’. Without going very much into the biceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one’s ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has, however, to be recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the context of Art. 19 (1) a) or 19 (1) (b). A demonstration might take the form of an assembly and even then the intention is to convey to the person to authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms
of demonstration which would fall within the freedoms guaranteed by Arts. 19 (1) (a) and 19 (1) (b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19 (1) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances."

The Court continued:

"No doubt, if the rules were so framed as to single out those types of demonstrations which were likely to lead to a disturbance of public tranquility or which would fall under the other limiting criteria specified in Art. 19 (2) the validity of the rule could have been sustained. The vice of rule, in our opinion, consists in this that it lays a ban on every type of demonstration—be the same, however innocent and however incapable of causing a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result.

"Learned counsel for the respondent and those who supported the validity of the rule could not suggest that on the language of the rule as it stood, it was possible so to read it as to separate the legal from the unconstitutional portion of the provision. As no such separation is possible the entire rule has to be struck down as unconstitutional."

Rule 4-A of the Central and Civil Services (Conduct) Rules, 1'55 again came up before the Supreme Court in O. K. Ghosh v. E. X. Joseph, AIR 1963 SC 812, wherein the Court observed:

"The question about the validity of Rule 4-A has been the subject-matter of a recent decision of this court in Kameshwar Prasad v. State of Bihar, AIR 1962 SC 1166. At the hearing of the said appeal, the appellants and the respondent had intervened and were heard by the court. In that case, this court has held that Rule 4-A in the form in which it now stands prohibiting any form of demonstration is violative of the Government servants' rights under Art. 19 (1) (a) and (b) and should, therefore, be struck down. In striking down the rule in this limited way, this court made it clear, that in so far as the said rule prohibits a strike, it cannot be struck down for the reason that there is no fundamental right to resort to a strike. In other words, if the rule was invalid against a Government servant on the ground that he had resorted to any form of strike specified by Rule 4-A; the Government servant would not be able to contend that the said rule was invalid in that behalf. In view of this decision, we must hold that the High Court was in error in coming to the conclusion that Rule 4-A was valid as a whole."
"Can it be said that the rule imposes a reasonable restriction in the interest of public order? There can be no doubt that Government servants can be subjected to rules which are intended to maintain discipline amongst their ranks and to lead to an efficient discharge of their duties. Discipline amongst Government employees and their efficiency may, in a sense, be said to be related to public order. But in considering the scope of Cl. (4), it has to be borne in mind that the rule must be in the interest of public order and must amount to a reasonable restriction. The words "public order" occur even in Cl. (2), which refers, inter alia, to security of the State and public order. There can be no doubt that the said words must have the same meaning in both Cls. (2) and (4). So far as Cl. (2) is concerned, security of the State having been expressly and specifically provided for, public order cannot include the security of the State, though in its widest sense it may be capable of including the said concept. Therefore, in Cl. (2), public order is virtually synonymous with public peace, safety and tranquility. The denotation of the said words cannot be any wider in Cl. (4). That is one consideration which it is necessary to bear in mind. When Cl. (4) refers to the restriction imposed in the interest of public order, it is necessary to enquire as to what is the effect of the words "in the interests of." This clause again cannot be interpreted to mean that even if the connection between the restriction and the public order is remote and indirect, the restriction can be said to be in the interest of public order. A restriction can be said to be in the interest of public order only if the connection between the restriction and the public order is proximate and direct. Indirect or far-fetched or unreal connection between the restriction and public order would not fall within the purview of the expression "in the interests of public order." This interpretation is strengthened by the other requirements of Cl. (4) that, by itself, the restriction ought to be reasonable. It would be difficult to hold that a restriction which does not directly relate to public order can be said to be reasonable on the ground that its connection with public order is remote or far-fetched. That is another consideration which is relevant. Therefore, reading the two requirements of Cl. (4), it follows that the impugned restriction can be said to satisfy the test of Cl. (4) only if its connection with public order is shown to be rationally proximate and direct. That is the view taken by this Court in Superintendente, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia, AIR 1960 SC 633. In the words of Patanjali Shatri, J. in Rex v. Basudev, AIR 1950 FC 67, "the connection contemplated between the restriction and public order must be real and proximate, not far-fetched and problematical." It is in the light of this legal position that the validity of the rule must be determined.

"It is not disputed that the fundamental rights guaranteed by Art. 19 can be claimed by Government servants. Article 33 which confers power on the Parliament to modify the rights
in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Art. 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his co-employees are entitled to form associations or unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of the Government Servants as soon as recognition accorded to the said association is withdrawn or if, after the association is formed, no recognition is accorded to it within six months. In other words, the right to form an association is conditioned by the existence of the recognition of the said association by the Government. Can this restriction be said to be in the interests of public order and can it be said to be a reasonable restriction? In our opinion, the only answer to these questions would be in the negative. It is difficult to see any direct or proximate or reasonable connection between the recognition by the Government of the association and the discipline amongst, and the efficiency of, the members of the said association. Similarly, it is difficult to see any connection between recognition and public order."

In A. I. B. E. Association v. N. I. Tribunal, AIR 1962 SC 171, the scope of Art. 19 (1) (c) was discussed as follows:

"Applying what we have stated earlier to the case of labour union, the position would be thus: while the right to form a union is guaranteed by sub-clause (c), the right of the members of the association to meet would be guaranteed by sub-clause (b), their right to move from place to place within India by sub-clause (d), their right to discuss their problems and to propagate their views by sub-clause (e), their right to hold property would be that guaranteed by sub-clause (f) and so on—each of these freedoms being subject to such restrictions as might properly be imposed by Cls. (2) to (6) of Art. 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of those rights, for that construction would, by a series of ever-expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result."

In Khem Chand v. Union of India, AIR 1963 SC 687, it was contended that Rule 12 (4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957 which substantially restrict his right to his arrears of pay and allowances, violated the provisions of Art. 19 (1) (f) of the Constitution. The Court negatived the contention and observed:

"Equally untenable is the appellant’s next contention that the impugned Rule contravenes the provisions of Art. 19 (1) (f)
of the Constitution. The argument is that as a result of this court's decree the appellant had a right to his arrears of pay and allowances. This right constituted his property; and as the effect of the impugned Rule is that he would not, for some time at least, get those arrears it restricts his right. It may be conceded that the right to arrears of pay and allowances constituted property within the meaning of Art. 19 (1) (f) of the Constitution and further, that the effect of Rule 12 (4) is a substantial restriction of that property under Art. 19 (1) (f). The question remains whether this restriction is a reasonable restriction in the interests of the general public. Nobody can seriously doubt the importance and necessity of proper disciplinary action being taken against Government servants for inefficiency, dishonesty or other suitable reasons. Such action is certainly against the immediate interests of the Government servant concerned; but it is absolutely necessary in the interests of the general public for serving whose interests the Government machinery exists and functions. Suspension of a Government servant pending an enquiry is a necessary part of the procedure for taking disciplinary action against him. It follows, therefore, that when the penalty of dismissal has been set aside but the disciplinary authority, decides a further enquiry on the same facts against him a fresh order of suspension till the enquiry can be completed, in accordance with law, is a reasonable step of the procedure. We have no hesitation in holding, therefore, that in so far as Rule 12 (4) restricts the appellant's right under Art. 19 (1) (f) of the Constitution, it is a reasonable restriction in the interests of general public."

5. Article 32 and Article 311.

Article 32 of the Indian Constitution runs as under:—

"Article 32.—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or order or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers on the Supreme Court by Cls. (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Cl. (2).

(4) The right guaranteed by this Article shall not be suspended except as otherwise provided for by this Constitution."

In Satish Chandra Anand v. The Union of India, AIR 1953 SC 250, it was held that a temporary Civil servant engaged on special contract for five years could not claim the benefit or Article 311 and as such
he was not entitled to invoke the jurisdiction of the Supreme Court under Article 32 of the Constitution.

6. Extent of executive power of State and constitutional guarantees.

Article 162 of the Constitution which defines the extent of the executive power of a State is reproduced below:

"162. Extent of executive power of State.—Subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have powers to make laws, the executive power of the State shall be subject to, and limited by the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

The legal position which appears to emerge from a study of the decisions of the Supreme Court in B. N. Nagarajan v. State of Mysore, AIR 1966 SC 1942 and Ram Jawaya Kapur v. State of Punjab, AIR 1955 SC 549, may be summarised thus:

1. In the absence of any statutory rules governing appointment to any State service, the appropriate State may recruit members to that service in any manner it likes in exercise of its executive powers under Art. 62 of the Constitution provided the guarantees contained in Arts. 14 and 16 of the Constitution are not infringed.

2. So long as the action of the Government does not violate any fundamental law or statutory rights of the person concerned, mere absence of a statute or a rule justifying a particular manner of appointment will not invalidate it.

3. If, however, there is in existence any valid law or statutory rule relating to appointment to a particular service, the executive is bound to abide by the relevant law or rule and has no jurisdiction to ignore, outstep or violate the same under the guise of executive power. In short, if there is any legislation of any set of rules governing the conditions of recruitment, etc. to a particular cadre, the otherwise wide executive power of the State Government is automatically subjected to the relevant law or set of rules and actions of the executive sought to be controlled by the relevant provision of law must conform to it. In other words, when statutory rules direct anything to be done in a particular way, the executive is bound to comply with the directions contained in those rules and any action of the State Government contrary to those rules would be void and consequently liable to be struck down in appropriate legal proceedings.

4. The State Government is bound to carry out the orders of the Central Government, passed under Sec. 117 of the Act.
7. Conduct of Government business under Article 166 and service matters.

Article 166 of the Constitution reads as under:

"Article 166.—(1) All executive actions of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

The business of the State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of business framed by the Rajpramukh of Pepsu provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that constitutionally speaking, the Minister is no more than an advisor and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular State, a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the 'order' of the State Government? Therefore, to make the opinion amount to a decision of the Government, it must be communicated to the person concerned.

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character Bachhittar Singh v. State of Punjab, AIR 1963 SC 395.

In State of Punjab v. Sodhi Sukhdev Singh, AIR 1961 SC 493, the Court observed:

"Mr. Gopal Singh attempted to argue that before the final order was passed, the Council of Ministers had decided to accept
the respondent’s representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent, that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajparamukh in the form of advice and acted upon by him by issuing an order in the behalf to the respondent."

8. Article 311 : Scope and applicability.

Article 311 of the Constitution runs as under:

"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 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."

It is now well-settled law that Art. 311 applies only when the dismissal, removal or reduction in rank is by way of punishment and not to any other case—P. L. Dhingra v. Union of India, AIR 1958 SC 36; Khem Chand v. Union of India, AIR 1953 SC 300; Ravendra Chandra v. Union of India, AIR 1963 SC 1552; see also (1939) 1 SCWR 922.

The object of Art. 311 of the Constitution is to afford a safeguard against arbitrary dismissal, removal or reduction in rank. Its provisions give only a limited protection to the members of the civil service. The protection is firstly against dismissal or removal by an authority subordinate to the authority by which the civil servant was appointed and secondly it is against the penalty of dismissal or removal or reduction in rank being imposed without giving to the civil servant an opportunity of defending himself. These clauses do not secure to the members of the public service any other rights or any other measure of protection against other forms of penalties that can be imposed under the relevant ‘Civil Service Rules’—Satish Chandra Anand v. Union of India, AIR 1953 SC 250.

The two safeguards provided in this Article do not apply to all Government servants. They apply only to the persons who are members of a civil service of the Union or of an all-India service or of a civil service of a State or to the persons who hold civil post under the Union or a State. These safeguards are not applicable to members of defence forces or to any posts connected with defence. Thus, the protection under Art. 311 is not available to the military personnel who are governed by the Army Act. Their employment can be terminated without assigning any reasons. Even a civilian, holding a post in a department connected with defence, such as Military Engineering Service or Military Farm and who is not governed by the Indian Army Act, cannot claim any right under this Article as he cannot be said to be a member of the civil service of the Union or a person holding a civil post under the Union.

The provisions of Art. 311 are applicable both to permanent and temporary servants. Till recently there has been a good deal of controversy over this matter. Some of the High Courts, namely, Allahabad, Calcutta, Bombay, Madhya Bharat and Patna, were of the view that Arts. 310 and 311 made no distinction between persons who hold permanent posts and those who officiate in temporary or permanent posts. Whereas the High Courts of Nagpur, Punjab and Rajasthan held the view that Art. 311 was not attracted in respect of posts which were not permanent or servants who were not permanent members of the civil service. The controversy has now been set at rest by the decision of the Supreme Court in Purshottam Lal Dholinga v. Union of India, AIR 1958 SC 36 : 1958 SCA 37. The Court held that the provisions of Art. 311 are as much applicable to temporary employees as to permanent employees. The Supreme Court observed as follows:

"Article 311 does not, in terms, say that the protection of that Article extends only to persons who are permanent members of the services or who hold permanent civil posts. . . . . In our judgment, just as Art. 310, in terms, makes no distinction between permanent and temporary members of the services or between persons holding temporary or permanent posts in the matter of their tenure being dependent upon the pleasure of the President or the Governor, so does Art. 311, in our view, make no distinction between the two classes, both of which are, therefore, within its protections, and the decisions holding the contrary view cannot be supported as correct."
Reference may also be made to the Supreme Court's decision in Jagdish Mitter v. Union of India, AIR 1964 SC 449, where it was observed:

"Having regard to the legislative history of the provisions contained in Art. 311, the words 'dismissed', 'removed' and 'reduced in rank' as used in Art. 311 (1), have attained the significance of terms of Article. As has been observed by Das, C. J., in Parsvottam Lal Dhingra v. The Union of India, AIR 1958 SC 36 : 1958 SCR 828, both at the date of the commencement of the 1935 Act and of our Constitution the words 'dismissed', 'removed' and 'reduced in rank' as used in the service rules, were well understood as signifying or denoting the three major punishments which could be inflicted on Government servants. The protection given by the rules to the Government servants against dismissal, removal or reduction in rank, which could not be enforced by action, was incorporated in sub-sections (1) and (2) of Sec. 240 to give them a statutory protection by indicating a procedure which had to be followed before the punishments of dismissal, removal or reduction in rank could be imposed on them and which could be enforced in law. These protections have now been incorporated in Art. 311 of our Constitution. It is thus clear that every order terminating the service of a public servant who is either a temporary servant, or a probationer, will not amount to dismissal or removal from service within the meaning of Art. 311. It is only when the termination of the public servant's service can be shown to have been ordered by way of punishment that it can be characterised either as dismissal or removal from service.

"It is also now settled that the protection of Art. 311 can be invoked not only by permanent public servants, but also by public servants, who are employed as temporary servants, or probationers, and as there can be no difficulty in holding that if a temporary public servant or a probationer is served with an order by which his services are terminated, and the order unambiguously indicates that the said termination is the result of punishment sought to be imposed on him, he can legitimately invoke the protection of Art. 311 and challenge the validity of the said termination on the ground that the mandatory provisions of Art. 311 (2) have not been complied with. In other words, a temporary public servant or a probationer cannot be dismissed or removed from a service without affording him the protection guaranteed by Art. 311 (2).

"It is true that the tenure held by a temporary public servant or a probationer is of a precarious character. His services can be terminated by one month's notice without assigning any cause either under the terms of the contract which expressly provides for such termination or under the relevant statutory rules governing temporary appointments or appointment of probationers. Such a temporary servant can also be dismissed in a punitive way; that means that the appropriate
authority possesses two powers to terminate the services of a temporary public servant; it can either discharge him purporting to exercise its powers under the terms of contract or the relevant rule, and in that case, it would be a straightforward and direct case of discharge and nothing more; in such a case Art. 311 will not apply. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in a straightforward way; in such a case Art. 311 will apply.

"This simple position is sometimes complicated by the fact that even while exercising its power to terminate the services of a temporary servant under the contract or the relevant rule, the authority may in fairness enquire whether the temporary servant should be continued in service or not. It is obvious that temporary servants or probationers are generally discharged, because they are not found to be competent or suitable for the post they hold. In other words, if a temporary servant or a probationer is found to be satisfactory in his work, efficient, and otherwise eligible, it is unlikely that his services would be terminated, and so, before discharging a temporary servant, the authority may have to examine the question about the suitability of the said servant to examine the question about the suitability of the said servant to be continued and acting bona fide in that behalf, the authority may also give a chance to the servant to explain, if any complaints are made against him, or his competence or suitability is disputed on some grounds arising from the discharge of his work; but such an enquiry would be held only for the purpose of deciding whether the temporary servant should be continued or not. There is no element of punitive proceedings in such an enquiry; the idea in holding such an enquiry is not to punish the temporary servant but just to decide whether he deserves to be continued in service or not. If as a result of such an enquiry, the authority comes to the conclusion that the temporary servant is not suitable to be continued, it may pass a simple order of discharge by virtue of powers conferred on it by the contract or the relevant rule; in such a case it would not be open to the temporary servant to invoke the protection of Art. 311 for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and the temporary servant discharged.

"On the other hand, in some cases, the authority may choose to exercise its power to dismiss a temporary servant and that would necessitate a formal departmental enquiry in that behalf. If such a formal enquiry is held, and an order terminating the services of a temporary servant is passed as a result of the finding recorded in the said enquiry, prima facie the termination would amount to dismissal of the temporary servant. It is in this connection that it is necessary to remember cases in which the services of a temporary servant have been terminated directly as a result of the..."
formal departmental enquiry, and cases in which such termin-
ation may not be the direct result of the enquiry; and this complica-
tion arises before it is now settled by decisions of this Court that the motive operating in the mind of the au-
tority in terminating the services of a temporary servant does not alter the character of the termination and is not material in determining the said character. Take a case where the authority initiates a formal departmental enquiry against a temporary servant, but whilst the enquiry is pending, it makes the view that it may not be necessary or expedient to terminate the services of the temporary servant by issuing an order of dismissal against him. In order to avoid imposing any stigma which an order of dismissal necessarily implies, the enquiry is stopped and an order of discharge *simplicitor* is served on the servant. On the au-
thority of the decision of this Court in the case of *Parshottam Lal Dhingra*, AIR 1958 SC 36, it must be held that termin-
ation of services of the temporary servant which in form and substance is no more than his discharge effected under the terms of contract or the relevant rule, cannot, in law, be regarded as his dismissal, because the appointing authority was actuated by the motive that the said servant did not deserve to be continued for some alleged misconduct. That is why in dealing with temporary servants against whom formal departmental enquiries may have been commenced but were not pursued to the end, the principle that the motive operating in the mind of the authority is immaterial, has to be borne in mind."

The first clause of Article 311 enjoins in effect that should the State decide to dismiss or remove a Government servant, the order of dis-
missal or removal shall not be passed by an authority subordinate to that by which he was appointed. The second clause provides that no Government servant 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. This clause ensures that no Government servant shall be condemned unheard. But it is clear that Article 311 does not restrict the power of the State to dispense with the services of any Government servant for conduct which it considers to be unworthy or unbecoming of an official of the State, nor does it fetter the discretion of the State as what type of conduct it shall consider sufficiently blameworthy to merit dismissal or removal. The State has been invested with absolute discretion in this respect. It can demand a certain standard of conduct from Government servants not only when performing their official duties but in their private lives as well.

The proviso to the Article 311 (2) gives the following exceptions in which case while ordering dismissal, removal or reduction in rank it would not be necessary to follow the procedure of showing cause notice and giving reasonable opportunity. The exceptions are:

(i) Conduct which has led to conviction on a criminal charge.

(ii) Satisfaction of the punishing authority for some reason, to be recorded by that authority in writing, that it is not
reasonably practicable to give to that person opportunity of showing cause.

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

The decision of the punishing authority refusing to give opportunity is final order under Article 311 (3).

In *Ram Gopal Chaturvedi v. State of Madhya Pradesh*, (1969) 1 SCWR 1115 : (1969) 2 SCG 240, the appellant was a temporary Government servant and was not in quasi-permanent service. His services could be terminated on one month’s notice under Rule 12 of the Madhya Pradesh Government Servants Temporary and Quasi-Permanent Service Rules, 1960. There was no provision in the order of appointment or in any agreement that his services could not be so terminated.

It was argued that the order terminating the appellant’s services was passed by way of punishment without giving the appellant an opportunity to show cause against the proposed action and was therefore violative of Article 311 of the Constitution.

No charge-sheet was served on the appellant nor was any departmental inquiry held against him. The High Court passed a resolution that the State Government should terminate the appellant’s services. Having regard to this resolution the State Government passed the impugned order. The Supreme Court held that on the face of it, the order did not cast any stigma on the appellant’s character or integrity nor did it visit him with any civil consequences and that it was not passed by way of punishment and the provisions of Art. 311 were not attracted. It was also held that it was immaterial that the order was preceded by an informal inquiry into the appellant’s conduct with a view to ascertain whether he should be retained in service.

An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Art. 311 of the Constitution—*Ram Gopal Chaturvedi v. State of Madhya Pradesh*, (1969) 1 SCWR 1115.

The fact that an enquiry is made into a complaint does not mean that, if the services of a temporary Government servant are terminated after a report is received, any punishment is inflicted entitling the Government servant to reasonable opportunity to show cause against the termination with Art. 311 (2). An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Art. 311 of the Constitution—*State of Uttar Pradesh v. Abdul Khaliq and another*, (1969) 1 SCWR 1086.

For a termination of service by mutual consent, neither the provisions of Art. 311 nor the principles of natural justice are attracted. There is no principle of law which prohibits termination of service of a Government servant by the Government at the Government servant’s request—*Mohd. Kutubbudin v. The State of Andhra Pradesh*, (1969) 2 SCWR 856.
Ch. II] GOVERNMENT EMPLOYMENT AND CONSTITUTIONAL GUARANTEE 69

In Rajkumar v. Union of India, (1969) 1 SCA 48 : AIR 1969 SC 180, it was contended that acceptance of the resignation amounted to dismissal from employment and failure to comply with the requirements of Art. 311 of the Constitution vitiated the order accepting the resignation. The Supreme Court held that the contention had no force as the order complained of did not purport to be one of dismissal and that the Government of India had not purported to terminate the appointment for any misconduct on the part of the appellant or as a measure of penalty.

The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Art. 311 of the Constitution. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial. If the order visits the public servant with any civil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant. An order of termination of service in unexceptionable form proceeded by an enquiry launched by the superior authorities only to ascertain whether the public servant could be retained in service, does not attract the operation of Art. 311 of the Constitution. If there be a full-scale departmental enquiry envisaged by Art. 311, i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said Article—State of Punjab v. Sukhraj Bahadur, (1969) 1 SCJ 51.

(a) Article 311 is not retrospective.


In Jagannath Prasad Sharma's case, the Governor appointed under the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, the Tribunal for enquiry against a Sub-Inspector of Police before the commencement of the Constitution, but the order of dismissal was passed after the Constitution came into force, it was held that the Sub-Inspector was entitled to the protection of Art. 311 (2).

(b) Applicability of Article 311 (2) : Motive is immaterial.

Even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the express or implied terms of the contract of employment or under the statutory rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant. The test for attracting Art. 311 (2) of the Constitution in such a case is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary

(c) Conviction referred to in Article 311 : Meaning of:

Conviction can have only one meaning, namely that the person must have been convicted finally. In other words, if a person is acquitted by a court of appeal, then it cannot be said that there is any conviction in the sense in which it is used in the aforesaid provision.

The words ‘led to his conviction’ mean in the context they have been used, not merely to bring a criminal charge against the delinquent servant but further imply that as a result or consequence it has ended in conviction also.

A proceeding will not be said to have led to his conviction if it had not resulted ultimately in conviction or as a consequence of appeal, has failed in an acquittal. Appeal is a continuation of the proceedings commenced on the criminal charge and it does not conclude in a conviction where an appeal is preferred against the order of the trial Court or of any subsequent Court until these subsequent proceedings have finally ended. There is no conclusion of the proceedings which, therefore, cannot be said to have resulted in a conviction until either the order has become final by efflux of time or has been upheld, where an appeal or revision is preferred by the higher Court.

(d) Proviso (c) of Article 311 (2).

Claus: (c) of the proviso to Cl. (2) of Art. 311 in terms confers unrestricted powers on the President or Governor in the interest of the State to deprive a particular officer of the reasonable opportunity provided by Art. 311 of the Constitution of India. The said power is not subscribed by any objective standards and, therefore, it cannot be questioned in a court of law.

In Sardari Lal v. Union of India, (1971) 1 SCG 411, the question related to the exercise of powers expressly conferred on the President by Cl. (c) of the Proviso to Art. 311 (2) of the Constitution. In that case the appellant was dismissed from service without holding an enquiry, by an order in the name of the President of India under Art. 311 (2) (c). The appellant’s contention was that the President could not delegate his power under Art 311 (2) (c) to any other authority and, therefore, the order was void. The High Court negatived the contention and relied on the provisions of Art. 77 (2) which provides for authentication of orders made in the name of the President. When the matter came before the Supreme Court, Grover, J. delivering judgment of the Court observed:

"Under Art. 53 (1) the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 77 (1) lays down that all executive action of the Government of India shall be expressed to be taken in the name of the President. Clause (3) of that Article enables the President to make rules for the more convenient transaction of the business of the Government of India. Chapter I of Part XIV contains inter alia the three
main provisions relating to the services Articles 309, 310 and 311 may be set out to the extent necessary:

'309. 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.'

'310. (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member 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) ... ... ... ...'

'311. (1) No person who is 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 charge 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 had been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence 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."

"These Articles have come up for consideration before this Court in several cases and in connection with diverse points. The view that has been taken with regard to their true content, scope and inter-connection and the nature of the power exercisable under them is that while Art. 310 provides for the tenure at the pleasure of the President or the Governor, Art. 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 recognized under Art. 310, read with Art. 311. The power to dismiss a public servant at pleasure is outside the scope of Arts. 53 and 154 of the Constitution and cannot be delegated by the President or the Governor, to a subordinate officer and can be exercised by him only in the manner prescribed by the Constitution. This, however, does not mean that a law cannot be made under Art. 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, vide Moti Ram Deka etc. v. General Manager, N. E. F. Railways, Maligaon, Pandu, etc., (1964) 5 SCR 683 : 1964 SC 600 : (1964) 2 SCA 372. Article 311 contains the main safeguards for civil servants in the matter of dismissal or removal or reduction in rank while the procedure provided in Cl. (2) must be followed before the dismissal or removal or reduction in rank of a civil servant can be ordered, there are certain exceptions which have been made where it is not necessary to comply with the requirements of the substantive part of Cl. (2) of Art. 311. These exceptions are contained in the three Cls (a), (b) and (c) of the proviso to Cl. (2).

"As in the cases mentioned in the proviso, the procedure laid down in Cl. (2) has not to be availed of by him, we must look at them carefully. A dichotomy has been introduced in Cls. (b) and (c) with regard to the authority or the functionary who has to be satisfied about the matters stated therein. In Cl. (b), it is only the authority empowered to dismiss or remove a person or to reduce him in rank who has to be satisfied that it is not reasonable practicable to hold the inquiry provided by Cl. (2) and the decision in terms of Cl. (3) of the Article shall be final. But in Cl. (c) it is the President or the Governor alone, as the case may be, who has to be satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."
"Now the argument on behalf of the appellant has proceeded on these lines. Article 53 (1) vests the executive power of the Union in the President but Art. 77 deals only with executive action of the Government of India. There are several Articles under which the President is required to be satisfied before an action is taken. Clause (c) of the proviso to Cl. (2) of Art. 311 is one of such provisions. The other provision which also deals with the question of satisfaction about the security of India being threatened etc. is the one contained in Art. 352 which relates to Proclamation of Emergency. Article 356 says that if the President on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may make a Proclamation as provided in the Article. Article 360 which contains provisions relating to financial emergency also employs the language 'if the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.' The enumeration of the aforesaid Articles is merely illustrative and not exhaustive. In such cases, it is the President who has to be personally satisfied on the material placed before him about the various matters on which action has to be taken. Such functions may pertain to the executive power of the Union which is vested in him under Art. 53 (1) but these cannot fall within Art. 77 (1) which is confined to executive action of the Government of India. Apart from the Articles mentioned above, there are several other Articles which may also be considered in this connection. It would be best to refer to the observation in Jayantilal Amrit Lal Shodhan v. F. N. Rana and others, (1964) 5 SCR 294 : AIR 1964 SC 648 ; (1964) 2 SCA 284 : 

'The power to promulgate Ordinances under Art. 123; to suspend the provisions of Arts. 268 to 279 during an emergency; to declare failure of the Constitutional machinery in States under Art. 356; to declare a financial emergency under Art. 360; to make rules regarding the recruitment and conditions of service of persons appointed to posts and services in connection with the affairs of the Union under Art. 309—to enumerate a few out of the various powers—are not powers of the Union Government; these are powers vested in the President by the Constitution and are incapable of being delegated or entrusted to any other body or authority under Art. 258 (1). The plea that the very nature of these powers is such that they could not be intended to be entrusted under Art. 258 (1) to the State or officer of the State, and therefore, that clause must have a limited content, proceeds upon an obvious fallacy. Those powers cannot be delegated under Art. 258 (1) because they are

S. L. I.—10
not the powers of the Union, and not because of their special character. There is a vast array of other powers exercised by the President—to mention only a few—appointment of Judges: Arts. 124 and 217, appointment of Committees of Official Languages Act: Art. 344, appointment of Commissions to investigate conditions of backward classes: Art. 340, appointment of Special Officer for Scheduled Castes and Tribes: Art. 338, exercise of his pleasure to terminate employment: Art. 310, declaration that in the interest of the security of the State it is not expedient to give to a public servant sought to be dismissed an opportunity contemplated by Art. 311 (2)—these are executive powers of the President and may not be delegated or entrusted to another body or officer because they do not fall within Art. 253.

The Court then concluded:

"It seems to us that there is a good deal of substance in the argument raised on behalf of the appellant and on the principles which have been enunciated by this Court, the function in Cl. (c) of the proviso to Art. 311 (2) cannot be delegated by the President to any one else in the case of a civil servant of the Union. In other words he has to be satisfied personally that in the interest of the security of the State, it is not expedient to hold the inquiry prescribed by Cl. (2). In the first place, the general consensus has been that executive functions of the nature entrusted by the Articles, some of which have been mentioned before and in particular those Articles in which the President has to be satisfied himself about the existence of certain fact or state of affairs cannot be delegated by him to any one else. Secondly even with regard to Cl. (c) of the proviso, there is a specific observation in the passage extracted above from the case of Jayantilal Amrit Lal Shodhan that the powers of the President under that provision cannot be delegated. Thirdly the dichotomy which has been specifically introduced between the authority mentioned in Cl. (b) and the President mentioned in Cl. (c) of the proviso cannot be without significance. The Constitution-makers apparently felt that a matter in which the interest of the security of the State had to be considered should receive the personal attention of the President or the Head of the State and he should be himself satisfied that an inquiry under the substantive part of Cl. (2) of Art. 311 was not expedient for the reasons stated in Cl. (c) of the proviso in the case of a particular servant.

"We are not impressed with the reasoning of the High Court with reference to Art. 77 (2). If the function or the power exercisable under Cl. (c) of the proviso under consideration could not be delegated or allocated to anyone else by the President, Art. 77 (2) will not stand in the way of the Court in the matter of examining the validity of the Order.""

In B. C. Dass, etc. v. State of Assam and others. (1971) 2 SCC 168, the appellant and 32 other employees were placed under
suspension and enquiry proceedings were drawn up against them to show cause why disciplinary action should not be taken against them for insubordination. But before the appellants could furnish their explanation they were placed under detention by the District Magistrate under Rule 30 (1) of the Defence of India Rules. Thereafter the Governor passed an order that they were not fit to be retained in public service and ought to be dismissed from service and that he was satisfied under Art. 311 (2) (c) that in the interest of the State it was not expedient to give the opportunity to show cause against action proposed to be taken in regard to them. When the order was made the attention of the Governor was not invited to the amended Art. 311 (2).

The appellants challanged the order of the Governor before the High Court inter alia, on the ground that it did not satisfy the requirements of Art. 311 (2) (c). The High Court dismissed the petition. When the matter came up before the Supreme Court, Dua, J. delivering the majority judgment observed as under:

"It appears that when the Governor made these two orders his attention was not invited to the amended Art. 311 (2) which was in force on that date. The impugned orders were accordingly made in terms of Art. 311 (2) as it existed before its amendment by the Fifteenth Amendment Act, 1963, which had come into force on October 6, 1963. The amended Art. 311 (2) has been reproduced in the judgment of my learned brother. It is, however, desirable to reproduce both the amended and unamended Art. 311 (2) so as to understand if any substantial or material change in the legal position was intended by the amendment:

Unamended

(Prior to 6-10-1963)

(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:

Amended

(After 6-10-1963)

(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
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 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, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give that person such an opportunity.'

The unamended sub-Article except the proviso was a reproduction of Sec. 240 (3) of the Government of India Act, 1935. The proviso to Sec. 240 (3) had only two clauses corresponding to Cls. (a) and (b) of the unamended Art. 311 (2). A bench of five Judges of this Court in Khem Chand v. The Union of India and others, AIR 1958 SC 300; 1958 SCR 1080: 1959 SCJ 497, speaking through Das C J, after referring to the divergent views expressed by Spens, C. J., of the Federal Court for himself and Zafarulla Khan, J., on the one hand,
and by Varadachariar, J., on the other in Secretary of State for India v. I.M. Lall, (1945) FCR 103, and to the decision of the Privy Council on appeal in High Commissioner for India v. I.M. Lall, LR (1948) 75 IA 225, explained the Privy Council decision and clarified the meaning, scope and ambit of the unamended Art. 311 (2) in these words:

'In our judgment neither of the two views can be accepted as a completely correct exposition of the intention of the provisions of Sec. 240 (3) of the Government of India Act, 1935, now embodied in Art. 311 (2) of the Constitution. Indeed the learned Solicitor-General does not contend that this provision is confined to guaranteeing to the Government servant an opportunity to be given to him only at the later stage of showing cause against the punishment proposed to be imposed on him. We think that the learned Solicitor-General is entirely right in not pressing for such a limited construction of the provisions under consideration. 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 cause 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.'

"According to the decision the expression 'reasonable opportunity of showing cause against the action proposed to be taken' included an opportunity to show cause against the guilt of the government servant concerned. This opportunity to show cause against the guilt seems to correspond to the reasonable opportunity of being heard in respect of the charges in the course of the inquiry contemplated by the amended sub-Article. The question, therefore, arises if in the present case the Governor when expressing his satisfaction under sub-clause (c) of the proviso to Cl. (2) of Art. 311 of the Constitution in the impugned order, by using the words 'it is not expedient to give the said Shri P. K. Hore an opportunity to show cause against the action proposed to be taken in regard to him as stated above', intended to convey his satisfaction that in the interest of the security of the State it was not expedient to give an opportunity to P. K. Hore to show cause only against the penalty proposed to be imposed, and that the Governor's satisfaction did not extend to the inexpediency of giving P. K. Hore an opportunity of showing
cause against his unfitness to be retained in service as well. In our opinion the impugned order cannot reasonably be construed to be restricted to the narrow meaning suggested on behalf of the appellant. The words 'as stated above' on which great reliance was placed by the learned counsel do not have the effect of restricting the ambit of the show-cause notice to the question of penalty which may be imposed after the inquiry into P. K. Hore's unfitness to be retained in the public service. The show-cause notice about the inexpediency of which the Governor was satisfied seems to us to extend also to the question of such unfitness of P. K. Hore. To accept the suggestion made by the appellant's learned counsel would impute to the Governor an intention to make what seems to be a meaningless order. It may be recalled that the amended Art. 311 (2) does not speak of any show-cause notice. The language of this sub-Article refers to an inquiry in which the delinquent Government servant is to be informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where after such inquiry it is proposed to impose on him a penalty he is again to be given a reasonable opportunity or making representation on the penalty proposed. The second stage does not speak of notice to show cause against the action proposed to be taken. The amendment in 1953 was made principally to put in clearer language the result of the judicial decisions construing Sec. 240 (3) of the Government of India Act, 1935, and unamended Art. 311 (2) of the Constitution. As already noticed, under Sec. 240 (3) of the Act of 1935 and the unamended Art. 311 (2) provision was made of giving a reasonable opportunity to the Government servant concerned of showing cause against the action proposed to be taken in regard to him. This expression was construed in terms to refer to the stage when, after such inquiry as may be necessary, and after the punishing authority being satisfied of the guilt of the delinquent Government servant, provisionally proposed the action to be taken against him. But in answer to this show-cause notice the Government servant was held entitled also to show-cause against his guilt on the merits. Even though in the earlier inquiry, if any, the Government servant had been given an opportunity of showing cause against his guilt, the second opportunity provided by the statute was held to be mandatory. The Privy Council in I. M. Lall's case (supra) saw 'no difficulty in the statutory opportunity being reasonably afforded at more than one stage'. The Privy Council, however, dealt with Sec. 240 (3) of the Act of 1935 and the earlier statutory rule on the subject. This Court in Khem Chand's case (supra), after quoting a passage from the judgment of the Privy Council said:

"Therefore, in a case where there is no rule like Rule 55 the necessity of an enquiry was implicit in Sec. 240 (3) and is so in Art. 311 (2) itself. Further Their Lordships say that an enquiry under Rule 55 'would not exhaust his statutory right and he would still be entitled to make a
representation against the punishment proposed as the result of the findings of the enquiry. This clearly proceeds on the basis that the right to defend himself in the enquiry and the right to make representation against the proposed punishment are all parts of his 'statutory right' and are implicit in the reasonable opportunity provided by the statute itself for the protection of the Government servant.'

"It cannot be doubted that the Governor in the present case was fully alive to the interest of the security of the State when he expressed his satisfaction about the inexpediency of giving an opportunity to P. K. Hore in the one case, and to B. C. Das in the other, to show cause against their guilt as contemplated by Cl. (2) of Art. 311 and intended that this cause shall not apply to their cases. Merely because the form of the order was expressed in the language used in the unamended Art. 311 (2), it does not in our view detract from its effectiveness as operating to exclude the applicability of the amended Cl. (2) of Art. 311 as a whole. The use of the words in conformity with the unamended Article serves to convey the same intention as is contemplated by the amended Article and the difference in the language which seems to be inconsequential does not have the effect of nullifying the impugned order.

"No doubt Article 311 (2) is intended to afford a sense of security to Government servants covered by sub-Article (1) and the safeguards provided by sub-Article (2) are mandatory. But clause (e) of the proviso to this sub-Article which is designed to safeguard the larger interest of the security of the State cannot be ignored or considered less important when construing sub-Article (2). The interest of the security of the State should not be allowed to suffer by invalidating the Governor's order on unsubstantial or hyper-technical grounds which do not have the effect of defeating the essential purpose of the constitutional safeguard of individual Government servant. It is nobody's case before us that inquiry into the charges against the two appellants as contemplated by the amended Article 311 (2) had already been held and the question of imposition of penalty alone remained to be finally settled when the impugned order was made. No inquiry of any kind as contemplated by Article 311 (2) was, according to the common case of the parties, held against the appellants when the Governor made the impugned orders under proviso (e) to this sub-article. In these circumstances the impugned orders when they speak of the 'action proposed to be taken' must be construed as intended to refer to the action including inquiry into the truth of the charges against them and the proposed penalty to be imposed after such inquiry. The fact that clause (e) of the proviso to the amended sub-Article only speaks of the inquiry and not of imposition of penalty is understandable because in the absence of inquiry the question of penalty cannot arise. It also serves to indicate that the Governor could not have
intended by the impugned order to exclude only representation against imposition of penalty, leaving untouched the inquiry and the right of the Government servant to the opportunity of hearing with respect to the charges. Once it is borne in mind that the Governor’s attention was, for some reason or the other, drawn only to the unamended Article 311 and not to the amended Article, and it is further kept in view that the amendment of Article 311 in 1963, as already explained, was only designed to clarify and give effect to the judicial decisions interpreting the unamended Article, the reason for the form and the language used in the impugned orders become clear and there can be no difficulty in understanding their true meaning. Reading the impugned orders in the light of what has just been stated, they quite clearly exclude the applicability of sub Article (2) of Article 311 in both cases.”

9. Rule 12 (4), Central Services (Classification, Control and Appeal) Rules, 1957, if contravenes, Articles 142, 144 and 311.

In Khem Chand v. Union of India, AIR 1963 SC 687, the Court observed:

“The provision in the Rule that the Government servant shall be deemed to have been placed under suspension from the date of the original order of dismissal does not seek to affect the position that the order of dismissal previously passed was inoperative and that the appellant was a member of the service on 25th May, 1953, when the first suit was instituted by the appellant. An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. There was a termination of the appellant’s service when the order of dismissal was made on 17th December, 1951. When that order of dismissal was set aside the appellant’s service revived; and so long as another order of dismissal is not made or the service of the appellant is not terminated by some other means, the appellant continues to be a member of the service and the order of suspension in no way affects this position. The real effect of the order of Government servant he was not permitted to work, and further, during the period of his suspension he was paid only some allowance—generally called ‘subsistence allowance’—which is normally less than his salary—instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that the order of suspension affects a Government servant injuriously. There is no basis for thinking, however, that because of the order of suspension he ceases to be a member of the service. The provision in Rule 12 (4), that in certain circumstances the Government servant shall be deemed to have been placed under suspension from the date of the original order of dismissal and shall continue to remain under suspension until further orders, does not in any way go against the declaration made by this court. The contention that the impugned Rule contravenes Article 142 or Article 144 is, therefore, untenable.”
CHAPTER III

TENURE OF PLEASURE

SYNOPSIS

1. Historical background.
2. Position under the present law.
3. Whether pleasure is controlled by Article 311?
4. Whether pleasure extends to compelling servants to continue in service even after the age of superannuation?

1. Historical background.

The rule that a civil servant holds office at the pleasure of the crown has its origin in the Latin phrase "durante bene placito" (during pleasure) meaning that the tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without cause assigned.

The doctrine of pleasure had been introduced by section 75 of 3 and 4 will IV, Chapter 85 which read as under:

"Nothing in this Act shall take away the powers of the said court of Directors to remove or dismiss any of the officers or servants of the said company but that the said court shall and may have full liberty to remove or dismiss any such officer or servant at their will and pleasure."

This pleasure, as will be noticed from the above provision, was not based on any prerogative. The power to remove or dismiss employee conferred by the above statute was presumably based either on Common Law of Master and Servant or on the public policy in those times.

The rule of the East India Company which was administering India in trust for the British Crown ended by the Act of 1858 and the Queen’s proclamation that followed in November, 1858 continued the doctrine of pleasure as under:

"And we do hereby confirm in their several offices, civil and military, all persons now employed in the the service of the Honourable East India Company, subject to our future pleasure, and to such laws and regulations as may hereafter be enacted."

The pleasure as a Royal prerogative was asserted in the above Royal Proclamation.

This position continued till the year 1919 when the Government of India Act, 1919 came into force. Section 96-B of the Act which gave statutory recognition to the doctrine of pleasure ran as under:

"Subject to the provisions of this Act and of the rules made thereunder, every person in the Civil Service of the Crown in India holds office during His Majesty’s pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service

S.L.I.—11
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.

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in Governor's Province and on due application made to the superior does not receive the redress to which he may consider himself entitled, he may without prejudice to any other rights of 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.

The Secretary of State in Council may make rules for regulating the classification of the Civil Services in India, the methods of their requirement, their conditions of service, pay and allowances and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local Governments or authorise the India Legislature or local Legislatures to make laws regulating the public services.

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 rights, or shall receive such compensation for the loss of any of them as the Secretary of the State in Council may consider just and equitable.

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 member of the service appointed before the date thereof. 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 provision in relation to pensions contained in the East India Annuity Funds Act, 1874.

For removal of doubts, it is hereby declared that all rules or other provisions in operation at the time of 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 the 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.

No rules or other provisions made or confirmed under this section shall be construed to limit or abridge the power of the Secretary of State in Council to deal with the case of any person in the Civil Service of the Crown in India in such manner as may appear to him to be just and equitable, and any rules made by the Secretary of State in Council under sub-section (2) of this section delegating the power of making rules may provide for dispensing with or relaxing the requirements of such rules to such extent and in such manner as may be prescribed: Provided that where any such rule or provision is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule or provision."

Section 96-B, Government of India Act, lays down in express terms that every servant of the Crown holds office during His Majesty's pleasure, and the only restrictions, if any, upon the exercise of His Majesty's pleasure are to be sought for in the provisions of this very Act and in the rules and regulations framed under this very Act by the Secretary of State for India in Council and by the Government of India and by local Governments in accordance with powers delegated to these authorities under the Act itself. It is nowhere laid down in any section of this statute that the exercise by the Crown of its prerogative in the matter of the appointment and dismissal and removal of any person in the civil service of the Crown can be questioned in a Court of law. This immunity of the Crown from liability to be sued in a Civil Court in respect of acts of sovereignty in the matter of the appointment and dismissal of its servants is also brought out clearly by sub-section (2) of Section 32 of the Act.

When the Crown of England assumed the sovereignty over India, every person then in the Civil Service of the East India Company was naturally presumed to hold office during His Majesty's pleasure, and the nature of this tenure of office was made explicit by the provisions contained in Section 96-B of the Government of India Act, 1919.

It will thus be noticed that Section 96-B so far from abrogating the prerogative of the Crown with regard to dismissals of persons in the civil service reiterated and emphasised the fact, that the right of dismissal at pleasure still existed and enacted that the right was only limited in so far as they were definite and special or particular rules and regulations, laying down the method by which or the circumstances in which the right was to be exercised.

In Venkata Rao v. The Secretary of State, AIR 1937 PC 31, their Lordships held:

"Section 96-B in express terms states that office if held during pleasure. There is therefore, no need for the implication of this term and room for its exclusion. The argument for a limited and special kind of employment during pleasure but with an added contractual term that the rules are to be observed, is at once too artificial and too far-reaching to commend itself for acceptance."
In that case, the case of **Rangachari v. Secretary of State**, AIR 1937 PC 27, was referred and their Lordships observed as under:

"There are two decisions of the Board much discussed in the Courts below which state the principles to be applied to cases such as this. The first is (1895) AC 229 relied upon by the respondent and the other is (1896) AC 575 relied upon for the appellant. In the first case Dr. Smith held office in the Government Medical Service in Western Australia and relied upon certain rules and regulations of the service as an essential part of his contract of service. He was dismissed and brought an action for damages which failed. Upon appeal to Her Majesty in Council, Lord Hobhouse, in giving their Lordships' judgment said: It appears to their Lordships that the proper grounds of decision in this case have been expressed by Stone, J. in the full Court. They consider that unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law suit, but by an appeal of an official or political kind. As for the regulations, their Lordships again agree with Stone, J., that they are merely directions given by the Crown to the Governments of Crown Colonies for general guidance, and that they do not constitute a contract between the Crown and its servants.

"A special case such as was contemplated in the above cited passage occurred in **Gould's** case where the Board, consisting of three members, two of whom had sat in **Shenton's** case, held that the respondent Stuart held office in New South Wales under certain conditions expressly enacted in the body of the New South Wales Civil Services Act, 1884, and that these express provisions of the statute were 'inconsistent with importing into the contract of service, the term that the Crown may put an end to it at its pleasure'."

In the case of **Rangachari v. The Secretary of State**, AIR 1937 PC 27, the appellant, a Sub-Inspector of Police in the Presidency of Madras had been appointed by the Inspector General of Police but dismissed by an official lower in rank. The Privy Council held that the dismissal was by reason of the origin inoperative and bad.

It will be noticed from the above two decisions that Section 96-B had put some restriction upon the exercise of the pleasure of the Crown. With the enactment of the Government of India Act, the position of the Government servant underwent effective changes. In that Act detailed provisions were enacted in Sections 232 to 277 dealing with different kinds of tenure and conditions of various services in India. The doctrine of pleasure was incorporated in Section 240 as follows:

"Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India or
holds any civil post under the Crown in India holds office during His Majesty's pleasure."

The provisions contained in Fundamental Rule XIV framed under Sec. 96-B of the Government of India Act, 1919 which prescribed the procedure for imposing the penalties for dismissal, removal or reduction in rank were also incorporated though in different form in the Government of India Act, 1935. The relevant rule ran as under:

"In all cases in which the dismissal, removal or reduction in rank of any officer is ordered, the order shall, except when it is based on facts and conclusions established at a judicial trial, or when the officer concerned has absconded with the accusation hanging over him, be proceeded by a properly recorded departmental enquiry. At such an enquiry, a definite charge in writing shall be framed in respect of each offence and explained to the accused, the evidence in support of it, any evidence which he may adduce in his defence shall be recorded in his presence and his defence shall be taken down in writing.

"Each of the charges framed shall be discussed and a finding shall be recorded on each charge."

Under the Government of India Act, 1935, for the first time the members of civil service of the Crown were provided protection on two matters, firstly, that no such person shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed and secondly, that no such person shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. To this too, Sec. 240, contained certain provisions.

The relevant sections of the Government of India Act, 1935 are reproduced below:

"240. Tenure of office of persons employed in civil capacities in India.—(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

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

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 or 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.

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during 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 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.

241. Recruitment and conditions of service.—(1) Except as expressly provided by this Act, appointments to the civil services of, and civil posts under the Crown in India, shall, after the commencement of Part III of this Act, be made—

(a) in the case of services of the Federation, and posts in connection with the affairs of the Federation, by the Governor-General or such person as he may direct;

(b) in the case of services of a Province, and posts in connection with the affairs of a Province by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed—

(a) in the case of person serving in connection with the affairs of the Federation, by Rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose;

(b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose:

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this sub-section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.

(3) The said rules shall be so framed as to secure—

(a) that, in the case of person who before the commencement of Part III of this Act was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of
service are regulated shall be made except by an authori-
ty which would have been competent to make such an
order on the eighth day of March, nineteen hundred and
twenty-six or by some person empowered by the Secretary
of State to give directions in that respect;

(b) that every such person as aforesaid shall have the same
rights of appeal to the same authorities from any order
which

(i) punishes or formally censures him; or

(ii) alters or interprets to his disadvantage any rule by
which his conditions of service are regulated; or

(iii) terminates his appointment otherwise than upon his
reaching the age fixed for superannuation,
as he would have had immediately before the commencement
of Part III of this Act, or such similar rights of appeal to
such corresponding authorities as may be directed by the
Secretary of State or by some person empowered by the
Secretary of State to give directions in that respect;

(c) that every other person serving His Majesty in a civil
capacity in India shall have at least one appeal against
any such order as aforesaid, not being an order of the
Governor-General or a Governor.

(4) Notwithstanding anything in this section, but to any other
provisions of this Act, acts of the appropriate Legislature in
India may regulate the conditions of service of persons
serving His Majesty in a civil capacity in India, and any
rules made under this section shall have effect subject to the
provisions of any such Act:

Provided that nothing in any such Act shall have effect so as to
deprive any person of any rights required to be given to him
by the provisions of the last preceding sub-section.

(5) No rules made under this section and no Act of any Legisla-
ture in India shall be construed to limit or abridge the power
of the Governor-General or a Governor to deal with the case
of any person serving His Majesty in a civil capacity in
India in such manner as may appear to him to be just and
equitable:

Provided that, where any such rule or Act is applicable to the
case of any person, the case shall not be dealt with in any
manner less favourable to him than that provided by that
rule or Act.

242. Application of preceding section to railways, customs,
postal and telegraph services, and officials of courts.—
(1) In its application to appointments to, and to persons
serving in, the railway services of the Federation, the last
preceding section shall have effect as if for any reference
to the Governor-General in paragraph (a) of sub-section (1),
in paragraph (a) of sub-section (2) and in sub-section (5)
there were substituted a reference to the Federal Railway
Authority.
(2) In framing rules for the regulation of recruitment to superior railway posts, the Federal Railway Authority shall consult the Federal Public Service Commission, and in recruitment to such posts and in recruitment generally for railway purposes shall have due regard to the past association of the Anglo-Indian community with railway services in India, and particularly to the specific class, character, and numerical percentages of the posts hitherto held by members of that community and the remuneration attaching to such posts, and shall give effect to any instructions which may be issued by the Governor-General for the purpose of securing, so far as practicable to each community in India a fair representation in the railway services of the Federation, but, save as aforesaid, it shall not be obligatory on the Authority to consult with, or otherwise avail themselves of the services of the Federal Public Service Commission.

(3) In framing the rules for the regulation of recruitment to posts in the Customs, Postal and Telegraph Services, the Governor-General or person authorised by him in that behalf shall have due regard to the past association of the Anglo-Indian community with the said services, and particularly to the specific class, character and numerical percentages of the posts previously held in the said services by members of the said community and to the remuneration attaching to such posts.

(4) In its application to appointments to, and to persons serving on, the staff attached to the Federal Court or the staff attached to a High Court, the said section shall have effect as if, in the case of Federal Court, for any reference to the Governor-General in paragraph (a) of sub-section (1), in paragraph (a) of sub-section (2) and in sub-section (5) there were substituted a reference to Chief Justice of India and as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of sub-section (1), in paragraph (b) of sub-section (2) and in sub-section (5) there were substituted a reference to the Chief Justice of the High Court:

Provided that—

(a) in the case of the Federal Court, the Governor-General and, in the case of a High Court, the Governor may in his discretion require that in such cases as he may in his discretion direct no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the Federal Public Service Commission, or the Provincial Public Service Commission, as the case may be;

(b) rules made under the said sub-section (2) by a Chief Justice shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor-General or, as the case may be, the Governor.

243. Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks
of the various police forces in India shall be such as may be determined by or under the Act relating to those forces respectively."

In the case of High Commissioner of India v. I M. Lal, AIR 1948 PG 121, the section was considered by the Privy Council and it was observed:

"The provisions of sub-section (3) of Sec. 240 of the Government of India Act, are prohibitory in form which is inconsistent with their being merely permissive. They are mandatory and necessarily qualify the right of the Crown recognised by sub-section (1) and provide a condition precedent to His Majesty's exercise of his power of dismissal provided by that sub-section."

"No action is proposed within the meaning of sub-section (3) of Sec. 240 until a definite conclusion has been come to on the charges against a Government servant, and the actual punishment to follow is provisionally determined on. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which sub-section (3) makes provision. The statutory opportunity could be afforded at more than one State. If the civil servant has been through an enquiry under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 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 enquiry.

"It does, however, seem to us that the sub-section requires that as and when an authority is definitely proposing to dismiss or reduce in rank a member of the civil service he shall be so told and he shall be given an opportunity of putting his case against the proposed action and as that opportunity has to be a reasonable opportunity, it seems to us that the section requires not only notification of the action imposed, but of the grounds on which the authority is proposing that the action should be taken and that the person concerned must then be given a reasonable time to make his representations against the proposed action and the grounds on which it is proposed to be taken. It is suggested that in some cases it will be sufficient to indicate the charges, the evidence on which those charges are put forward and to make it clear that unless the person can, on that information, show good cause against being dismissed or reduced if all or any of the charges are proved, dismissal or reduction in rank will follow. This may indeed be sufficient in some cases. In our judgment each case will have to turn on its own facts, but the real point of the sub-section is in our judgment that the person who is to be dismissed or reduced must know that that
punishment is proposed as the punishment for certain acts or omissions on his part and must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punish-
ment should not be imposed."

Their Lordships continued that—

"In their opinion, sub-section (3) of Sec. 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 con-
cerned that the civil servants 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 Lord-
ships 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. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the State gives the civil servant the opportunity for which sub-section (3) makes provision. Their Lordships would only add 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 enquiry 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 enquiry."

Dealing with the same point in North West Frontier Province v. Suraj Narain Anand, AIR 1949 PC 112, the Privy Council held as under:

"On the first question, apart from consideration whether the context indicates a special significance to the expressions 'conditions of service,' their Lordships are unable, in the absence of any such special significance, to regard provisions which prescribe the circumstances under which the employer is entitled to terminate the service as otherwise than condi-
tion of the service, whether these provisions are contractual or statutory; they are, therefore, of opinion that the natural meaning of the expression would include such provisions. In the second place, it will be found, on a perusal of Chapter II which includes Secs. 240 to 263, that sub-sections (2) and (3) of Sec. 240 are the only provisions of Chapter II to which the introductory words of Sec. 243 can be referable in relation to conditions of service, as every one of the other provisions of the chapter, with one exception, deals with special classes of service, just as Sec. 243 deals with a special class. The one exception is sub-section (1) of Sec 240, but that provides for
termination by His Majesty, and there can be no question of delegation of that power by virtue of Sec. 243. Their Lordships need only notice of these other sections as it was referred to in argument by both the parties, namely, Sec. 241, sub-sections (2) and (4). The opening words of sub-section (2) 'Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India, relate to the very same persons dealt with in the immediately preceding Sec. 240, and this exclusion from the power of making rules conferred by sub section (2) of Sec. 241, points out unmistakably, in their Lordships' opinion, to the express provisions of Sec. 240 so as to prevent their alteration by rules. There are, of course, other provisions of the Act which will also fall under the exception provided in sub-section (2) of Sec. 241, but there can be no doubt in their Lordships' opinion that the provisions of Sec. 240 prescribe conditions of service, which are covered by the exception. Sub-section (4) of Sec. 241 contains a similar exception to the powers conferred. Their Lordships are, accordingly, of opinion that the right of dismissal was a condition of service within the meaning of Sec. 243.

"The Federal Court set aside the order of dismissal of the respondent's suit by the Court below, on the ground that the bearing of Sec. 240 (2) had not been sufficiently realised by them, and that on a proper construction of Secs. 240 and 243, the dismissal of the respondent was void and inoperative. The construction of Sec. 240 by the Federal Court was similar to that expressed by the Federal Court in Lal's case and is fully dealt with in the judgment of the Board in that case, to which reference may be made. On construction of Sec. 243, the Federal Court held that 'conditions of service' did not include provisions as to dismissal, a view contrary to that just expected by their Lordships."

The doctrine of pleasure as embodied in Section 240 of the Government of India Act was explained in Province of Punjab v. Tara Chand, AIR 1947 FC 23, as follows:

"These provisions operate as limitations upon the applicability of the doctrine of tenure during His Majesty's pleasure. It seems to us very doubtful whether the doctrine itself imports anything more than that the period of tenure of office of a servant of the Crown is liable to be determined at His Majesty's pleasure and that in the absence of any express provision binding upon the Crown guaranteeing to a public servant a tenure terminable on other conditions a public servant may be dismissed from office at will. It follows, of course, that where office is held during pleasure and is terminated at pleasure no claim can possibly arise to salary or remuneration in respect of a period subsequent to such termination. It is only in this sense that it may be said that where office is terminable at pleasure no claim to payment of salary or remuneration can arise after the pleasure has been exercised."
2. Position under the present law.

Then came our Constitution on January 26, 1950. Part XIV deals with "Services under the Union and the State". Chapter I contains seven sections grouped under the heading "Services". Section 240 (1) of the 1935 Act has been substantially reproduced in Article 310 (1) and sub-section (2) and (3) of Sec. 240 have become Article 311 (1) and (2), while Section 276 of the 1935 Act, which continued the existing rules in force has been embodied in Article 313, Article 310 (1) and Article 311. As under Section 96 B (1) of the 1915 Act and Section 240 (1) of the 1935 Act, the persons specified therein held office during the pleasure of Crown, so under Article 310 (1) they hold their office during the pleasure of the President or of the Governor, as the case may be. The opening words of Article 310 (1), namely, "Except as expressly provided by the Constitution", reproduce the opening words of Section 240 (1) of the 1935 Act, substituting the word "Constitution" for the word "Act". The exception contemplated by the opening words of Article 310 (1) quite clearly refer, inter alia to Articles 124, 148, 218 and 324 which respectively provide expressly that the Supreme Court Judges, the Auditor-General, the High Court Judges, and the Chief Election Commissioner shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by the requisite majority therein specified, has been presented to him in the same session for such removal on the ground of proved misbehaviour or incapacity. There are clearly exceptions to the rule embodied in Article 310 (1) that public servants hold their office during the pleasure of the President or the Governor, as the case may be. Subject to these exceptions our Constitution, by Article 310 (1), has adopted the English Common Law rule that public servants hold office during the pleasure of the President or Governor, as the case may be, and has, by Article 311, imposed two qualifications on the exercise of such pleasure. Though the two qualifications are set out in a separate Article, they quite clearly restrict the operation of the rule embodied in Article 310 (1). In other words, the provisions of Article 311 operate as a proviso to Article 310 (1). All existing laws have been continued by Article 372 Some of which, e.g., the Code of Civil Procedure made it possible for a public servant to enforce his claim against the State. It has accordingly been held by the Supreme Court in the State of Bihar v. Abdul Majid, AIR 1954 SC 245 : 1954 SCR 786, that the English Common Law rule regarding the holding of office by public servants only during the pleasure of the Crown has not been adopted by us in its entirety and with all its rigorous implications.

The effect of the political changes which came into force in India from 15th August, 1947, on the services of the persons recruited to the Secretary of State's service known as the Indian Civil Servants was that while previously the Secretary of State's services were under the Crown, in the sense that the ultimate authority and responsibility for these services was in the British Parliament and the British Government, this responsibility and authority completely vanished from and after 15th August, 1947 and as envisaged in the Viceroy's announcement of 30th September, 1947, and as specifically affirmed by Section 47 (1) (a), Indian Independence Act.

Thus, the essential structure of the Secretary of State's services was altered and the basic foundation of the contractual cum statutory
Tenure of the service disappeared. It follows: that the contracts as well as the statutory protection attached thereto came to an automatic and legal termination (1934) AC 176 and (1940) AC 1014.—Relied on.

Taking the provisions contained in Sections 9 (1) (a) and 10 (2), Indian Independence Act, 1947, Article 7 (1), India (Provisional Constitution) Order, 1947, and Sections 240 and 247, Government of India Act, 1935, as adopted together, it is clear that the guarantee of the prior conditions of service and the previous statutory safeguards relating to the disciplinary action are now confined to such persons as continue in service on and after the establishment of the Dominion to serve under the Crown, i.e., of the Government of the Dominion or of a Province, as the case may be.

Who the persons are who fall within the category of persons so continuing is carefully indicated by implication in Article 7 (1), India (Provisional Constitution) Order, 1947. It has to be noted that this provision is specifically preceded by the qualifying phrase “subject to any general or special order or arrangements affecting his case.” Thus, all persons who were previously holding civil posts are deemed to have been appointed and hence to continue in service, excepting those whose case is governed by “general or special orders or arrangements affecting his case”—State of Madras and another v. K M. Rajagopalai, AIR 1955 SC 817.

The relevant Articles of the Indian Constitution read as under:

"Article 309. 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."

"Article 310, (1) Except as expressly provided by the 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, hold office during the pleasure of the President, any person who is a member of 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 reason not connected with any misconduct on his part, required to vacate that post."

"Article 311—(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 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."

Clauses (2) and (3) where substituted by the Constitution (Fifteenth Amendment), 1963. The original clauses ran as under:

"(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 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

e) 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 reasonable to give any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove or to reduce him in rank, as the case may be, shall be final."

"Article 313.—Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution."

In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, insufficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service has ripened into what is, the service rules, called a quasipermanent service—P. L. Dhingra v. Union of India, AIR 1958 SC 36.

The Supreme Court in a decision in Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36 : 1958 SCJ 217, has pointed out that subject to the exceptions contained in Article 311 our Constitution had adopted the English Common Law Rule that public servants hold office during the pleasure of the President or the Governor, as the case may be, and they also point out that all that Abdul Majid's case, 1954 SCR 786 : AIR 1954 S 245, laid down was that the English Common Law rule regarding the holding of office by public servants only during the pleasure of the Crown has not been adopted by us in its entirety and with all its rigorous implications. But subject to these exceptions, the exception of Article 311 and the exception enunciated by Abdul Majid's case with regard to the recovery of arrears of salary, it is not suggested,
with respect, by the Supreme Court in its judgment that the doctrine of a Government servant holding office during the King's pleasure has been in any way further limited or cut down.

3. Whether pleasure is controlled by Article 311?

The rule of English law pithily expressed in the Latin phrase ‘durante bene placito' (during pleasure) has not been fully adopted either by Section 240 of the Government of India Act, 1935 or by Article 310 (1) of the Constitution. The pleasure of the President is clearly controlled by the provisions of Article 311 on a fair and reasonable construction of the relevant words used in that Article, would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there, but it has to be exercised in accordance with the requirement of Article 311.

Therefore, the true position is that Articles 310 and 311 must no doubt be read together, but once the true scope and effect of Article 311 is determined, the scope and effect of Article 310 (1) must be limited in the sense that in regard to cases falling under Article 311 (2) the pleasure mentioned in Article 310 (1) must be exercised in accordance with the requirements of Article 311—State of Bihar v. Abdul Majid, AIR 1954 SC 245 : 1954 SCR 786.

The Court will no doubt have to decide what cases of termination of services of permanent civil servants amount to removal; but once that question is determined, wherever it is shown that a permanent civil servant is removed from service, Article 311 (2) will apply and Article 310 (1) cannot be invoked independently with the object of justifying the contravention of the provisions of Article 311 (2) Moti Ram v. N. E. Frontier Railway, AIR 1964 SC 600.

The English Common Law rule regarding the holding of office by public servants only during the pleasure of the Crown has not been adopted by Article 310 (1) of the Constitution in its entirety and with all its rigorous implication. Article 311 gives two-fold protection to persons who come within that Article, viz. (1) against dismissal or removal by an authority subordinate to that by which they were appointed; and (2) against the dismissal, removal, or reduction in rank without giving them a reasonable opportunity to show cause against the action proposed to be taken in regard to them. Though the two qualifications are set out in a separate Article they quite clearly restrict the operation of the rule embodied in Article 310 (1). In other words, the provisions of Article 311 operate as a proviso to Article 310 (1)—P. L. Dhingra v. Union of India AIR 1958 SC 36.

The Constitution is prospective in effect, but not retrospective, unless otherwise provided by the Constitution itself. Article 311 has improved the position of civil servants inasmuch as the guarantee under it extends even to a case of removal. Further, Article 313 gives constitutional sanctity to all the laws in force immediately before the commencement of the Constitution and applicable to any public service so far as they are consistent with the provisions of the Constitution till appropriate laws are made by the Parliament or the State Legislature. The position has thus considerably changed with the advent of the Constitution.
Whenever there is a breach of a restriction imposed by the statute (example, the safeguards to civil servants embodied in the Constitution), by the Government or the Crown, the matter is justiciable, and the party aggrieved is entitled to suitable relief at the hands of the Court—State of Bihar v. Abdul Majid, AIR 1954 SC 245 : 1954 SCR 786

In State of U. P. v. Babu Ram, AIR 1961 SC 761, the Supreme Court discussed the relative scope of Articles 309, 310 and 311 and observed as under:

"The discussion yields the following results: (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 subordinate officer, and can be exercised by him, only in the manner prescribed by the Constitution. (3) This tenure is subject to the limitation or qualifications 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 overridding 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."

Gajendragadkar and Wanchoo, JJ. delivering a dissentient judgment expressed themselves as follows:

"This brings us to a consideration of the tenure on which public servants hold office. The position in England is that all public servants hold office at the pleasure of His Majesty, that is to say, their service was terminable at any time without cause. By law, however, it is open to Parliament to prescribe a different tenure and the King being a party to every Act of Parliament is understood to have accepted the change in the tenure when he gives assent to such law. This principle applied in India also before the Government of India Act, 1915, was amended by the addition of section 96-B therein. Section 96-B for the first time provided by statute that every person in the civil service of the Crown held office during His Majesty's pleasure, subject to the provisions of
the Government of India Act and the rules made thereunder and the only protection to a public servant against the exercise of pleasure was that he could not be dismissed by any authority subordinate to that by which he was appointed. It was this section, which came for consideration before the Privy Council in Venkata Rao's case, AIR 1937 PC 31, and the Privy Council held that in spite of the words 'subject to the rules made under the Government of India Act,' Venkata Rao's employment was not of a limited or special kind during pleasure with an added contractual term that the procedure prescribed by the rules must be observed: it was by the express terms of section 96-B held 'during His Majesty's pleasure' and no right of action as claimed by Venkata Rao existed. The Privy Council further held that the terms of section 96-B secured that the tenure of the office, though at pleasure, would not be subject to capricious or arbitrary action but would be regulated by the rules which were manifold in number, most minute in particularity and all capable of change; but there was no right in the public servant enforceable by action to hold his office in accordance with those rules and he could therefore be dismissed notwithstanding the failure to observe the procedure prescribed by them...

In Moti Ram Deka v. N. E. Frontier Railway, AIR 1964 SC 600, the relative scope of the Article was again discussed as under:

"The learned Additional Solicitor-General has also impressed upon us the necessity to construe Article 310 (1) and Article 311 in such a manner that the pleasure contemplated by Article 310 (1) does not become illusory or is not completely obliterated. He, therefore, suggests that Article 311 (2) which is in the nature of a proviso or an exception to Article 310 (1) must be strictly construed and in all cases falling outside the scope of the said provision, the pleasure of the President or the Governor must be allowed to rule supreme.

"On the other hand, it has been urged by the learned counsel appearing for the railway servants concerned before us that the pleasure of the President is controlled by Article 311 and if the argument of the learned Additional Solicitor-General is accepted and full scope given to the exercise of the said pleasure, Article 311 itself would become otiose. It is urged that the employment in civil service can be terminated only after complying with Article 311 and any rule which violates the guarantee provided by the said Article would be invalid. In fact, the argument on the other side is that the word 'removal' should receive a much wider denotation than has been accepted by this court in its decision in bearing on the point, and that all termination of services in respect of all categories of public servants should be held to constitute removal within Article 311 (2). We are inclined to hold that the two extreme contentions raised by both the parties must be rejected. There is no doubt that the pleasure of the President on which the learned Additional Solicitor-General so strongly relies has lost some of its majesty and power,
because it is clearly controlled by the provisions of Article 311, and so the field that is covered by Article 311 on a fair and reasonable construction of the relevant words used in that Article, would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there, but it has to be exercised in accordance with the requirements of Article 311.

Besides, as this Court has held in State of Bihar v. Abdul Majid, 1954 SCR 786 : AIR 1954 SC 245, the rule of English law pithily expressed in the Latin phrase 'durante bene placito' ('during pleasure') has not been fully adopted either by section 240 of the Government of India Act, 1935, or by Article 310 (1). To the extent to which that rule has been modified by the relevant provisions of section 240 of the Government of India Act, 1935, or Article 311, the Government servants are entitled to relief like any other person under the ordinary law and that relief must be regulated by the Code of Civil Procedure. It is mainly on this basis of this principle that the Court refused to apply the doctrine against Abdul Majid that a civil servant cannot maintain a suit against a State or against the Crown for the recovery of arrears of salary due to him. Thus, the extreme contention based on the doctrine of pleasure enshrined in Article 310 (1) cannot be sustained. Similarly, we do not think it would be possible to accept the argument that the word 'removal' in Article 311 (2) should receive the widest interpretation. Apart from the fact that the said provision is in the nature of a proviso to Article 310 (1) and must, therefore, be strictly construed, the point raised by the contention is concluded by the decisions of this Court and we propose to deal with the present appeals on the basis that the word 'removal' like the two other words 'dismissal' and 'reduction in rank' used in Article 311 (2) refer to cases of major penalties which were specified by the relevant service rules. Therefore, the true position is that Articles 310 and 311 must no doubt be read together, but once the true scope and effect of Article 311 is determined, the scope and effect of Article 310 (1) must be limited in the sense that in regard to cases falling under Article 311 (2) the pleasure mentioned in Article 310 (1) must be exercised in accordance with the requirements of Article 311.

"It is then urged by the learned Additional Solicitor-General that Article 310 does not permit of the concept of tenure during good behaviour. According to him, in spite of the rule of superannuation, the services of a civil servant can be terminated by the President exercising his pleasure at any time. The rule of superannuation on this contention merely gives an indication to the civil servant as to the length of time he may expect to serve, but it gives him no right to continue during the whole of the said period. In fact, the learned Additional Solicitor-General did not disguise the fact that according to his argument, whether or not rule of superannuation is framed and whether or not Rule 148 or
Rule 149 is issued, the President's pleasure can be exercised independently of these rules and the action taken by the President in exercise of his pleasure cannot be questioned under Article 311 (2).

"Alternatively he contends that if Article 311 (2) is read in a very general and wide sense, even the rule as to the age of superannuation may be questioned as valid, because it does put an end to the service of a civil servant. We are not impressed by this argument. We will, no doubt, have to decide what cases of termination of services of permanent civil servants amount to removal; but once that question is determined, whenever it is shown that a permanent civil servant is removed from his service, Article 311 (2) will apply and Article 310 (1) cannot be invoked independently with the object of justifying the contravention of the provisions of Article 311 (2)."

Subba Rao, J. expressed himself as follows:

'As the argument of the learned Additional Solicitor-General is based upon the doctrine of pleasure it would be convenient at the outset to ascertain the precise scope of the doctrine in the context of the Indian Constitution.

"Article 309 is subject to the provisions of the Constitution and, therefore, is subject to Article 310 thereof. Article 311 imposes two limitation on the doctrine of pleasure declared in Article 310. The gist of the said provisions is this: Under Article 309 of the Constitution 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 any State; and until provision on that behalf is made the President or such person as he may direct may make rules regulating the recruitment and conditions of service of persons appointed to the said services and posts in connection with the affairs of the Union. In its ordinary meaning the expression 'conditions of service' takes in also the tenure of the servant. Under Article 310, such a civil servant holds office during the pleasure of the President; but Article 311 imposes two conditions to be satisfied before a civil servant can be dismissed, or removed or reduced in rank, namely (i) he shall not be dismissed, removed or reduced in rank by an authority subordinate to that by which he was appointed, and (ii) he shall be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. A combined reading of these provisions indicates that the rules made under Article 309 are subject to the doctrine of pleasure; and that the doctrine of pleasure is itself subject to two limitations imposed thereon under Article 311. This tenure at pleasure is a concept borrowed from English law, though it has been modified to the Indian conditions. The English law on the doctrine of tenure at pleasure has now become fairly crystallized. Under the English law, all servants of the Crown hold office during the pleasure of the Crown. The
right to dismiss at pleasure is an implied term in every contract of employment under the Crown. This doctrine is not based upon any prerogative of the Crown but on public policy. If the terms of appointment definitely prescribe a tenure for good behaviour or expressly provide for a power to dismiss at pleasure is excluded, and an Act of Parliament can abrogate or amend the said doctrine of public policy in the same way as it can do in respect of any other part of common law—See State of U. P. v. Babu Ram, (1961) 2 SCR 679: AIR 1961 SC 751.

"Section 96-B of the Government of India Act, 1915, for the first time in 1919, by an amendment, statutorily recognised this doctrine, but it was made subject to a condition that no person in the service might be dismissed by an authority subordinate to that by which he was appointed. Section 240 of the Government of India Act, 1935, imposed another limitation, namely, that a reasonable opportunity of showing cause against the action proposed to be taken in regard to a person must be given to him. But neither of the two Acts empowered the appropriate Legislature to make a law abolishing or amending the said doctrine. The Constitution of India practically incorporated the provisions of Section 240 and Section 241 of the Government of India Act, 1935, in Articles 309 and 310. The English doctrine has been enlarged in one direction and restricted in another; while Parliament has no power to deprive the President of his pleasure, the said pleasure is made subject to two limitations, embodied in Article 311. The English concept is considerably modified to suit the conditions of our country. It is, therefore, not correct to say that Article 311 is not a limitation on the power of the President to terminate the services of a Union civil servant at pleasure. To accept the argument that the relevant expression in Article 311 shall be so construed as to give full sway to the doctrine is to ignore the limitations on that doctrine. Both Article 310 and Article 311 shall be read together and, if so read, it is manifest that the said doctrine is subject to the said two conditions."

4. Whether pleasure extends to compelling servant to continue in service even after the age of superannuation?

In Pratap Singh v. State of Punjab, AIR 1964 SC 72, the Court held that the "pleasure" in Article 310 did not extend to compelling the officer to continue in service even after the age of superannuation was reached. The Court observed as under:

"Besides we should not be taken to have accepted the submissions of the learned Attorney-General who appeared for the respondent State, that the provisions of Article 310 (1) of the Constitution that 'members of a civil service of a State hold office during the pleasure of the Governor', conferred a power
on the State Government to compel an officer to continue in service of the State against his will apart from the Service Rules which might govern the matter even after the age of superannuation was reached, or where he was employed for a defined term, even after the term of his appointment was over. We consider that to construe the expression ‘the pleasure of the Governor’ in that manner would be patently unwarranted besides being contrary to what this Court said in *State of Bihar v. Abdul Majid*, AIR 1954 SC 245 : 1954 SCR 786.
CHAPTER IV
PUBLIC SERVICE COMMISSION

SYNOPSIS

1. General.
2. Provisions, if mandatory.
3. Dismissal of Registrar of High Court: Consultation with Public Service Commission, if necessary.
4. Termination of service on the month's notice—Public Service Commission not consulted—Effect.

1. General.

Article 320 (3) (c) of the Constitution of India which is relevant for our purpose is reproduced below:

"The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters . . . .

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary for any Public Service Commission to be consulted.

2. Provisions, if mandatory.

The Federal Court has held in Biswanath v. Emperor, AIR 1945 FC 67, that the functions of the Public Service Commission are only advisory and that the authority was not bound to follow it. The Court further held that the failure to consult where it was prescribed, would not make an appointment, without such consultation, void.

Article 311 of the Constitution is not controlled by Article 320. The protection afforded to civil servants under section 240, clause (3) of the Government of India Act, 1935, was the same as afforded by Article 311 of the Constitution to civil servants.—U. R. Bhat v. Union of India, AIR 1962 SC 1344. If there are no disciplinary proceedings there is no occasion to consult Public Service Commission—High Court of Calcutta v. Amal Kumar, AIR 1962 SC 1704.

In State of U. P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912, the question before the Court was whether the provisions of Article 320 (c) (3) are of a mandatory character and are in the nature of a rider to Article 311”. The Court observed:

"If the provisions of Article 320 were of a mandatory character the Constitution would not have left it to the discretion of
the Head of the Executive Government to undo these provisions by making regulations to the contrary.

"If it had been intended by the makers of the Constitution that consultations with the Commissioner should be mandatory, the proviso would not have been there, or, at any rate, in the terms in which it stand."

The Court after referring with approval the decision contained in Biswanath Khemka v. The King Emperor, AIR 1945 FC 67, and quoting a passage from the decision in Montreal Street Rly. Co. v. NormandIn, AIR 1917 PC 172, observed:

"Article 320 (3) (c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a Court of law, or entitle him to relief under the special powers of a High Court under Article 226 of the Constitution and of the Supreme Court under Article 32. It is not a right which could be recognised and enforced by a writ. On the other hand, Article 311 of the Constitution has been construed as conferring a right on a civil servant of the Union or a State, which he can enforce in a Court of law. Hence, if the provisions of Article 311 have been complied with he has no remedy against any irregularity that the State Government may have committed, in not complying with the provisions of Article 320 (3) (c).

"That does not amount to saying that it is open to the Executive Government completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted. Once, relevant regulations have been made under the proviso to Article 320 they are meant to be followed in letter and in spirit and it goes without saying that consultation with the Commission on all disciplinary matters affecting a public servant has been specially provided for, in order, first, to give an assurance to the Services that a wholly independent body not directly concerned with the making of orders adversely affecting public servant, has considered the action proposed to be taken against a particular public servant with an open mind; and secondly, to afford the Government unbiased advice and opinion on matters vitally affecting the morale of public services. It is, therefore, incumbent upon the Executive Government, when it proposes to take any disciplinary action against a public servant, to consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirements of the situation.

"It is clear that the requirement of the consultation with the Commission does not extend to making the advice of the Commission on those matters binding on the Government. In the absence of such a binding character, it is difficult to see how non-compliance with the provisions of Article 320(3) (c) could have the effect of nullifying the final order passed by the Government."
“Chapter II (of Part XIV of the Constitution) containing Article 320 does not, in terms, confer any rights or privileges on an individual public servant, nor any constitutional guarantee of the nature contained in Chapter I of that Part, particularly Article 311. Article 311, therefore, is not, in any way, controlled by the provisions of Chapter II of Part XIV, with particular reference to Article 320.”

In Ram Gopal Chaturvedi v. The State of Madhya Pradesh, 1969 SLR 429 : (1969) 2 SCC 240, it was held that the provisions of Article 320 (3) (c) of the Constitution of India were not mandatory and did not confer any rights on the public servant and that the absence of consultation with the State Public Service Commission did not afford him cause of action.

In A. N. D'Silva v. Union of India, AIR 1962 SC 1130, the Supreme Court held:

“By Article 320(3) of the Constitution it is provided that the Union Public Service Commission shall be consulted in all disciplinary matters affecting a person serving under the Government of India in a civil capacity, but the Union Public Service Commission is not an appellate authority over the Enquiry Officer. It is unnecessary for the purpose of this case to consider whether in making their recommendations or tendering their advice the Union Public Service Commission may express a conclusion on the merits of the case as to the misconduct alleged to have been committed by a public servant different from the conclusion of the Enquiry Officer.”

In U. R. Bhatt v. Union of India, AIR 1962 SC 1344, the Supreme Court referred to the decision in State of U. P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912 : 1958 SCR 533, and observed as under:

“The question whether the order, dated 3rd December, 1947, discharging the appellant from service was void because of failure to consult the Public Service Commission is not now open to be canvassed in view of the decisions of this Court, and has, therefore, rightly not been raised by the counsel for the appellant. In The State of U. P. v. Manbodhan Lal Srivastava, this Court held that Article 320 (3) (c) of the Constitution of India (which is substantially the same as section 266 of the Government of India Act) is not mandatory and that it does not confer any right on the public servant, and that the absence of consultation or any irregularity in consultation does not afford him a cause of action in a court of law. It was also held that Article 311 of the Constitution is not controlled by Article 320. The content of the protection afforded to civil servants under section 240, Clause (3) of the Government of India Act was the same as afforded by Article 311 of the Constitution, to civil servants.”

In P. Joseph John v. State of Travancore-Cochin, AIR 1955 SC 160, the report of the enquiring officer was placed before the Public
Service Commission and the latter approved the action proposed to be taken. The appellant was given another opportunity to show cause but he did not avail himself of that opportunity or submit any explanation or show any cause on which the Public Service Commission could be consulted. It was held that the order of dismissal having been made, there was in the circumstances no further necessity to consult the Public Service Commission.

3. **Dismissal of Registrar of High Court: Consultation with Public Service Commission, if necessary.**

The officers and staff of the High Court cannot be said to fall within the scope of the phrase “persons serving under the Government of India or the Government of a State” because in respect of them the administrative control is clearly vested in the Chief Justice who, under the constitution has the power of appointment and removal and of making rules for conditions of services. Therefore for the dismissal of the Registrar of the original side of the High Court, prior consultation with the Public Service Commission is not necessary—**Prodyat Kumar v. Hon’ble Chief Justice of Calcutta High Court**, AIR 1950 SC 286.

4. **Termination of Service on one months’ notice—Public Service Commission not consulted—Effect**

There is no merit in the contention that the impugned order was invalid as it was passed without consulting the State Public Service Commission. The Provisions of Article 320 (3) (e) of the Constitution of India were not mandatory and did not confer any rights on the public servant and that absence of consultation with the State Public Service Commission did not afford him cause of action—**Ram Gopal Chaturvedi v. The State of Madhya Pradesh**, 1966, SLR 429.
CHAPTER V

APPOINTMENT

SYNOPSIS

1. General.
2. Qualifications for appointment.
3. Reservation of appointments and posts.
4. Law as to residence for appointment in a particular part of State—Section 3, Andhra Pradesh Public Employment (Requirement as to residence) Act, 1957.
5. Reservation by Government of right of appointment to any particular cadre irrespective of merit position—Rule 9, Mysore Recruitment of Gazzetted Probationers Rules, 1959, if violative of Articles 14 and 16.

1. General.

The Constitution of India has made specific provisions for the appointment and conditions of service for certain officers like Attorney-General (Article 76), Chief Justice and the Judges of the Supreme Court and the High Courts (Articles 124 and 127) officers of the Supreme Court and the High Courts, (Articles 146 and 229), Advocate-General of the States (Article 165), District Judges (Article 233) etc., other appointments are governed by the Rules. The rule-making power vests in the President and the Governors.

The appointment and rule-making power conferred under the Article has to be exercised subject to the provisions of the Articles stated above. There are various authorities who have powers to make rules both under the Constitution and other enactments. Article 309 is an enabling provision which confers certain powers upon a Legislature. It does not impose a duty upon the Legislature to enact regulations with regard to the conditions of service of persons appointed to public office or make the enactment or such regulations a condition precedent to such appointments.

2. Qualifications for appointment.

It is open to the appointing authority to lay down the requisite qualification for recruitment to Government service and it is open to that authority to lay down such pre-requisite conditions of appointment as would be conducive to the maintenance of proper discipline amongst Government servants. If persons already under Government employment on part-time basis have shown themselves not to be amenable to proper discipline in Government offices, it is open to Government not to appoint such persons to the permanent cadre of service because such persons cannot be said to be as efficient as those who have excellent records of service and have shown greater sense of responsibility to their employers.

Article 16 of the Constitution is an instance of the application of the general rule of equality laid down in Article 15, with special reference to the opportunity for appointment and employment under the Government. Like all that employers, Government is also entitled to
pick and choose from amongst a large number of candidates offering themselves for employment under the Government.

Article 16 does not exclude selective tests nor does it preclude the prescription of qualifications for office, not only of mental excellence but also of physical fitness, sense of discipline, moral, integrity, loyalty to State etc.; where the appointment requires technical knowledge, evidence of such knowledge may be required—The State of Mysore v. P. Narasinga Rao, AIR 196 SC 349.

If the Government advertises the appointment and the conditions of service of the appointment and makes a selection after such advertisement there would be no breach of Article 16 because every body who is eligible in view of the conditions of service would be entitled to be considered by the State—B N. Nogarajain and others v. State of Mysore, (1967) 2 SCJ 664 : AIR 1966 SC 1942 : (1967) 2 SCR 664.

In Banarsi Das v. State of U. P., 1956 SCR 357 : AIR 1956 SC 520, a large number of patwaris in the State of U. P. resigned in pursuance of a concerted action. The Government accepted the resignation and organised a new cadre by recruiting new personnel. This new cadre included all those patwaris whose record of service was free from blamish and who had withdrawn their resignation and some new recruits from outside. The patwaris who were not included in the new cadre challenged the order by invoking Article 16 of the Constitution. The Supreme Court repelled the contention of denial of equal opportunity and held that the Government had right to exclude all those whose services were not free from blamish. The Court added that selection for appointment in Government service had got to be on a competitive basis and those whose past service had been better were more qualified for Government service than those whose record was not free from any blamish.

In Sankatanarayana v. State of Mysore, AIR 1966 SC 157, the power of Government to prescribe qualifications for the posts of village officers was upheld by the Supreme Court. In that case certain posts of village officers to which appointments were hereditary were abolished and fresh posts were created for which qualifications were prescribed.

In Pandurangarao v. Andhra Pradesh Public Service Commission, AIR 1963 SC 268, the qualification required for the post of District Munsif was that the applicant should be an advocate of the High Court of that State. The petitioner who was practicing in that State but was an Advocate of another State, challenged this restriction as being unconstitutional. The Supreme Court held that the impugned rule contravened Article 14 and observed as under:

"The scope and effect of the provision of Article 14 can no longer be subject-matter of any doubt or dispute. It is well-settled that though Article 14 forbids class legislation it does not forbid reasonable classifications for purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule
or statutory provision in question. As the decision of this Court shows the classification on which the statutory provision may be founded may be referable to different considerations. It may be based on geographical considerations or it may have reference to objects or occupations or the like. In every case there must be some nexus between the basis of the classification and the object intended to be achieved. The object of the rule is to recruit suitable and proper persons to the judicial service in the State of Andhra with a view to secure fair and efficient administration as justice and so there can be no doubt that it would be perfectly competent to the authority concerned to prescribe qualifications for eligibility for appointment to the said service. Knowledge of local laws as well as knowledge of the regional language and adequate experience at the Bar may be prescribed as qualifications which the applicants must satisfy before they apply for the post.

“What is relevant and more important in the matter of recruiting persons to the judicial service is not only the applicants’ loyalty and attachment to the institution of a particular High Court but their loyalty and a sense of dedication to the cause of judicial administration and this feeling and sense of dedication would be present in the minds of persons enrolled as advocates in the Andhra High Court as much in the minds of other persons enrolled as advocates in other High Courts.”

The Court then concluded by saying:

“Therefore, in our opinion, the impugned rule has introduced a classification between one class of Advocates and the rest, and the said classification must be said to be irrational inasmuch as there is no nexus between the basis of the said classification and the object intended to be achieved by the relevant scheme of the rules. That being so, it must be held that the decision of the Andhra High Court in the case of Nallanthigal Bhaktavatsalam Iyengar is not correct.”

3. Reservation of appointments and posts.

The relevant law on the subject is well-settled. Under Article 16 of the Constitution of India, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Articles 14, 15 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words Article 16 of the Constitution is only an incident of the application of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows, therefore, that there can be a reasonable classification of the employees for the purpose of appointment and promotion. To put it differently, the equality of opportunity guaranteed by Article 16(1) means equality between members of the same class of employees and not equality between members of separate independent classes. It is manifest that the scope of clause (4) of Article 16 is not co-extensive with the guarantee of equality offered to
all citizens by clause (1) of that Article. In other words clause (4) of Article 16 does not cover the entire field covered by clauses (1) and (2) of Article. For instance some of the matters relating to the employment in respect of which equality of opportunity has been guaranteed by clause (1) and (2) do not fall within the mischief of exception clause (4). As regards the conditions of service relating to employment such as salary, increment, gratuity, pension and age of superannuation there can be no exception even in regard to the backward classes of citizens. It is well settled, that clause (4) of Article 16 is an exception clause and is not an independent provision and it has to be strictly construed. Therefore, under Article 16 (4) there is no constitutional duty imposed upon the Government to make a reservation for Scheduled Castes and Scheduled Tribes either at the initial stage of the recruitment or at the stage of promotion. In other words Article 16 (4) is an enabling provisions and confers a discretionary power on the State to make a reservation of appointments in favour of backward of class citizens which, in its opinion, is not adequately represented in the Service of the State. C. A. Rajendran v. Union of India, AIR 1968 SC 507 ; (1968) 1 SCA 202 ; (1968) 2 SCJ 19 : 1968 SCD 714 : (1968) Lab. LJ 407 : 17 Fac. LR 350 350.

The condition precedent for the exercise of the powers conferred by Article 16 (4) is that the State ought to be satisfied that any backward class of citizen is not adequately represented in its services. This condition precedent may refer either to the numerical inadequacy of representation in the services or even to the qualitative inadequacy of representation. The advancement of the socially and educationally backward classes requires not only that they should have adequate representation in the lowest rung of services but that they should aspire to secure adequate representation in selection posts in the services as well. In the context the expression ‘adequately represented’ imports consideration of ‘size’ as well as ‘values’, numbers as well as the nature of appointments held and so it involves not merely the numerical test but also the qualitative one. It is thus by the operation of the numerical and a qualitative test that the adequacy or otherwise of the reservation for backward classes in any service has to be judged and if that be so, it would not be reasonable to hold that the inadequacy of representation can and must be cured only by reserving a proportionately higher percentage of appointments at the initial stage. In a given case the State may well take the view that a certain percentage of selection posts should also be reserved, for reservation of such posts may make the representation of backward classes in the services adequate, the adequacy of such representation being considered qualitatively. If it is conceded that ‘posts’ in the context refer to posts in the services and that selection posts may be reserved but should be filled only in the manner suggested by the respondent, then we see no reason for holding that the reservation of selection posts cannot be implemented by promoting suitable members of backward class of citizens to such posts as the circulars intend to do General Manager, Southern Railway v. Rangachari, AIR 1962 SC 86.

There can be no doubt that the Constitution-makers assumed as they were entitled to that while making adequate reservation under Article 16 (4), care should be taken not to provide for unreasonable excessive or extravagant reservation for that would, by eliminating general competition in large field and by creating widespread dissatisfaction among the employees, materially affect efficiency. Therefore,
like the special provision improperly made under Article 15 (4), reservation made under Article 16 (4); beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution.

In this connection it is necessary to emphasise that Article 16 (4) like Article 15 (4) is an enabling provision. It does not impose obligation but merely leaves it to the discretion of the appropriate Government to take suitable action, if necessary.

When it is said about an executive action that it is a fraud on the Constitution, it does not necessarily mean that the action is actuated by *mala fides*. An executive action which is patently and plainly outside the limits of the constitutional authority conferred on the State in that behalf, is struck down as being *ultra vires* the State authority. If on the other hand the executive action does not patently or overtly transgress the authority conferred on it by the Constitution, but the transgression is covert or latent, the said action is struck down as being fraud on the relevant constitutional power. It is in this connection that courts often consider the substance of the matter and not its form and in ascertaining the substance of the matter the appearance or the cloak or the veil of the executive action is carefully scrutinised and if it appears that notwithstanding the appearance, the cloak or the veil of the executive action, in substance and in truth the constitutional power has been transgressed the impugned action is struck down as a fraud on the Constitution.

In making special provisions, the State would not be justified in ignoring altogether the advancement of the rest of the society. The reservation under Article 15 (4) or 16 (4) must be within reasonable limits. The interest of the weaker sections of society has to be adjusted with the interest of the community as a whole—M. R. Balaji *v. State of Mysore*, AIR 1963 SC 649.

What is meant by equality in Article 14 is equality amongst equals. It does not provide that what is aimed at is an absolute equality of treatment to all persons in utter disregard in every conceivable circumstance of the differences such as age, sex, education and so on and so forth as may be found amongst people in general. Indeed, while the aim of this Article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answers the same description and the differences which may obtain between them are of no relevance for the purpose of applying in particular law, reasonable classification is permissible. It does not mean anything more.

It is an accepted fact that members of the Scheduled Castes and Tribes are by and large backward in comparison with other communities in the country. The fact however remains that they are backward and the purpose of Article 16 (4) is to ensure that such people, because of their backwardness should not be unduly handicapped in the matter of securing employment in the various services of the State. This provision, therefore, contemplates reservation of appointments or posts in favour of backward classes who are not adequately represented in the services under the State. Where, therefore, the State makes a rule providing for the reservation of appointments and posts for such backward classes it cannot be said to have violated Article 14 merely
because members of the more advanced classes will not be considered for appointment to these posts even though they may be equally or even more meritorious that the members of the backward classes, or merely because such reservation is not made in every kind of service under the State. When the object of a rule is to make reasonable allowance for the backwardness of members of a class by reserving certain proportion or appointments for them in the public services of the State what the State would in fact be doing would be to provide the members of backward classes with an opportunity equal to that of the members of the more advanced classes in the matter of appointments to public services. If the reservation is so excessive that it practically denies a reasonable opportunity for employment to members of other communities the position may well be different and it would be open then for a member of a more advanced class to complain that he has been denied equality by the State.

The problem of giving adequate representation to members of backward classes enjoined by Article 16 (4) of the Constitution is not to be tackled by framing a general rule without bearing in mind its repercussions from year to year. What precise method should be adopted for this purpose is a matter for the Government to consider. While any method can be evolved by the Government it must strike a reasonable balance between the claims of the backward classes and claims of other employees.

The guarantee contained in Article 16 (1) is for ensuring equality of opportunity for all citizens relating to employment, and to appointments to any office under the State. This means that on every occasion for recruitment the State should see that all citizens are treated equally. The guarantee is to each individual citizen and, therefore, every citizen who is seeking employment or appointment to an office under the State is entitled to be afforded an opportunity for seeking such employment or appointment whenever it is intended to be filled. In order to effectuate the guarantee each year of recruitment will have to be considered by itself and the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities.

Clause (4) of Article 16 is by way of a proviso or an exception to clause (1). A proviso or an exception cannot be so interpreted as to nullify or destroy the main provision. To hold that unlimited reservation of appointments could be made under clause (4) would in effect efface the guarantee contained in clause (1), or at best make illusory. No provision of the Constitution or of any enactment can be so construed as to destroy another provision contemporaneously enacted therein. It is true that effect must be given to the express words of Article 16 (4) : "Nothing in this Article shall prevent the State for making any provision for the reservation of appointments etc." but that does not mean that the provision made by the State should have the effect of virtually obliterating the rest of the Article, particularly clauses (1) and (2) thereof. The overriding effect of clause (4) on clauses (1) and (2) could only extend to the making of a reasonable number of reservation of appointments and posts in certain circumstances. That is all.

Under Article 16 (4) it is clear that reservation of a reasonable percentage of posts for members of the Scheduled Castes and Tribes
is within the competence of the State. What the percentage ought to be must necessarily depend upon the circumstances obtaining from time to time.

The Government resolution does not contemplate reservation of any posts in the service cadre but merely provides for reservation of vacancies. Even if the Government had provided for the reservation of posts for Scheduled Castes and Tribes, a cent per cent reservation of vacancies to be filled in a particular year of reservation of vacancies in excess of 50% would not be constitutional—Deradasan v. Union of India, AIR 1964 SC 179.

In Triloki Nath v. State of J. & K., AIR 1967 SC 1283, the Supreme Court held that the tests to be satisfied under Article 16 (4) are (1) whether the class of citizens is backward, say, socially and educationally, and (2) whether the said class is adequately represented in the services under the State.

In General Manager, Southern Railway v. Rangachari, AIR 1962 SC 36, the Supreme Court observed:

"It is true that in providing for the reservation of appointments or posts under Article 16 (4), the State has to take into consideration the claims of the members of the backward classes consistently with the maintenance of efficiency of administration. It must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration. That undoubtedly is the effect of Article 335. Reservation of appointments or posts may theoretically and conceivably mean some impairment of efficiency; but the risk involved in sacrificing efficiency of administration must always be borne in mind when any State sets about making a provision for reservation of appointments or posts. It is also true that the reservation which can be made under Article 16 (4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. In exercising the powers under Article 16 (4) the problem of adequate representation of the backward class of citizens must be fairly and objectively considered and an attempt must always be made to strike a reasonable balance between the claims of backward classes and the claims of other employees as well as the important consideration of the efficiency of administration; but in the present case, as we have already seen, the challenge to the validity of the impugned circulars is based on the assumption that the said circulars are outside Article 16 (4) because the posts referred to in the said Article are posts outside the cadre of services and, in any case, do not include selection posts. Since in our opinion this assumption is not well-founded, we must hold that the impugned circulars are not unconstitutional."
In T. Deradasan v. Union of India, AIR 1964 SC 179, it was held that reservation of posts under Article 16 (4) should be only of a reasonable proportion of the total number of vacancies. In that case on 13th September, 1950 the Government of India published a resolution indicating their policy in regard to communal representation in the services. There they stated that certain reservations, among others, for members of Scheduled Castes and Scheduled Tribes, would provisionally be made in recruitment to the posts and services under them. That resolution provided that in all cases in minimum standard of qualifications would be prescribed and that the reservations would be subject to the over-all condition that candidates of the requisite communities possessing the prescribed qualifications and suitable in all respects for the appointments in question, were forthcoming insufficient numbers for the vacancies reserved for them. These orders were made applicable to all services under the control of the Government of India. Supplementary instructions with regard to this subject were issued by the Government of India on January 28, 1952. Those supplementary instructions, providing inter alia for carrying forward vacancies for one year, were given apparently because candidates from among the Scheduled Castes and Tribes were not available. However, even carrying forward the vacancies for one year proved to be inadequate for giving effect to the policy of the Government of India to give adequate representation in the services to members of the Scheduled Castes and Tribes. Then by Office Memorandum No. 2/11/55-RPS dated May 7, 1955 the Government of India modified sub paras (3) and (4) of paragraph 5 of the Supplementary instructions dated January 28, 1952. The rule as modified in 1963 provided that 17½% of the total vacancies in a year would be reserved for being filled from amongst candidates belonging to Scheduled Castes and Tribes. It further provided that if in any year suitable candidates were not available from amongst such classes the reserved posts would be dereserved, filled by candidates from other classes and a corresponding number of posts could be carried forward to the next year. If in the subsequent year the same thing happened, the posts unfilled by candidates from Scheduled Castes and Scheduled Tribes could be carried forward to the third year. In the third year the number of posts to be filled from amongst candidates of Scheduled Castes and Tribes would thus be 17½% of the total vacancies to be filled in that year, plus the total unfilled vacancies which had been carried forward from the two previous years. The rule thus permitted a perpetual 'carry forward' of unfilled reserved vacancies in the two years preceding the year of recruitment and provided addition to them of 17½% of the total vacancies to be filled in the recruitment year. If for two successive years no candidate from amongst the Scheduled Castes and Tribes was found to be qualified or filling any of the reserved posts, and supposing that in each of those two years the number of vacancies to be filled in a particular service was 100, by operation of the carry forward rule the vacancies to be filled by persons from amongst the Scheduled Castes and Tribes would be 54½ as against 46 by persons from amongst the more advanced classes. The reservation would thus be more than 5½%. On the basis of reservation permitted by the carry forward rule as modified in 1955, in the year 1961, out of the 45 vacancies, actually filled, 29 went to members of the Scheduled Castes and Tribes. That came to about 64% of reservation. The question for consideration was whether the carry forward rule as modified in 1955 was unconstitutional either because its operation would practically destroy the fundamental
right guaranteed by Article 16 (1) of the Constitution or because it was
violative of the guarantee contained in Article 14 of the Constitution.
It was held per majority that the "Carry forward" rule as modified
in 1955 was bad and must be struck down as invalid and unconstitutional.

In G. D. Kelkar v. Union of India, 1966 SCN 391, it was
held that the court could not decide whether the proportion of
vacancies reserved for direct recruits and promotees was proper or
adequate. These are matters depending upon the circumstances of each
case and the requirement of the particular post or service. The Court
can interfere only when the ratio is so unreasonable as to amount to
discrimination.

In Jalsinghani v. Union of India, AIR 1967 SC 1427, the Supreme
Court has held that a rule fixing quotas as between departmental pro-
motees and direct recruits in the matter of appointments as Income
Tax Officers (Class I, Grade II) does not offend Articles 14 and 16 and
that the quota rule of promotion laid down in the letter of the Govern-
ment is a statutory rule and duty is cast on the Government to deter-
mine the method or methods to be employed for the purpose of filling
up the vacancies and number of candidates to be recruited by each
method.

In Kumari Chitra Ghosh and another v. Union of India, (1969)
2 SCC 228, the appellant challenged in a writ petition before the High
Court the authority of the Central Government to select candidates for
certain reserved seats on the ground that they having secured 62.5% marks
would have got admission but for the reservation seats. The High Court dismissed the writ petition. In appeal the Supreme Court
observed:

"(i) We unable to see how Article 15 (1) can be invoked in
the present case. The rules do not discriminate between
any citizen on grounds only of religion, race, caste, sex, place
of birth or any of them. Nor is Article 29 (2) of any assist-
ance to the appellants. They are not being denied admission
into Medical College on grounds only of religion, race, caste,
language or any of them.

"(ii) As laid down in Shri Ram Krishna Dalmia's case,
1959 SCR 279, Article 14 forbids class legislation; it does
not forbid reasonable classification. In order to pass
the test of permissible classification two conditions
must be fulfilled: (i) that the classification is founded on
intelligible differentia which distinguishes persons or things
that are grouped together from other left out of the group
and (ii) that differentia must have a rational relation to the
object sought to be achieved.....The classification in all these
cases is based on intelligible differentia which distinguishes
them from the group to which the appellant belongs. It is
the Central Government which bears the financial burden
of running the Medical College. It is for it to lay down the
criteria for eligibility. From the very nature of things it is
not possible to throw the admission open to students from all over the country.

"The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends *inter alia* on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is necessary to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification.....If the sources have been classified in the manner done in the present case, it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose.....There is no question of any preferential treatment being accorded to any particular category or class of persons desirous of receiving medical education in the present case. The mere facts that the Central Government has to make the nominations with regard to the reserved seats cannot be considered to be preferential treatment of any kind.....It appears that the Central Government has been acting in a very reasonable way inasmuch as when nominations were made only to nine seats the rest were thrown open to the general pool....."

"(iii) The first group of persons for whom seats have been reserved are the sons and daughters of residents of Union territories other than Delhi. These areas are well-known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their own. It was necessary that persons desirous of receiving medical education from these areas should be provided some facility for doing so. As regards the sons and daughters of Central Government servants posted in Indian Missions abroad it is equally well-known that due to exigencies of their service these persons are faced with lot of difficulties in the matter of education. Apart from the problems of language it is not easy or always possible to get admission into institutions imparting medical education in foreign countries. The Cultural, Colombo Plan and Thailand scholars are given admission in medical institutions in this country by reason of reciprocal arrangements of educational and cultural nature. Regarding Jammu and Kashmir scholars, it must be remembered that the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for medical education in the State itself for its residents. The classification in all these cases is based on intelligible differentia which distinguishes them from the group to which the appellants belong."

In *Makhanlal Waza and others v. State of Jammu and Kashmir*, (1971) 1 SC 749, the petition under Article 32 of the Constitution illustrated how an attempt had been made to incumbent the law declared by the Supreme Court in *Triloki Nath and another v. State of Jammu*
and Kashmir and others, (1969) 1 SCR 103, by which the State policy of reserving 50% of the vacancies among the teachers in the employment of the respondent State for the Muslims of Kashmir and out of the remaining 50%, 40% for Jamvi Hindus and 10% for others including Kashmiri Pandits was struck down as contrary to the Constitutional guarantee under Article 16.

In December, 1965, Triloki Nath and others filed a writ petition in this Court. In that petition it was alleged that the communal policy of promoting teachers to the gazetted cadre was not disclosed in any order made by the State but had been arrived at on the footing of the recruitment by promotion made to the gazetted post of teachers from time to time. The promotions had been made not on the basis of merit and seniority but purely on the ground of religion, caste and place of birth. This Court called for a report from the High Court on the question whether the Muslims of the entire State of Jammu and Kashmir and the Hindus of the Jammu Province constituted backward class in the sense explained in M. R. Balaji and others v. The State of Mysore, (1963) Supp. 1 SCR 439 : (1963) 2 SCA 1 : AIR 1963 SC 619 and also whether they were not adequately represented in the services of the State. [See Triloki Nath Tiku and another v. State of Jammu and Kashmir and others, (1967) 2 SCR 265 : AIR 1967 SC 1283 ; (1967) 2 SCJ 187]. After the report was received it was found that the High Court did not record its opinion on the evidence. But the Supreme Court proceeded to give its decision on the material before it. This is what was observed at page 105 [(1969) 1 SCR 103]], by Shah, J.:

"Article 16 in the first instance by clause (2) prohibits discrimination on the ground inter alia, of religion, race, caste, place of birth, residence and premits an exception to be made in the matter of reservation in favour of backward classes of citizens. The expression 'backward class' is not used as synonymous with 'backward caste' or 'backward community'. The members of an entire caste or community may in the social, economic and educational scale of values at a given time be backward and may on that account be treated as a backward class but that is not because they are members of a caste or community, but because they form a class. In its ordinary connotation the expression 'class' means a homogeneous section of the people grouped together because of certain likeness or common traits and who are identifiable by some common attributes such as status, rank, occupation residence in a locality, race, religion and the like. But for the purpose of Article 16 (4) in determining whether a section forms a class, a test solely based on caste, community, race, religion sex, descent, place of birth or residence cannot be adopted because it would directly offend the Constitution."

It was pointed out that no formal order making a provision for reservation of appointment to posts in favour of any backward class of citizens had been produced. There were a number of Government Orders by which the promotions had been made according to the communal policy. There was no reference in any of the orders to selection of officers on the basis that they belonged to backward classes. It was
held that in effect the communal policy was not of reservation of some posts; it was a scheme of distribution of all the posts community-wise. Such distribution made in implementation of the so-called policy was contrary to the constitutional guarantee under Article 16 (1) and (2) and was not saved by clause (4). The promotions granted to Respondents 3 to 83 in that petition were declared void. It was left open to the State to devise a scheme consistent with the constitutional guarantee for reservation of appointments to posts or promotions in favour of any backward class of citizens which, in the opinion of the State, was not adequately represented in the services.

No such scheme as was envisaged was devised. It was, however, stated in the Makhlan Lal Waza's case, (1971) 1 SC 749, that certain rules had been promulgated by a notification No. S. R. O. 460 dated August 19, 1969. In the meantime the officers concerned of the Education Department of the State thought of an ingenious device of giving ostensible effect to the decision of this Court. Those teachers who were respondents in the previous writ petition Triloki Nath Tiku's case and whose promotions became illegal in view of the pronouncement of the Supreme Court were ordered to be adjusted in non-gazetted cadre of which the grade was Rs. 150-500. They were "allowed to work against the posts they were holding prior to their reversion" on temporary basis. Numerous copies of the orders which had been annexed to the petition showed that this was the common pattern that was followed. A new nomenclature was evolved for the post of Head Masters. They were called Teachers-in-charge. They were to get the same salary which they were getting when they were in the gazetted cadre of Rs. 300-600. For instance, if A was working as Head Master in the gazetted post and was drawing a salary of Rs. 300/- per month according to the scale of Rs. 360-600, he was stated to have been adjusted in his own grade and on his own pay, i.e., in the grade of Rs. 150-500. He was still to get a salary of Rs. 350/- which he would not have got if he had originally not been promoted to the gazetted cadre. In other words although such a teacher was brought into the non-gazetted cadre from the gazetted grade his emoluments and his posting as Head of an institution were not affected. It is not disputed that ordinarily he could not have been appointed to that post being far junior to the petitioners according to the seniority list of the non-gazetted cadre to which originally he and the petitioners belonged.

The Supreme Court considered the aspects and observed:

"It has been stated somewhat timely in the return of Respondents 1 and 2 that when these teachers who were affected by the decision of this Court had been promoted to the gazetted cadre not only seniority but merit had also been taken into consideration. But it has not been denied and this fact has been admitted before us in the course of arguments that but for the so-called communal policy these teachers would not have been promoted to the gazetted cadre even though merit and other factors had entered into their promotion inter se. As regards the other respondent teachers who did not figure in the earlier petition, they were all promoted to the gazetted cadre prior and subsequent to the previous decision in complete defiance of law laid down by this Court. Such a
course has been sought to be justified on the tenuous ground
that they were not parties to the previous petition and there-
fore their cases would not be governed by the decision given
in that petition. It may be observed immediately that such
a position is wholly untenable and misconceived. The judg-
ment which was delivered did not merely declare the promo-
tions granted to the respondents in the writ petition filed at
the previous stage as unconstitutional but also laid down in
clear and unequivocal terms that the distribution of appoint-
ments, posts or promotions made in implementation of the
communal policy was contrary to the Constitutional
guarantee of Article 16. The law so declared by this Court
was binding on the respondent State and its officers and they
were bound to follow it whether a majority of the present
respondents were parti-s or not to the previous petition......

“In the absence of any rules lawfully promulgated for employ-
ment of backward classes promotions could be made only in
accordance with Rule 25 and there can be no manner of
doubt that there was absolute non-compliance with the
provisions of that rule. The promotions thus made of all the
respondent-teachers were illegal and unconstitutional being
violative of Article 16 of the Constitution. The have, there-
fore, to be set aside. All the promotions made to the higher
posts or the higher grade pursuant to the communal policy
would have to be revised and reconsidered and appropriate
orders must be passed by Respondents 1 and 2 with regard to
them as also the petitioners in accordance with law.”

4. Law as to residence for appointment in a particular part
of State—Section 3, Andhra Pradesh Public Employment
(Requirement as to Residence) Act, 1957.

Clause (3) of Article 16 of the Constitution of India enables Parliament to make a law in a special case prescribing any requirement as to residence within a State or Union Territory prior to appointment, as a condition of employment in the State or Union Territory. Under Article 35 (a) this power is conferred upon Parliament but is denied to the Legislatures of the States, notwithstanding anything in the Constitution and under Article 35 (b) any law in force immediately before the commencement of the Constitution in respect to the matter shall, subject to the terms thereof and subject to such adaptations that may be made under Article 372, continue in force until altered or repealed or amended by Parliament. The legislative power to create residential qualifications for employment is thus exclusively conferred on Parliament. Parliament can make any law which prescribes any requirement as to residence within the State or Union Territory prior to employment or appointment to an office in the State or Union Territory.

The claim for supremacy of Parliament is misconceived. Parliament in this, as in other matters, is supreme only in so far as the Constitution make it. Where the Constitution does not concede supremacy Parliament must act within its appointed functions and not transfer them. By the first clause of Article 16 of the Constitution equality of opportunity to an office is guaranteed. By the second clause, there can be no
discrimination, among other things, on the ground of residence. Realising however, that sometimes local sentiments may have to be respected or sometimes an in-road from more advanced States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in clause (3), was made. Even so that clause spoke of residence within the State. The claim that Parliament can make a provision regarding residence in any particular part of State would render the general prohibition lose all its meaning. The words "any requirement" cannot be read to warrant something which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. The Constitution, as it stands, speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in districts, Taluqas, Cities, towns or villages. The fact that this clause is an exception and came as an amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the Constituent Assembly also seem to indicate. These words are obviously controlled by the words "residence within the State or Union Territory" which words mean what they say, neither more nor less. It follows, therefore, that section 3 of the Andhra Pradesh Public Employment (Requirement as to Residence) Act, 1957, in so far as it relates to Telangana and Rule 3 of the Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959, made under that Act, are ultra vires the Constitution of India.—A. V. S. Narsimha Rao and others v. The State of Andhra Pradesh and others, AIR 1970 SC 422 : (1970) 1 SCR 115 : (1970) 1 SCA 51 : (1970) 1 SCJ 335.

5. Reservation by Government of right of appointment to any particular cadre irrespective of merit position—Rule 9, Mysore Recruitment of Gazetted Probationers Rules, 1959, if violative of Articles 14 and 16.

The last part of the Mysore Recruitment of Gazetted Probationers Rules, 1959 gives the Government an arbitrary power of ignoring just claims of successful candidates for recruitment to offices under the State. It is violative of Articles 14 and 16 of the Constitution of India and must be struck down. The above said Rules make provisions for the direct recruitment to several cadres in the State Service on the basis of the result of a competitive examination. The examination is held annually and is open to all eligible candidates. The result of the examination is announced and the list of the successful candidates in order of merit is published. The successful candidates are entitled to be appointed as probationers to Class-I posts in the order of merit and thereafter to Class-II posts in the order of merit. The candidates are required to indicate in their applications their preference for the cadres they wish to join. But the last part of Rule 9 2) reserves to the Government the right of appointing any candidate whom it considers more suitable for such cadre. The rules are silent on the question as to how the Government is to find out the suitability of a candidate for a particular cadre. In the present case an open competitive examination was held for recruitment to the posts of Assistant Commissioners in the Mysore Administrative Service and Assistant Controllers in the Mysore State Accounts Service. Though both are
Class-I posts the post of Assistant Commissioner has better prospects. But for the last part of rule 9 (2) the successful candidates would have the preferential claim for appointment as probationers to the posts of Assistant Commissioners in order of merit. If, therefore, a candidate, as the respondent in this case, who indicated his preference for the post of Assistant Commissioner and who ranked fourth in order of merit was singed out and debarred from that post whereas the candidates ranking 1st, 2nd, 3rd and 5th were appointed as Assistant Commissioner it was because of the arbitrary power under the last part of rule 9 (2) that Government could make this unjust discrimination. The principle of recruitment by open competition aims at ensuring equality of opportunity in the matter of employment and obtaining the service of the most meritorious candidates. Though Rule 9 (1) requires the appointment of successful candidates to Class-I posts in the order of merit and thereafter to Class-II posts in the order of merit, Rule 9 (1) is subject to Rule 9 (2) and under the cover of Rule 9 (2) Government can even arrogate to itself the power of assigning a Class-I post to a less meritorious and Class-II post to a more meritorious candidate. In the result the following part of Rule 9 (2) of the Mysore Recruitment of Gazetted Probationers' Rules, 1959 is struck down:


In *Rajendram v. Union of India*, AIR 1968 SC 507 : (1968) SCA 202 : (1968) 2 SCJ 19 : 1968 SCD 714 : 17 Fac LR 350 : 1968 Lab LJ 407, it was contended that the impugned order arbitrarily discriminated among Class III employees themselves and Class IV employees themselves. Under the impugned order reservation was kept for appointments for which there was direct recruitment and for promotion made by (1) selection or (2) on the result of a competitive examination limited to departmental candidates. There was no reservation for appointments made by promotion on the basis of seniority-cum-fitness. It was held that there was no justification for the contention as it was well established that there could be a reasonable classification of employees for the purpose of appointment by promotion and the classification as between direct recruits and promotees was reasonable. It was further held that the contention that there was discrimination between Classes I and II where there was no reservation and Classes III and IV where reservation had been made for Scheduled Castes and Scheduled Tribes had no force. It was explained that as in Classes I and II of the Service Posts, a higher degree of efficiency and responsibility was required, the reservation was considered harmful so far efficiency in the higher echelons of service the classification made in the impugned order was held reasonable.

It was also contended in *Rajendram v. Union of India*, (Supra), that there was discrimination between the employees belonging to the Scheduled Castes and Scheduled Tribes in the Railway Service and similar employees in the Central Secretariat Service because the competitive departmental examination for promotion was not held by the Railway Board for 1955, 1963 and on the contrary such examinations were held

S. L. I.—16
for the Central Secretariat Service and 74 employees belonging to Scheduled Castes and Scheduled Tribes secured the benefit of the provisions of reservation. The contention was repelled and it was held that since the employees of the Railway Board were governed by the rules applicable to the officers in the service to which they belonged and those of the Central Secretariat Service belonged to a different class, it was not possible to accept the argument that there was any discrimination against the employees of the Railway Board and violation of the guarantee under Article 14 of the Constitution of India.
CHAPTER VI

CONDITIONS OF SERVICE

SYNOPSIS

1. General.
2. Power of Legislature to make laws.
4. Whether Service Rules constitute terms of contract?
5. Making of regulations: Exigencies of service are guiding factors.
8. Enforceability of Service Rules—
   (a) Salary.
   (b) Scale of pay.
   (c) Dearness allowance.
   (d) Bonus.
   (e) Pension.
   (f) Seniority.
   (g) Promotion.
   (h) Deputation.
   (i) Cadre.
   (j) Transfer.
   (k) Disciplinary action.
   (l) Retirement.
   (m) Suspension.
9. Discrimination in matters relating to conditions of service.
10. Alteration in Service Rules.

1. General.

Article 310 (1) of the Constitution declares that every person who is a member of civil service of a State or holds any civil post in a State holds office during the pleasure of the Governor of a State. But the pleasure doctrine embodied therein is subject to the other provisions in the Constitution. Two other Articles in the Constitution which cut down the width of the power given under Article 310 (1) are Articles 309 and 311. Article 309 provides that subject to the provisions of the 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. Proviso to that Article says:

“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.”

One of the powers conferred under this proviso is to make rules regulating the conditions of service of persons appointed to civil services of the Union or the State, as the case may be. The expression “conditions of service” is an expression of wide import. As pointed out by the Supreme Court in Pradyat Kumar Bose v. The Hon’ble the Chief Justice of Calcutta High Court, (1955) 2 SCR 1331, the dismissal of an official is a matter which falls within “conditions of service”

(123)
of public servants. The Judicial Committee of the Privy Council in *North-West Frontier Province v. Suraj Narain Anand*, (1948) LR 75 IA 347, took the view that a right of dismissal is a condition of service within the meaning of the words under section 243 of the Government of India Act, 1935. *Lord Thankerton* speaking for the Board observed therein:

"apart from consideration whether the context indicates a
special significance to the expression 'conditions of service'
their Lordships are unable in the absence of any such
special significance, to regard provisions which prescribe the
circumstances under which the employer is to be entitled to
terminate the service as otherwise than conditions of the
service, whether these provisions are contractual statutory;
they are, therefore, of opinion that the natural meaning of
the expression would include such provisions."

In *P. Balakotaiah v. The Union of India and others*, 1958 SCR 1052, the Supreme Court proceeded on the basis that a rule providing for the termination of the service of a railway official can be made in exercise of the powers conferred on the Government by sections 241 (2), 247 and 263 (3) of the Government of India Act, 1935.

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 till his retirement and even beyond it in matters like pension, etc.—*State of Madhya Pradesh v. Shardul Singh*, (1970) 1 SCC 108.

The general provisions relating to recruitment and the conditions of service are contained in Article 309 of the Constitution which runs as under:

"309. 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 persons 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 this 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."

Article 309 enables the Legislature to legislate in regard to recruitment and conditions of services of persons appointed to public services and posts in connection with the affairs of the Union or of any State.

The opening words of Article 309 "subject to the provisions of this Constitution" make it clear that the conditions of service, whether laid down by the Legislature or prescribed by the rules, must conform
to the mandatory provisions of the Constitution as laid down, for example in Articles 310, 311 and 320. In the absence of any law passed by the Legislature, the President and the Governors can in their respective spheres, frame rules regulating the conditions of services of persons appointed to such services and posts. The rules so framed shall have force of law but shall be subject to the law passed by the Legislature.

Article 312 empowers Parliament to create new All India Services common to the Union and the State. But before Parliament can set up an all-India service, it is necessary that a resolution in the council of the States supported by not less than two-third of the members present and voting should have been passed declaring that it is necessary or expedient in the national interest to do so.

The rule-making power under Articles 309 and 312 can be delegated.

Article 313 of the Constitution provides that all the laws in force immediately before the commencement of the Constitution are applicable to any public service or any post which continues to exist after the commencement of the Constitution shall continue in force until other provisions are made on this behalf under the Constitution. These laws are, however, subject to their being consistent with the provisions of the Constitution.

Article 314 of the Constitution deals with persons who have been appointed by the Secretary of State or Secretary of a State in Council to a Civil service of the Crown in India continuing after the commencement of the Constitution to serve under the Government of India. The Article gives the protection regarding their conditions of service and provide conditions of service as respects remuneration, leave, pension and the same right as respect disciplinary matters or right as they were entitled to, before the Constitution came into existence.

Articles 309 and 310 of the Constitution were considered by the Supreme Court in State of U. P. v. Buddha Ram Anr. AIR 1952 SC 751, where the Supreme Court observed:

"Under Article 309 the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services. Under Article 310 every person who is a member of a public service described therein holds office during the pleasure of the President or the Governor, as the case may be. The words 'conditions of service' in their comprehensive sense take in the tenure of a civil servant. Therefore, the tenure and the same is subject to the conditions of service. Article 310 contains a restrictive clause, namely, subject to the provisions of this Constitution, and if there is no restrictive clause in Article 310, there cannot be any difficulty in deducing that Article 309 is subject to provisions of Article 310 with the result that the power of the Legislature was to determine the conditions of service of persons appointed to public services and be subject to the 'tenure at pleasure' under Article 310. Hence, any law made by the Legislature could have, after the overruling power of the Legislature, the effect, as the case may be, in putting an end to the tenure at their pleasure. Would the opening
words of the clause in Art. 310, namely, ‘Except as provided in the Constitution’, make any difference in the matter of interpretation? It should be noticed that the phraseology of the said clause in Article 310 is different from that in Article 309. If there is a specific provision in some part of the Constitution given to a Government servant a tenure different from that provided for in Article 310, that Government servant is excluded from the operation of Article 310. The said words refer *inter alia* to Articles 124, 148, 218 and 324 which provide that the Judges of the Supreme Court, the Auditor-General, the Judges of the High Courts and the Chief Election Officer shall not be removed from their offices except in the manner laid down in those Articles. If the provisions of the Constitution specifically prescribing different tenures were included from Article 310, the purpose of that clause would be exhausted and thereafter the Article would be free from any other restrictive operation. In that even, Articles 309 and 310 should be read together, excluding the opening words in the latter Article, namely, ‘Except as expressly provided by this Constitution.’ Learned counsel seeks to confine the operation of the opening words in Article 309 to the provisions of the Constitution which empower other authorities to make rules relating to the conditions of service of certain clauses of public servants, namely, Articles 146 (2), 148 (5) and 229 (2). That may be so, but there is no reason why Article 310 should be excluded therefrom. It follows that while Article 310 provides for 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.

“Learned counsel for the respondent contends that this construction is inconsistent with that prevailing in English law and that the intention of the framers of the Constitution could not have been to make a radical departure from the law of England on the doctrine of ‘tenure at pleasure’ has now become fairly crystallized. In England, all servants of the Crown hold office during the pleasure of the Crown; the right to dismiss at pleasure is an implied term in every contract of employment of the Crown; this doctrine is not based on any prerogative of the Crown, but on public policy; if the terms of employment definitely prescribe a tenure for good behaviour or expressly provides for a power to determine for a cause, such an implication of a power to dismiss at pleasure is excluded, and an Act of Parliament can abrogate or amend the said doctrine of public policy in the same way as it can do in respect of any other common law. The said propositions are illustrated in the following decisions: *Shenton v. Smith*, *Gold v. Sluart*, *Reilly v. The King*, and *Terrel v. Secretary of State*. The English doctrine was not incorporated in its entirety in the Indian enactments. Section 96-B of the Government of India Act, 1915, for the first time in 1919, by amendment, statutorily recognised this
doctrine, but it was made subject to a condition or a qualification, namely, that no person in that service might be dismissed by any authority subordinate to that which he was appointed. Section 240 of the Act of 1935 imposed another limitation, namely, that a reasonable opportunity of showing cause against the action proposed to be taken in regard to a person must be given to him. But neither of the two Acts empowered the appropriate Legislature to make a law abolishing or amending the said doctrine. The Constitution of India practically incorporated the provisions of sections 240 and 241 of the Act of 1935 in Articles 309 and 310. But the Constitution has not made 'the tenure at pleasure' subject to any law made by the appropriate Legislature. On the other hand, as we have pointed out, Article 309 is expressly made subject to 'the tenure at pleasure' in Article 310.

"Nor the attempt of the learned counsel for the respondent to discover such a power in the Legislature in the Entries of the appropriate Lists of the Seventh Schedule to the Constitution can be legally sustained. He referred, inter alia, to Entry 70 of List I and Entry 41 of List II. It is not disputed that Parliament can make law for the organisation of the police and for the prevention and detection of crime. But under Article 245 of the Constitution such a power is subject to the provisions of the Constitution and, therefore, is subject to the provisions of Article 310.

"Nor can we imply such a power in Parliament or the Legislatures from Article 154 (b) of the Constitution. Under Article 154,

"the executive of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution",

and under clause 2 (b) thereof,

"Nothing in this Article shall prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor".

"The argument is that a power to terminate the service at pleasure under Article 310 is a part of the executive power of the State, that power under Article 154 can be exercised by the Governor directly or through officers subordinate to him, and that under Article 154 (2) (b) the Parliament or the Legislature of the State can confer the same power on any authority subordinate to the Governor or, at any rate, can make a law prescribing to the Governor shall exercise the said pleasure through a particular officer.

"We cannot agree either with the premises or with the conclusion sought to be based on it. The first question is whether the power of the Governor under Article 310 to terminate the services of a Government servant at pleasure is part of the executive power of the State under Article 154 of the
Constitution. Article 154 speaks of the executive power of the State vesting in the Governor; it does not deal with the constitutional powers of the Governor which do not form part of the executive power of the State. Article 162 says that, subject to the provision of the Constitution, the executive power of the State shall extend to matters with respect to which the Legislature of the State has power to make laws. If the Legislature of the State has no such power and, therefore, it cannot be a part of the executive power of the State. That apart, if the said power is part of the executive power in its general sense, Article 162 imposes another limitation on that power, namely, that the said executive power is subject to the provisions of the Constitution and, therefore, subject to Article 310 of the Constitution. In either view, Article 310 falls outside the scope of Article 154 of the Constitution. That power may be analogous to that conferred on the Governor under Articles 174, 175 and 176. Doubtless the Governor may have to exercise the said power, whenever an occasion arises, in the manner prescribed by the Constitution, but that in itself does not make it a part of the executive power of the State or enable him to delegate that power.

"Even on the assumption that the power under Article 310 is executive power within the meaning of Article 154, it does not make any difference in the legal position so far as the present case is concerned. Article 310 of the Constitution does not expressly provide for a different tenure? Can it be said that said Article 154 (2) (b) expressly provides for a different tenure? Can it be said that the said Article confers on the Parliament or the Legislature power to impose on the Governor subject to the limitation prescribed under Article 311. Can it be said that Article 310 is not a limiting provision subject to the provisions of the Constitution and that the power under Article 310 is not subject to the limitations imposed by the Constitution? It is only preserved by the power of the Legislature which I am under the Constitution, to make a law conferring functions on an authority subordinate to the Governor. To this extent, Article 245 is not a limiting provision subject to the provisions of the Constitution and it is not subject to the limitations imposed by the Constitution. Article 310 is not a limiting provision subject to the limitations imposed by the Constitution. Article 310 is not a limiting provision subject to the limitations imposed by the Constitution.

The question then (put before the Court) was whether the provisions were not accepted or would lead to dissatisfaction. The question was whether the provisions were not accepted or would lead to dissatisfaction. The question was whether the provisions were not accepted or would lead to dissatisfaction. The question was whether the provisions were not accepted or would lead to dissatisfaction.
"This argument is based upon the misapprehension of the scope of Article 309 of the Constitution. A law made by the appropriate Legislature or the rules made by the President or the Governor, as the case may be, under the said Article may confer a power upon a particular authority to remove a public servant from service; but the conferment of such a power does not amount to a delegation of the Governor's pleasure. Whatever the said authority does is by virtue of express power conferred on it by a statute or rules made by competent authorities and not by virtue of any delegation by the Governor of his power. There cannot be conflict between the exercise of the Governor's pleasure under Article 310 and that of an authority under a statute, for the statutory power would be always subject to the overriding pleasure of the Governor.

"This conclusion, the argument proceeds, would throw a public servant in India to the mercy of the executive Government while their compatriots in England can be protected by legislation against arbitrary actions of the State. This apprehension has no real basis, for, unlike in England a member of the public service in India is constitutionally protected at least in two directions: (i) he cannot be dismissed by an authority subordinate to that by which he was appointed; (ii) he cannot be dismissed, 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. A condition similar to the first condition in Article 311 found in Section 96-B of the Government of India Act, 1919, was held by the Judicial Committee in R. T. Rangachari v. Secretary of State, to have a statutory form, and the second condition, which is only a reproduction of that found in sub-section (2) of section 240 of the Government of India Act, 1935, was held in High Commissioner for India v. I. M. Lall, as mandatory qualifying the right of the employer recognised in sub-section (1) thereof. These two statutory protections to the Government servant are now incorporated in Article 311 of the Constitution. This Article imposes two qualifications on the exercise of the pleasure of the President or the Governor and they quite clearly restrict the operation of the rule embodied in Article 310 (1) — vide the observations of Das C. J. in Dhingra's case. The most important of these two limitations is the provision prescribing that a civil servant shall be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. As this condition is a limitation on the 'tenure at pleasure', a law can certainly be made by Parliament defining the content of 'reasonable opportunity' and prescribing the procedure for giving the said opportunity. The appropriate High Court and the Supreme Court can test the validity of such a law on the basis whether the provisions prescribed, provide for such an opportunity, and, if it is valid, to ascertain whether
the reasonable opportunity is really given to a particular officer. It may be that the framers of the Constitution, having incorporated in our Constitution the ‘tenure of pleasure’ unhampered by Legislative interference, thought that the said limitations and qualifications would reasonably protect the interests of the civil servants against arbitrary actions.”

Now coming back to Article 309, it may be pointed out that it is not obligatory under the proviso to Article 309 to make rules of recruitment and that the executive power of the State under Article 162 is not abridged by Article 309. The executive must abide by any Act or rule, if any, made under Article 309 i.e. the Government cannot act contrary to a statutory under Article 309 but where there is no rule it is open to the Government to make appointments or regulate conditions of service in exercise of its executive power—B. N. Nagarajan v. State of Mysore, AIR 1966 SC 1942.

The proviso to Article 309 clearly lays down that any rule made as contemplated therein shall have effect subject to the provisions of any Act passed by the Legislature in the matter. Thus if the appropriate legislature has passed an Act under Article 309, the rules framed under the proviso will have effect subject to that Act but in the absence of any Act of the appropriate legislature on the matter the rules made by the President or by such person as he may direct are to have full effect both prospectively and retrospectively. Apart from the limitations pointed out above, there is none other imposed by the proviso to Article 309 regarding the ambit of the operation of such rules. In other words the rules unless they can be impeached on grounds such as breach of Part III or any other constitutional provision must be enforced if made by the appropriate authority—B. S. Vadera v. Union of India, AIR 1968 SC 118 : 1968 SCD 1120 (AIR 1963 Mys 265 and AIR 1965 Mys 25 over-ruled).

The Railway Establishment Code has been issued by the President in the exercise of his powers under Article 309, proviso. Under Rule 157, the President has directed the Railway Board to make rules of general application to non gazetted Railway servants under their control. The Rules which are embodied in the schemes framed by the Board are within the powers conferred under Rule 157 and in the absence of any Act having been passed by the appropriate legislature on the said matter, the Rules framed by the Railway Board will have full effect and if so indicated, retrospectively also—B. S. Vadera v. Union of India, AIR 1968 SC 118 : 1968 SCD 1120 : 1969 SCR 6.

It is well-settled that the legislature can delegate to other authorities the power to frame the rules to carry out the purposes of the Act. Even if the Legislature enacts any law, such law has to leave the actual details to be provided for by rules. As observed by the Supreme Court in—D. S. Grewal v. State of Punjab, AIR 1959 SC 512, “Regulation of recruitment and conditions of service requires numerous and varied rules, which may have to be changed from time to time as the exigencies of public service require. This could not be unknown to the Constitution-makers.” In that case it was urged that the delegation made by section 3 of the All-India Services Act, 1951 was excessive and, therefore section 3 be struck down. It was held that it could not be said
that there was excessive delegation by section 3 (1) to the Central Government and it could not be struck down on the ground of excessive delegation. The court in that case was considering Article 312 of the Constitution and despite the expression "by law" in that Article the delegation of rule-making power was held valid.

The Government can frame different rules for different services but, as observed in—Moti Ram Deka v. General Manager, N. E. F. Railway, AIR 1964 SC 60, in essential matters like termination of service, there cannot be any difference.

In Raj Kumar v. Union of India, (1969) 1 SCA 48 : AIR 1969 SC 180, a circular memorandum was issued under the signature of the Deputy Secretary to the Government of India, setting out the procedure to be followed in dealing with resignation from service. It was held that the circular letter had no statutory force and that it contained merely instructions set out by the Ministry of Home Affairs about the procedure to be followed in respect of resignation from service. It was further held that there appeared to be no statutory rule or regulation relating to resignation by members of the Indian Administrative Service, especially as to the date on which the resignation became effective.

In State of Mysore v. Padmanobhattacharya, AIR 1966 SC 602 : (1966) 1 SWR 376, a ratification of the Governor to the effect that persons invalidly retired should be deemed to be validly retired was held to be not within the proviso to Article 309—Wanchoo J. observed as under:

"We are of opinion that such a rule cannot be made under the proviso to Article 319 of the Constitution. We are expressing no opinion as to the power of the Legislature to make a retrospective provision under Article 309 of the Constitution wherein the appropriate Legislature has been given the power to regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with affairs of the Union or of any State by passing Acts under Article 309 of the Constitution read with Item 70 of List I of the Seventh Schedule or Item 41 of List II of the Seventh Schedule. The present rule has been made by the Governor under the proviso to Article 309. That proviso lays down that it shall be competent for the Governor 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 provi- sion in that behalf is made by or under an Act by the appropriate Legislature. Under the proviso the Governor has the power to make rules regulating the recruitment and conditions of service of persons appointed to such services and posts in connection with the affairs of the State. The question is whether the notification of March 25, 1959, can be said to be such a rule. We are of opinion that this notification cannot be said to be a rule regulating the recruitment and conditions of service of persons appointed to the services and posts in connection with the affairs of the State. All that the rule does is to say in so many words that certain persons who had been, in view of our decision on the first
point, invalidly retired should be deemed to have been
validly retired from service on superannuation. It would,
if given effect, contravene Article 311 of the Constitution.
Such a rule in our opinion is not a rule contemplated under
the proviso to Article 309. Under the proviso the Governor
can make rules regulating the recruitment and conditions
of service of persons appointed to services and posts in con-
nection with the affairs of the State. But all that this
notification or rule does is to say that certain persons who
had been wrongly retired must be treated to have been
rightly retired. This power of validating an order which
was invalid when it was made does not in our opinion, flow
from the power conferred on the Governor to make rules
regulating recruitment and conditions of service of persons
appointed to services and posts in connection with the affairs
of the State. It is certainly not a rule regulating recruit-
ment of such persons; nor can it be said to be a rule
regulating conditions of services of such persons. The rules
relating to recruitment and conditions of service contem-
plated by the proviso to Article 309, are general in operation,
though they may be applied to a particular class of Govern-
ment servants. But what this notification or rule does is to
select certain Government servants who had been illegally
required to retire and to say that even if the retirement had
been illegal, that retirement should be deemed to have been
properly and lawfully made. We are of opinion that such
a declaration by the Governor—and that is all that the noti-
fication or the rule does—cannot in any sense be regarded as
a rule made under the proviso to Article 309 governing the
conditions of service of persons appointed to services and
posts in connection with the affairs of the State. In this
view of the matter it is not necessary to decide whether
a rule of this kind which is purely retrospective could be
made as a rule governing conditions of service of persons
appointed in connection with the affairs of the State.”

Rules dealing with functions of the Public Service Commission are
not rules relating to recruitment and, therefore, are not statutory rules
of the nature authorised by the proviso to Article 309—State of Mysore

2. Power of Legislature to make Laws.

The power of the legislature to make laws under Article 309 of the
Constitution is limited and such law cannot be made by the legislature
abrogating or modifying the tenure of a person who is member of a civil
service described in Article 310 of the Constitution. It will be difficult
to hold that if the President exercised his pleasure and terminated the
services of a railway employee the employee had to be given a reason-
able opportunity, to show cause against the punishment, but if the
services are terminated by the officer by merely giving a notice of one
month under Rule 149 of the Indian Railway Establishment Code no
such procedure need be followed. Such a rule will be modifying the
tenure of service which is at the pleasure of the President qualified by
Article 311 (5) of the Constitution and will not be valid—Moti Ram
Deka v. N. E. F. Railway, AIR 1964 SC 600.
3. Service Rules and Executive Instructions

The expression "condition of service" has nowhere been defined. The expression is of substantially wide amplitude and would in the absence of any definite indication to the contrary include rules relating to salary or time scale of pay or grade, to contributory or other compulsory provident fund, to dearness allowance, to termination of service, to eligibility and qualifications for promotion and like. The expression "conditions of service" includes power as to termination of service—


Though the expression "conditions of service" in Article 309 in its comprehensive sense will include tenure, the rule-making authority cannot be exercised so as to affect or curtail the rights guaranteed to public servants by Article 311. No rule framed under Article 309 can trespass on the rights guaranteed by Article 311—Moti Ram Deka v. N. E. F. Railway, AIR 1964 SC 600 : (1964) 2 SCA 372.

In General Manager v. Rangachari, AIR 1962 SC 36, it was held that the word "the recruitment and conditions of service of persons appointed" in Article 309 suggested that the expression "conditions of service" related to conditions of employment. The conditions of employment, as observed in Accountant-General v. Bakshi, AIR 1962 SC 505, governed the rights and liabilities of the Government servant since the moment after appointment until the termination of the employment and also beyond that in so far as they ensure with respect to matters relating to the employment.

The "conditions of service" of a Government servant are governed by express contract, if any—Satish v. Union of India, 1954 SCR 655.

But in majority of cases there is no express contract, and relationship between the employee and the Government is governed by the Service Rules. These Service Rules, as pointed out by the Supreme Court in Hartwell v. State of U. P., AIR 1957 SC 886, constitute the "contract of service" or the "conditions of service", where there is no express contract between the employer and the employee or such contract does not cover the matter in question.

In Hartwell v. State of U. P., AIR 1957 SC 886, the Subordinate Agriculture Service Rules were considered and it was held that these Rules constituted the conditions of service. The observations are as under:

"The conditions of service were governed by the Subordinate Agriculture Service Rules. Rule 25 (4) of these rules permit the Director of Agriculture to terminate the services of a person or probation by giving him one month's notice if that person has not made sufficient use of his opportunities. The termination of the appellant's service under Rule 24 (5) does not amount to dismissal or removal from service within the meaning of Article 311 as it was in accordance with the terms of the conditions of service applicable to the appellant. In principle, we cannot see any clear distinction between the termination of the services of a person under the terms of a contract governing him and the termination of his services in accordance with the terms of his conditions of service."
In **Parshottam v. Union of India**, AIR 1958 SC 36, it was held:

"In the absence of contract to the contrary the terms of employment of persons in different services are governed by rules made by the appropriate authorities. The conditions of service of a Government servant appointed to a post, permanent or temporary, are regulated by the terms of the contract of employment, express or implied, and subject thereto by the rules applicable to the members of the particular service."

In **Parshottam Das's case** it was pointed out that if the Service Rules provided for termination on serving a notice to the Government servant could not invoke Article 311 (2). But this doctrine has been qualified by the Supreme Court in **Moti Ram v. N. E F. Rly.**, AIR 1964 SC 600, wherein it has been held that a contract *inter partes* or a Rule of service will be void if it provides that the service of civil servant can be terminated on the ground of misconduct or efficiency, without giving him an opportunity as required by Article 311 (2).

In **Roshan Lal v. Union of India**, AIR 1967 SC 1889, *Rameswari, J.* observed that the legal position of a Government servant was more one of status than of contract and that the hall mark of status was the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement between the parties.

The conditions of service of a Government servant appointed to a post are regulated by the terms of contract of employment, express or implied, and subject thereto by the rules applicable to the members of the particular service. **T. Cajee v. U. J. Siem**, AIR 1961 SC 276 : (1961) 1 SCR 759.

A continued and uninterrupted practice in service matters would constitute a condition of service whether or not they incorporated as a rule—**Dalmia Cements v. Workmen**, AIR 1967 SC 209.

In **Parshottam Lal Dhingra v. Union of India**, AIR 1958 SC 36, it was held that there could be conditions of service which were not either embodied as terms of contract or made as service rules.

In the absence of any statute laying down the conditions of service of persons appointed to public services and posts being enacted under the purview of Article 309 of the Constitution, the conditions of service of such employee have to be governed and determined by the President of India or the Governor of a State, as the case may be, in exercise of his powers vested in him by the proviso to Article 309 of the Constitution. So long as such rules are not framed by the President or by the Governor, the conditions of service had to be regulated by the executive orders of the Government.

In **Santram Sharma v. State of Rajasthan**, AIR 1967 SC 1910, the Supreme Court has held that it is open to the Government to regulate matters relating to conditions of service by means of administrative instructions so long as the statutory rules had not been made. These instructions, however, cannot amend or supersede statutory rules. But if the rules are silent or any matter, the Government can fill up the gaps with instructions.

The point was also considered by the Supreme Court in **Lalit Mohan Deb and others v. Union of India and others**, AIR 1972 SC 995, and it was decided that in the absence of statutory rules regulating
the selection of Assistants to the selection grade, the Government is competent to issue administrative instructions as long as those instructions are not in consistent with the rules already framed.

In B. N. Nagarajan v. State of Mysore, AIR 1966 SC 1942, the Supreme Court held that it was not obligatory under the proviso to Article 309 of the Constitution to make rules of recruitment etc. before a service could be constituted or a post created or filled and that the State Government had executive power in relation to all matters with respect to which the legislature of the State had power to make laws. It was further held that there was nothing in Article 309 which abridged the power of the executive, to act under Article 162 of the Constitution without a law.

The above view of the Supreme Court also finds support from the following observations in an earlier decision reported in T. Cajee v. U Jormanik Siem, AIR 1951 SC 276:

"The High Court has taken the view that the appointment and succession of a Siem was not an administrative function of the District Council and that the District Council could only act by making a law with the assent of the Governor so far as the appointment and removal of a Siem was concerned. In this connection, the High Court relied on paragraph 3 (1) (g) of the Schedule, which lays down that the District Council shall have the power to make laws with respect to the appointment and succession of Chiefs and Headmen. The High Court seems to be of the view that until such a law is made there could be no power of appointment of a Chief or Siem like the respondent and in consequence there would be no power of removal either. With respect, it seems to us that the High Court had read far more into paragraph 3 (1) (g), than is justified by its language. Paragraph 3(1)(g) is in fact something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under paragraph 3(1)(g) it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect. Further once the power of appointment falls within the power of administration of the District Council the power of removal of officers and others so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous district should come to a stop till the Governor made regulations under Para 19 (1)(b) or till the District Council passed laws under Para 3 (1) (g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when the regulations were made under Para 19 (1) (b) or laws were passed under Para 3 (1)
with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule. The view, therefore, taken by the High Court that there could be no appointment or removal by the District Council without a law having been first passed in that behalf under Para 3 (1 (g) cannot be sustained.”

The Supreme Court also repelled the contention that if the Executive Government be held to have power to make appointment and lay down service conditions without making rules in that behalf under the proviso to Article 309, Articles 14 and 16 would be violated.

In J. N. Saxena v. State of Madhya Pradesh, AIR 1967 SC 1264, the Government issued a memorandum on 28-2-1963. The memorandum began with the statement that “the State Government have decided that the age of compulsory retirement of State Government Servants should be raised to 58 years” subject to the exceptions stated in the first paragraph of the memorandum. The fifth paragraph which was very material stated that notwithstanding anything contained in the earlier paragraphs of the memorandum the appointing authority may require a Government servant to retire after he attains the age of 55 years on three months’ notice without assigning any reason; and that this power will be in addition to the provisions already contained in the rules referred to in paragraph 5. The paragraph also laid down that the power of compulsory retirement “will normally be exercised to weed out unsuitable employees after they have attained the age of 55 years”. It also added that a Government servant may, after attaining the age of 55 years, voluntarily retire after giving three months’ notice to the appointing authority. It was also stated that the necessary amendments to the rules would be issued in due course. On 11-9-1963 the Government gave 3 months’ notice to the appellant directing him to retire from 31-12-1963. On 29-11-1963 the formal amendments to rule raising the age of retirement were issued but no provision was made regarding power of Government to order the retirement by 3 months’ notice as provided in the memorandum. When the case came before the Supreme Court it was held that memorandum in question only contained an executive direction of the Governor to raise the age of superannuation to 58 years and not a rule. It was also held that the rule actually made did not contain any provision relating to notice and that did since the memorandum was not published in Gazette, the action in pursuance of the memorandum was invalid.

4. Whether Service Rules Constitute Terms of a Contract?

In Roshan Lal v. Union of India, AIR 1967 SC 1889, the Supreme Court held:

“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 status and his rights and obligations are no longer determined by consent of both parties, but by statute or 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 statute 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 servants 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."

The matter is clearly stated by Solmond and William on Contracts as follows:

"So we may find both contractual and status obligations produced by the same transaction. The one transaction may result in the creation not only of obligations determined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status."

The general trend of the decision in Parshottam Lal Dhingra v. Union of India, AIR 1958 SC 36, supports the view that Service Rules
donot themselves constitute the terms of a contract between the Government and its servant.

5. Making of Regulations: Exigencies of Service are Guiding Factors

In making the regulations the Central Government is to be guided by the exigencies of the service and the advice of the State Government and the Union Public Service Commission. These authorities are the best judges of the appropriate regulations to be made in the matter. In the light of their expert knowledge they can adopt for this purpose the existing regulations and other methods of recruitments with suitable modifications or make other appropriate regulations having regard to the exigencies of the service.—A. P. Sharma v. Union of India, 1961 SCN 7:82.


(a) All-India Services (Discipline and Appeal) Rules, 1955, if violate Article 314.

Article gives the guarantee in the case of a member of Secretary of State's Services that he would be entitled to the same conditions of service as respects remuneration, leave and pension and the same right as respects disciplinary matter or rights as they were entitled to, before the commencement of the Constitution.

The right in the matter of interim suspension as distinct from suspension as punishment was that a member of the former Secretary of State's Services could not be suspended by any authority other than the Government of India. This right is guaranteed by Article 314 and cannot be taken away by framing a rule like Rule 7 of the Discipline Rules.

In B. P. Kapoor v. Union of India, AIR 1964 SC 787, the Supreme Court held that Rule 7 of the All-India Services (Discipline and Appeal) Rules, 1955 in so far as it permitted any authority other than the Government of India to suspend as an interim measure (and not as a punishment) a public servant who was a member of the former Secretary of State's Services and who became a member of the Indian Administrative Service by virtue of Rule 3 (a) and (b) of the Indian Administrative Service (Recruitment) Rules, 1954 violated the guarantee under Article 314 of the Constitution and was declared ultra vires to that extent. It was further held that the order of the Governor of the Punjab dated 18th July, 1959 suspending the appellant pending a criminal charge against him purporting to be passed under Rule 7 (3) of the Discipline Rules was without authority and must be set aside.

In this case AIR 1962 SC 505 was relied on and AIR 1963 Punj 87 reversed.

In AIR 1968 SC 137: the Supreme Court held that All-India Services (Discipline and Appeal) Rules, 1955 applied to the appellant and the order of the State Government did not in any way violate the rights which he possessed under Rule 55 of the Rules of 1939 and which were preserved to him by Article 314 of the Constitution.
(b) Rule 12 (4), Central Civil Service (Classification, Control and Appeal) Rules, 1957, if ultra vires.

In Khem Chand v. Union of India, AIR 1963 SC 687, Rule 12 (4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957, was challenged as contravening Articles 142, 144, 31, 14 and also 19 (8) (f) of the Constitution. The Supreme Court had declared that the order of dismissal was inoperative and that he was a member of the service at the date of the suit and also directed that the appellant was entitled to his costs throughout in all courts. The disciplinary authority decided under Rule 12 (4) to hold further enquiry against him on the allegations on which he had been originally dismissed, the effect of which was that the appellant was to be deemed to have been placed under suspension. The argument was that as a result of the Supreme Court's decree the appellant had a right to his arrears of pay and allowances and that the impugned rule contravened the provisions of Article 142, 144, 19 (1) (f), 31 and 14 of the Constitution.

It was held that the rule did not contravene any of those Articles of the Constitution and was not invalid on that ground, and the order under Rule 12 could not be challenged. It was also held that the provision in Rule 12 (4) that in certain circumstances the Government servant shall be deemed to have been placed under suspension from the date of the original order of the dismissal and shall continue to remain in suspension until further orders, did not in any way go against the declaration of the Supreme Court contained in the decree.

While arriving at the above conclusion the Court observed:

"Equally untenable is the appellant's next contention that the impugned rule contravenes the provisions of Article 19 (1) (f) of the Constitution. The argument is that as result of this Court's decree the appellant had a right to his arrears of pay and allowances. This right constituted his property; and as the effect of the impugned rule is that he would not for some time at least get those arrears it restricts his right. It may be conceded that the right to arrears of pay and allowances constituted property within the meaning of Article 19 (1) (f) of the Constitution and further, that the effect of Rule 12 (4) is a substantial restriction of his right in respect of that property under Article 19 (1) (f). The question remains whether this restriction is a reasonable restriction in the interests of the general public. Nobody can seriously doubt the importance and necessity of proper disciplinary action being taken against Government servants for inefficiency, dishonesty or other suitable reasons. Such action is certainly against the immediate interests of the Government servant concerned; but is absolutely necessary in the interests of the general public for serving whose interests the Government machinery exists and functions. Suspension of a Government servant pending an enquiry is a necessary part of the procedure for taking disciplinary action against him. It follows, therefore, that when the penalty of dismissal has been set aside but the disciplinary authority decides to hold a further enquiry on the same facts against him a fresh order of suspension till the enquiry can be completed,
in accordance with law, is a reasonable step of the procedure. We have no hesitation in holding, therefore, that in so far as Rule 12 (4) restricts the appellant's right under Article 19 (1) (f) of the Constitution, it is a reasonable restriction in the interest of the general public. Rule 12 (4) is, therefore, within the saving provisions of Article 19 (6), so that there is no contravention of the Constitutional provisions”.

(c) Rules 148 (3) and 149 (3), Railway Establishment Code, if violative of Article 311.

In Moti Ram v. N. E. Frontier Railway, AIR 1964 SC 600, the question was whether Rule 148 of the Indian Railways Establishment Code, Vol. I (1951) and Rule 149 of the revised edition of the said Code of the year 1959 replacing Rule 14 of the Code of 1951 edition violated Article 311 (2) of the Constitution. The Court per majority judgment held:

“A person who substantially holds a permanent post has a right to continue in service, subject, of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must per se amount to his removal, and so, if by Rule 148 (3) or Rule 149 (3), such a termination is brought about, the rule clearly contravenes Article 311 (2) and must be held to be invalid. It is common ground that neither of the two rules contemplates an enquiry and in none of the cases before us has the procedure prescribed by Article 311 (2) been followed. We appreciate the argument urged by the learned Additional Solicitor-General about the pleasure of the President and its significance; but since the pleasure has to be exercised subject to the provisions of Article 311, there would be no escape from the conclusion that in respect of cases falling under Article 311 (2), the procedure prescribed by the said Article must be complied with and the exercise of pleasure regulated accordingly.”

The Court further point out:

“It is true that the termination of service authorised by Rule 148 (3) or Rule 149 (3) contemplates the right to terminate or either side. For all practical purposes, the right conferred on the servant to terminate his services after giving due notice to the employer does not mean much in the present position of unemployment in this country; but apart from it, the fact that the servant has been given a corresponding right cannot detract from the position that the right which is conferred on the railway authorities by the impugned rules is inconsistent with Article 311 (2), and so, it has to
be struck down in spite of the fact that a similar right is
given to the servant concerned.

"It has, however, been urged that the railway servants who
entered service with the full knowledge of these Rules cannot
be allowed to complain that Rules contravene Article 311
and are, therefore, invalid. It appears that under Rule 144
(which was originally Rule 143), it was obligatory on railway
servants to execute a contract in terms of the relevant
Railway Rules. That is how the argument based on the
contract and its binding character arises. If a person while
entering service executes a contract containing the relevant
rule in that behalf with open eyes, how can he be heard to
challenge the validity of the said Rule, or the said contract?
In our opinion, this approach may be relevant in dealing
with purely commercial cases governed by rules of contract;
but it is wholly inappropriate in dealing with a case where
the contract or the Rule is alleged to violate a constitutional
guarantee afforded by Article 311 (2); and even as to com-
mercial transactions, it is well-known that if the contract is
void, as for instance, under section 23 of the Indian Contract
Act, the plea that it was executed by the party would be of
no avail. In any case, we do not think that the argument
of contract and its binding character can have validity in
dealing with the question about the constitutionality of the
impugned Rules . . . .

"The true scope and effect of Article 14 has been considered by
this Court on several occasions. It may, however, be suffi-
cient to refer to the decision of this Court in Shri Ram-
krishna Dalmia v. Shri Justice S. R. Tendolkar, 1959 SCR
279 : AIR 1958 SC 538. After examining the Article and the
relevant decisions of this Court bearing on it, Das C. J.,
who spoke for the Court stated the position in the form of
propositions (a) to (f). Propositions (a) and (f) are relevant
for our purposes. The decisions of this Court establish, said
Das C. J., "(a) that a law may be constitutional even though
it relates to a single individual if, on account of some spe-
cial circumstances or reasons applicable to him and not
applicable to others, that single individual may be treated
as a class by himself; and (f) that while good faith and
knowledge of the existing conditions on the part of a Legis-
lature are to be presumed, if there is nothing on the face of
the law or the surrounding circumstances brought to the
notice of the Court on which the classification may reason-
ably be regarded as based, the presumption of constitution-
ality cannot be carried to the extent of always holding that
there must be some undisclosed and unknown reasons for
subjecting certain individuals or corporations to hostile or
discriminating legislation." Applying these two principles,
it is difficult to understand on what ground employment by
the Railways alone can be said to constitute a class by itself
for the purpose of framing the impugned Rules. If consid-
erations of administrative efficiency or exigencies of service
justify the making of such a rule, why should such a rule
not have been framed by the Posts and Telegraphs Department, to take only one instance? The learned Additional Solicitor-General frankly conceded that the affidavits filed by the Railway Administration or the Union of India afforded no material on which the framing of the Rule only in respect of one sector of public service can be justified. We appreciate the argument that the nature of services rendered by employees in different sectors of public service may differ and the terms and conditions governing employment in all public sectors may not necessarily be the same or uniform; but in regard to the question of terminating the services of a civil servant after serving him with a notice for specified period, we are unable to see how the Railways can be regarded as constituting a separate and distinct class by reference to which the impugned Rule can be justified in the light of Article 14. If there is any rational connection between the making of such a Rule and the object intended to be achieved by it, that connection would clearly be in existence in several other sectors of public service. What has happened is that a provision like Rule 148 (3) to Rule 149 (3) was first made by the Railway Companies when employment with the Railways was a purely commercial matter governed by the ordinary rules of contract. After the Railways were taken over by the State, that position has essentially altered, and so, the validity of the Rule is now exposed to the challenge under Article 14. Therefore, we are satisfied that the challenge to the validity of the impugned rules on the ground that they contravene Article 14 must also succeed."

The Court then concluded judgment as under:

"In dealing with the validity of Rule 149 Nayudu, J., of the Assam High Court who has delivered the minority judgment in the case of Shyam Behari Tewari v. Union of India, AIR 1963 Assam 94, has observed that the rule would be invalid for the additional reason that it purports to give power to the Railway Administration to terminate the services of any person in permanent employment in railway service on notice at the sweet-will and pleasure of the Railway Administration. Such a power, said the learned judge, can only be exercised by the President in the instant cases where the service is under the Union and not by any other, whereas the rule in question purports to give that power to the Railway Administration. In suppr of this conclusion, the learned judge has relied on the observations made in the majority judgment delivered by this Court in State of Uttar Pradesh v. Babu Ram Upadhyaya, (1961) 2 SCR 579; AIR 1961 SC 751, we ought to point out that the learned judge has misconstrued the effect of the observations on which he relies. What the said judgment has held is that while Article 310 provides for 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 and (sic) 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. N. Jayakumar, J., was, therefore, in error in holding that the majority decision of this Court in the case of Babu Ram Upadhyya, (1961) 2 SCR 679: AIR 1961 SC 751 supported his broad and unqualified conclusion that Rule 149 (5) was invalid for the sole reason that the power to terminate the services had been delegated to the Railway Administration.

In G. M., North-Eastern Railway v. Sachindra Nath Sen, (1969) 2 SCC 569, the services of the respondent were terminated by serving on him one month’s notice under Rule 148 contained in the Railway Establishment Code. On 5-12-1963 the Supreme Court decided by majority in Moti Ram Deka etc. v. General Manager, N. E. F. Railway, etc., (1964) 2 SCR 683, that Rules 148 (3) and 149 (3) of the Indian Railway Establishment Code were invalid.

The respondent made a representation in 1964 to the General Manager to reconsider the case of the termination of his services in the light of the law declared by the Supreme Court. The General Manager sent a reply dated June 3, 1964 saying that the question of the respondent’s reinstatement could not be considered as it was not covered “by limits of law, i.e. it does not fall within a period of six years from the date of your termination of service”. This was followed by another letter dated December 7, 1964 in which it was stated:

“It has now been clarified by the Railway Board that the claim for reinstatement of the Ex-employees whose services were terminated in terms of Rules 148/149 within a period of six years prior to 5-12’63 (the date of the Supreme Court’s judgment), and whose representation is still pending is only to be considered. Since your services were terminated on 2-12’57 which is more than six years counting backwards from 5-12’63, it is regretted that your request for reinstatement cannot be acceded to.”
Thereupon, the respondent filed a petition under Article 226 of the Constitution in the High Court. The petition was allowed principally on the ground that the railway authorities were not legally justified in making a distinction between officers whose services had been terminated within six years prior to the judgment in Moti Ram Deka’s case, (1964) 2 SCR 683 and the cases of those whose services had been terminated earlier.

When the matter came before the Supreme Court, Grover, J. observed:

"As pointed out in the judgment of High Court that as respondent's services were terminated on December 2, 1957, he was behind time by 3 days only. It was found that such an artificial demarcation between the two kinds of cases was hit by Article 14 of the Constitution. 'The other point that the respondent had accepted re-employment and must be deemed to have waived his rights to reinstatement to his original office was also repelled.

"In Moti Ram Deka's case supra the Court held that the termination of the services of a permanent servant authorised by Rules 148 (3) and 149 (3) of the Railways Establishment Code was inconsistent with the provisions of Article 311 (2) of the Constitution. The termination of the services of a permanent servant authorised by those Rules was no more and no less than removal from service and Article 311 (2) was at once attached. In view of the law laid down by this Court the termination of the services of the respondent in December 1957 wholly void and illegal. The Railway authorities recognised, as indeed they were bound to do, the implications and effect of the judgment of this Court but created a wholly illegal and artificial distinction by saying that only those employees whose services were terminated in terms of Rule 148 within a period of six years prior to December 5, 1963 and whose representations were pending were to be considered for reinstatement, whereas the employees like the respondent whose services had been terminated on a date which was more than six years counting backward from December 5, 1963 would not be reinstated. The fixing of the period of six years was on the face of it arbitrary and no valid or reasonable explanation has been given as to why this limit was fixed. If the termination of service of an employee in terms of Rule 148 was wholly illegal and void and was violative of Article 311 (2) of the Constitution his reinstatement should have followed as a matter of course."

(d) All India Service (Discipline and Appeal) Rules, 1955, 4f, ultra vires.

In D. S. Grewal v. State of Punjab, AIR 1959 SG 51?, the validity of All-India Service (Discipline and Appeal) Rules, 1955 was considered with reference to Article 312 and it was held by the Supreme Court as under:

"It is contended that Article 312 lays down a mandate on Parliament to make the law itself regulating the recruitment and the conditions of service of All-India Services, and,
therefore, it was not open to Parliament to delegate any part of the work relating to such regulations to the Central Government by framing rules for the purpose. Now, it is well settled that it is competent for the Legislature to delegate to other authorities the power to frame rules to carry out the purposes of the law made by it. It was so held by the majority of Judges *In re Delhi Laws Act, 1912*, 1951 SCR 747: AIR 1951 SC 332. The Delhi Laws case was further examined in *Rajnarain Singh v. Chairman, Patna Administration Committee, Patna* (1955) 1 SCR 290: AIR 1954 SC 569, and the delegation was held to go to the extent of authorising an executive authority to modify the law made but not in any essential feature. It was also observed that what constitutes essential feature cannot be enunciated in general terms. It is, therefore, clear that delegation of legislative functions can be made to executive authorities within certain limits. In this case section 3 of the Act lays down that the Central Government may, after consultation with the Government of the State concerned, make rules for the regulation of recruitment and conditions of service of persons appointed to an All-India Service. It also lays down that all rules made under this section shall be laid for not less than fourteen days before Parliament as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as Parliament may make on a motion made during the session in which they are so laid......We have, therefore, to see whether there is anything in the words of Article 312 which takes away the usual power of delegation, which ordinarily resides in the Legislature. Stress in this connection has been laid on the words 'Parliament may by law provide' appearing in Article 312. It is urged that these words should be read to mean that there is no scope for delegation in a law made under Article 312......

"This could not be unknown to the Constitution-makers and it is not possible to hold that the intention of the Constitution was that these numerous and varied rules should be framed by Parliament itself and that any amendment of these rules which may be required to meet the difficulties of day-to-day administration should also be made by Parliament only with all the attending delay which passing of legislation entails. We are, therefore, of opinion that in the circumstances of Article 312 it could not have been the intention of the Constitution that numerous and varied provisions that have to be made in order to regulate the recruitment and the conditions of service of All-India Services should all be enacted as statute law and nothing should be delegated to the executive authorities. In the circumstances we are of opinion that the words used in Article 312 in the context in which they have been used do not exclude the delegation of power to frame rules for regulation of recruitment and the conditions of service of All-India Services. We cannot read Article 312 as laying down a mandate prohibiting Parliament from delegating authority..."
to the Central Government to frame rules for the recruitment and the conditions of service of All-India Services. We, therefore, reject this contention."

The Supreme Court further observed:

"But a close reading of section 4 of the Act and its scope, purpose and effect will show that this is not a case where the Legislature has failed to lay down the legislative policy and formally to enact that policy into a binding rule of conduct. What does section 4 in fact provide? Undoubtedly there were rules in force immediately before the commencement of the Act which governed the two All-India Services covered by it and the Legislature adopted those rules and said in section 4 that they shall continue to be in force. Thus though section 4 appears on the face of it as one short section of four lines, it is in effect a statutory provision adopting all the rules which were in force at the commencement of the Act governing the recruitment and the conditions of service of the two All-India Services. The section certainly lays down that the rules already in force shall be taken to be rules under the Act; but that was necessary in order to enable the Central Government under section 3 to add to, alter, vary and amend those rules. There is no doubt, however, that section 4 did lay down that the existing rule will govern the two All-India Services in the matter of regulation of recruitment and conditions of service and in so far as it did so it determined the legislative policy and set up a standard for the Central Government to follow and formally enacted it into a binding rule of conduct. Further, by section 3 of the Central Government was given the power to frame rules in future which may have the effect of adding to, altering, varying or amending the rules accepted under section 4 as binding. Seeing that the rules would govern the All-India Services common to the Central Government and the State Governments, provision was made by section 3 that rules should be framed only after consulting the State Governments. At the same time Parliament took care to see that these rules were laid on the table of Parliament for fourteen days before they were to come into force and they were subject to modification, whether by way of repeal of amendment on a motion made by Parliament during the session in which they were so laid. This makes it perfectly clear that Parliament has in no way abdicated its authority, but is keeping strict vigilance and control over its delegate. Therefore, reading section 4 along with section 3 (2) of the Act it cannot be said in the special circumstances of this case that there was excessive delegation to the Central Government by Section 3 (1). We are, therefore, of opinion that the Act cannot be struck down on the ground of excessive delegation."

(e) Rules 4-A and 4-B, Central Civil Services (Conduct) Rules, 1955: Vilidity.

Rules 4-A and 4-B of the Central Civil Services (Conduct) Rules (1955) were considered by the Supreme Court in O. K. Ghosh v.
E. X. Joseph, AIR 1968 SC 812: (1962) 2 SCA 117. In that case an employee was charged under Rules 4-A and 4-B of the Central Conduct Rules of 1955 on ground that he participated in a demonstration and that he continued to be a member of an association to which recognition was not given under Rule 4-B. The Supreme Court observed as under:

"The question about the validity of Rule 4-A has been the subject-matter of a recent decision of this Court in Kameswar Prasad v. State of Bihar, AIR 1962 SC 812. At the hearing of the said appeal, the appellants and the respondent had intervened and heard by the Court. In that case, this Court has held that Rule 4-A in the form in which it now stands prohibiting any form of demonstration is violative of the Government servants' rights under Article 19 (1) (a) and (b) and should, therefore, be struck down. In striking down the rule in this limited way, this Court made it clear, that in so far as the said rule prohibits a strike, it cannot be struck down for the reason that there is no fundamental right to resort to a strike. In other words, if the rule was invalid against a Government servant on the ground that he had resorted to any form of strike specified by Rule 4-A, the Government servant would not be able to contend that the said rule was invalid in that behalf. In view of the decision, we must hold that the High Court was in error in coming to the conclusion that Rule 4-A was valid as a whole.

".......Can it be said that the rule imposes a reasonable restriction in the interest of public order? There can be no doubt that Government servants can be subjected to rules which are intended to maintain discipline amongst their ranks and to lead to an efficient discharge of their duties. Discipline amongst Government employees and their efficiency may, in a sense, be said to be related to public order. But in considering the scope of clause (4), it has to be borne in mind that the rule must be in the interest of public order and must amount to a reasonable restriction. The words 'public order' occur even in clause (2), which refers inter alia, to security of the State and public order. There can be no doubt that the said words must have the same meaning in both clauses (2) and (4). So far as clause (2) is concerned, security of the State having been expressly and specifically provided for, public order cannot include the security of the State, though in its widest sense it may be capable of including the said concept. Therefore, in clause (2) public order is virtually synonymous with public peace, safety and tranquility. The denotation of the said words cannot be any wider in clause (4). That is one consideration which it is necessary to bear in mind. When clause (4) refers to the restriction imposed in the interest of public order, it is necessary to enquire as to what is the effect of the words "in the interests of." This clause again cannot be interpreted to mean that even if the connection between the restriction and the public order is remote and indirect, the restriction can be said to be in the interest of public order. A restriction can be said
to be in the interest of public order only if the connection between the restriction and the public order is proximate and direct. Indirect or far-fetched or unreal connection between the restriction and public order would not fall within the purview of the expression “in the interests of public order. This interpretation is strengthened by the other requirements of clause (4) that, by itself, the restriction ought to be reasonable. It would be difficult to hold that a restriction which does not directly relate to public order can be said to be reasonable on the ground that its connection with public order is remote or far-fetched. That is another consideration which is relevant. Therefore, reading the two requirements of clause (4), it follows that the impugned restriction can be said to satisfy the test of clause (4) only if its connection with public order is shown to be rationally proximate and direct. That is the view taken by this Court in Superintendant, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia, AIR 1960 SC 633. In the words of Patanjali Shastri J., in Rex v. Basudev, 1949 FCR 157 : AIR 1950 (FC) 67 “the connection contemplated between the restriction and public order must be real and proximate, not far-fetched and problematical.” It is in the light of this legal position that the validity of the rule must be determined.

“It is not disputed that the fundamental rights guaranteed by Article 19 can be claimed by Government servants. Article 33 which confers power on the Parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Article 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his co-employees are entitled to form associations or unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of Government Servants as soon as recognition accorded to the said association is withdrawn or if, after the association is formed, no recognition is accorded to it within six months. In other words, the right to form an association is conditioned by the existence of the recognition of the said association by the Government.... Can this restriction be said to be in the interest of public order and can it be said to be a reasonable restriction? In our opinion, the only answer to these questions would be in the negative. It is difficult to see any direct or proximate or reasonable connection between the recognition by the Government of the association and the discipline amongst, and the efficiency of, the members of the said association. Similarly, it is difficult to see any connection between recognition and public order.”

(f) Rule 4-A of the Bihar Government Servants’ Conduct Rules, 1956, if violates Article 19 (1)(a), (b) and (c) of the Constitution.

In Kameshwar Prasad v. State of Bihar, AIR 1962 SC 1166 : (1962) 3 SCR (Supp.) 369, the Supreme Court examined the validity of
Rule 4-A of the Bihar Government Servant's Conduct Rules, 1956 which read as under:

"4A. Demonstrations and strikes—No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service."

It was contended on behalf of the State that the Constitution excluded Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III. The Court observed:

"In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Article 33. That Article selects two of the services under the State-members of the armed forces and forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them—from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the services members of which might be deprived of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogations might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents or the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Article 19 (1) (e) and (g)."

The Court then concluded the observations as follows:

"No doubt, if the rules were so framed as to single out those types of demonstrations which were likely to lead to a disturbance of public tranquility or which would fall under the other limiting criteria specified in Article 19 (2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration—be the same, however innocent and however incapable of causing a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result.

"Learned Counsel for the respondent and those who supported the validity of the rule could not suggest that on the language of the rule as it stood, it was possible so to read it as to separate the legal from the unconstitutional portion of the provision. As no such separation is possible the entire rule has to be struck down as unconstitutional."
(g) U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, if hit by Article 14 of the Constitution.

In Jagannath Prasad v. State of Uttar Pradesh, AIR 1961 SC 1245, the Supreme Court held that the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 were not hit by Article 14 and observed:

"Enquiry against the appellant, though commenced before the Constitution was concluded after the Constitution, and the order dismissing him from the Police Force was passed in December, 1950. Under Police Regulation 479 (a), the Governor had the power to dismiss a police officer. The Tribunal Rules were framed in exercise of various powers vested in the Governor including the power under section 7 of the Police Act, and by those rules, the Governor was authorised to pass appropriate orders concerning police officers. By virtue of Article 313, the Police Regulations as well as the Tribunal Rules in so far they are not inconsistent with the provisions of the Constitution remained in operation after the Constitution. The authority vested in the Inspector-General of Police and his subordinate by section 7 of the Police Act was not exclusive. It was controlled by the Government of India Act, 1935, and the Constitution which made the tenure of all civil servants of a Province during the pleasure of the Governor of that Province. The plea that the Governor had no power to dismiss the appellant from service and such power could not be exercised by the Inspector-General of Police and the officers named in section 7 of the Act is, therefore, without substance."

The Court then proceeded to observe on various points as under:

"Selection by the authorities of one of two alternative procedures at a time when Article 14 was not in operation, does not, therefore, enable the appellant to contest the validity of the enquiry on the plea of denial of equal protection of the laws. It was also observed in Quasim Razvi's case, 1953 SCR 589: AIR 1953 SG 156:

'In cases of the type (where the trial commenced before the Constitution) which we have before us where part of the trial could not be challenged as had and the validity of the other part depends on the question as to whether the accused has been deprived of equal protection in matters of procedure, it is incumbent upon the Court to consider, firstly, whether the discriminatory of unequal provisions of law could be separated from the rest and even without them a fair measure of equality in the matter of procedure could be secured to the accused. In the second place, it has got to consider whether the procedure actually followed did or did not proceed upon the basis of the discriminatory provisions. In our opinion, a mere threat or possibility of unequal treatment is not sufficient. If actually the accused has been discriminated against, then and there only he can complain, not otherwise.'
"We may mention here that the impossibility of giving the accused the substance of a trial according to normal procedure at the subsequent stage may arise not only from the fact that the discriminatory provisions were not severable from the rest of the Act and the Court consequently had no option to continue any other than the discriminatory procedure; or it may arise from something done at the previous stage which, though not invalid at that time, precludes the adoption of a different procedure subsequently....

"Regulation 490 of the Police Regulations sets out the procedure to be followed in an enquiry by the police functionaries, and Rules 8 and 9 of the Tribunal Rules set out the procedure to be followed by the Tribunal. There is no substantial difference between the procedure prescribed for the two forms of enquiry. The enquiry in its true nature is quasi judicial. It is manifest from the very nature of the enquiry that the approach to the materials placed before the enquiring body should be judicial. It is true that by Regulation 490, the oral evidence is to be direct, but even under Rule 8 of the Tribunal Rules, the Tribunal is to be guided by rules of equity and natural justice and is not bound by formal rules of procedure relating to evidence. It was urged that whereas the Tribunal may admit on record the evidence which is hearsay, the oral evidence under the Police Regulations must be direct evidence and hearsay is excluded. We do not think that any such distinction was intended. Even though the Tribunal is not bound by formal rules relating to procedure and evidence, it cannot rely on evidence which is purely hearsay, because to do so in an enquiry of this nature would be contrary to rules of equity and natural justice. The Tribunal Rules and the Police Regulations so far as they deal with enquiries against police officers are promulgated under section 7 of the Police Act, and neither the Tribunal Rules nor the Police Regulations provide an appeal against an order of dismissal or reduction in rank which the Governor may pass. The fact that an order made by a police authority is made appealable whereas the order passed by the Governor is not made appealable is not a ground on which the validity of the Tribunal Rules can be challenged. In either case the final order rests with the Governor who has to decide the matter himself. Equal protection of the laws does not postulate equal treatment of all persons without distinction; it merely guarantees the application of the same laws alike and without discrimination to all persons similarly situated. The power of the Legislature to make a distinction between persons of transactions based on a real differentia is not taken away by the equal protection clause. Therefore, by providing a right of appeal against the order of police authorities acting under Police Regulations imposing penalties upon a member of the Police Force, and by providing on such right of appeal when
the order is passed by the Governor, no discrimination involving the application of Article 14 is practised.

"Under Rule 10 of the Tribunal Rules, the Governor is enjoined to pass an order of punishment in terms recommended by the Tribunal, whereas no such obligation is cast upon the police authority who is competent to dismiss a police officer when an enquiry is held under Regulation 49, of the Police Regulations. To the extent that Rule 10 requires the Governor to accept the recommendation of the Tribunal, the rule may be regarded as inconsistent with the Constitution, because every police officer holds office during the pleasure of the Governor, and is entitled under Article 311 (2) to a reasonable opportunity to show cause to the satisfaction of the Governor against the action proposed to be taken in regard to him. The partial invalidity of Rule 10, however, does not affect the remaining rules; that part of the rule which requires the Governor to accept the recommendation of the Tribunal as to the guilt of the public servant concerned is clearly severable. We may observe that in considering the case of the appellant, the Governor exercised his independent judgment and passed an order of dismissal and did not act merely on the recommendation of the Tribunal. The difference between the two sets of rules on the matter under consideration does not relate to the procedure of the enquiring bodies, but to the content of reasonable opportunity guaranteed by Article 311 of the Constitution."

(h) Rajasthan Civil Services (Rationalisation of Pay Scales) Rules and Schedules, 1965: Validity.

In U. S. Menon v. State of Rajasthan, AIR 1968 SC 81, the Rajasthan Civil Services (Rationalisation of Pay Scales) Rules and Schedules, 1965 was on the anvil and the decision of the Rajasthan High Court was affirmed, the Supreme Court holding that Articles 14 and 16 were not violated.

(i) Disciplinary proceedings (Administrative Tribunal) Rules, 1951, if violative of Article 14.


"It is manifest whereas detailed provisions are made in the Tribunal Rules as to the grounds on which an enquiry may be directed against a public servant for misconduct in discharge of official duties, failure to discharge duties properly, general inefficiency or personal immorality, under the Classification Rules for good and sufficient reasons, penalties may be imposed. The expression used in the Classification Rules is somewhat vague, but whatever other ground it may
include, it does include charges described in Rule 4 of the Tribunal Rules. The procedure to be followed in the enquiry under the Tribunal Rules is not described in any detail. But it is clearly indicated, that: the public servant must be given a summary of the charges against him and he must be given an opportunity to submit his explanation orally or in writing in respect of the charges, and that the Tribunal must on holding the enquiry be guided by rules of natural justice, in the matter of procedure and evidence. The procedure prescribed by Rule 55 of the Civil Services (Classification, Control and Appeal) Rules which is assimilated by virtue of the Note under Rule 2 into the Classification Rules, is set out in greater detail, but it is in substance not different from the procedure under Rule 7 of the Tribunal Rules.

"It is true that Tribunal Rules do not set out the punishments which may be imposed whereas the Classification Rules set out the various punishments such as censure, withholding of increments or promotion, including stoppage at efficiency bar, reduction to lower post or time-scale, recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order, fine, suspension, removal from the civil service, which does not disqualify from future employment and dismissal from the civil services which ordinarily disqualifies from future employment. But failure to enumerate the penalties which may be imposed also does not indicate any variation between the Tribunal Rules and the Classification Rules. Rule 2 of the Classification Rules merely enumerates the diverse punishments which may be imposed. This list is exhaustive and no penalties other than those enumerated are ever imposed upon delinquent public servants. Under the Tribunal Rules there is no enumeration of penalties, but it is left to the Governor in his discretion, after considering the report of the Tribunal to select the appropriate punishment having regard to the gravity of the delinquency.... Under the Classification Rules there is a right of appeal from an order imposing a penalty passed by a departmental head to the latter's superior whereas there is no such right of appeal against the order passed by the Governor imposing penalty upon a public servant. But this also cannot be regarded as a ground sustaining a plea of unlawful discrimination."

The Court concluded that the Tribunal Rules could not be held to be ultra vires, on the ground of their resulting in discrimination contrary to Article 14 of the Constitution.

(j) Rule 3, Railway Services (Safe-guarding of National Security) Rules, 1949, if ultra vires.

In Balakotaiah v. Union of India, 1958 SCR 1052 : AIR 1958 SC 232, the services of a railway servant were terminated under the provisions of Rule 3 of the Railway Services (Safe-guarding of National Security) Rules, 1949 for reason that he was suspected to be engaged in

S. L. I.—20
subversive activities. It was stated in the notice issued to him that he was suspected to have attended private meetings of the Communists, carried on agitation among the railway workers for a general strike. It was argued that the impugned orders contravened Article 19 (1) (c). This argument was, however, repelled by the Supreme Court and it was held:

"The orders do not prevent them from continuing to be Communists or trade unionists. Their rights in that behalf remain after the impugned orders precisely what they were before. The real complaint of the appellants is that their services have been terminated; but that involves apart from Article 31 no infringement of any of their constitutional rights. The appellants have no doubt a fundamental right to form associations under Article 19 (i) (c), but they have no fundamental right to be continued in employment by the State, and when their services are terminated by the State, they cannot complain of the infringement of any of their constitutional rights, when no question of violation of Article 311 arises. This contention of the appellants must also be rejected."

It was also argued that the Rule 3 offended Article 311 of the Constitution. The Court repelled the contention and observed:

"It was therein held that if a person had a right to continue in office either under the service rules and under a special agreement, a premature termination of his services would be a punishment. And, likewise, if the order would result in loss of benefits already earned and accrued, that would also be a punishment. In the present case the terms of employment provide for the services being terminated on a proper notice, and so no question of premature terminations arises. Rule 7 of the Security Rules preserves the rights of the employees to all the benefits of pensions, gratuities and the like, to which they would be entitled under the rules. Thus, there is no forfeiture of benefits already acquired. It was stated for the appellants that a person who was discharged under the rules was not eligible for re-employment, and that was punishment. But the appellants are unable to point to any rule imposing that disability. The order terminating the services under Rule 3 of the Security Rules stands on the same footing as an order of discharge under Rule 148, and it is neither one of dismissal nor of removal within meaning of Article 311."


(k) The Indian Administrative Service (Regulation of Seniority Rules, 1954—validity.

In Anand Prakash Saksena v. Union of India, 1969 SCJ 217, the Indian Administrative Service Rules and Regulation of Seniority
Rules were considered and it was held that the Rules were not arbitrary or discriminatory and was not violative of Articles 14 and 16 of the Constitution. It was further held that the special recruits to services under the special Recruitment Regulations, 1960 formed a distinct class and were neither direct recruits nor promotees and the Regulation was not arbitrary nor violative of Articles 14 and 16 of the Constitution.


The Rajasthan Higher Judicial Service Rules, 1955 are ultra vires Article 233 of the Constitution and, therefore, the selections made in the instant case by the Selection Committee appointed thereunder and the appointments made to the posts of Civil and Additional Sessions Judge in the Rajasthan Higher Judicial Service on the basis of such selection are invalid. However, the said appointments are not liable to be challenged as they are validated by the Constitution (Twentieth Amendment Act, 1966) which introduced Article 233-A in the Constitution—Prem Nath v. The State of Rajasthan (1968) 1 SCJ 571.

(m) The U. P. Higher Judicial Service Rules, if Constitutional.

The U. P. Judicial Service Rules providing for the recruitment of District Judges are constitutionally void as they clearly contravene the constitutional mandate of Article 233 (1) and (2). Under the Rules the consultation of the High Court is an empty formality. The Governor prescribes the qualifications, the Selection Committee appointed by him selects the candidates and the High Court has to recommend from the lists prepared by the Committee. This is a traveristy of the constitutional provision. The Governor in effect and substance does neither consult the High Court nor act on its recommendations. He only consults the Selection Committee or acts on its recommendations subject to a kind of veto by the High Court which can be accepted or ignored by the Governor. The rules are, therefore, illegal and appointments thereunder are bad. Further the Rules empowering the Governor to recruit District Judges from judicial officers also unconstitutional because the expression “the service” in Article 233 (2) can only mean the judicial service—(1966 All LJ 599 Reversed)—Chandra Mohan v. State of U. P., AIR 1966 SC 1987 : (1967) 1 SCR 77 : (1967) 2 SCJ 717.

(n) Rule 165-A of the Bombay Civil Service Rules

In State of Bombay v. Saubhagchand M. Doshi, AIR 1957 SC 892 : 1958 SCR 571, it was held that the provisions of compulsory retirement under Rule 165-A of the Saurashtra Civil Service Rules under which the order of retirement was made did not violate Article 311 (2). It was pointed out that “while misconduct and inefficiency are factors that enter into account where the order is one of dismissal or removal or retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held—and there is no duty to hold an enquiry—is only for the satisfaction of the authorities, who have to take action, in the case of dismissal or removal, they form the very basis on what the order is made and the enquiry thereon must be formal and must satisfy the rules of natural justice and the requirement of Article 311 (2).” The Court consequently held that Rule 165-A was not violative of Article 311 (2) and was intra vires, and the order compulsorily retiring the civil servant who had attained the age of 50 years, but before superannuation without holding an enquiry was valid.

In U. S. Menon v. Union of India, AIR 1963 SC 1160, an employee of P. & T. Department was charged under the Civil Services (Safe guarding of National Security) Rules, 1949 for engaging himself in subversive activities and was ordered to be compulsorily retired. The Supreme Court set aside the order of retirement and observed:

"Taking interest in political activities of the Communist Party would not amount to taking part in subversive activities so long as the Communist Party continued to be a recognised political organisation which has not been banned. It cannot be asserted that simply talking with members of the Communist Party or associating with such members would amount to engaging in subversive activities. Subversive activity in order to bring the person within the purview of the rule must amount to activity pursuing such activities as are calculated to subvert the Government established by law.

"That rule contemplates compulsory retirement from service of a Government servant who (a) is engaged in subversive activities, or (b) is reasonably suspected to be engaged in subversive activities, or (c) associated with others in subversive activities. If any one of those three alternative conditions is fulfilled, then the competent authority has also to be satisfied that the manner of his activities is such as to raise doubts about his reliability, as also that his retention in the public service is prejudicial to national security. And finally, where such an order is passed by a competent authority in his capacity as the head of department, the prior approval of the Governor-General (now the President) has to be obtained. It is manifest on the charge as framed against the appellant that he was not even alleged to have been engaged or to be reasonably suspected to have been engaged in subversive activities or to be engaged in such activities in association with others. It was only alleged against him that he associated with others who were engaged in subversive activities. That is not a charge which could be sustained under Rule 3. As the rule is of a penal character, it has to be very strictly construed. If the appellant was even suspected to have been engaged in subversive activities, the charge could have been in those terms. But it is not even alleged that he was suspected to be engaged in subversive activities far less to have been engaged in such activities either by himself or in association with others. As the charge against the appellant did not strictly come within the purview of Rule 3, there was no basis for the procedure adopted in pursuance of Rule 4. It is not, therefore, necessary to pursue the enquiry as to whether the procedure actually adopted complied with that laid down in Rule 4."


The Punjab Tahsildari Rules, 1932 framed under sections 9 and 28 of the Punjab Land Revenue Act, 1887 continued to remain in force even
after the Act was amended by the Government of India Adoption of Indian Laws Order, 1937 and the order passed by the Financial Commissioner in 1953 dismissing a Tahsildar from service under those rules is valid—Gian Singh v. State of Punjab, AIR 1962 SC 219 : (1962) 1 SCJ 641.


The Government of India Order of 25-3-1955 reckoning the service for promoted Indian Police Service Officers from 19-5-1951 must be held to be invalid since the date was arbitrary and artificial the date having nothing to do with the application of Rule 3 (3) provisos 1 and 2 of the Indian Police Service (Regulation of Seniority) Rules, 1954—D. R. Nim v. Union of India, (1967) 2 SCJ 347 : AIR 1967 SC 1301 : (1967) 2 SCR 325.

(r) Bombay Civil Service Classification and Recruitment Rules.

Delinquent should not be taken by surprise.—Further unless a person knows what some stated individual is going to state, there can be no real opportunity to him to elicit any answers. The witness would be sprung as a surprise and what he would State would also be a matter of surprise.

(B) Central Information Service Rules, 1959, Rule 5, if violates Articles 31, 114 and 16.

In P. B. Roy v. Union of India, AIR 1972 SC 908 - In 1955, the post of Editor, Publications Division, in the Department of Information and Broadcasting of the Government of India (hereinafter referred to as 'the Department') was advertised. The appellant, who had applied for the post, was selected by the Union Public Service Commission, and, on its recommendation, was offered a temporary post of Editor in the Publications Division of the Department on an initial salary of Rs. 720/-per month in the scale of Rs. 720—40—1000, together with the usual allowances. The material terms and conditions of this employment were:

(i) The post is to be gazetted Class II.

(ii) The temporary post was sanctioned upto 28-2-1957 but was likely to continue;

(iii) Shri Roy (the Appellant) will be governed by the Central Civil Services (Temporary Service Rules) and other Rules applicable to temporary Government Servants of his category;

(iv) He was to be on probation for 6 months which may be extended at the discretion of the appointing authority.

The Appellant had reported for duty on 1st August, 1956, as directed. On 27-3-1957, the Appellant’s probation was extended by three months. Immediately thereafter, on 28-3-57, the Appellant’s service were terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules 1949. On 5-3-1957, the Appellant made a representation against this termination of his service. On 27-4-1957 in response to this representation, the above-mentioned termination of the Appellant’s service was rescinded. On 28-4-1958, the President was pleased to terminate the probationary period of the Appellant and permitted him to continue in his post in a temporary capacity.

On 16-2-1959, the President of India, in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, promulgated the Central Information Service Rules, 1959, which came into force on 21-2-1959. These rules were meant for the creation of a Central
Information Service with prescribed grades and their strengths. Entry into this service was open to "departmental candidates" by a procedure laid down in Rule 5 for the initial constitution of the service. In accordance with this procedure, the Appellant was required to appear before a Selection Committee on a given date, and, after selection, he was posted by the impugned order as indicated above. On 11-3-1960, the Appellant assumed charge of the post thus assigned to him on the recommendation of the Union Public Service Commission. The Appellant then made a representation, dated 11-3-1960, against his appointment in Class II, Grade III post. He made other similar representations after that. His last representation was made on 25-8-1962. The Appellant received a communication dated 10-12-1962 forwarding extract of an order dated 26-11-1962 which said:

"The representation from Shri P. B. Roy has been carefully considered in the Ministry. All relevant facts were fully taken into account, by the Departmental Promotion Committee, before drawing up the recent panel of Grade III officers considered suitable for promotion to Grade II, Sri Roy may be informed accordingly."

The Single Judge of the High Court came to the conclusion, on the facts stated above, that the petitioner's case would be governed by the decision of this Court in Moti Ram Deka v. General Manager, North East Frontier Railway, AIR 1964 SC 600, as the petitioner's prospects and emoluments were adversely affected by the impugned order. The Judge thought that the mere fact that the Department was re-organised and that the petitioner was to be fitted into an appropriate category by the procedure laid down in Rule 5 did not take away the effect, that, is to say, the loss of his emoluments, of the procedure to which the petitioner had been subjected. This view implied that Article 311 of Constitution was attracted by the case despite the above-mentioned Central Information Service by the rules.

The Division Bench, after reviewing facts leading to the absorption of the Appellant into a newly constituted Central Information Service, in accordance with the procedure laid down in Rule 5 mentioned above, held that the "News and Information Cadre" of the Department, in which the Appellant was initially appointed, had been superseded by the cadres and grades constituted by the rules of the new service. It overruled the contention of the Petitioner that the effect of the rules was merely to transfer employees in existing posts to corresponding posts with new designations. It held that the Rules did create an altogether new service. It pointed out that the process of entry into the new service was of selection of each individual candidate after an examination of his individual record and qualifications by a selection Committee before which he appeared so that there could be no automatic fitting into some corresponding appropriate posts of a pre-determined class and grade. The rules and process for the constitution of the new service did not guarantee the class or grade or emoluments enjoyed by any candidate in a cadre in which he served prior to the setting up of the new service. It, therefore, held that no question of demotion or reduction in rank, without observing the procedure laid down in Article 311 of the Constitution, arose at all in the instant case.
When the matter came before the Supreme Court it was held:

"Thirdly, it was contended that the impugned order violates Articles 14 and 16 of the Constitution inasmuch as it places an employee who was serving as an Editor in a post of lower grade with less emoluments whereas no such result had followed in the case of any other employee in the Information and Broadcasting Department. We are unable to see how an order which has the effect of terminating an officiating appointment, in which the petitioner had no right to continue, and which gives him a fresh appointment, with a different designation but permanent tenure and prospects, constitutes a violation of either Article 14 or 16 of the Constitution simply because the process which resulted in such an order did not have a similar effect upon the position or rights of any other servant in the Department. Indeed, the Selection Committee had, apparently after taking into account the special features of the petitioner's individual case, recommended the maximum pay, in the class and grade of the post given to him, and the petitioner got this exceptional pay. Even his prospects improved to the extent that from the precarious position of a temporary servant he had moved into a permanent service. It could not be definitely stated that his position had worsened on the whole. He was at least no longer subject to the hazards of temporary employment which could be terminated by a month's notice at any time. The results of applying Rule 5 to the facts of individual cases could not be expected to be identically similar in all cases.

"All candidates were subjected to the same process or procedure contemplated by Rule 5. It is not the Appellant's case that the Selection Committee did not function honestly or that its proceedings were vitiated by any defect in its constitution or of any bias on its part or any unfairness or inequality of the test applied in judging the merits of the Appellant as against other candidates. The alleged defect with the material said to have been used by the Committee is another matter which will consider last.

"Fourthly, it was urged that Rule 5 mentioned above is itself void for conflict with the provisions of Articles 311 and 14 and 16 of the Constitution.

It was urged that Rule 5 permits violation of Article 311 of the Constitution inasmuch as it enables that to be done indirectly which could not be done directly. The Rule reads as follows:

5. Initial Constitution of the Service (1) The Commission shall constitute a Selection Committee with the Chairman or a Member of the Commission as President and not more than three representatives of the Ministry of Information and Broadcasting as members, to determine the suitability of departmental candidates for appointment to the different grades and to prepare an order of prefer-
ence for each grade for the initial constitution of the service.

(2) On receipt of the Committee's report the Commission shall forward its recommendations to the Government and such recommendations may include recommendation that a person considered suitable for appointment to a grade may, if a sufficient number of vacancies are not available in that grade, be appointed to a lower grade;

(3) vacancies in any grade which remain unfilled after the appointment of departmental candidates selected under sub-rules (1) and (2) above shall be filled by direct recruitment through the Commission.

"Rule 3 indicates that appointment to the newly created service could take place either by selection under Rule 5 or by direct recruitment with which we are not concerned here. The grades and the fixation of an authorised strength of each grade are provided for by Rule 4. Only posts in the first 3 grades are classified as Class I (Gazetted) posts. Rule 5 (2) enables the Selection Committee to recommend that a 'departmental candidates' considered suitable for appointment to a post of a particular grade be actually appointed in even a lower grade if sufficient number of vacancies are not available in the grade for which he may be found fit. In other words, even between candidates found fit for a particular grade, the recommendation may be for an appointment to a lower grade. As between those found fit for a particular grade, the preferences had to be and were presumably, determined by fair and honest appraisements of their merit. Such preferences due to honest assessments, which are not above possibilities of error, have never been held to case any reflection which could be equated with punishment. If the view of the Division Bench of the Delhi High Court is correct, as we think it is, that the rules had the effect of constituting a new service, with a fair and reasonable procedure for entry into it, the procedure could not be characterised as a device to defeat the provisions of Article 311 or a fraud upon the Constitution simply because the results of subjection to the process of appraisement of the merits of each candidate may not meet the expectations of some candidates.

"Article 311 affords reasonable opportunity to defend against threatened punishment to those already in a Government service. Rule 5 provides a method of recruitment or entry into a new service of persons who, even though they may have been serving the Government, had no right to enter the newly constituted service before going through the procedure prescribed by the Rule. If the petitioner had already been appointed a permanent Government servant, there may have been some justification for contending that Rule 5 could not be so applied as to deprive him of a permanent post without complying with Article 311 as such deprivation would have been per se a punishment.
The mere possibility of misuse of Rule 5 could not involve either its conflict with or attract the application of Article 311. The fields of operation of Rule 5 and Article 311 of the Constitution are quite different and distinct so that the two do not collide with each other.

"The learned Counsel for the appellant then contended that each person placed in the category of Departmental candidates by Rule 2 had to be treated alike, but Rule 5 enables the Selection Committee to treat them differently by assigning different grades to them. In other words, the contention was that Rule 5 gives too wide a power of selection to the Selection Committee. It was also submitted, though not quite so clearly, that Rule 5 must itself be so interpreted as to operate automatically and place all persons falling within the definition of "Departmental candidate" in a single class of Rule 5 is to be upheld as valid. It was urged that the interpretation placed on Rule 5 by the Division Bench involved not merely its conflict with the definition of a "departmental candidate" in Rule 2 (b) but also with Articles 14 and 16 of the Constitution, as it meant that those treated equally by the Selection Committee. This argument rests on a misconstruction of Rule 2 (b).

The definition of a Departmental candidate given by Rule 2 (b) is:

2 (b) "departmental candidate" means—

(i) a person in the Ministry of Information and Broadcasting or any of its attached and subordinate offices who was holding or would have held, but for his absence on deputation, a duty post, on the Ist November, 1957, and

who is holding, or has lien on a duty post in a substantive capacity at the commencement of these rules; or

who has been declared quasi permanent in a duty post, on, or prior to, the Ist July 1957; or

who was eligible to be declared quasi permanent in a duty post on, or on any date prior to, the Ist July 1957; or

who was appointed to a duty post on the basis of selection by the Commission or whose appointment thereto was approved by the Commission, before the commencement of these rules;

(ii) any other person in the Ministry of Information and Broadcasting or any of its attached and subordinate offices whom the Government may declare as such on the basis of his qualifications and experience;

It is clear that this definition of a "departmental candidate" is meant only as an aid in interpreting Rule 5 and was not intended to operate as a fetter on the functions and powers of the Commission.
of the Selection Committee. We may add that the validity of Rule 5 does not appear to us to have been assailed in arguments before the High Court. And in any case, the attack on it must fail on merits”.

(s) Rule 5, Andhra Pradesh Registration Subordinate Service Special Rules.

In Mohd. Usman and others v. State of Andhra Pradesh and others, 1971 SCR 584, the Court observed:

It cannot be agreed that for the purpose of recruitment of Sub-Registrar the State should have classified the Upper Division Clerks, and Lower Division Clerks separately. If the State had treated the Upper Division Clerks for the purpose of that recruitment it would have resulted in a great deal of injustice to a large section of the clerks. The fortuitous circumstances of an officer in a particular district becoming an Upper Division Clerk would have given him an undue advantage over his seniors who might have been as efficient or even more efficient than him, merely because they chanced to serve in some other district. For the reasons mentioned, in the present case, the State cannot be said to have treated unequals as equals. The rule of equality is intended to advance justice by avoiding discrimination. The High Court by overlooking the reason behind Rule 5 of the Andhra Pradesh Registration Subordinate Service Special Rules came to the erroneous conclusion that the said violated Article 14 of the Constitution of India.

7. Statutory Force of Rules

In State of U. P. v. Babu Ram, AIR 1961 SC 951 the Supreme Court has distinguished some rules which are not statutory in origin from those which have a statutory origin. Some of the rules having statutory force are given below:

(A) Rules made under section 96-B of the Government of India Act 1955:


(B) Rules framed under Section 241 (2) of the Government of India Act, 1935:

(C) Rules made under statutes:


In Raj Kumar v. Union of India, (1969) 1 SCA 48 : AIR 1969 SC 180, a circular memorandum was issued under the signature of the Deputy Secretary to the Government of India, Ministry of Home Affairs, setting out the procedure to be followed in dealing with resignation from service. It was held that the circular letter had no statutory force. It was a rule made under Article 309 of the Constitution. It contained merely instructions set out by the Ministry of Home Affairs about the procedure to be followed in respect of resignation from service.

8. Enforceability of Service Rules

All Statutory Rules are not necessarily enforceable in a Court of law. It is only the breach of a mandatory statutory rule which is justiciable.

In State of Mysore v. M. H. Bellary, AIR 1965 SC 868 : (1964) 2 SCA 778 : (1965) 1 SCWR 10 : (1965) 1 SCJ 311 : (1964) 7 SCR 471, the Court observed:

"In view of the decisions of this Court of which it is sufficient to refer to State of U. P. v. Babu Ram Upadhyay, AIR 1961 SC 751 : (1961) 2 SCR 679, it was not disputed that if there was a breach of a statutory rule framed under Article 309 or which was continued under Article 313 in relation to the conditions of service, the aggrieved Government servant could have recourse to the court for redress."

In State of U. P. v. Babu Ram, AIR 1961 SC 751, the Supreme Court laid down that the service Rules relating to disciplinary action made under an Act are enforceable in a Court of law.

In Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta, AIR 1956 SC 285 : (1955) 2 SCR 1331, it was held that the Civil Service Rules could be scanned by the Court in order to ascertain the proper authority by whom the services of an officer could be terminated. To the same effect was the decision in Hartwell Prescott Singh v. U. P. Government, AIR 1957 SC 886 : 1958 SCR 509 : 1:58 SCJ 148.

In State of Bihar v. Abdul Majid, AIR 1954 SC 245 : 1954 SCR 786, the point of right to recover salary was discussed and it was held
that a Government servant could bring a suit for recovery of arrears of salary.

In *Shyam Lal v. State of U. P.*, 1955 SCR 46 : AIR 1954 SC 359, it was held that a Government servant was bound by the relevant provisions in the Civil Service Regulations which dealt with the compulsory retirement. It was further held that the order of the President of India compulsorily retiring an officer could not be challenged on the ground that he had not been given an opportunity of showing cause against the action being taken and that no writ could be issued in the matter.

In *State of Andhra Pradesh v. Venkatayya*, AIR 1961 SC 779, the Court considered the Service Rules and decided that there was no breach of such rules.

In *Srinivasan v. Union of India*, AIR 1958 SC 419, the true scope and effect of the Central Civil Services (Temporary Services) Rules, 1949 was considered. If the court had decided that the Service Rules were not justiciable, it would not have discussed the rules. In that case the court interpreted certain words in the rules and held that the words “reduction in the number of posts available for Government servants not in permanent service” was not confined to the reduction consequent on abolition of post and would include all posts kept in abeyance.

In *Venkataraman v. Union of India*, AIR 1954 SC 375, the Supreme Court held:

“As the law stands at present, the only purpose, for which an enquiry under Act 37 of 1850 could be made, is to help the Government to come to a definite conclusion regarding the misbehaviour of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him, prior to giving him a reasonable opportunity of showing cause, as is required under Article 311 (2) of the Constitution. An enquiry under this Act is not at all compulsory and it is quite open to the Government to adopt any method if it so chooses. It is a matter of convenience merely and nothing more.”

In *Parshottam Lal Dhingra v. Union of India*, 1958 SCR 828 : AIR 1958 SC 36, the Supreme Court was pleased to lay down:

“The protection given by the rules to the Government servants against dismissal, removal and reduction in rank, which could not be enforced by action, was incorporated in subsection (1) and (2) of section 240 to give them a statutory protection by indicating a procedure which had to be followed before the punishments of dismissal, removal or reduction in rank could be imposed on them and which could be enforced in law. These protections have now been incorporated in Article 311 of our Constitution.”

In another Supreme Court’s case reported in *Balakattaiah v. Union of India*, AIR 1958 SC 232, the compulsory retirement of a railway servant was ordered under Rule 3 of the Security Rules which permitted such an order being made if in the opinion of the competent
authority the servant concerned was associated with others in subversive activities in such manner as to raise doubts about his reliability. The Court considered the rule and as such interfered to enforce the rule.

The following are the categories of Service Rules which have been considered by the Supreme Court:

(a) Salary.

It has now been made clear by the Supreme Court in State of Bihar v. Abdul Majid, AIR 1954 SC 245, that a Government servant has an enforceable right to salary in respect of his period of duty. In the case of State of Bihar v. Abdul Majid, supra, it was observed as follows:

"The rule that a civil servant holds office at the pleasure of the Crown has its origin in the Latin phrase "*durante bene placito*" meaning that the tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without cause assigned. The true scope and effect of this expression is that even if a special contract has been made with the civil servant, the Crown is not bound thereby. In other words, civil servants are liable to dismissal, without notice and there is no right of action for wrongful dismissal, that is, they cannot claim damages for prematured termination of their services.

"This law has not been fully adopted in section 240. It follows, therefore, that "whenever there is a breach of restrictions imposed by the statute by the Government or the Crown the matter is justiciable and the party aggrieved is entitled to suitable relief at the hands of the Court".

It is now well-settled that the rules, framed under section 241 of the Government of India Act, deal with the conditions of service, they have therefore, a statutory force. These rules in so far as they regulate the conditions of service and do not affect the pleasure of the President or the Governor to terminate the services of his employees under Article 310 of the Constitution, they cannot be regarded anything but statutory rules, a breach of which will be enforceable in proper cases by means of a writ.

It has been held by the Supreme Court in the case referred to above that it is open to an employee to bring a suit for recovery of arrears of the salary. Under the terms and conditions of employment he is entitled to get his monthly salary and non-payment of such salary gives a right of action to an employee. There is no reason why, if there is a breach of the rules in respect of matters other than payment of salary, an employee will not have a right of action.

Where a member of the Rajasthan Secretariat Service was appointed as Deputy Secretary and his scale of pay was higher than the earlier scale and there was no reduction in the emoluments received in the new scale, the fact of non-consideration of the special pay drawn by the member as Assistant Secretary cannot vitiate the Rajasthan Civil Services

In **K. M. Bakshi v. Union of India**, AIR 1962 SC 1139, the Supreme Court held that it was open to the Government to fix incremental scale of pay depending upon the duration of an officer’s service.

(b) Scales of pay.

The abstract doctrine of equal pay for equal work has nothing to do with Article 14. Article 14, therefore, cannot be said to be violated where the pay-scale of Class I and Class II Income-tax Officers are different though they do the same kind of work. Incremental scales of pay can be validly fixed dependent on the duration of an officer’s service—**Kishori Mohan Lal Bakshi v. Union of India**, AIR 1962 SC 1139.

(c) Dearness allowance.

In **State of M. P. v. G. C. Madawar**, AIR 1954 SC 493 : (1955) 1 SCR 599, the Supreme Court held that the grant of dearness allowance at a particular rate was under Rule 44 of the Fundamental Rules, a matter of grace and not a matter of right, and hence a claim against the Government for the grant of such allowances at a particular rate was not justiciable.

(d) Bonus.

If the contract of service stipulated for payment of certain sum as bonus, it is enforceable at law **Mathura Das Kangi v. L. D. Tribunal**, AIR 1958 SC 899.

(e) Pension.

If in accordance with the law as laid down in **State of Bihar v. Adul Majid**, AIR 1954 SC 245, an action for salary is competent in civil court it is somewhat difficult to see why a suit for pension should be held to be incompetent.

(f) Seniority.

Seniority in the author’s view is a matter of an administrative nature depending on rules which have been framed by the Government under Article 399. These rules have a binding effect and are not justiciable. Thus the question of seniority is a matter which is not justiciable in a Court of law, much less in a writ petition.

The position emerged out of the various decisions of the courts is that the courts will not interfere with the seniority of persons in service so long as there is no arbitrary exercise of discretion—**High Court of Calcutta v. Amal Kumar**, AIR 1962 SC 1704 : **State of Punjab v. Jagdish Singh**, AIR 1964 SC 52.

(g) Promotion.

Among the well-known attributes of public service, one that is least subject to exception is that no employee can claim as of right a promotion from one position to another unless he could do so under a statutory provision or an enforceable condition of service. A variety of considerations govern the promotion of an employee, none of which
alone could render an employee suitable for promotion. Ordinarily, it would be for the State or the promoting authority to determine such suitability after an assessment of all relevant considerations, such as seniority, competence, rectitude, and antecedent, official records, none of which is less important than the other, for the preservation of purity and efficiency in public service. The basic or governing consideration in all promotions is what may be shortly described as merit or suitability. Seniority is in substance one of the elements in the assessment of merit. It may be that, having regard to the fact that seniority normally engenders some expectations of preferment or promotion in the minds of Government servants, the State, which is interested in having contended service for good and efficient administration, hardly if ever totally disregards all consideration of seniority. That does not mean, however, that political expediency which may govern the actions of the State necessarily confers a right on the civil servant. Because he cannot claim promotion as of right, he may, if he chooses, request the Government to reconsider his case and revise their opinion but cannot complain in a Court of law on the footing that any right of his has been infringed or that he has been denied equality of opportunity guaranteed under Article 16 of the Constitution which does not rule out right of the Government to make a proper selection on consideration of suitability.

Promotions cannot be claimed as of right unless by virtue of any statutory rule a civil servant has actually acquired that right. The mere provision in a rule that certain number of vacancies will be filled by promotion from a particular class of Government servants on the basis of seniority-cum-merit does not confer any such enforceable right on any one of the Government servants in the same class.

No civil servant has a claim to ask for promotion as of right and the giving or refusal of promotion is a matter within the exclusive discretionary domain of the executive authorities concerned in the matter. The equality guaranteed under Articles 14 and 16 cannot take away the right of the Government to pick and choose proper person for employment in Government service. It cannot be said that the act of the Government in exempting some members of service from passing of the test required to be passed for promotion and its denial of such exemption to other members by itself constitutes an unequal discriminatory treatment violative of the equality clause. The act of the Government is not giving promotion to a civil servant does not result in any infringement of his fundamental rights under the Constitution.

Concessions alleged to be shown to certain junior officers in the matter of promotion by a Government Order discriminating against the petitioners cannot be claimed as a matter of right and a writ of mandamus cannot be issued commanding the authority to show indulgence. 


In Management of Vishnu Sugar Mills v. Workmen, AIR 1960 SC 812, it was held that the promotion to a higher post is within the exclusive discretionary domain of the management. In that case, a new higher post was created and a person from outside was directly recruited. It was contested that the person holding the lower post satisfactorily for quite a long time was entitled to this post. This contention was repelled
and it was held that so long as the existing emoluments of the person were not affected, he could not complain.

It might very well be that "matters relating to employment or appointment to any office" in Art. 16 (1) are wide enough to include the matter of promotion. Inequality of opportunity for promotion as between citizens holding different posts in the same grade may, therefore, be an infringement of Article 16.

Thus, if, of the Income-Tax Officers of the same grade some are eligible for promotion to a superior grade, and others are not, the question of contravention of Article 16 (1) may well arise. But no such question can arise at all when the rules make Income-tax Officers of Class I eligible for appointment as Assistant Commissioners, but make Income-Tax Officers of Class II ineligible for promotion to the post of Assistant Commissioners. There is no denial in such a case of equality of opportunity as among citizens holding posts of same grade. As between citizens holding posts of different grades in Government service there can be no question of equality of opportunity. Article 16 does not forbid the creation of different grades in the Government service. K. M. Bakshi v. Union of India, AIR 1962 SC 1139.

In High Court of Calcutta v. Amal Kumar Roy, AIR 1962 SC 1704, was contended that Articles 14 and 16 (1) had been violated. The Court repelled the contention and observed:

"It is difficult to see how either of these Articles can be pressed in aid of the plaintiff's case. The plaintiff's case was considered along with that of the others, and the High Court after a consideration of the relative fitness of the Munsiff chose to place a number of them on the panel for appointment as Subordinate Judges, as and when vacancies occurred. He had, therefore, along with others, equal opportunity. But equal opportunity does not mean getting the particular post for which a number of persons may have been considered. So long as the plaintiff along with others under consideration, had been given his chance, it cannot be said that he had not equal opportunity along with others, who may have been selected in preference to him. Where the number of posts to be filled is less than the number of persons under consideration for those posts, it would be a cause of many being called and few being chosen. The fact that the High Court made its choice in a particular way cannot be said to amount to discrimination against the plaintiff."

In All-India Station Masters and Asstt. Station Masters Association v. General Manager, Central Railway, AIR 1960 SC 384 the question whether matters of promotion were included in the words "matters relating to employment" in Article 16 was left undecided. The point again came before the Supreme Court in General Manager, Southern Railway v. Rangacharia, AIR 1962 SC 36 and it was held that the words "in respect of any employment" used in Article 16 (2) must include all matters relating to employment as specified in Article 6(1) and, therefore, promotion to selection post was included both under Article 16 (1) and (2) of the Constitution.
In Sant Ram v. State of Rajasthan, AIR 1967 SC 1910, the question raised before the Supreme Court was whether the petitioner was entitled, as of right to be promoted to a higher post merely on the ground that his name stood first in the Gradation List prepared under Rule 6 of the Indian Police Service (Regulation of Seniority) Rules, 1954. The Court held that the respondents were right in the contention that the ranking or position in the Gradation List did not confer any right on the petitioner to be promoted to selection post and that it was a well established rule that promotion to selection grades or selection posts was to be based primarily on merits and not on seniority alone. The Court further held that the principle was that when the claim of officers to selection post was under consideration, seniority should not be regarded except where the merit of the officers was judged to be equal and no other criterion was, therefore, available.

In Dr. Jai Narain Misra v. State of Bihar (1971) 1 SCC 30, the appellant and the third respondent were serving in the Agricultural Department of the Bihar Government. The State Government wrote to the Public Service Commission to select one of the fourteen officers for the post of Director of Agriculture, a selection post on the basis of merit and suitability. The Commission recommended the name of the appellant. The third respondent challenged the recommendation of the Commission in the High Court contending that the Government should make the appointment in accordance with the rules. The High Court held that the third respondent being senior to the appellant possessed greater merit and that he was entitled to be promoted under the rules. On appeal to the Supreme Court it was held:

"It was not disputed before us that the post of Director of Agriculture is a selection post. Therefore, the question of seniority was not relevant in making the selection. It is for the State Government to select such officer as it considers as most suitable. In this view we think the High Court was not justified in going into the question of seniority nor will we be justified in going into that question. It may be noted that at the time the Commission made this recommendation the pay-scale of both the appellant as well as the third respondent was Rs. 1,200—1,700.

"So far as the question of suitability is concerned, the decision entirely rested with the Government. In other words, the Government is the sole judge to decide as to who is the most suitable candidate for being appointed as the Director of Agriculture. For discharging that responsibility it was open to the Government to seek the assistance of the Public Service Commission. In our judgment the High Court was not justified in calling for the records of the Public Service Commission and going through the notings made by various officers in the Commission as well as the correspondence that passed between the Commission and the Government. The High Court overlooked the fact that the Government sought the assistance of the Commission and not that of the High Court for finding out the most suitable candidate. In this case there was no complaint of mala fides either on the part of the
Government or the Commission. That being so the interference of the High Court in the matter of selection made by the Government was not called for.

"The post of Director of Agriculture is admittedly an ex-cadre post. The selection to that post is made solely on the basis of merit. Merely because the Government in its letter to the Commission used the word ‘promotion’, the High Court should not have treated the case as one of ‘promotion’. The word ‘promotion’ used in the Government’s letter was an inappropriate word. What the Government really meant was selection of a person to be posted as the Director. The nature of the post cannot be changed by the Government’s using the word ‘promotion’. The post remains to be selection post.

"The High Court was also not right in opining that the recommendation made by the Commission was not in accordance with the rules."

In State of Orissa v. Durga Charan, AIR 1966 SC 1547 : (1966) 2 SCR 907, the Supreme Court has held that promotion to a selection post is not a matter of right which can be claimed by seniority only. When, therefore, certain conditions of service like pay, leave pension, etc. are guaranteed when a person is transferred from one State to another, a claim to promotion to a higher selection post is not thereby guaranteed. The argument that non-promotion affected the pension was not accepted.

In State of Punjab v. Joginder Singh AIR 1963 SC 913 : 1963 (Supp) 2 SCR 169, the two cadres were different and distinct from each other. Qualifications prescribed for entry into each and the method of recruitment were also different. On these facts the Supreme Court held that there could be no question of seniority inter se between the members of the 2 cadres and consequently the differential treatment in the matter of promotion did not violate Articles 14 and 16 (1).

In S.S Srivastva v. General Manager, N.E. Railway, Gorakhpur, AIR 1966 SC 1197, it was held that a person whose name was placed on the panel for promotion had no right to be promoted and so the removal of the name from the panel would not amount to punishment. To the same effect was the case of Ramaswamy v. I.G., AIR 1966 SC 175, wherein it was also held that a promotion made on an ad hoc basis conferred no right to the person so promoted and a reversion from higher post was not a reduction in rank.

But where a Government servant on deputation to his parent department, it was held that he was entitled to all promotions had he not been deputed and that the department should maintain proper promotion where he had a lien—State of Mysore v. L.H. Bellary, AIR 1965 SC 868.

In State of Mysore v. P. N. Najundiah, 1969 SLR 346, it was held that so long as the service of the employee in the new department was satisfactory and he was obtaining the increments and promotions in that department, it stood to reason that the satisfactory service and the manner of its discharge in the post he actually filled should be deemed to be
rendered in the parent department also so as to entitle him to promotion which were open on seniority-cum-merit basis. But it was clearly pointed out that the High Court ought not to issue writ directing the State Government to promote the aggrieved officers with retrospective effect and that the correct procedure for the High Court was to issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to his seniority and fitness the respondent should have been promoted on the relevant date and so what consequential benefits should be allowed to him.

Where a cadre officer in the junior scale of pay was promoted to officiate in a post in the senior scale of pay and was thereafter reverted to his substantive post while other cadre officers junior to him continued to officiating on post in senior scale of pay, it would only indicate that the action taken against the cadre officer so reverted was only by way of penalty or punishment—Anand Prakash Saksena v. Union of India, (1969) 1 SCC 217.

In State of Orissa and another v. B. K. Mahapatra, (1969) 2 SCC 149, the petitioner was appointed as Deputy Superintendent of Police in the State of Orissa on January 1, 1947. On January 1, 1950, he was confirmed as Deputy Superintendent of Police. In the meantime an agreement had been arrived at between the Central Government and some State Governments, including Orissa, regarding the constitution of an Indian Police Service. This agreement provided for various matters such as the strength, including both the number and character of posts of the Indian Police Service, the method of recruitment to the service, framing of rules regarding conditions of service, the penalties which could be imposed etc.

On April 30, 1951, the State Government wrote to the Secretary, Union Public Service Commission, that they proposed to hold a meeting of the Committee (to be constituted in accordance with Rule 2 of the Draft Rules) sometime in June, 1951, with a view to prepare a select list of officers suitable for promotion to the Indian Police Service. The Commission was asked to depute one of its members to preside over the said meeting in accordance with Rule 3 of the Draft Rules. On September 6, 1951, the Union Public Service Commission approved the recommendation of the above Committee which met to prepare the select list for promotion to Indian Police Service, and agreed to the select list as drawn up by the Committee.

On May 14, 1952, the petitioner was promoted as Additional Superintendent of Police in the Indian Police Service cadre. On August 21, 1952, his name again appeared in the list which we may call “fit for trial list”. His name also appeared in a similar list on July 12, 1954.

One of the questions which had to be decided in the case was whether these lists could come within the expression “select list” used in the second proviso to Rule 3(3) of the Indian Police Service (Regulation of Seniority) Rules, 1954, which came into force on September 8, 1954.

On November 10, 1955, the first meeting of the Selection Committee set up in accordance with Regulation 3 of the Indian Police Service (Appointment by Promotion) Regulation, 1955, was held at Cuttack.
In this meeting the Committee selected and recommended officers for officiating appointment in the Indian Police Service and the petitioner's name appeared as No. 2 in the list.

On February 10, 1956, the Union Public Service Commission approved the recommendations of the above Selection Committee. On December 1, 1956, the Government of India wrote to the Union Public Service Commission requesting for its advice as to whether the list prepared by the Selection Committee could be treated as "Select List" as recommended by the State Government. On January 10, 1957, the Commission replied as follows:

"I am directed to refer to Shri S. P. Mukerjee’s letter No. 5/1/56/-AIS-1(I), dated the 10th December, 1956 and to say that the Selection Committee which met at Cuttack on the 10th November, 1955, did not recommend any officer for appointment to the Indian Administrative Service/Indian Police Service. The Committee only recommended officers who were considered suitable to hold Indian Administrative Service/Indian Police Service cadre posts in an officiating capacity. Lists of such officers are made to avoid frequent references to the Commission in making interim arrangements in cadre posts till cadre officers become available and these lists cannot be considered as Select Lists.

I am to suggest that the State Government may be advised to place the cases of all these officers before the Selection Committee when it meets again in Orissa some time in the month of February, 1957, for preparation of the Select List”.

On February, 15, 1957, the Selection Committee met and placed the petitioner, including some others, in the “Select List” for substantive appointment to the Indian Police Service. The Committee also recommended some persons for holding cadre posts in an officiating capacity.

Reiterating the view that it had already expressed on January 23, 1957, on March 27, 1957 the Commission wrote to the Government of India stating:

"(i) that the 'fit for trial' list is intended merely in order to avoid specific references to the Commission for casual appointments to senior Indian Administrative Service/Indian Police Service posts.

(ii) that the Commission have advised in Para 2 of their letter No. F. 950/55-R.-III, dated the 25th September, 1956, that the 'fit for trial' list being not a list envisaged under the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, any officiation of an officer included in the "fit for trial" list cannot be taken as approved officiation for purposes of seniority and..."
On May 7, 1957, the Government of India wrote to the State Governments and observed:

"The question whether the officiation in the senior posts of the State Civil Service/State Police Officer after inclusion of their names in the ‘fit for trial’ list should or should not be taken into account for the purpose of seniority, on their subsequent appointment to the Indian Administrative Service/Indian Police Service, has been engaging the attention of the Government of India for some time past. As the State Governments are aware, the Indian Administrative/Police (Appointment by Promotion) Regulations do not provide for the preparation of any such ‘fit for trial’ list. Such a list has been devised merely to enable the State Government to try out a few officers irrespective of their seniority with a view to test their suitability for senior posts and is intended only to avoid specific reference to the Union Public Service Commission for casual short-term appointments of the State Civil Service/State Police Service Officers to Senior Indian Administrative Service/Indian Police Service posts. The Union Public Service Commission, who were consulted in this respect, have advised that any officiation of State Civil Service/State Police Service Officers included in the ‘fit for trial’ list should not be taken into account to determine their seniority in the Indian Administrative Service/Indian Police Service."

The Central Government further stated:

"The Government of India have accordingly decided that wherever such lists have been prepared in some States, the officiation in the senior posts of the State Civil Service/State Police Service Officers included in the ‘fit for trial’ list cannot be counted for the purpose of determining the seniority of such officers, under the Indian Administrative Service/Indian Police Service (Regulation of Seniority) Rules, 1954."

On July 10, 1957, the petitioner was appointed to the Indian Police Service. On July 22, 1958, the Government of India wrote to the Government of Orissa regarding the seniority of the petitioner. It stated:

"The approved continuous officiation of these officers counting for seniority commenced from the 10th February, 1956—the date on which the Union Public Service Commission approved the ‘fit for continuous officiation’ list containing their names. This date being later than the date i.e. 7-9-35 on which Shri S. S. Padhi (1951-R. R.) started officiating in the senior posts but earlier than the date on which regular recruits of 1952 started officiating it has been decided that these officers may be finally allotted to 1951 and placed en bloc below Shri S. S. Padhi (1951-R. R.) and above Shri B. N. Misra (1952—R. R.)."

It was the above order which was quashed by the High Court.

The Attorney-General, who appeared for the appellant, urged that the case of the petitioner was covered by the second proviso to Rule 3 (3)
of the Indian Police Service (Regulation of Seniority) Rules, 1954 and was not governed only by Rule 3 (3) (b). He urged that the lists of 1951, 1952 and 1954, mentioned above, were not Select Lists within the meaning of the second proviso, and it was only the Select List which was made on February 15, 1957, which was the Select List within the second proviso, and that there had been no discrimination or breach of Article 14, as held by the High Court.

The counsel for the petitioner on the other hand contended that the second proviso did not govern Rule 3 (3) (b) but in fact governed the first proviso only. He said that the Select List of 1951 was a Select List within the meaning of the second proviso and the seniority of the petitioner should be counted from that date. In the alternative he contended that the petitioner's officiation in senior posts prior to July 10, 1957, had in fact been approved and was approved officiation within the second proviso. He further contended that the date, February 10, 1956, mentioned in the order, dated July 22, 1958, was an arbitrary date and the Government had in fact, not applied its mind to the question. He further said that there had been discrimination and another person has been given benefit which had been denied to the petitioner.

The main point that arose in this case was whether the Select Lists of 1951, 1952 and 1954 could be deemed to be treated as Select Lists within the second proviso.

The Court observed:

"It seems to us that the 1951, 1952 and 1954 lists cannot be deemed to be Select Lists within the second proviso because, as a matter of fact, the Selection Committee did not select names for the purpose of substantive appointment by only selected names for the purpose of officiation in the senior posts of the Indian Police Service......

"It seems to us that the Public Service Commission and the Government of India were quite right in deciding that the 'fit for trial' lists could not be deemed to be select lists made within the draft rules or the Promotion Regulations.

"In view of this conclusion it is not necessary to decide the question, which was raised by the learned Attorney-General, that in any event the second proviso is only dealing with select lists made after the Promotion Regulations came into force and not with select lists made under the so called draft rules. We are assuming, without deciding, that if a proper select list had been made under the draft rules it would be a Select list within the meaning of the second proviso.

This takes us to the next point whether the petitioner is governed by the main portion of Rule 3 (3) (b) and not by the second proviso. In our opinion, the object of the second proviso is to cut down the period of officiation which would be taken into consideration under Rule 3 (3) (b). It is common ground that the case of the petitioner is not covered by the first proviso. We are unable to agree with the learned
counsel for the petitioner that the only object of the second proviso is to limit the operation of the first proviso.

"Explanation 1 really explains the expression 'officiated continuously' occurring in Rule 3 (3) (b). But it does not mean that where Explanation 1 applies the second proviso does not apply. The object of Explanation 1 is to deal with the problem arising in the case of officers holding appointments as a purely temporary or local arrangement.

"If the second proviso applies, as we hold it does, it was for the Central Government to approve, or not to approve, the period of officiation prior to the date of inclusion of the petitioner in the Select List. As observed by this Court in D. R. Nim v. Union of India, (1967) 2 SCR 325, 'the first period (i.e., period before the date of inclusion of an officer in the Select List) can only be counted if such period is approved by the Central Government in consultation with the Commission'. They have approved the period from February 10, 1956 to July 10, 1957. No material has been brought to our notice to show that the Central Government did not apply its mind to the problem.

"The learned counsel for the petitioner contends that in the letter dated July 22, 1958, a list called the 'fit for continuous officiation list' is mentioned which is said to have been approved by the Public Service Commission. The learned counsel rightly points out that no such list exists. Apparently this is an expression coined by the draftsman to express the views of the Public Service Commission which clearly stated in the letter, dated February 10, 1956, that they approved the recommendation of the Selection Committee which met at Cuttack or the selection of police officers for promotion to the Indian Police Service in an officiating capacity.

"There is no doubt from the correspondence we have set out above that the Government of India were quite aware of the requirements of a select list.

"We are unable to agree with the learned counsel that February 10, 1956, is an arbitrary date. It has definite relation to the question of approved period of officiation because it is on this date that the Public Service Commission approved the inclusion of the petitioner in the list for officiating appointment for the first time after the Promotion Regulations had come into force.

"The next point which we may now consider is whether the officiating period prior to February 10, 1956, was, as a matter of fact, approved by the Government of India. The learned counsel has taken us through the correspondence. He has been able to point out some letters written by the State Government on the point but no letter from the Government of India has been shown which could possibly be read as approving his period of officiation prior to February 10, 1956. At any rate the approval of Government
of India has to be accorded after the appointment to Indian Police Service and not before.

"The only point that remains now is the question of discrimination. Singh Deo was an officer who was appointed on June 1, 1955, after the Seniority Rules had come into force and he seems to be governed by the first proviso. We have not been able to appreciate how this case has any relationship to the case of the petitioner.

"The learned Attorney-General had raised the point that all the officers who were likely to be affected by the decision of the writ petition had not beenimpleaded as parties to the petition, and he referred to us the decision of this Court in Padam Singh Phina v. Union of India, Civil Appeal no. 405 of 1967 where Shah J., speaking for the Court observed:

'But we are unable to investigate the question whether there has been infringement of the rules governing fixation of seniority, for a majority of those who were placed above the appellant in the seniority list are notimpleaded in the petition before the Judicial Commissioner and are not before this Court. It is impossible to pass an order, assuming that the appellant is able to convince us that a breach of the rules was committed, altering the list of seniority, unless those who are likely to be affected thereby are before the Court and have an opportunity of replying to the case set up by the appellant.'

"This is salutary rule and should be observed. But the learned counsel for the petitioner says that he was concerned with his year of allotment and in that question nobody else was interested directly. Each officer has to have a year of allotment and no other officer is directly interested in it. But as we are allowing the appeal it is not necessary to finally decide whether the petition should have been dismissed only on this ground."

(h) Deputation

See State of Mysore v. M. H. Bellary, (1965) 1 SC] 311, under heading "Promotion". In that case the Court was considering a particular rule in the Bombay Civil Service Rules in the nature of a "next below" rule.

(i) Cadre

In Nohirla Ram v. Union of India, AIR 1958 SC 113 : 1958 SCR 922, the main question before the Supreme Court was whether the appellant had a post in the regular cadre of the establishment of the D. G. I, M, S. The Supreme Court held after considering the relevant Rules that the appellant did not hold a post in the regular cadre and was doing so outside the regular cadre and hence his grievance was without foundation. The Court dismissed the writ petition on the ground that the appellant was not justified in refusing to do the work allowed to him,
(j) Transfer

In *Messrs. Kandan Sugar Mills v. Ziya-uddin*, AIR 1960 SC 650, the Supreme Court has held that in the absence of an express term of the contract of service, a person employed in a concern cannot be transferred to some other independent concern started by the same employer at another place at a stage subsequent to the date of his employment and that an employer has no inherent right to transfer his employee to another places where he chooses to start a business subsequent to the date of his appointment.

(k) Disciplinary action

Rules prescribing a procedure in regard to reasonable opportunity etc. are enforceable and a breach of these rules will give rise to a cause of action.

As the Supreme Court held in *A. N. D. Silva v. Union of India*, AIR 1962 SC 1130, in the absence of rules or any statutory provisions to the contrary, the enquiry officer is not required to specify the punishment which may be imposed on the delinquent officer. His task is merely to hold an enquiry into the charges and make his report setting forth his conclusions and findings in respect of the said charges. Sometimes the enquiring officers do indicate the nature of the action that may be taken against the delinquent officer, but that ordinarily is outside the scope of the enquiry. That being so, not much significance can be attached to the recommendation made by the enquiring officer in the present case. Besides, it is absolutely clear that under the relevant rules, the punishment proposed to be imposed on the respondent was justified even on the findings recorded against him by the enquiring officer, and so, it would be idle to contend that unless the appellants had differed from the conclusions of the enquiring officer in respect of the charges which he held not proved, they could not have legitimately thought of imposing the said punishment on him. In that case, the Public Service Commission proposed a lower punishment of compulsory retirement but the Government ordered removal. The Supreme Court upheld the action of the Government and observed that the function of the Public Service Commission was only advisory—See also *Union of India v. H. C. Goel*, AIR 1964 SC 364.

(l) Retirement

*See* under Chapter "Retirement."

(m) Suspension

*See* under Chapter "Suspension."

(n) Leave preparatory to retirement

Under rule 8.15 of the Punjab Civil Services Rules, 1959, leave cannot be claimed as of right. When the exigencies of the public services so require, discretion to refuse leave or revoke leave of any description is reserved to the authority empowered to grant it. It follows, therefore, that the authority granting leave, has the discretion to revoke it. There is no restriction on the power of revocation with respect to the time when it is to be exercised. It can be exercised before the officer to
whom the leave was granted proceeds on leave. It can also be revoked after he has proceeded on leave. Revocation of leave simply means cancelling the leave granted. The exigency necessitating the revocation of leave may arise after the officer has proceeded on leave. Rule 8.3 of the above said rules has no hearing on the question as it provides that the rules following it govern the procedure for making applications for leave and for granting leave in India. It deals with the procedure and not with the right of the officer to leave or with the power of the necessary authority to sanction refuse leave or revoke leave. Rules 8.42 of those rules deals with the matter incidental to the recall from leave and in no way affects the discretion of the authority to revoke leave. In fact recall to duty follow the revocation of the leave with respect to the period not availed of till then.

There is no force in the contention that when a Government servant proceeds on leave preparatory to retirement, he ceases to hold office and to be in employment of Government and that in fact he practically retires on the date he avails of the leave and consequently no question of his suspension can arise. A Government servant is in service till his service terminates and the service can be terminated by dismissal removal or retirement. The date from which the Government servant is on leave preparatory to retirement cannot be treated as the date of his retirement from service—S. Pratap Singh v. The State of Punjab, AIR 1964 SC 72.

9. Discrimination in matters relating to conditions of service

The Supreme Court in re: General Manager, Southern Railway v. Rangachari, AIR 1962 SC 35, held that “in respect of any employment” used in Article 16 (2) must include all matters relating to employment both prior and subsequent to the employment, which are incidental to the employment and form part of the terms and conditions of such employment. The observations of Supreme Court may be quoted below:

“In deciding the scope and ambit of the fundamental right of equality of opportunity guaranteed by this Article it is necessary to bear in mind that in construing the relevant Article a technical or pedantic approach must be avoided. We must have regard to the nature of the fundamental right guaranteed and we must seek to ascertain the intention of the Constitution by construing the material words in a broad and general way. If the words used in the Article are wise in their import they must be liberally construed in all their amplitude. Thus construed, it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Article 16 (1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be
included in the expression ‘matters relating to employment’ in Article 16 (1). Similarly, appointment to any office which means appointment to an office like that of Attorney-General or Comptroller and Auditor-General must mean not only the initial appointment to such an office but all the terms and conditions of service pertaining to the said office. What Article 16 (1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us.

“This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16 (1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for the employment of the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Article 16 (1) guarantees is equality of opportunity to all citizens who enter service.

“If the narrow construction of the expression ‘matters relating to employment’ is accepted it would make the fundamental right guaranteed by Article 16 (1) illusory. In that case it would be open to the State to comply with the formal requirements of Article 16 (1) by affording equality of opportunity to all citizens in the matter of initial employment and then to defeat its very aim and object by introducing discriminatory provisions in respect of employees soon after their employment. Would it, for instance, be open to the State to prescribe different scales of salary for the same or similar posts, different terms of leave or superannuation for the same or similar post? On the narrow construction of Article 16 (1) even if such a discriminatory course is adopted by the State in respect of its employees that would not be violative of the equality of opportunity guaranteed by Article 16 (1). Such a result could not obviously have been intended by the Constitution. In this connection it may be relevant to remember that Articles 16 (1) and (2) really gave effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15 (1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matter relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment.”
In K. M. Bakshi v. Union of India, AIR 1962 SC 1139 the Supreme Court observed:

“What Article 16 (1) provides is that there should be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. It might very well be that ‘matters relating to employment or appointment to any office’, are wide enough to include the matter of promotion. Inequality of opportunity for promotion as between citizens holding different posts in the same grade may therefore be an infringement of Article 16. Thus, if, of the Income-tax Inspectors some were made eligible for promotion as Income-tax Officers and others were not, there would be legitimate ground for complaint that Article 16 (1) has been violated. No such complaint can however be reasonably made, if, for example, all Income-tax Inspectors are eligible under the rules for promotion to the post of Income-tax Officers while Income-tax Sub-Inspectors are eligible for promotion only as Income-tax Inspectors, but not directly as Income-tax Officers. Similarly, if, of the Income-tax Officers of the same grade, some are eligible for promotion to a superior grade, and others are not, the question of contravention of Article 16 (1) may well arise. But how can such question arise at all when the rules make Income-tax Officers of Grade I eligible for appointment as Assistant Commissioner, but make Income-tax Officers of Class II eligible for promotion as Income-tax Officers of Class I but not for promotion to the post of Assistant Commissioners? There is no denial here of equality of opportunity among citizens holding posts of the same grade. As between citizens holding posts in different grades in Government service there can be no question of equality of opportunity. It is fantastic to suppose that Article 16 of the Constitution forbids the creation of different grades in the Government service ; that is what the petitioner’s argument amounts to. The contention that Article 16 has been violated because Class II Income-tax Officers are not eligible for promotion to higher posts, like the posts of Commissioners and Assistant Commissioners directly is therefore wholly unsound.”

In All-India Station Masters’ Association v. General Manager, Central Railway, (1960) 2 SCR 311 : 1960 SCJ 344; 1960 SC 384, the question whether matters of promotion were included in the words “matters relating to employment” in Article 16 (1) was left open by the Court as it was not necessary for the decision of the case before the Court. The following passage from the judgment may however be quoted:

“The impugned provisions of the channel of promotion are in respect of promotion of persons already employed under the State and not in respect of the first employment under the State. If the ‘equality of opportunity’ guaranteed to all citizens by Article 16 (1) does not extend to matters of promotion, the petitioners’ contention that the provisions are void must fall at once. If, however, matters of promotion are also ‘matters relating to employment’ within the meaning of Article 16(1) of the Constitution, the next question we have
to consider is whether the impugned provisions amount to denial of equality of opportunity within the meaning of that Article.

"We propose to consider the second question first, on the assumption that matters of promotion are 'matters relating to employment'. So multifarious are the activities of the State that employment of men for the purpose of these activities has by the very nature of things to be in different departments of the State and inside each department, in many different classes. For each such class there are separate rules fixing the number of personnel of each class, posts to which the men in that class will be appointed, questions of seniority, pay of different posts, the manner in which promotions will be effected from the lower grades of pay to the higher grades, e.g., whether on the result of periodical examination or by seniority, or by selection or on some other basis and other cognate matters. Each such class can be reasonably considered to be a separate and in many matters independent entity with its own rules of recruitment, pay and prospects and other conditions of service which may vary considerably between one class and another. A member joins a particular class on recruitment; he leaves the class on retirement or death or dismissal, discharge, resignation or other modes of termination of service, or by joining another class of employees whether by promotion thereto or direct recruitment thereto on passing some examination or by selection by some other mode.

"It is clear that as between the members of the same class the question whether the conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State? In our opinion, the answer must be in the negative. The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment. It will for example, plainly make no sense to say that because for employment of professors of colleges, a higher University degree is required than for employment as teachers of schools, equality of opportunity is being denied. Similarly, it is meaningless to say that unless persons who have obtained employment as school teachers, have the same chances of promotion as persons who have obtained employment as teachers in colleges, equality of opportunity is denied. There is, in our opinion, no escape from the conclusion that equality of opportunity in matters of promotion must mean equality as between members of the same class of employees, and not equality between members of separate, independent classes".
In B. N. Nagarajan v. State of Mysore, AIR 1966 SC 1942; (1967) 2 SCR 664, it was held that if the Government advertised the appointments and the conditions of service of the appointments and made a selection after such advertisement there would be no breach of Article 16, because everybody who was eligible in view of the conditions of service would be entitled to be considered by the State.

As observed in Sham Sunder v. Union of India, AIR 1969 SC 212; (1969) 1 SCWR 294, equality of opportunity in matters of employment means equality as between members of the same class of employees and not equality between members of separate independent classes.

In All-India Station Masters Associations v. General Manager, Central Railway, supra, The Supreme Court held that equality of opportunity in matters of employment can be predicated only as between those who are either seeking the same employment or have obtained it.

In R. B. Dewan v. Industrial Tribunal, AIR 1963 SC 630, under the standing orders leave facilities available to persons employed before a particular date were not available to persons appointed after that date. The Supreme Court held that the rules should be the same for both the categories of employees.

Everyone appointed to the same post is not entitled to claim that he must be paid identical emoluments as any other person appointed to the same post disregarding the method of recruitment or the source from which the officer is drawn for appointment to that post. No such equality is required by Article 14 or Article 16—Unakat Sarkunni Menon v. The State of Rajasthan, AIR 1968 SC 81.

In Krishna Chandra v. Central Tractor Organisation, AIR 1962 SC 602; (1962) 3 SCR 187; (1962) 1 SCJ 715, the Supreme Court held that an order imposing arbitrarily a ban against a person whose services under Government were terminated from even being employed in Government service offended Article 16 (1).

10. Alteration in Service Rules

In Roshan Lal v. Union of India, AIR 1967 SC 1889, the Supreme Court held that the Service Rules could be changed unilaterally by the Government and that a Government servant has no vested contractual right to any terms of appointment. This is a disability peculiar to the Government servants.

In D. S. Grewal v. State of Punjab, AIR 1954 SC 512, it was held that regulation of recruitment and conditions of service required numerous and varied rules which might have to be changed from time to time, as the exigencies of public service required and that this could not be unknown to the Constitution-makers.

In Bishan Narain Mishra v. State of U. P., AIR 1965 SC 1567; (1965) 2 SCA 95; (1965) 2 SCJ 718, a question arose whether alteration in the age of retirement was within the competence of the State. In that case the U. P. Government had by its Order dated 27-11-1957 raised the age of retirement of Government servants to 58 years, but a subsequent Order dated 25-5-1961 reduced the age of retirement to 55 years. This Order was challenged on the ground that the change in the rule of retirement was hit by Article 311 of the Constitution as it amounted to
removal of public servants from service without complying with the requirement of Article 311 (2). The Supreme Court observed:

"The argument that the termination of service resulting from change in the age of superannuation amounts to removal within the meaning of Article 311, and, therefore, the necessary procedure for removal should have been followed is negatived by the very case on which the appellant relies (Moti Ram Dekas' case, AIR 1964 SC 600). We, therefore, hold that Article 311 has no application to the termination of service of the appellant in the present case."

In State of Orissa v. Dr. Binapani Devi, AIR 1967 SC 1269, the Supreme Court has held that it is open to the Government to alter the rules as to the time of retirement. Thus, if the Government decided that the age of retirement should be fifty years and this rule is made to apply even to existing incumbents, no such incumbent has any claim that he should be governed by old rules and should be retained up to the age of retirement as on the date of his entry in service.

Employees of the insurers whose controlled business has been taken over, become the employees of the Corporation, then their terms and conditions of service continue until they are altered by the Central Government and if the alteration made is not acceptable to them, they are entitled to leave the employment of the Corporation on payment of compensation—Life Insurance Corporation v. S. K. Mukerjee and others, AIR 1964 SC 847.


The power to make and change rules regulating the conditions of service is a function of the Government and the Government have powers to do the same. The question arises whether the Government can change the rules to the detriment of the employee and affect the already existing conditions retrospectively.

"The Government of India have always been careful to exercise the right of altering rules with due consideration for the rights of their servants. The ordinary course adopted to prevent hardship arising from any change of rule found necessary has been either to defer the introduction of the change for some time after its publication, or to give the officers affected the right of choosing whether they shall come under the operation of the old or the new rules. It has been decided that the right of altering rule must be maintained, that care should be taken as in the past, to prevent the introduction of any new rules from operating harshly, but that the Local Governments and the Government of India should not consider themselves precluded from recommending an exception in any case of individual hardship which may arise in spite of the precautions taken. If any case of apparent hardship arises the local authorities should understand that when the officer applies to retire, they are not precluded from examining into its merits and ascertaining whether, in their opinion, he has substantially suffered from the introduction of a rule not in force at the time he entered the service. If, after comparing the advantages secured to the officer by the altered rules with any disadvantages incidentally involved, they find that he has on the whole substantially suffered, the point may be taken into consideration in determining whether some compensation
ought not to be granted in the particular instance.”—Resolution of the Government of India No. 4863 dated 4-12-1891.

See also Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845: (1965) 1 SCJ 377: (1965) 1 SCR 933.

The Indian Railway Establishment Code has been issued, by the President, in exercise of the powers, vested in him by the proviso to Article 309 of the Constitution. The Railway Board, as will be seen from Rule 157, have full powers to make rules of general application to non-gazetted railway servants under their control. The question is whether the second respondent has, while acting under Rule 157, power to make a rule having effect from an anterior date. The words “and any rules so made shall have effect subject to the provisions of any such act” in the proviso to Article 309 of the Constitution must receive their due weight. In this case there is no Act of the appropriate legislature regulating the recruitment and conditions of service under the Railway Board and therefore the main part of Article 309 is not attracted. But, under the proviso therein the President has got full power to make rules regulating the respondent. Further, under the proviso, such person as may be directed by the President can also make rules regulating the recruitment and conditions of service of persons, under the Railway Board. The rules so made, either by the President, or such person, as he may direct, will have currency, until provision, in that behalf, is made by or under an Act of the appropriate Legislature under Article 309. Under Rule 157, the President has directed the Railway Board to make rules of general application to non-gazetted railway servants under their control. The rules, which are embodied in the schemes, framed by the Board are within the powers, conferred under Rule 157; and, in the absence of any Act having been passed by the appropriate Legislature on the said matter the rules framed by the Railway Board will have full effect and if so indicated, retrospectively also. Therefore, the contention that the Railway Board has no power to frame a rule, having retrospective effect, cannot be accepted—B. S. Vadera and another v. Union of India and others, (1969) 1 SCJ 73 : AIR 1969 SC 118 : (1969) 1 SCWR 182.

The question whether the Government has power to make Service Rules retrospectively came before the Supreme Court also in B. N. Narayan v. State of Mysore, AIR 1966 SC 1942, but the Supreme Court did not decide the point.
CHAPTER VII

DISCIPLINARY PROCEEDINGS

SYNOPSIS

1. General.
2. Reasonable opportunity.
3. Natural Justice.
4. Mala fides.
   A. First stage enquiry—
      (a) Preliminary enquiry.
      (b) Charge-sheet.
      (c) Notice to delinquent officer.
      (d) Oral enquiry.
      (e) Facilities for inspection and copies of documents.
      (f) Reply of the delinquent employee.
      (g) Appointment of Enquiry Officer.
      (h) Legal Assistance for defence.
      (i) Examination of witnesses.
      (j) Cross-examination of witnesses.
      (k) Defence evidence.
      (l) Admission of relevant facts enough to establish charge, whether admission of guilt.
      (m) Findings and report of Enquiry Officer: How far binding on Disciplinary Authority.
      (n) Enquiry by a Tribunal having no jurisdiction.
      (o) Ex parte enquiry.
      (p) Departmental enquiry: Bias.
      (q) Whether Enquiry Officer need make recommendations as to punishment.
   B. Second stage enquiry—
      (a) Competent authority to be satisfied.
      (b) Satisfaction of the Enquiring Officer is immaterial.
      (c) Notice to show cause.

   (i) Punishing authority failing to indicate in notice, its concurrence with conclusion of Enquiry Officer.
   (ii) Reasons for agreeing with Enquiring Officer need not be given unless rules specifically require.
   (iii) Show-cause notice against any of three major punishment: Effect.
   (iv) Disciplinary authority tentatively determining to impose particular punishment before explanation to show-cause notice, if illegal.
   (d) Non-supply of copy of Enquiry Officer's report: Effect.
   (e) Reply to show-cause notice.
   (f) Personal hearing.
   (g) Previous record when can be taken into consideration to determine punishment.
   (h) Consultation with Public Service Commission.
   (i) Enquiry Officer acquitting employee of first two charges and finding him guilty of third charge—Punishing authority relying on charges on which employee was acquitted: Effect.
   (j) Order of dismissal based on several grounds some of which unsustainable—Order if bad.
   (k) Punishment
   (l) Punishment Order: Communication.
6. Power of Civil Court to interfere.

S.L.I.—24
7. Exceptions:
   (a) Conviction on criminal charge
       [Proviso (a) to Article 311 (2) of the Constitution].
   (b) Proviso (b) to Article 311 (2), Constitution.
   (i) Whether President or the Governor is bound to give reasons
       for his satisfaction.
   (ii) Whether personal satisfaction of President or Governor essential.

8. Whether fresh proceeding can be started in respect of same matter:
   Double jeopardy.

9. Discretion of Government to hold enquiry or launch prosecution:
   Provision of discriminatory.

10. Departmental Enquiry and Criminal Prosecution.

11. Initiation of Departmental proceedings: Cancellation of leave preparatory to retirement.

1. General

Article 311 of the Indian Constitution is reproduced below:

"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 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 reasons, 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."
Article 311 thus applies only to cases of dismissal or removal from service or reduction in rank by way of penalty—Satish Chandra Anand v. The Union of India, AIR 1953 SC 250; Shyam Lal v. State of U. P., AIR 1954 SC 769.

The object of Article 311 of the Constitution is to afford a safeguard against arbitrary dismissal, removal or reduction in rank. Its provisions give only a limited protection to the members of the civil service. The protection is, firstly, against dismissal or removal by an authority subordinate to the authority by which the civil servant was appointed; and secondly it is against the penalty of dismissal or removal or reduction in rank being imposed without giving to the civil servant an opportunity of defending himself. These clauses do not secure to the members of the Public Service any other rights or any other measure of protection against other forms of penalties that can be imposed under the relevant Civil Service Rules—Satish Chandra Anand v. Union of India, AIR 1953 SC 250. The protection is available to the employees, who are—

(i) members of a Civil Service of the Union, or
(ii) members of All India Service, or
(iii) members of Civil Service of a State, or
(iv) holding a Civil Post under the Union, or
(v) holding a Civil Post under a State.

The proviso to the Article 311 (2) gives the following exceptions in which case while ordering dismissal, removal or reduction in rank it would not be necessary to follow the procedure of showing cause notice and giving reasonable opportunity. The exceptions are:

(i) Conduct which has led to conviction on a criminal charge.
(ii) Satisfaction of the punishing authority for some reason, to be recorded by that authority in writing, that it is not reasonably practicable to give to that person opportunity of showing cause.
(iii) Satisfaction of the President, Governor or Rajpramukh, as the case may be, that in the interest of the security of the State it is not expedient to give to the employee such an opportunity.

The decision of the punishing authority refusing to give opportunity is final order under Article 311 (3).

Subject to the overriding power of the President or the Governor under Article 310 as qualified by the provisions of Article 311 the rules governing the disciplinary proceedings cannot be treated as administrative directions but shall have the same effect as the provisions of the
Statute whereunder they are made, in so far as they are not inconsistent with the provisions thereof. So when the appropriate authority takes disciplinary action under an Act or the rules made thereunder, it must conform to the provisions of the Statute or the rules which have conferred upon it the power to take the said action—State of U. P. v. Babu Ram Upadhyay, (1961) 1 Cr J 773 : AIR 1961 SC 751.


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 prior to the amendment of that Article that every disciplinary proceeding must consist of two enquiries one before issuing the show-cause notice to be followed by another enquiry thereafter. Such is not the requirement of natural justice. Law may or may not prescribe such a course. Even if a show-cause notice is provided by law it does not follow that a copy of the report on the basis of which the show-cause notice is issued should be made available to the person proceeded against or that another enquiry should be held thereafter—Suresh Koshy George v. University of Kerala, (1969) 1 SCJ 543 : AIR 1969 SC 158 : (1968) 2 SCWN 117.

It is not within the competence of the Civil Court to sit in judgment over the decision of the authority who is competent by law to dismiss a public servant provided he has been afforded an opportunity to defend himself consistently with the substance of the constitutional guarantee. The contents of the reasonable opportunity under Article 311 (2) of the Constitution is the same as in section 240 (3) of the Government of India Act, 1935. An opportunity to show cause is reasonable even if it does not contemplate a further enquiry to examine witnesses before the authority competent to impose punishment provided there has been a fair and full enquiry at an earlier stage before the enquiry officer—Major U. R. Bhatt v. Union of India, AIR 1962 SC 1344; Khem Chand v. Union of India, AIR 1958 SC 300 : 1958 SCJ 497.

Now the question arises when the departmental actions become justiciable? As pointed out in State of Andhra v. Sree Rama Rao, AIR 1963 SC 1723, the High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could even have arrived at that conclusion or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there
be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

Now we shall discuss in the following pages "reasonable opportunity", "natural justice" and "mala fide", which very often afford grounds for challenging the enquiry.

2. Reasonable opportunity: Requirement of

What is reasonable opportunity has not been defined in the Constitution or the General Clauses Act. But the words "reasonable opportunity" have acquired a legal meaning and it cannot be left to the vagaries of each individual. The word "reasonable" must, therefore, mean according to rules of natural justice which are rules of law.

Prior to the enforcement of the Constitution the words "reasonable opportunity" were to be found under section 240 of the Government of India Act, 1935. Section 240 of the Government of India Act, 1935 was interpreted by the Privy Council in High Commissioner of India v. I. M. Lal, AIR 1948 PC 121. According to that decision the reasonable opportunity means opportunity to the employee charged at two stages, (i) at the enquiry, (ii) after the enquiry. The observations of Privy Council in the said case may be reproduced below:

"In the opinion of their Lordships, 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 the stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which sub-section (3) makes provision. Their Lordships would only add 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.

"In their Lordships' view, the substance of the protection of Rule 55 is also included in section 240 (3) and to that is superadded by way of further protection, the necessity of giving yet another opportunity to the Government servant at the stage where the charges are proved against him and a particular punishment is tentatively proposed to be inflicted on him."

As observed in State of U. P. v. Om Prakash, 1969 SLR 890:

"Reasonable opportunity contemplated by section 240 of the Government of India Act, 1935 as under Article 311 (2) of the Constitution
of India primarily consists of, (i) opportunity to the concerned officer to deny his guilt and establish his innocence which means he must be told what the charges against him are and the allegations on which such charges are based, (ii) he must be given a reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf, and (iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict, which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him. Further the enquiry must be conducted in accordance with the principles of natural justice.”

The Supreme Court in **Khem Chand v. Union of India,** AIR 1958 SC 300, explained the law as to two opportunities in the following words:

“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 cause 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 these provisions is to give 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 him 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 some 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."

In State of Assam v. Bimal Kumar, AIR 1963 SC 1612, Gajendragadkar, J., spoke for the Court as under:

"It is now well settled that a public officer against whom disciplinary proceedings are intended to be taken is entitled to have two opportunities before disciplinary action is taken against him. An enquiry must be conducted according to the rules prescribed in that behalf and consequently with the requirements of natural justice. At this enquiry, the public servant concerned would be entitled to test the evidence adduced against him by cross-examination, where necessary, and to lead his own evidence. In other words, at this first stage of the proceedings he is entitled to have an opportunity to defend himself. When the enquiry is over and the enquiring officer submits his report, the dismissing authority has to consider the report and decide whether it agrees with the conclusions of the report or not. If the findings in the report are against the public officer and the dismissing authority agrees with the said findings, a stage is reached for giving another opportunity to the public officer to show cause why disciplinary action should not be taken against him. In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the guilt of the public officer as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. There is no doubt that in response to this notice, the public officer is entitled to show cause not only against the action proposed to be taken against him, but also against the validity or correctness of the findings recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails to substantiate his innocence, the action proposed to be taken against him is either unduly severe or not called for. This position is not in dispute....

"The High Court seems to have taken the view that in order that the public officer may have a reasonable opportunity, the dismissing authority must indicate its conclusions on the findings recorded by the enquiring officer and must specify reasons in support of them. According to this view, the fact that the
copy of the report made by the enquiring officer was sent to the delinquent officer along with the notice indicating the nature of the action proposed to be taken against him, does not help to meet the requirement of Article 311 (2). The argument is that unless this course is adopted, it would not be clear that the dismissing authority had applied its mind and had provisionally come to some conclusions both in regard to the guilt of the public officer and the punishment which his misconduct deserved. It may be conceded that it is desirable that the dismissing authority should indicate in the second notice its concurrence with the conclusions of the enquiring officer before it issues the said notice under Article 311 (2). But the question which calls for our decision is if the dismissing authority does not expressly say that it has accepted the findings of the enquiring officer against the delinquent officer, does that introduce such an infirmity in the proceedings as to make the final order invalid? We are not prepared to answer this question in the affirmative. It seems to us that it would be plain to the delinquent officer that the issuance of the notice indicating the provisional conclusions of the dismissing authority as to the punishment that should be imposed on him, obviously and clearly implies that the findings recorded against him by the enquiring officer have been accepted by the dismissing authority; otherwise there would be no sense and no purpose in issuing the notice under Article 311 (2). Besides, we may add that in the present case, the affidavit made by appellant No. 2 clearly shows that before the impugned notice was served on the respondent, the Government had accepted the findings of the enquiring officer which means that the Government agreed with the enquiring officer in regard to both sets of findings recorded by him. Therefore, we do not think that the failure to state expressly that the dismissing authority has accepted the findings recorded in the report against the delinquent officer, justifies the conclusion that the notice given in that behalf does not afford a reasonable opportunity to the delinquent officer under Article 311 (2). On receiving the notice in the present case it must have been obvious to the respondent that the findings recorded against him by the enquiring officer had been accepted by the appellants and so, we think it would not be reasonable to accept the view that in the present case, he had no reasonable opportunity as required by Article 311 (2).

“We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311 (2). In such a case, it would be obviously necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it
would be impossible to issue the notice at all. There may also be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and against him on other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in their entirety, it is another matter; but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or all of those recorded in his favour and proceeds to specify the nature of action proposed to be taken on its own conclusions, it would be necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be based only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer are, according to the dismissing authority, proved. In order to give the delinquent officer a reasonable opportunity to show cause under Article 311 (2), it is essential that the conclusions provisionally reached by the dismissing authority must in such cases, be specified in the notice. But where the dismissing authority purports to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that the dismissing authority must say that it has so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do not think that the words used in Article 311 (2) justify the view that the failure to make such a statement amounts to contravention of Article 311 (2). In dealing with this point, we must bear in mind that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in a commonsense manner, the respondent would not have found any difficulty in realising that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in their entirety."

The point again came up before the Supreme Court in Union of India v. H. C. Goel, AIR 1964 SC 364:

"In this connection we may add that unless the statutory rule or the specific order under which an officer is appointed to hold an enquiry so required, the enquiry officer need not make any recommendations as to the punishment which may be imposed on the delinquent officer in case the charges framed against him are held proved at the enquiry; if however, the enquiry officer makes any recommendations, the said recommendations like his findings on the merits are intended merely to supply appropriate material for the consideration of the Government. Neither the findings, nor the recommendations, are binding on the Government—A. N. D'Silva v. Union of India, AIR 1952 SC 1130.

"Let us now briefly consider whether the observations on which the respondent rests his case justify his contention. In 1945 S.L.I.—25
FCR 103, Spens, C. J., examined the provisions of section 240 (3) of the Government of India Act, 1935 and observed that the said sub-section involves in all cases 'where there is an enquiry and as a result thereof some authority definitely proposes dismissal, or reduction in rank, that the person concerned shall be told in full, or adequately summarised form, the results of that enquiry and the findings of the enquiring officer and be given an opportunity of showing cause with that information why he should not suffer the proposed dismissal or reduction. Mr. Chatterji suggests that these observations indicate that it is only on the basis of the findings recorded by the enquiry officer that the second notice can be issued. In our opinion, this argument is completely misconceived. In the case of I. M. Lal, 1945 FCR 103: AIR 1945 FC 47, the findings were against him and it is by reference to the said findings that the observations made by Spens, C. J., must be considered. If the findings are against the public servant, and the Government, on considering the evidence, accept the said findings provisionally, it would be right to say that on the said findings the second notice is served on the public servant, and so, he should be given a clear idea as to the nature of the said findings. That, of course, does not mean that the findings of the enquiring officer are binding and virtually concludes the matter.

"The same comment has to be made about the observations made by S. R. Das, C. J., in the case of Khem Chand, AIR 1958 SC 300: 1958 SCR 1080. Summarising his conclusions, the learned Chief Justice observed, inter alia, that the second opportunity to which a public servant is entitled can be effective only if 'the competent authority after the enquiry is over and after applying its 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. It is obvious when the learned Chief Justice refers to the charges proved against the Government servant, it is not intended to be suggested that the findings made by the enquiry officer in that behalf are final. The enquiry report along with the evidence recorded constitutes the material on which the Government has ultimately to act. That is the only purpose of the enquiry held by competent officer and the report which he makes as a result of the said enquiry. Therefore, we have no hesitation in holding that the High Court was in error in coming to the conclusion that the appellant was not justified in differing from the findings recorded by the enquiry officer. As we have just indicated, if it is held that the report of the enquiry officer is not binding on the Government, then the constitutional safeguard afforded by Article 311 (1) and (2) cannot be said to have been contravened by the appellant and the grievance made by the respondent in that behalf must fail."
right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed or otherwise dealt with so as to attract Article 311 (2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal is based on no evidence. In fact, the fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this position in law.

"He, however, attempted to argue that if the appellant acted bona fide, then the High Court would not be justified in interfering with its conclusion though the High Court may feel that the conclusion is based on no evidence. His contention was that cases where conclusions are reached by the Government without any evidence, could not, in law, be distinguished from cases of mala fides; and so he suggested that perverse conclusions of fact may be and can be attacked only on the ground that they are mala fide, and since mala fides were not alleged in the present case, it was not open to the respondent to contend that the view taken by the appellant can be corrected in writ proceedings.

"We are not prepared to accept this contention. Mala fide exercise of power can be attacked independently on the ground that it is mala fide. Such an exercise of power is always liable to be quashed on the main ground that it is not a bona fide exercise of power. But we are not prepared to hold that if mala fides are not alleged and bona fides are assumed in favour of the appellant its conclusions on a question of fact cannot be successfully challenged even if it is manifest that there is no evidence to support it. The two infirmities are separate and distinct, though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is
proved that there is no evidence to support the conclusion of the Government, a writ of *certiorari* will not issue without further proof of *mala fides* . . .”

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 enquiry 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, 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.

This procedure also has the merit of giving some assurance to the officer concerned that the competent authority maintains an open mind with regard to him. If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the Government servant concerned the latter may well feel that the competent authority had formed an opinion against him, generally on the subject-matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done *Khem Chand v. Union of India*, AIR 1958 SC 300.

In *State of Orissa v. Bidyabhusan*, AIR 1963 SC 779, the Supreme Court made the following observations:

“The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not 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. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under Article 309 of the Constitution. But servant impugned, is not concerned to decide whether the sentence imposed, provided it is justifiable by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were ‘unassailable’, the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore, if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the finding of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to consider the question.”

In State of Madhya Pradesh v. Chintaman, AIR 1961 SC 1623, the Supreme Court laid down the law as under:

“There is no dispute that under Article 311 (2) the respondent is entitled to have such a reasonable opportunity. A proper opportunity must be afforded to him at the stage of the enquiry after the charge is supplied to him as well as at the second stage when punishment is about to be imposed on him. If the first enquiry was materially defective and denied the respondent an opportunity to prove his case it is impossible to hold that a reasonable opportunity guaranteed to a public servant by Article 311 (2) had been afforded to the respondent . . .

“It cannot be denied that then an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Article 226 it is for the High Court to consider whether the constitutional requirements of Article 311 (2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public servant relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary orders passed by
him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Article 311 (2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of law. As Venkatarama Aiyar, J., has observed in Union of India v. T. R. Verma, 'stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity to adduce all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them. It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice.'

The Supreme Court in U. R. Bhutt v. Union of India, AIR 1962 SC 1344, discussed the case of Khem Chand v. Union of India, AIR 1958 SC 300, and observed as under:

"Counsel for the appellant contends that the observations made by Das, C. J. indicate that at both the stages, namely, first before the Enquiry Officer and secondly, before the authority competent to impose punishment, the public servant concerned should be afforded the three opportunities set out in the judgment in Khem Chand's case, AIR 1958 SC 300 : 1958 SCR 1080. But this contention is, in our judgment, devoid of force. On page 1099 (of SCR) (at page 508 of AIR) the learned Chief Justice observed approving the view of the Privy Council in High Commissioner for India and Pakistan v. I. M. Lal, AIR 1948 PC 121 : 75 IA 225, that if the public servant has been through the enquiry under Rule 55, it would not be reasonable that he should ask for a repetition at that stage if duly carried out, which implied that if no enquiry has been held under Rule 55 or any analogous rule applicable, then it would be quite reasonable for him to ask for an enquiry. It is evident that an
opportunities to show cause is reasonable even if it does not contemplate a further opportunity to examine witnesses provided there has been a fair and full enquiry at an earlier stage before the Enquiry Officer. In the present case there was an enquiry before the Enquiry Officer. The Enquiry Officer had afforded to the appellant an opportunity to remain present and make his defence. It is true that all the witnesses of the State who could have been examined in support of their case were not examined *viva voce* but that was because of the conduct of the appellant who declined to participate in the enquiry. He declined to take part in the proceeding and the Enquiry Officer was, in our view, justified in proceeding to act upon the materials placed before him. Once the appellant expressed a desire not to take further part in the proceeding of the Enquiry Officer, that officer was entitled to proceed *ex parte* and to act upon the materials placed before him. The enquiry made by the Enquiry Officer cannot, therefore, be challenged either on the ground of unfairness or incompleteness, the appellant having been afforded the protection of the Constitution guaranteed under section 240, clause (3) of the Government of India Act. The order of discharge from service passed against him by order of the Governor-General is not liable to be questioned on the ground that the materials may not have justified the passing of that order. It is not within the competence of the Civil Court to sit in judgment over the decision of the authority who is competent by law to dismiss a public servant provided he has been afforded an opportunity to defend himself consistently with the substance of the constitutional guarantee."

In *State of Uttar Pradesh v. S. C. Sharma*, AIR 1968 SC 285: (1967) 2 SCWR 648, the Court held that Rule 55:1) of the Civil Services (Classification, Control and Appeal) Rules provided for a full-blooded enquiry which is the counter-part of a regular trial; witnesses have to be examined in support of the allegations, opportunity has to be given to the delinquent officer to cross-examine them and to lead evidence in his defence.

In *Amalendu Ghosh v. District Traffic Superintendent, North Eastern Railway, Katihar*, AIR 1960 SC 992: (1960 2 Lab LJ 61, a statutory departmental enquiry into a railway accident was held in order to find out who was responsible for the accident. The appellant, a station master and the pointsmen concerned gave evidence at the enquiry and the committee gave a finding that both of them were responsible for the accident. The appellant was then served with notice to show cause by written explanation why the penalty of reduction in rank should not be imposed on him. The appellant gave a written explanation. No subsequent enquiry was held and the appellant was served with an order reducing him in rank. On these facts the Supreme Court held:

"It is obvious that the enquiry into the accident which was held by the Statutory Committee was not directed against the appellant as such. It was an enquiry held as is always
done in cases of accident to find out who was responsible for the accident. In this enquiry the appellant gave evidence and so did the other witnesses. It does appear that the committee held that the statements made by the appellant in support of the pointsman were not true and that along with the pointsman the appellant was also negligent in the discharge of his duties. . . . there can be no doubt that it is as a result of this departmental enquiry into the accident that occasion arose to take action against the appellant; and it was obviously necessary that he should have been given a chance to show his innocence, by holding an enquiry in respect of the charge that he was responsible for the accident. The findings reached by the enquiry committee as a result of the statutory enquiry cannot be said to be findings made against the appellant in a departmental enquiry made against him for alleged neglect of duty or violation of the statutory rules. . . . It may be that the authorities concerned took the view that the departmental enquiry into the accident was enough but that clearly is not right. At the departmental enquiry nobody is accused of negligence or dereliction of duty. It is a kind of investigation made by the department under statutory rules. Therefore, we are satisfied that the appellant is justified in challenging the validity of the impugned order on the ground that a proper enquiry has not been made and he has not been given a reasonable opportunity to meet the charge against him. The said order must, therefore, be set aside”.

In Jagdish Prasad Saxena v. State of M. P., AIR 1961 SC 1070, the Supreme Court observed:

“In such a case, even if the appellant had made some statements which amounted to admissions it is open to doubt whether he could be removed from services on the strength of the said alleged admissions without holding a formal enquiry as required by the rules. But apart from this consideration, if the statements made by the appellant do not amount to clear and unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him. Under Article 311 (2) he was entitled to have a reasonable opportunity of meeting the charge framed against him, and in the present case, before show-cause notice was served on him he has had no opportunity at all to meet the charge. After the charge-sheet was supplied to him he did not get an opportunity to cross-examine (Kethulekar and others). He was not given a copy of the report made by the enquiry officer in the said enquiries. He could not offer his explanation as to any of the points made against him; and it appears that from the evidence recorded in the previous enquiries as a result of which Kethulekar was suspended an inference was drawn against the appellant and show-cause notice was served on him. In our opinion, the appellant is justified in contending that
in the circumstances of this case he has had no opportunity of showing cause at all, and so the requirement of Article 311 (2) is not satisfied...

"The Minister may have thought that the facts to which his attention was invited indicated that the appellant must have been present at the warehouse when the offence took place; but it is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a charge-sheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge-sheet. In the present case preliminary enquiries of a general type were held and they ended in a finding against Kethulekar. The reports did not show that the appellant was guilty of the offence for which he was ultimately dismissed from service. The delay made in giving the appellant the charge-sheet as well as communicating to him the final order of dismissal shows that the authorities did not think that time was the essence of the matter, and so there was hardly any justification for not holding a formal and proper enquiry after the appellant was given a charge-sheet on October 17, 1951. In our opinion, therefore, the High Court was in error in coming to the conclusion that no prejudice had been caused to the appellant as a result of the respondent's failure to hold an enquiry against him after supplying him with a charge-sheet. The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admission made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with the cases of orders passed against public servants terminating their services."

In the **State of Punjab v. Dewan Chunilal**, (1970) 1 SCC 479, the State of Punjab challenged the judgment and order of the Punjab High Court upholding the decree of the Subordinate Judge, Gurgaon, declaring that the dismissal of the respondent from service was illegal and inoperative. The respondent, a Sub-Inspector of Police, was called upon to answer a charge framed on October 12, 1949, setting forth extracts from his confidential character roll showing inefficiency and lack of probity while in service from 1941 to 1948 and to submit his answer to the *prima facie* charge of inefficiency as envisaged in paragraph 16, 25 (2) of the Punjab Police Rules.

The confidential report's extracts whereof were contained in the charge-sheet make it clear that the respondent was being accused of laziness and ineffectiveness and as having a doubtful reputation as to his honesty. Excepting for the year 1948 wherein a specific instance of corruption was charged against him the other reports only contained generally adverse remarks.

S. L. I.—26
The respondent pleaded not guilty to the charge and filed a list of 68 witnesses whom he sought to examine in his defence. He also gave a summary of the facts about which each of the witnesses was to depose. The enquiry officer allowed him to examine 21 witnesses in defence. No witness was examined on behalf of the Department. On 25th May, 1950 Bishambhar Das, Superintendent of Police, made a report that the charge had been fully brought home to the respondent and it was suggested that he should be dismissed. The Deputy Inspector-General of Police asked him to show cause why he should not be dismissed from service. After receipt of written representation made by the respondent and recording his statement the Deputy Inspector-General of Police passed an order dismissing the respondent from service.

The respondent then filed his suit in the Court of the Subordinate Judge, Gurgaon, wherein his main complaint was that the enquiring officer did not record any evidence in support of the charge nor were the persons making the reports examined direct and in his presence with opportunity for him to cross examine the persons who had made those reports.

It was urged that the crossing of the efficiency bar must be regarded as giving him a clean bill up to that date and in view of this the reports of 1941 and 1942 should not have been taken into consideration against him.

The High Court opined that the enquiry officer should not have neglected to summon five officers who made reports about the respondent and were available for examination at the enquiry.

The Supreme Court held:

"In our view reports earlier than 1942 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year. It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944. It will be noted that there was no specific complaint in either of the two years and at best there was only room for suspicion regarding his behaviour...

"In our view the High Court arrived at the correct conclusion and on the facts of this case it is impossible to hold that the respondent had been given reasonable opportunity of conducting his defence before the enquiry officer. From what we have stated it is clear that if the enquiry officer had summoned at least those witnesses who were available and who could have thrown some light on the reports made against the respondent the report might well have been different. We cannot also lose sight of the fact that charges based on the reports for the years 1941 and 1942 should not have been levelled against the respondent."

In State of U. P. v. Om Prakash Gupta, (1969) 3 SCC 775 : 1969 SCR 890, the respondent filed a suit challenging, on various grounds, the
validity of the order dismissing him. The Judge who tried the suit set aside the order of dismissal on the sole ground that a second show-cause notice as required by section 240 of the Government of India Act, 1935 had not been given. This decision was upheld in appeal both by the High Court as well as by the Supreme Court. In its judgment, the Trial Court had observed that it was open to the Government to continue the second stage of the enquiry in accordance with law. The Government set aside the order of dismissal made by it. At about the same time it issued a notice to the respondent calling upon him to show cause why he should not be dismissed from service on the basis of the findings reached by the enquiry officer. By that notice he was required to show cause against the proposed punishment. On receipt of that notice, the respondent wrote to the Government requesting that he may be allowed time up to July 31, 1949 to show cause against the proposed punishment. But the Government granted him time up to June 25, 1949. He was told that no further time will be given to him and if he failed to show cause by that time; it will be deemed that he has no cause to show. Despite this warning, the respondent did not show cause against the proposed punishment. On the other hand he challenged the Government's right to call upon him to show cause against the proposed punishment as he proposed to file an appeal against the order of the Trial Court in so far as that Court did not uphold his contention that the enquiry held was wholly vitiated. Thereafter the Government proceeded ex parte. It accepted the report of the enquiry officer, came to a tentative conclusion that the respondent should be dismissed; it consulted the Public Service Commission afresh and dismissed the appellant.

As a result of the aforesaid order another round of litigation stated which culminated in appeal before the Supreme Court. The respondent challenged the impugned order in Civil Suit No. 14 of 1953 in the Court of II Additional Civil Judge, Allahabad on various grounds.

The Trial Court came to the conclusion that there were no serious irregularities in the conduct of the enquiry. It held that even though there were technical breaches of some of the rules, in its opinion, those breaches were not substantial. It further held that specific charges had been served on the respondent; he had been given reasonable time to file his written statement; the oral enquiry was held in his presence and that he was heard in person. It also held that the enquiry officer had given reasonable opportunity to the respondent to cross-examine the witnesses. In conclusion it observed, “my clear opinion, therefore, is that there has been no breach of Rule 55 as contended to by the plaintiff. The procedure laid down in Rule 55 has been substantially adhered to and Mr. Bishop was also conscious of this fact all the time.”

The Trial Court rejected the contention of the respondent that he had not been given reasonable opportunity to show cause against the proposed punishment. Rejecting the contention of the respondent that the impugned order is not valid as the same was not made in the name of Governor, the Trial Court observed that the order was made in the name of the Government. It was made after obtaining the approval of the Premier and with the concurrence of Public Service Commission; hence that order is substantially in accordance with law. In the result it dismissed the respondent's suit with costs.
The judgment of the Supreme Court was delivered by Hedge J. who observed:

"Reasonable opportunity contemplated by Section 240 of the Government of India Act, 1935 as under Article 311 (2) of the Constitution primarily consists of: (i) opportunity to the concerned officer to deny his guilt and establish his innocence which means he must be told what the charges against him are and the allegations on which such charges are based; (ii) he must be given reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf; and (iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him. See Khem Chand v. Union of India, 1958 SCR 1081.

"All these requirements have been substantially complied with in the present case. It is true that an enquiry under section 240 of the Government of India Act, must be conducted in accordance with the principles of natural justice. But these principles are not embodied principles. What principle of natural justice should be applied in a particular case depends on the facts and circumstances of that case. All that the Courts have to see is whether the non-observance of any of those principles in a given case is likely to have resulted in deflecting the course of justice. In the present case so far as the first charge is concerned, the fact that the respondent was not given full opportunity to cross examine Hafiz Habib Beg could not have in the least affected the finding of the enquiry officer as it was primarily based on the admissions made by the respondent. The High Court was not right in its conclusion that the report of the enquiry officer had not been made available to the respondent before he was called upon to show cause against the proposed punishment. A summary of that report had been given to him when he asked for it for the purpose of submitting a memorial to the Government against the order made in 1944 dismissing him from service. It is not shown that summary did not contain all the relevant facts and circumstances taken into consideration as well as the conclusions reached by the enquiry officer and the recommendations made by him. The entire records of the enquiry were before the Courts in proceedings commenced by the respondent in 1948 and quite clearly it would have included the report of the enquiry officer. Further it was open to the respondent to ask for a copy of that report when he was asked in 1949 to show cause against the proposal to dismiss him. He did not do so nor did he object to the notice calling upon him to show cause why he should not be dismissed, on the ground that he had not been supplied with a copy of the report made by the
enquiry officer. The learned Judges of the High Court were wholly wrong in holding that there was no proof to show that Mr. Bishop had been appointed to enquire into the allegations. No such plea had been taken in the plaint. There is a presumption that official acts had been done according to law.

"In this Court, the respondent who argued his own case contended that the enquiry was vitiated because the enquiry officer had relied on the statements given by some of the witnesses behind his back; and he had not been given the true copies of the statements of the witnesses recorded by the Deputy Commissioner; that the translations of those statements given to him were full of mistakes and that Mr. Bishop was biased against him.

"This Court has repeatedly laid down that the fact that the statements of the witnesses taken at the preliminary stage of the enquiry were used at the time of the formal enquiry does not vitiate the enquiry if those statements were made available to the delinquent officer and he was given opportunity to cross-examine the witnesses in respect of those statements—See State of Mysore v. S. S. Makapur, (1963) 2 SCR 943. It is clear from the records of the case that the respondent had been permitted to go through the statements recorded from the witnesses by the Deputy Commissioner and prepare his own notes, he was supplied with the English translations of those statements and that he was permitted to cross-examine those witnesses in respect of those statements. It may be that there were some mistakes in the translations. In our opinion those mistakes could not have vitiated the enquiry. They were quite trivial mistakes. We agree reasonable time was given to the respondent to prepare his case."

Charges must be specific

For an opportunity to be reasonable a person must be told in the clearest terms and with full particulars what his alleged faults are.

In Hukum Chand Malhotra v. Union of India, AIR 1959 SC 536, it was argued that as the show-cause notice was against any of the three major punishments, no reasonable opportunity was given to show cause against the actual punishment sought to be inflicted. This argument did not find favour with the Supreme Court who observed:

"Therefore, the real point for decision both in I. M. Lal’s case, AIR 1948 PC 121 and Khem Chand’s case, AIR 1958 SC 300, was that no opportunity had been given to the Government servant concerned to show cause after a stage had been reached when the charges had been established and the competent authority had applied its mind to the gravity or otherwise of the charges proved and tentatively proposed the punishment to be given to the Government servant for the charges so proved. It is true that in some of the observations made in those two
decisions the words ‘actual punishment’ or ‘particular punishment’ have been used, but those observations must, however, be taken with reference to the context in which they were made."

"Let us examine a little more carefully what consequences will follow if Article 311 (2) requires in every case that the ‘exact’ or ‘actual’ punishment to be inflicted on the Government servant concerned must be mentioned in the show-cause notice issued at the second stage. It is obvious and Article 311 (2) expressly says so, that the purpose of the issue of a show-cause notice at the second stage is to give the Government servant concerned a reasonable opportunity of showing cause why the proposed punishment should not be inflicted on him; for example, if the proposed punishment is dismissal, it is open to the Government servant concerned to say in his representation that even though the charges have been proved against him, he does not merit the extreme penalty of dismissal, but merits a lesser punishment, such as removal or reduction in rank. It is obligatory on the punishing authority to state in the show-cause notice at the second stage the ‘exact’ or ‘particular’ punishment which is to be inflicted, then a third notice will be necessary if the State Government accepts the representation of the Government servant concerned. This will be against the purpose for which the second show-cause notice was issued.

"Then, there is another aspect of the matter which has been pointedly emphasized by Dulat, J. ‘If in the present case the show-cause notice had merely stated the punishment of dismissal without mentioning the other two punishments, it would still be open to the punishing authority to impose any of the lesser penalties of removal or reduction in rank and not grievance could have been made either about show-cause notice or the actual punishment imposed. Can it be said that the enumeration of the other two punishments in the show-cause notice invalidated the notice? It appears to us that the show-cause notice in the present case by mentioning the three punishments gave a better and fuller opportunity to the appellant to show cause why none of three punishments should be inflicted on him. We desire to emphasize here that the case before us is not one in which the show-cause notice is vague or of such a character as to lead to the inference that the punishing authority did not apply its mind to the question of punishment to be imposed on the Government servant. The show-cause notice, dated 14th April, 1954, stated in clear terms that ‘the President is provisionally of opinion that a major penalty, namely, dismissal, removal or reduction, should be enforced on you’. Therefore, the President had come to a tentative conclusion that the charge proved against the appellant merited any one of the three penalties mentioned therein and asked the appellant to show cause why any one of the aforesaid three penalties should not
be imposed on him. We see nothing wrong in principle in the punishing authority tentatively forming the opinion that the charges proved merit any one of the three major penalties and on that footing asking the Government servant concerned to show cause against the punishment to be taken in the alternative in regard to him. To specify more than one punishment in the alternative does not necessarily make the proposed action any the less definite; on the contrary, it gives the Government servant better opportunity to show cause against each of those punishments being inflicted on him, which he would not have had if only the severest punishment had been mentioned and a lesser punishment not mentioned in the notice had been inflicted on him."

**Disciplinary authority using against employee charges of which he was acquitted without warning him**

If the Conservator of Forests (Punishing Authority) intended taking the charges on which appellant (Forester) was acquitted into account it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words the Conservator of Forests, used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of Forests wanted to use them, he should have appraised to appellant of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of dismissal passed by Conservator of Forests modified by the State Government into one of discharge from service cannot be upheld. The order is accordingly set aside and the case remitted to the Conservator of Forests for dealing in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them—*Narayan Misra v. State of Orissa*, 1969 SLR 657 (659).

**Statement of allegations accompanying the charge-sheet not supplied—Effect—Supplying of Statement of allegations at the stage of second show cause notice, if admissible.**

The whole object of furnishing the statement of allegations accompanying the charge-sheet is to give all the necessary particulars and details which would satisfy the requirements of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied with the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges. Even if the Enquiry Officer had made a report against him the appellant could have been given further opportunity at the stage of the second show-cause notice to adduce any further evidence, if he so desired, after he had been given the necessary particulars and material in the form of a statement of allegations which had never been supplied to him before. This
could undoubtedly be done in view of the provisions of Article 311 (2) of the Constitution of India, as they existed at the material time. The entire proceedings show a complete disregard of Fundamental Rule 55 in so far as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. There is no matter of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him—Surath Chandra Chakrabarty v. The State of West Bengal, 1971 SLR 103.

3. Natural Justice, : Requirements of

There are certain basic principles relating to the requirements of natural justice which must be followed in all cases by those who hold any judicial enquiry unless of course the statute in express terms or by necessary implication absolves them from the obligation to do so. Very broadly expressed, the first principle is that the party to the controversy must know with reasonable certainty the nature of the case against him. Secondly, he should be given a fair and proper opportunity to meet the case against him and to state his own case. According to this principle he should have a fair and proper opportunity to make any relevant statement which he may desire to bring forward and correct or controvert any relevant statement prejudicial to his view and lastly tribunal must conduct the enquiry and reach its conclusion in good faith,

The question whether the requirements of natural justice, have been met by the procedure adopted in a particular case must depend to a great extent on the facts and circumstances of the case on the point. The requirements of natural justice cannot as such be reduced to any formula exclusive or inclusive which can have universal application in every kind of enquiry, for a good deal may depend on the subject-matter, the nature of the enquiry itself, the nature and constitution of the tribunal or authority which holds the enquiry and the rule under which the enquiry is held. The procedure also need not be analogous procedure or procedure of Courts of justice but would depend upon the subject-matter etc.

Without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them—See AIR 1931 SC 1623 and 1958 SCJ 142.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed—Union of India v. T. R. Varma, AIR 1957 SC 882.

In New Prakash Transport Co. v. New Suwarna Transport Co., 1957 SCR 98 : AIR 1957 SC 232, the Supreme Court held that the rules of of natural justice were not absolute and that every case had to be
reviewed in the light of the statutory provisions governing the procedure under which the rights had to be decided.

In Phulbari Tea Estate v Its Workmen, AIR 1959 SC 1111, was a case under the Industrial Dispute Act and there was no question of the applicability of Article 311 of the Constitution, but the Court referred to and virtually applied the principles of Article 311. In that case, an enquiry was held against the employee who was charged for complicity in the theft of two motor-lorry wheels with tyres from the garage of the company. The witnesses who were present during the enquiry, were not examined in the presence of the employees and the copies of the statements made by the witnesses were not supplied to him before he was asked to question them. Nor did it appear that the statements of the witnesses were read out to him. The statements were, however, produced before the Tribunal but the witnesses were not produced before it, for being cross-examined on behalf of the employee. On these facts the Court considered the question whether in the circumstances it could be said that an enquiry as required by principles of natural justice had been made in the case? The Court replied as under:

"We may in this connection refer to Union of India v. T. R. Verma, 1958 SCR 499; AIR 1957 SC 832. That was a case relating to dismissal of a public servant and the question was whether the enquiry held under Article 311 of the Constitution of India was in accordance with the principles of natural justice. This Court, speaking through Venkatarama Ayyar, J., observed as follows in that connection (at page 507 of SCR and at page 885 of AIR):

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given an opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them."

"It will be immediately clear that those principles were not followed in the enquiry which took place on March 12, inasmuch as the witnesses on which the company relied were not examined in the presence of Das. It is true that the principles laid down in that case are not meant to be exhaustive. In another case New Prakash Transport Co., Ltd. v. New Suwarna Transport Co., Ltd., 1957 SCR 98; AIR 1957 SC 232, this Court held that—"

"rules of natural justice vary which the varying constitutions of statutory bodies and the rules prescribed by the Legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what they may be put in the light of the provisions of the relevant Act.'

S.I.1.—27
In that case it was held that—

‘the reading out of the contents of the police report by the Chairman at the hearing of the appeal was enough compliance with rules of natural justice as there was nothing in the rules requiring a copy of it to be furnished to any of the parties.’

“That was, however, a case in which the police officer making the report was not required to be cross-examined, on the other hand the party concerned was informed of the material sought to be used against him and was given an opportunity to explain it. The narration of facts as to what happened on March 12, which we have given above, shows that even this was not done in this case, for there is no evidence that copies of the statements of witnesses who had given evidence against Das were supplied to him or even that the statements made by the witnesses to the manager were read out in extenso to Das before he was asked to question them. In these circumstances one of the basic principles of natural justice in an enquiry of this nature was not observed, and, therefore, the finding of the Tribunal that proper procedure had not been followed is justified and is not open to challenge.”

In a later decision reported in M/s. Khardah & Co. Ltd. v. The Workmen, AIR 1964 SC 719, the Supreme Court pointed out the difference between an enquiry under Article 311 of the Constitution and an enquiry under the Industrial Dispute Act and observed:

“In this connection, it is necessary to point out that unlike domestic enquiries against public servants to which Article 311 of the Constitution applies, in industrial enquiries, the question of the bona fides or mala fides of the employer is often at issue. If it is shown that the employer was actuated by a desire to victimise a workman for his trade union activities, that itself may, in some cases, introduce an infirmity in the order of dismissal passed against such a workman. The question of motive is hardly relevant in enquiries held against public servants, vide Union Territory of Tripura v. Gopal Chandra, AIR 1963 SC 601. That is another reason why domestic enquiries in industrial matters should be held with scrupulous regard for the requirements of natural justice. Care must always be taken to see that these enquiries are not reduced to an empty formality.”

Thus, the case of a Government servant cannot be equated with that of an industrial workers in view of Khardah’s case (supra).

In State of U. P. v. Mohammad Nooh, AIR 1958 SC 86; 1958 SCA 73, the observations of Supreme Court given below may be read with advantage:

“On the authorities referred to above it appears to us that there may conceivably be cases—and the instant case is in point—where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or tribunal
of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction of manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fairplay, the superior Court may, we think, quite properly exercise power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforesaid. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior Court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

As has been pointed out by the Supreme Court in _Naw Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd._, AIR 1937 SC 232 : 1957 SCR 98, the rules of natural justice vary with varying constitution of statutory bodies, and the rules prescribed by the Legislature under which they have to function, and the question whether in a particular case they have been contravened must be judged not by any prescribed notion but in the light of the provisions of the relevant Act.

In that case under the Motor Vehicles Act, 1939, there was a dispute regarding issue of permit for plying buses. Before the Nagpur High Court in appeal it was held that the order of the Regional Transport Authority was invalid because it contravened the principles of natural justice in so far as a report of the police submitted before the Appellate Authority was only read out and no opportunity was given to the parties to meet out the report. When the matter came before the Supreme Court, it was observed:

"It will thus be seen that though the substantive section creating the right of appeal does not in terms create any right in a respondent to be heard, the rules framed providing for the procedure before the Appellate Authority contemplate that sufficient notice shall be given to 'any other person interested in the appeal' which expression must include persons other than the appellant who may be interested in being heard against the points raised in support of the appeal. Neither the sections nor the rules framed
under the Act contemplate anything like recording oral or documentary evidence in the usual way as in Courts of law. Besides, the parties interested in the grant of stage-carriage permits or those interested against it, the police authority of the locality is also entitled to be heard both at the original stage and at the appellate stage.

"Thus the Motor Vehicles Act and the rules framed thereunder with particular reference to the Regional Transport Authority and the Appellate Authority do not contemplate anything like a regular hearing in a court of justice. No elaborate procedure has been prescribed as to how the parties interested have to be heard in connection with the question and who is to be granted a stage-carriage permit...... It has got to be observed that the question whether the rules of natural justice have been observed in a particular court must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the Legislature and in that sense the rules themselves must vary. The Regional Transport Authority is charged with the duty of granting or refusing a stage carriage permit...... In that connection the statute requires that authority to have regard to the matters set forth in section 47 of the Act, as already indicated. The police authority within whose local jurisdiction any part of the proposed route lies has also been given the right to make representations. But the police report submitted to the Regional Transport Authority or to the Appellate Authority, if it requires the police authority to do so, is not intended to do anything more than an expression of opinion by an authority interested in the maintenance of law and order, with particular reference to the question as to whether any of the applicants for a permit had anything to its credit or discredit as supplier or transport facilities. Such a report is meant more for the use of the authority in making or refusing a grant than for the use of the several applicants or anyone of them. In other words, it is in the nature of information supplied by the police in order to assist the authority in making up its mind...... Hence in our opinion, there was nothing in the rules requiring a copy of the police report to be furnished to any of the parties, nor was there any circumstance necessitating the adjournment of the hearing of the appeal, particularly when no request for such an adjournment had been made either by the first respondent or by any other party. At that time none of the parties appears to have made any grievance about the police report only being read out by the Chairman, or any request being made for an adjournment in order to adduce evidence pro and con. The rules framed under Chapter IV for 'the conduct and hearing of the appeals that may be preferred under this chapter' and section 68 (2) (b) do not contemplate any such facilities being granted to the parties, though it is open to the Appellate Authority to make any such 'further enquiry, if any, as it may deem necessary.'......
“As already indicated, the statutory provisions do not contemplate that either the Regional Transport Authority or the Appellate Authority had to record evidence or to proceed as if they were functioning as a Court of law. They had to decide between a number of applicants as to which of them was suitable for the grant of the fresh permit applied for. They took into consideration all the relevant matters and came to the decision which has not been attacked as partial or perverse. The only ground which survived before the Appellate Bench of the High Court was that the requirements of natural justice had not been satisfied. The only question that we have to determine is whether the Appellate Authority was justified in using the second report made by the police, though it had not been placed into the hands of the parties. The report did not directly contain any allegations against the first respondent. Hence there was nothing in that report which it could be called upon to meet. The only effect of that report was that many of the objections raised against the suitability of the appellant had been withdrawn by the police on further consideration of their records. The police report is more for the information of the authorities concerned with the granting of permits than for the use of the several applicants for such permits. In our opinion, therefore, the fact that the Appellate Authority had read out the contents of the police report was enough compliance with the rules of natural justice. We have also pointed out that no grievance was made at the time the Appellate Authority was hearing the appeal by any of the parties, particularly by the first respondent, that the second report should not have been considered or that they wished to have a further opportunity of looking into that report and to controvert any matter contained therein. They did not move the Appellate Authority for an adjournment of the hearing in order to enable it to meet any of the statements made in that report. But the learned counsel for the respondent suggested that the requirements of natural justice could not be waived by any of the parties and that it was incumbent upon the Appellate Authority to observe the so-called rules of natural justice. In our opinion, there is no warrant for such a proposition. Even in a Court of law a party is not entitled to raise the question at the appellate stage that he should have been granted an adjournment which he did not pray for in the Court of first instance. Far less, such a claim can be entertained in an appeal from a tribunal which is not a Court of Justice, but a statutory body functioning in a quasi judicial way.”

The principles of natural justice can be invoked only when the functions to be discharged by the tribunal are “judicial or quasi judicial” and not when they are purely administrative.

Dass, C. J., in Radheshyam v. State of M. P., AIR 1959 SC 107, cited with approval the celebrated definition of quasi judicial body
given by Atkin C. J. in Rex v. Electricity Commissioners, (1924) 1 KB 171, which still holds the field, namely:

"Whenever any body of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

This definition has been accepted as correct both in England and in India. Referring to this definition Das C. J. said:

"It will be noticed that the definition insists on three requisites each of which must be fulfilled in order that the act of the body may be quasi judicial act, namely, that the body of persons (1) must have legal authority, (2) to determine questions affecting the rights of parties, and (3) must have the duty to act judicially. Since a writ of certiorari can be issued only to correct the error of a Court or a quasi judicial body, it would follow that the real and determining test for ascertaining whether an act authorised by a statute is quasi judicial act or an administrative act, is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially as required by the third condition in the definition given by Atkin, C. J."

Even where an action to be taken was administrative in character, the ordinary rule of fairplay have nevertheless to be observed.

In Board of High School and Intermediate Education, U. P. v. Ghansham Das Gupta, AIR 1962 SC 1110, no opportunity whatever was given to the examinees to give an explanation and present their case before the Examination Committee and the Committee had decided to cancel their results and to debar them from appearing at the next examination. A writ petition was filed contending that no opportunity had been afforded to them to rebut the allegations made against them and that they were not informed about the nature of the unfair means they were alleged to have employed. The act of the Committee was challenged as violative of audi alteram partem rule of natural justice. A single Judge of the Allahabad High Court held that no duty was cast upon the Committee to act judicially and it was not obliged to give an opportunity to every examinee to be heard. The petition was rejected.

The matter then came up in Letters Patent Appeal before two Judges of that High Court. There was a disagreement between them on certain matters and, therefore, a reference to the third judge was called for. The two Judges were in agreement to the extent that no duty was cast on the Committee to act judicially. The third Judge dealt with the case on the basis that the Committee was acting merely administratively. On that assumption, also, the Judge expressed the view that the examinees were entitled to hearing. The appeal in accordance with the opinion of the third Judge, was allowed. When the matter came before the Supreme Court, the Supreme Court expressed its agreement with the principles which had been summarised by
Dass J., (as he then was), in the case of Province of Bombay v. Khushal Das, AIR 1950 SC 222, in the following words:—

"The principles, as I apprehend them are:

(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is *lis* and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is *quasi* judicial act; and

(ii) that if a statutory authority has powers to do any act which will *prerogatively* affect the subject, then although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a *quasi* judicial act provided the authority is required by the statute to act judicially."

In State of Orissa v. Dr. (Miss) Binapani Devi, AIR 1967 SC 1269, the Supreme Court held that an order fixing the date of birth of the Government servant concerned there and declaring that she should be deemed to have retired on a particular date on the basis of the date so determined without giving an opportunity to show cause against the action proposed was invalid on the ground that the determination was in violation of the principles of natural justice. It was there observed:

"The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the Service Register from holding an enquiry if there existed sufficient grounds for holding such enquiry and for refixing her date of birth. But such decision of the State could be based upon the result of an enquiry in a manner consonant with the basic concepts of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, if true, is not in the position of a judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice."

In Gopal Krishna v. State of M. P., AIR 1968 SC 240, the Court considered Fundamental Rule 54 and observed:

"It is true as Mr. Sen pointed out that F. R. 54 does not in express terms lay down that the authority shall give to the employee concerned the opportunity to show cause before he passes
the order. Even so, the question is whether the rule casts such a duty on the authority by implication. The order as to whether a given case falls under clause (2) or clause (5) of the Fundamental Rules must depend on the examination by the authority of all the facts and circumstances of the case and his forming the opinion therefrom of two factual findings; whether the employee was fully exonerated and in cases of suspension whether it was wholly unjustified. Besides, an order passed under this rule would obviously affect the Government servant adversely if it is one made under clauses (3) and (5). Consideration under this rule depending as it does on facts and circumstances in their entirety, passing an order on the basis of factual finding arrived at from such facts and circumstances and such an order resulting in pecuniary loss to the Government servant must be held to be an objective rather than a subjective function. The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action proposed is not afforded, as admitted it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice."

One of the principles of natural justice is that reasons should be given in support of orders passed by the domestic tribunal or authority.

In a recent case reported as *Madhya Pradesh Industries v. Union of India*, AIR 1966 SC 671, the Supreme Court observed:

"If Tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard.

"It is said that this principle is not uniformly followed by appellate Courts, for appeals and revisions are dismissed by appellate and revisional Courts in limine without giving any reasons. There is an essential distinction between a Court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by consideration of policy or expediency; but, an executive officer generally looks at things from the stand point of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate Courts invariably reasons are given except when they dismiss an appeal or revision in limine and that is because the
appellate or revisional Court agrees with the reasoned judgment of the subordinate Court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons. That apart, when we insist upon reasons, we do not prescribe any particular form or scale of the reason. The extent and the nature of the reasons depend upon each case. Ordinarily, the appellate or revisional tribunal shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the facts of each case.”

In Union of India v. T. R. Varma. AIR 1957 SC 882 : 1958 SCR 449 : 1958 SCJ 142 : 1958 SCA 110, the evidence was not recorded in conformity with the provisions of the Evidence Act and the enquiry was consequently attacked on two grounds:

(1) That the petitioner was cross-examined and was not enabled to make an oral statement on his own behalf.

(2) That the defence witnesses were not given an opportunity to tell their own version or to be examined by the petitioner as their depositions were confined to answers in reply to questions put by the Inquiry Officer.

In substance, the charge was that the respondent and his witnesses should have been allowed to give their evidence by way of examination-in-chief, and that only thereafter, the officer should have cross-examined them, but that he took upon himself to cross-examine them from the very start and had thereby violated well-recognised rules of procedure. There was also a complaint that the respondent was not allowed to put questions to them.

The Supreme Court observed:

“Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act, but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of law.

“Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence
the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witness examined by that party, and that no materials should be relied on against him whithout his being given an opportunity of explaining them.

In U. R. Bhatt v. Union of India, AIR 1962 SC 1344, the Supreme Court has decided the point in the following words:

"The Enquiry Officer is not bound by the strict rules of the law of evidence and when the appellant declined to take part in the proceedings and failed to remain present, it was open to the Enquiry Officer to proceed on the materials which were placed before him..."

In State of Madras v. G. Sundaram, AIR 1965 SC 1103 : (1965) 2 SCJ 662, the Supreme Court observed that in the matter of enquiry against a police officer, the procedure to be followed under the Police Rules [namely the Madras District Police Act, 1859 and the Madras Police Subordinate Service (Discipline and Appeal) Rules, 1950] as well as under Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948 was substantially the same and satisfied the requirements of natural justice.

Proceedings against employee Change in personnel after examination of some witnesses—Dismissal of employee based on report of Inquiry Committee after change in personnel.

In General Manager, Eastern Railway v. Juwala Prasad Singh, (1970) 1 SCC 103 : AIR 1970 SC 1095, the respondent used to serve as treasure guard in the Eastern Railway. A charge-sheet was issued by the Chief Cashier of the Railway wherein allegations of misappropriation of cash belonging to Government were levelled against him. An Inquiry Committee consisting of three persons was constituted to enquire into the charges. The charge-sheet had been issued after a fact finding committee of the very same persons had looked into the matter. After proceedings of the Inquiry Committee had gone for some time and some witnesses were examined one of the personnel "A" was transferred to some other place and the vacancy in the Committee was filled up by "V" as successor in office.

The proceedings were not started afresh but were continued from the stage at which "A" had dropped out. The Committee submitted a report finding the respondent guilty of all the three charges framed against him. On 1st February, 1961, the Chief Accounts Officer, Eastern Railway issued the second show-cause notice and by an order dated March 20, 1961, he was dismissed from service. The respondent's appeal to the General Manager of the Railway was unsuccessful. He thereafter moved the High Court and a single Judge quashed the order of dismissal. A Division Bench of the High Court dismissed the appeal of the Union of India, and the matter came before the Supreme Court.

The Division Bench of the High Court took the view that where the persons who decided the matter finally were not the identical persons who had heard the witnesses at least in respect of a part of the evidence, the departmental proceedings were vitiated by the violation of the principles of natural justice. Reliance was placed mainly on the
decision of the Supreme Court in **Gullapalli Nageswararao and others** v. **A.P. State Road Transport Corporation and another**, 1959 Supp (1) SCR 319.

According to the High Court:

"If the enquiring authority has a duty to come to a conclusion as to the guilt of the delinquent upon an evaluation or assessment of the evidence, then it is absolutely necessary that he who should decide the case should hear the evidence. It was impossible to evaluate the evidence of a witness taken on proxy, because one of the salient features of such proceedings is to observe the demeanour of the witness."

The High Court turned down the contention that according to the Discipline and Appeal Rules for railway servants the Disciplinary Authority had to look into the record itself in which case any defect in the Inquiry Committee would not be fatal. The High Court held that if the report of the Inquiry Committee was tainted with illegality then the entire departmental enquiry was vitiated.

The Supreme Court in his judgment observed:

"In our view the judgment of the High Court cannot be supported. Section V of the Indian Railway Establishment Code, Volume I, lays down by several rules the procedure to be followed for imposition of major penalties on railway servants. Under Rule 1708 the inquiry may be held, as far as may be, under Rules 1709 to 1715. Rule 1709 lays down that the Disciplinary Authority must frame definite charges on the basis of the allegations on which the enquiry is proposed to be held and such charges together with a statement of the allegations on which they are based have to be communicated in writing to the railway servant who is called upon to submit a written statement of his defence and also to state whether he desires to be heard in person. Such written statement may be submitted either to the Disciplinary Authority or to the Board of Enquiry or Inquiring Officer where one has been appointed under Rule 1710. Under the lastmentioned rule, the Disciplinary Authority may enquire into the charges itself or it may appoint a Board of Inquiry or an Inquiring Officer for the purpose to be termed the Inquiring Authority. Rule 1711 gives the railway servant the right to inspect and take extracts from official records as he may specify for preparing his defence. The inquiry procedure is set forth in Rule 1712. This rule lays down that an inquiry has to be made into the charges which are not admitted after the filing of the written statement. At the inquiry, a definite charge in writing must be framed and explained to the railway servant in respect of each offence which had not been admitted by him and the evidence in respect of it along with any evidence which he may adduce in defence must be recorded in his presence. The accused railway
servant may present his case with the assistance of another railway servant. Sub-rule (3) of the rule provides:

"The Inquiring Authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence including cross-examination of the railway servant and witnesses, as may be relevant or material in regard to the charges. The railway servant shall have the opportunity of adducing relevant evidence on which he relies, the evidence of witnesses shall be taken in his presence, he or the person assisting him shall be given the opportunity of cross-examining the witnesses and no material shall be relied on against him without his being given an opportunity of explaining them."

Under sub-rule (4):

"At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges, together with the reasons therefor......"

"Under sub-rule (5) the record of the inquiry shall include the charges framed against the railway servant and the statement of allegations furnished to him under Rule 1709, his written statement of defence, if any, the oral evidence taken in the course of the inquiry, the documentary evidence considered in the course of inquiry, the orders, if any, made by the Disciplinary Authority in regard to the inquiry and a report setting out the findings on each charge and the reasons therefor. Under Rule 1713 the Disciplinary Authority, if it is not the Inquiring Authority, shall consider the record of the inquiry and record its findings on each charge.

"It is after the observance of all the above formalities that penalty may be imposed under Rule 1704 or Rule 1715.

"In our opinion, the above procedure does not leave any scope for the guidance of a member of an Inquiry Committee consisting of more than one person by the impression formed by him about the truthfulness or otherwise of a particular witness examined during the inquiry. From the stage antecedent to the framing of the charges everything is recorded in writing; the allegations on which the charges are based are made known to the railway servant and he is called upon to file his written statement after looking into all the relevant records. The oral evidence of all the witnesses tendered during the enquiry is recorded in writing. Whereas here the oral evidence is recorded in the presence of three persons constituting the Inquiry Committee, any impression created by the demeanour of a particular witness on the mind of any one member cannot affect the conclusion afterwards arrived at jointly by them. It cannot be suggested that all the three persons would record their impressions separately about the demeanour of a witness and it is quite possible that a particular witness may appear to one member of the Committee to be untruthful without
his being considered so by the others. The members of the Inquiry Committee cannot record their findings separately but it is their duty to record findings on each of the charges together with the reasons therefor. It is to be noted that the duty of the Inquiry Committee ends with the making of the report. The Disciplinary Authority has to consider the record of the inquiry and arrive at its own conclusion on each charge. Whatever may be the impression created by a particular witness on the mind of one member of the Committee, the same is never translated into writing and the Disciplinary Committee merely goes by the written record after giving a personal hearing to the railway servant if he asks for it. Even if the Inquiry Committee makes a report absolving the railway servant of the charges against him, the Disciplinary Authority may, on considering the entire record come to a different conclusion and impose a penalty. This is amply borne out by a judgment of this Court in union of India v. H. C. Goel, AIR 1964 SC 364, where it was said that neither the findings nor the recommendations of the Inquiry Committee are binding on the Government.

"In such a state of affairs a change in the personnel of the Inquiry Committee after the proceedings are begun and some evidence recorded cannot make any difference to the case of the railway servant. The record will speak for itself and it is the record consisting of the documents and the oral evidence as recorded which must form the basis of the report of the Inquiry Committee. The Committee is not the punishing authority and the personal impression of a member of the Committee cannot possibly affect the decision of the Disciplinary Authority. In a state of affairs like this, we cannot see any reason for holding that any known principles of natural justice is violated when one member of the Committee is substituted by another.

"The observations of this Court in Gullapalli Nageswararao's case (Supra) have no bearing on the facts of the present case. There it was held that if a personal hearing is given by the Secretary of a Department and the Minister of the State has to decide on the notes put up by the Secretary, the procedure defeats the object of personal hearing. The observations at p. 367, that:

'Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides then personal hearing becomes an empty formality.'

"Can have no application to the facts of the case before us. The members of the Inquiry Committee who heard the arguments had the entire record before them and they had to go by the record.

"In proceedings before ordinary trial Courts of the land, both civil and criminal, it is not uncommon to find oral evidence
recorded before more than one presiding Judge or Magistrate. Common convenience requires it and statutes provide for it. It cannot be suggested that the Legislatures have enacted laws in disregard of an elementary principle of natural justice. Besides not unoften witnesses have to be examined on commission. Whenever a witness is so examined, the Judge does not have the benefit of watching his demeanour. The Criminal Procedure Code provides for more than one Magistrate recording the evidence of witnesses. Section 363, Cr. P. C. enjoins upon a Sessions Judge or a Magistrate to record such remarks (if any) as he thinks material respecting the demeanour of a witness whilst under examination. Order XVIII, Rule 15 of the Code of Civil Procedure empowers a Judge to treat the evidence recorded by his predecessor-in-office as if it had been taken down by him or under his direction under the said rule and he may proceed with the suit from the stage at which his predecessor left it, whenever his predecessor-in-office is prevented from concluding the trial of a suit by reason of death or transfer or some other cause. Instances are not rate when such powers have to be used either by a Judge hearing a civil suit or a Magistrate or a Sessions Judge hearing a criminal matter.

In the vast majority of cases both civil and criminal, a Judge does not come to any conclusion merely on the impression created by a witness while he is in the witness box. In all matters which go up in appeal, the appellate Court does not have any opportunity of watching the demeanour of the witnesses; it has to go by the record of the case. Of course if any comment is made by the trial Judge about the demeanour of a witness, the appellate Court takes note of it. But it never guides itself entirely by such comments. The entire evidence has to be looked into and assessed as a whole. Whereas here the punishing authority does not hear the evidence but goes by the record of the case the demeanour of a particular witness when giving evidence can have but little meaning and cannot influence the mind of the Disciplinary Authority in awarding punishment. We, therefore, hold that the High Court was not right in quashing the order of dismissal on the ground that the report of the Inquiry Committee was vitiated by the violation of any principle of natural justice as stated in the judgment. The appeal is, therefore, allowed and the order of the High Court set aside. There will, however, be no order as to costs."

4. Mala fides

In S. Sukhbans Singh v. State of Punjab, AIR 1962 SC 1711, a Tehsildar was recruited in the year 1936 and appointed as an Extra-Assistant Commissioner on probation in 1949. In 1952 he was reverted to the post of Tehsildar by an order duly served on him. This order was followed by a warning served on him on 18th September, 1953 and in this warning it was clearly stated that the officer was guilty of misconduct in several respects. It appears that the officer challenged the validity of the order reverting him to the post of a Tehsildar on the
ground that it amounted to punishment, and he also alleged that it was the result of the *mala fides*. The Court considered the relevant material adduced in the proceedings which showed that the record of the officer was extremely satisfactory and that the order reverting him showed that the Government was acting *mala fide*. In the course of the judgment the Supreme Court observed that having regard to the sequence of events which led to the reversion followed by the warning administered to the officer concerned in the light of his outstanding record, the reversion could also be held to be a punishment but the officer’s plea which proved effective was the plea of *mala fides* against the Government.

In *Partap Singh v. State of Panjab*, AIR 1964 SC 72, a Civil Surgeon who was granted leave preparatory to retirement was recalled and placed under suspension pending departmental enquiry into certain charges of misconduct. The order was challenged under Article 226 alleging that the orders of suspension and enquiry were passed at the instance of the Chief Minister, who had personal ill will. In order to decide the question of *mala fides*, the Supreme Court observed:

"Before entering into the details of the allegations made, the evidence in their support and the inferences to be drawn therefrom, we consider it useful to state the principles underlying this branch of law. The Service Rules which are statutory, vest the power to pass the impugned orders on the Government. The expression ‘Government’ in the context is the functionary within the State who is vested with executive power in the relevant field. Of course, the Constitution vests the executive power in a State in the Governor but he is constitutionally directed to act on the aid and advice of Ministers. In the case before us it is common ground that it was the Chief Minister who was in charge of the Health Department in which the appellant was employed and it was, therefore, the Chief Minister as the Minister in charge of that portfolio who initiated these proceedings, though the formal orders of the ministry were issued by the Secretaries, etc., of the Department in the name of the Governor. For the purposes of the present controversy the functionary who took action and on whose instructions, the action was taken against the appellant was undoubtedly the Chief Minister and if that functionary was actuated by *mala fides* in taking that action it is clear that such action would be vitiated. In this context it is necessary to add that though the learned Attorney-General at first hinted that he would raise a legal contention, that even if *mala fides* were established against the Chief Minister still the impugned orders could not be set aside, he did not further pursue the matter, but proceeded, if we may say so rightly, to persuade us that *mala fides* was not made out by the evidence on record. Such as argument, if right, would mean that even fraud or corruption, leaving aside *mala fides* would not be examinable by a Court and would not vitiate administrative order. As Lord Denning said in *Lazarus Estates Ltd. v. Beasley*, (1956) 1 All ER 341:

‘No judgment of a Court, nor order of a Minister, can be allowed to stand if it has been obtained by fraud.’
"In the circumstances we do not consider it necessary to deal with this aspect more fully or in greater details."

The Court also observed:

"...... the Court is not an appellate forum where the correctness of an order of Government could be canvassed and, indeed, it has no jurisdiction to substitute its own views as to the necessity or desirability of initiating disciplinary proceedings, for the entirety of the power, jurisdiction and discretion in that regard is vested by law in the Government. The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into account circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated mala fide for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event the fact that the authority concerned denies the charge of mala fides, or asserts the authority concerned denies the charge of mala fides, or asserts the absence of oblique motives or of its having taken into consideration improper or irrelevant matter does not preclude the Court from enquiring into the truth of the allegations made against the authority and affording appropriate relief to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out. ......"

"The Constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure that each and every authority in the State, including the Government, acts bona fide and within the limits of its power and we consider that when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual."

The Supreme Court upheld the plea of mala fides and observed:

"In the circumstances we are satisfied that the dominant motive which induced the Government to take action against the appellant was not to take disciplinary proceedings against him for misconduct which it bona fide believed to have committed, but to wreak vengeance on him for incurring his wrath and for the discredit that he had brought on the Chief Minister by the allegations that he had made in the article which appeared in the Blitz...... ...followed by the communication to the same newspaper by the appellant's wife in which these allegations were affirmed and which in large part we have found to be true. We, therefore, hold that the impugned orders were vitiates by mala fides in that they were motivated by an improper purpose which was outside that for which the power of discretion was conferred on the Government."
In *Mohammed Ibrahim v. The State of Andhra Pradesh and others*, 1970 SLR 110 : AIR 1970 SC 1399 : 1970 Lab IC 1164, a number of serious allegations were made by the appellant in his petition, in support of his plea that the order passed against him was made out of malice and practically no reply was submitted to that by the State. Apparently, the plea was urged before the High Court. The High Court observed in the course of the judgment that the appellant had challenged the order on the "ground of *mala fide"* but did not proceed to consider that plea. When the matter came before the Supreme Court it was held that there had been no fair trial of the petition filed by the appellant. The order of the High Court was set aside and the case remanded for trial according to law.


The Rules and Regulations of various departments have laid down the procedure that is to be followed in the departmental enquiry. In the absence of such rules, the enquiry officer is to observe the rules of natural justice. The powers of the Union and the States to lay down procedure and frame rules for enquiry is, however, subordinate to the provisions under the Constitution.

Article 311 of the Constitution provides that 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 and no such person 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. The exceptions to this general provision under the Article are 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 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 where the President, or Governor or Rajpramuk, 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.

After the service of a charge-sheet a departmental enquiry is to be held. The holding of such an enquiry is absolutely necessary and it is not open to the department to side-track the enquiry. The purpose of the enquiry is that the delinquent must know the charge against him and the material on which the charge is substantiated and have full opportunity to defend himself. Fact finding enquiry is no substitute for a departmental enquiry.

It is only where a Government servant tenders an unqualified apology, there is no necessity of holding an oral enquiry. It is, however, one thing to politely deny a charge and beg for pardon. It is quite another to unreservedly own one's fault and throw oneself at the mercy of the superior officer concerned. Where the fault is not accepted in unqualified language, an enquiry would be necessary.
To imagine that in view of the admissions made by him the enquiry would have served no useful purpose would be a matter of speculation which would be wholly out of place in dealing with cases of order passed against public servants terminating their services.—Jagdish Prasad v. State, AIR 1961 SC 1070.

In Jagdish Prasad Sexana's case (supra) the result of the enquiry was that the appellant was absolved from any responsibility in the commission of the offence. Later, he was removed from office on the strength of alleged admission without holding a formal enquiry as required by the Service Rules. The Supreme Court held that as the statement made by the appellant did not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry constituted a serious infirmity in the order of dismissal passed against him as the appellant had no opportunity at all of showing cause against the charge framed against him and so the requirement of Article 311 (2) was not satisfied.

A departmental enquiry consists of the following stages: (1) First Stage enquiry, and (2) Second Stage enquiry. The first stage enquiry begins as soon as an employee is questioned by the higher authorities to answer the charge with a view to punish him and the second from the time of communication of proposed punishment. It may be pointed out that both the stages are judicial. The Supreme Court has observed in Bachhittar Singh v. State of Punjab, AIR 1963 SC 395:

"Before we deal with the grounds we may state that the High Court was of the opinion that the proceedings taken against the appellant were made up of two parts: (a) the enquiry (which involved a decision of the question whether the allegations made against the appellant were true or not), and (b) taking action (i.e., in case the allegations were found to be true, whether the appellant should be punished or not and, if so, in what manner. According to the High Court the first point involved a decision on the evidence and may in its nature be described as judicial while the latter was purely an administrative decision and that in so far as this was concerned there is no reason why the State Government was incompetent to change its decision 'if it thought administratively advised to do so.' We cannot accept the view taken by the High Court regarding the nature of what it calls the second part of the proceedings. Departmental proceedings taken against a Government servant are not divisible in the sense in which the High Court understands them to be. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servant are established or not and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant concerned. The High Court accepts that the first stage is a judicial proceeding—and indeed it must be so because charges have to be framed, notice has to be given and the person concerned has to be given an opportunity of being heard. Even so far as the second stage is concerned Article 311 (2) of the Constitution requires a notice to be given to the person concerned..."
as also an opportunity of being heard. Therefore, this stage of the proceeding is no less judicial than the earlier one. Consequently any action decided to be taken against a Government servant found guilty of misconduct is a judicial order and as such it cannot be varied at the will of the authority who is empowered to impose the punishment. Indeed, the very object with which notice is required to be given on the question of punishment is to ensure that it will be such as would be justified upon the charges established and upon the other attendant circumstances of the case. It is thus wholly erroneous to characterise the taking of action against a person found guilty of any charge at a departmental enquiry as an administrative order.”

The first stage enquiry may be studied under the following heads:

A. FIRST STAGE ENQUIRY

(a) Preliminary enquiry

On the receipt of a complaint or the facts coming otherwise to the knowledge of the authority competent to take disciplinary action it is open to him to make such preliminary enquiry as he deems proper to ascertain the prima facie, truth of the allegations and the evidence available in this respect. For such an enquiry hardly any rules exists, but such a procedure is implicit in the very nature of things. It may sometimes be advisable to intimate the facts to the person concerned and to know what he has to say without framing a formal charge-sheet. This preliminary enquiry may be ex parte and it would be permissible to interrogate the delinquent. Such a preliminary enquiry is not only permissible but a very desirable step, because civil servants should not be charged with offences recklessly and without reason. But, as pointed out by the Privy Council in High Commissioner for India v. I. M. Lal, AIR 1941 PC 121, there is one important limitation to such an enquiry. It is no substitute for the departmental enquiry itself. The preliminary enquiry is merely for the purposes of framing a charge, and the results cannot be deemed to be conclusive. If there is a report, this cannot be evidence unless the delinquent has been furnished with it and afforded an opportunity of meeting it.

A preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out and it is very necessary that the two should not be confused. Even where Government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct, a preliminary enquiry is usually held to satisfy Government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post. Therefore, when a preliminary enquiry of this nature is held in the case of a temporary employee or a Government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when Government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments, viz. dismissal, removal and reduction in rank may be inflicted on the Government servant. Therefore as far as the preliminary enquiry is concerned there is no question of its being governed
by Article 311 (2) of the Constitution of India for that enquiry is really for the satisfaction of Government to decide whether punitive action should be taken under the contract or the rules in the case of a temporary Government servant or a servant holding higher rank temporarily to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of the Government, though usually for the sake of fairness, explanation is taken from the Government servant even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government, and it only when the Government decides to hold a regular departmental enquiry for the purposes of inflicting one of these major punishments that the Government servant gets the protection of Article 311 and all the rights that protection implies. That is why the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule is irrelevant—Champaklal Chimanlal Shah v. The Union of India, (1964) 1 SCR 190 : AIR 1964 SC 1854 : 66 Bom LR 319 : (1964) 1 Lab LJ 752.

Thus as observed above in Champak Lal v. Union of India, AIR 1964 SC 1854, the purpose of the preliminary enquiry is to determine whether there is a prima facie case.

There is a certain distinction between a preliminary enquiry and a departmental enquiry, preliminary enquiry is only for the satisfaction of the Government to make its mind for holding departmental enquiry or not and being so, as there never occurred departmental enquiry, the question of protection of Article 311 does not arise.

The above point came up before the Supreme Court also in A. C. Benjamin v. Union of India, C. A. No. 341 of 1966 decided on 13-12-1966. There the Supreme Court held that the preliminary enquiry was not governed by Article 311 (2) as it was intended for the satisfaction of the Government about the guilt of the employee and that there was no element of punitive proceedings in such an enquiry.

(b) Charge-sheet.

Article 311 does not speak of a charge-sheet being drawn up. This procedure of drawing up of a charge-sheet and calling upon the alleged delinquent to answer the same, arises in two ways. First it becomes necessary by reason of Rule 55, Civil Services (Classification, Control and Appeal) Rules, which applies to all civil servants. Secondly, the procedure is inherent in Article 311 itself. If a person is not apprized of the charges upon which it is proposed to take action against him he is not in a position to defend himself and show cause against the proposed action. Ordinarily a charge-sheet would also indicate the proposed punishment but it is not mandatory to do so. If a charge-sheet has been drawn up and an enquiry held in which the alleged delinquent has been given every opportunity to defend
himself, the subsequent proposal to punish him in any of the ways which would attract the provision of Article 311 may be proceeded with upon the findings of that enquiry. The delinquent must know what he is charged with and must have the amply opportunity to meet that charge. In such a case, Article 311 would only require that he should be given a reasonable opportunity to show cause why a certain action should not be taken upon such of the charges as have been already brought home.

The object of furnishing a charge-sheet it to give an opportunity to the person who is charged with misconduct to give an explanation to defend himself. The rule of natural justice requires that the person charged should know the nature of offence with which he is charged and should be given an opportunity to defend himself and to give a proper explanation.

The first thing necessary in a departmental enquiry is that the ground on which it is proposed to take action against an officer shall be reduced to the form of definite charge or charges and communicated to the person charged together with a statement of the allegation on which each charge is based and of any circumstances, which it is proposed to take into consideration, in passing orders in the case. This is provided in Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1939 in cases in which they apply—Khem Chand v. Union of India, AIR 1958 SC 300.

In Triloki Nath v. Union of India, C. A. No 322 of 1957 decided on 1-11-1960, the Supreme Court held that it was obligatory on the Enquiry Officer to furnish the delinquent employee not only with a copy of the charges levelled against him, but also the grounds on which those charges were based and the circumstances on which it was proposed to take action against him.

The charge-sheet must be such as to enable the delinquent to know the nature of the breach alleged to have been made. It should contain full particulars and must be clear and unambiguous.

In State of A. P. v. Sri Rama Rao, AIR 1963 SC 1723, the Supreme Court held that omission of a particular fact in the charge does not invalidate proceedings if the statement or facts accompanying the charge-sheet refers to it.

In a case of enquiries resulting in a major punishment the inclusion of proposed punishment in the charge-sheet would be improper and would not in any way dispute with the necessity of show-cause notice required under law—Khem Chand v. Union of India, AIR 1958 SC 300.

The charge-sheet is meant to call upon the employee to submit an explanation. Submitting of an explanation is a right of an employee. It is not a compulsion. Failure to submit an explanation would entitle the authority to proceed ex parte—Khem Chand v. Union of India, AIR 1958 SC 300.

The whole object of furnishing the statement is to give all the necessary particulars and details which would satisfy the requirements of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities
concerned that he had not been supplied with the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges. Even if the Enquiry Officer had made a report against him the appellant could have been given further opportunity at the stage of the second show-cause notice to adduce any further evidence, if he so desired after he had been given the necessary particulars and material in the form of a statement of allegations which had never been supplied to him before. This could undoubtedly be done in view of the provisions of Article 311 (2) of the Constitution of India, as they existed at the material time. The entire proceedings show a complete disregard of Fundamental Rule 55 in so far as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. There is no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him—Surath Chandra Chakravarti v. The State of West Bengal, 1971 SLR 103.

(c) Notice to delinquent officer

Calling for an explanation on the charges framed is one of the main stages of enquiry. Submitting an explanation is a right of the person charged. Adequate time should be given to the Government servant to submit his reply to the charges. Reasonable period should elapse between the date of delivery of charges and the commencement of the enquiry.

Giving of a notice is not merely a matter of form but one of substance.

(d) Oral enquiry

Though there is no right to an oral hearing on the principles of natural justice, the departmental rules or standing orders relating to disciplinary proceedings can confer such right.

In Bombay State v. Nurul Latif Khan, AIR 1966 SC 269: (1966) 2 SCJ 184, the Court pointed out that the requirement under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 to hold an oral enquiry was mandatory and based on the principles of natural justice. Failure of the Enquiry Officer to hold such an oral enquiry would amount to a failure of the Enquiry Officer to give the charge-sheeted officer a reasonable opportunity as contemplated by Article 311 (2). As observed by the Supreme Court in the above case:

"It is true that the oral enquiry which the enquiry officer is bound to hold can well be regulated by him in his discretion. If the charge-sheeted officer starts cross-examining the departmental witnesses in an irrelevant manner, such cross-examination can be checked and controlled. If the officer desires to examine witnesses whose evidence may appear to the enquiry officer to be thoroughly irrelevant, the enquiry officer may refuse to examine such witnesses but in doing so he will have to record his special and
sufficient reasons. In other words, the right given to the charge-sheeted officer to cross-examine the departmental witnesses or examine his own witnesses can be legitimately examined and controlled by the enquiry officer, he would be justified in conducting the enquiry in such a way that its proceedings are not allowed to be unduly or deliberately prolonged... ... It would be impossible to accept the argument that if the charge-sheeted officer wants to lead oral evidence the enquiry officer can say that having regard to the charges framed against the officer, he would not hold any oral enquiry.”

(e) Facilities for inspection of copies of documents

The person proceeded against must be given a fair and reasonable opportunity to defend himself. This requires that he should be given facilities to examine and study the documents sought to be put in evidence against him and, if he desires to take notes or extracts, he should be allowed to do so without let or hindrance. Exceptions to this rule may have to be made in the interest of public safety or security or some such overriding ground, but such exceptions should be clearly rare. Susceptibilities of individuals, however highly placed, will not justify an exception being made to this rule. It is further necessary that the individual proceeded against should be given a fair and proper opportunity to cross-examine the witness who deposes against him. In those cases where such witnesses have made statements relating to the charge prior to the inquiry the statements must be made available to the person against whom the charge is preferred since without such statements it is impossible effectively to exercise the right of cross-examination. Normally, this would require that copies of the statements made by the witnesses prior to the regular enquiry should be furnished to the person who is being proceeded against. It, for any reason, it is impossible to furnish him with copies he should be allowed to make out copies for himself. Persons who are familiar with the conduct of criminal cases will realise the importance of this requirement. One of the most effective ways of assailing the credibility of a witness in the box is by showing that previously he has made statements which contradict those he is making in the box. It will also be a legitimate way of discrediting a witness to show that he has improved on his original story in one form or other. Neither of these perfectly legitimate modes of cross-examination can be employed if the earlier statements of the witnesses are not made available to the accused person. No counsel, however, eminent and however resourceful he may be in the art of improvisation, can assist his client properly in a Sessions Court if he does not know what the witness has stated in the committing Court, and to the Investigating Officer, and whereas in departmental enquiry, the accused person has no legal right to the help of counsel, the need for copies of the earlier statements would be more imperative. The ordinary Government servant who has had no training at the Bar is bound to be inexpert in the art of cross-examination. To cross-examine properly he would have to study the earlier statements of the witnesses at leisure and note down the points on which he wants to question him, sometimes even to write out the entire questions he wants to put. To invite a person to cross-examine a witness while keeping back from his earlier statements made by the witness would be like bindfolding a man and asking him to find his way about. This is plainly and manifestly not
just. This view has been confirmed in *State of M. P. v. Chintaman*, AIR 1961 SC 1625.

In *State of M. P. v. Chintaman*, AIR 1961 SC 1625, the Supreme Court observed:

"There is no dispute that under Article 311 (2) the respondent is entitled to have such an opportunity. A proper opportunity must be afforded to him at the stage of the enquiry after of the charge is supplied to him as well as at the second stage when punishment is about to be imposed on him. If the first enquiry was materially defective and denied the respondent, an opportunity to prove his case it is impossible to hold that a reasonable opportunity guaranteed to a public servant by Article 311 (2) had been afforded to the respondent in the present case".

The Supreme Court considered the decision in *Dr. Tribhuwan Nath v. State*, AIR 1960 Pat 116, and further observed:

"In our opinion, this decision cannot assist the appellant’s case because, as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Article 226 it is for the High Court to consider whether constitutional requirements of Article 311 (2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary power passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Article 311(2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts of each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in compliance with that which is observed in Courts of law. As Venkatarama Aiyer, J., has observed in *Union of India v. T. R. Verma*, AIR 1957 SC 88: 1958 SCR 499, ‘stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on
which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no matter should be relied on against him without his being given an opportunity of explaining them. It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice."

Reasonable interval of time should be given to the Government servant after supply of copies of documents and statements and before witnesses are examined.

Where the records are of a nature in respect of which copies will not be granted even to an accused in a criminal case, facilities for inspection of copies can be refused. Though presumably there is no Supreme Court ruling on this point, yet the law is established since no different view of any High Court is available.

(f) Reply of the delinquent employee.

Submitting of reply is a right of an employee. He has to submit his reply within the time specified. The authority is not required to wait indefinitely for the reply. Failure to submit an explanation would entitle the authority to proceed ex parte—Khem Chand v. Union of India, AIR 1958 SC 300; P. Joseph John v. The|State of Trav.—Cochine, AIR 1955 SC 160.

In Bombay State v. Nurul Latif Khan AIR 1955 SC 269, the Supreme Court considered the question whether it was proper for the Government servant to have used improper language in his communication and statements. The enquiry officer observed that the conduct of the respondent and the language used by him from time to time disclosed an attitude of disobedience and insubordination which no Government can tolerate from its subordinate officers. The Supreme Court while agreeing that the language was not justified, observed that this aspect of the matter cannot have any material bearing on the question at issue and that the validity of the impugned order must be judged objectively without considering the impropriety of the language used by the respondent or the reluctance shown by him to appear before the enquiry officer.

(g) Appointment of Enquiry Officer

The rules of departmental enquiry contemplate that the Enquiry Officer and the disciplinary authority may be two different persons. The disciplinary authority may itself conduct the enquiry or it may appoint another officer or officers to conduct an enquiry into the charges and report.

The findings and the recommendations of the Tribunal are more in the nature of a report to the Government to enable it to pass final
orders. The findings of the tribunals are not final and can be reviewed in appropriate cases by the Government before final orders are made.

It is true that no judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication. But the exercise of the power to appoint or dismiss an officer is the exercise not of judicial power but of an administrative power. It is none the less so by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereto. It is well-recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a reasonable and competent official to enquire and report. A functionary who has to decide an administrative matter such as the dismissal of a member of the staff can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party has a fair opportunity to correct or contradict any relevant or prejudicial matter—Pradyat Kumar v. C. J., Calcutta, AIR 1956 SC 285.

In State of M. P. and others v. Shardul Singh, (1970) 1 SCC 109, a departmental enquiry was initiated against the respondent, a Sub-Inspector of Police, by the Superintendent of Police who, after holding the enquiry as prescribed by the Central Provinces and Bihar Police Regulations sent his report to the Inspector-General of Police. The respondent submitted his explanation to the show-cause notice for dismissal issued by the Inspector-General of Police who dismissed the respondent from service. The respondent challenged this order in a writ petition under Article 226 of the Constitution. The High Court allowed the writ holding that the enquiry held by the Superintendent of Police was against the mandate of Article 311 (1) of the Constitution as he was incompetent to initiate or conduct the enquiry, the respondent having been appointed by the Inspector-General of Police. The State appealed to the Supreme Court. The question for decision was whether the power conferred on the Superintendent of Police under the Central Provinces and Bihar Police Regulations was ultra vires Article 311 (1) of the Constitution.

The Supreme Court held:

"Article 311 (1) provides that no person who is a member of Civil Service of the Union or of an All-India Service or Civil Service of a State or holds Civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that enquiry should be done at its instance. The only right guaranteed to a Civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed......

"Hence we are unable to agree with the High Court that the guarantee given under Article 311 (1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a Civil servant should also be initiated and conducted by the authorities mentioned in that Article".
A person with a bias is disqualified to act as an Enquiry Officer. This principle is now well settled. It is a public policy that as far as possible judicial proceedings shall not be only free from actual bias of prejudice of the judge but they shall be free from the suspicion of bias or prejudice—*See Vishwanathan v. Abdul Wajid*, AIR 1963 SC 1.

Thus an officer selected to make an enquiry should be a person with an open mind and not one who is either biased against the person against whom action is sought to be taken or one who has prejudged the issue. Bias is relevant not only in the punishing authority but also in the enquiry officer even when the enquiry officer is different from the punishing authority—*See AIR 1958 SC 36*.

In *State of Uttar Pradesh v. C. S. Sharma*, AIR 1968 SC 158, the Court observed:

“We may not omit to state that there was an allegation against the Commissioner that he was biased against Sharma. It does appear that the Commissioner, in one of his letters, stated that he heard witnesses and satisfied himself that Sharma was definitely corrupt. This statement of the Commissioner showed that he approached the case with a feeling that Sharma was guilty although the State Government cannot be said to share this bias of the Commissioner. We would have said something more about this, if the occasion had demanded this, but as we are upholding the order of the High Court on the ground that no reasonable opportunity was afforded to Sharma to lead his evidence, it is not necessary to say whether an officer in the position of a Commissioner, who on the basis of secret enquiries behind the back of the delinquent officer has reached the conclusion that there are good grounds for holding that the officer is corrupt, should himself conduct the enquiry. That matter may be left for consideration in another case.”

There is no force in the contention that regarding the enquiry against a Government servant, under the provisions of the Travancore Public Servants (Inquiries) Act, 1122, it was only the Maharaja who could make an order appointing an Enquiry Commissioner and that the Minister could not take any action. The expression “Our Government” means the Maharaja’s Government, in other words, the Government of the State of Travancore—After the integration of the Two States Travancore and Cochin and the formation of the United States of Travancore Cochin the expression “Our Government” has to be construed according to the new set up of Government and when the Council of Ministers had come into being. It is obvious that the expression “Our Government” as adopted to fit in with the new Constitution means “The Council of Ministers”. The Rajpramukh or the Governor as Head of the State is in such matters merely a constitutional head and he is bound to accept the advice of his Ministers. In this situation it cannot be held that the order of the Government appointing the Enquiry Commissioner was *ultra vires* and without jurisdiction—*P. Joseph John v. State of Travancore Cochin*, AIR 1955 SC 160 (165); 1955 SCR 1011; 1955 SCA 85; 1955 SCJ 221; 1955 Andh WR (SC) 134; (1955) 1 Mad LJ (SC) 134.
Section 127 of the States Re-organisation Act, 1956 provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. It will, therefore, be seen that the States Re-organisation Act, 1956 applies even if it is inconsistent with anything in Hyderabad Public Servants (Tribunal of Enquiry) Act, 1950. By reason of section 127 and the power granted by section 122 of the State Re-organisation Act it was competent to the Government of Andhra Pradesh to name an authority under the Hyderabad Act even though that authority might not have been qualified under the latter Act. The concluding words of section 122 "shall be competent to exercise such functions exercisable under any law in force on that day as may be mentioned in the notification and such law shall have effect accordingly" show that on the notification issuing under section 122 the existing law itself is to have effect in a different manner. The argument that before the Hyderabad Act could be departed from, it had to be adapted under section 120 of the State Re-organisation Act by substituting an authority different from that named in section 3 of the Hyderabad Act, therefore, might have been effective if section 122 had not concluded in the manner indicated above. Section 122 by its very terms makes the Hyderabad Act speak in accordance with the notification issued under section 122. That Act after the notification and protanto is adapted by the notification. The adaptation of the Hyderabad Act under section 120 was not a condition present to the issuance of the notification and the notification having issued the Hyderabad Act applied accordingly and the appointment of the Tribunal consisting of a person not qualified under the Hyderabad Act, was therefore valid—M. Ramappa v. Government of Andhra Pradesh and others, (1964) 1 SCR 671.

Enquiry not be held by authority competent to impose punishment.

The first sentence of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930, purports to lay down the procedure where an order of dismissal, removal or reduction is sought to be passed. In the next sentence the rule requires that the grounds on which it is proposed to take action must be reduced to the form of definite charge or charges and they must be communicated to the person, charged, together with the other necessary material. The person charged is then required to put in a written statement of his defence within a reasonable time and to state whether he desires to be heard in person. After this stage comes the mention of authority who is to take action by laying down that, if the person charged so desires or if the authority concerned so directs, an oral enquiry shall be held. The submission that the authority concerned referred to in this sentence must necessarily mean the authority entitled to pass the order of dismissal, removal or reduction cannot be accepted. The language used in Rule 55 shows that the rule is only concerned with the holding of an enquiry and lays down the procedure for the enquiry. It does not at all deal with the question of passing an actual order of dismissal, removal or reduction. At the time when the appellant was appointed to the Indian Police, the provision which prescribed the authority would pass an order of dismissal in respect of the appellant was contained in sub-section (2) of section 240 of the Government of India Act, 1935, as a result of which the appellant
could only be dismissed from service by the Secretary of State who had appointed him. Rule 55 of the Rule of 1930, which then applied to him did not, however, require that the enquiry under that rule must be initiated by the Secretary of State. In fact, that rule made no mention at all of the authority who was empowered to pass the order of dismissal. On the face of it, it is clear that the rule was confined to making provision for an enquiry whereafter, if an order of dismissal had to be made, the appropriate authority under section 240 (2) of the Government of India Act, 1935 had to take up the proceedings and to pass the final order. The expression “authority concerned”, in Rule 55 in these circumstances must clearly be interpreted as referring, to the authority under which the officer concerned happened to be serving at the relevant time. The result is that under Article 314 of the Constitution of India, the right that continued to ensure to the benefit of the appellant was that the enquiry to be held in his conduct must comply with Rule 55 of the Rules of 1930. An enquiry ordered under the Rules of 1955 is in no way detrimental to the interest of the person against whom the enquiry is held as compared with an enquiry under Rule 55 of the Rules of 1930. The Rules of 1955 lay down the same type of opportunity to be given as did Rule 55 of the 1930.—*Tarak Nath Ghosh v. The State of Bihar and others*, (1968) 3 SCR 224.

(h) Legal assistance for defence

It is open to the delinquent employee to defend his case himself. Departmental rules relating to disciplinary action permit him as is often the case, to have the assistance of another Government servant. The question whether the assistance of a lawyer can be demanded as of right has attracted the attention of various High Courts of the country. Prior to the coming into operation of the Constitution, the view that prevailed with the High Courts was that there was in British India no common law right in a party to a proceeding to be represented by a counsel, and that the right whenever existed would be found to be given by enactment. The question now in India has to be judged not only on the language used in the Departmental Rules but also in the light of the expression “a reasonable opportunity of showing cause” in Article 311 (2) of the Constitution. If on the particular facts and complexity of a case, assistance of a lawyer is regarded as a part of reasonable opportunity, then denial of such an opportunity is violation alike of the constitutional protection under Article 311 (2) and the principles of natural justice. Assistance of a lawyer cannot always be regarded as a part of ‘reasonable opportunity to show cause.’ Courts in India on the particular facts of some cases have held that assistance of a lawyer was not a part of a reasonable opportunity. It may, on the facts of particular case, be a luxury, unnecessary or immaterial. What is reasonable opportunity in the Indian Constitutional context of Article 311 (2) will depend on the facts of each case and the Constitution has laid down no hard and fast rule by defining reasonable opportunity for all cases.

*In Dunlop Rubber Co. v. Workmen*, AIR 1965 SC 1392, the Supreme Court held that there was no right to representation by another person unless the rules specifically provided for the same and
that the right to representation was only to the extent specifically provided in the rules.

The observations of the Supreme Court in *N. Kalindi v. Messrs. Tata Locomotive and Engineering Co. Ltd.*, AIR 1960 SC 914, which was a case of an Industrial workman may be usefully reproduced:

“When the general practice adopted by domestic tribunal is that the person accused conduct his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union... A workman against whom an enquiry is being held by the management has therefore no right to be represented at such enquiry by a representative of his Union though of course an employer in his discretion can and may allow his employees to avail himself of such assistance.’’

In *Jeevaratnam v. State of Madras*, AIR 1966 SC 951, the disciplinary proceedings were started against the appellant, a Duputy Tahsildar along with three of his subordinates, of charges of accepting illegal gratification during his office. The Tribunal refused permission to appellant to engage a counsel at the enquiry. The three other servants were represented by a counsel. The appellant prayed for an adjournment which was refused. The appellant availed himself of the services of the counsel representing other accused. On the report of the Tribunal, the Government dismissed the appellant. The contention of the appellant was that in view of the appellant’s prayer for engaging a counsel of his choice, he had been denied a reasonable opportunity to defend himself against the charge. The Supreme Court held that there was no conflict of interests between him and the other three Civil servants. Counsel representing the other three Civil servants was allowed by the Tribunal also to represent him. The enquiry continued for three days. It was not proved that counsel was unable to conduct the defence properly. Even in his written representation the appellant did not allege that he was prejudiced in his defence. The appellant had reasonable opportunity to defend himself against the charge.

In *C. L. Subramaniam v. The Collector of Customs, Cochin*, AIR 1972 SC 2178 : 1972 Lab IC 1049, the question that arose for consideration was whether the petitioner was given reasonable opportunity to defend himself in accordance with sub-rule (5) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. Sub-rule (5) of Rule 15 is produced below:

“The Disciplinary Authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits”.
The grievance of the petitioner was that he was pitted against a trained prosecutor and not that the presenting officer was a legal practitioner. The Disciplinary authority did not consider that grievance. It brushed aside the request of the petitioner on the ground that the presenting officer was not a legal practitioner, a consideration which was not relied on by the petitioner. The petitioner contended that he had a right to engage a legal practitioner to defend him. He sought to spell out that right on the basis that what he could himself do, he could get it done by an agent of his and a legal practitioner acting for him would only have been his agent. In support of his contention he placed reliance on the decision in *Pett v. Greyhound Racing Association Ltd.*, (1968) 2 All ER 545. The facts of that case were as follows:

Track Stewards of a Greyhound Racing Stadium owned by the defendants proposed to hold an enquiry into the withdrawal of a trainer's dog from a race at a stadium licensed by the National Greyhound Racing Club. The inquiry involved the question whether drugs had been administered to the dog. The trainer held a licence from the National Greyhound Racing Club entitling him to race dogs on tracks licensed by the Club, and thus the result of the inquiry might involve the trainer's reputation and livelihood. The rules of the Club, to which the trainer had agreed when he obtained his licence, did not prescribe the procedure to be followed by Track Stewards at their inquiries and did not exclude legal representation. The procedure in fact allowed at such an inquiry allowed the trainer to be present, to hear the evidence and to have an opportunity to question witnesses. The trainer sought to be represented by counsel and solicitor at the enquiry but the track stewards decided ultimately not to allow legal representation. On appeal from the grant of an interlocutory injunction restraining the inquiry from being held unless the trainer was allowed to be represented, the Court of Appeal held that *prima facie* the trainer was entitled to an oral hearing and, the inquiry being one of serious importance to him, to be represented at it by counsel and solicitor, for he was entitled not only to appear himself but also to appoint an agent on his behalf, and so was entitled to appoint lawyers to represent him. *Lord Denning M. R.*, who delivered the main judgment of the Court in the course of his judgment dealing with the decision of Stewards that they will not bear lawyers observed:

“It cannot accept this contention. The plaintiff is here facing a serious charge. He is charged either with giving the dog drugs or with not exercising proper control over the dog so that someone else drugged it. If he is found guilty, he may be suspended or his licence may not be renewed. The charge concerns his reputation and his livelihood. On such an inquiry I think that he is entitled not only to appear by himself but also to appoint an agent to act for him. Even a prisoner can have his friend.”

Proceeding further the Master of Rolls observed:

“I should have thought therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor.”
The Supreme Court, however, held that this decision did not bear on the point and observed:

"Herein we are dealing with a certain circumstances. Hence the agency theory has no relevance nor are we required to consider the principles of natural justice as these principles are only relevant when the concerned procedure is not regulated by any statute or statutory rules. The rule laid down in Pet's case (supra) has not commended itself to this Court. In Kalindl v. Tata Locomotive and Engineering Co. Ltd., (1960) 3 SCR 407: AIR 1960 SC 914, a question arose in an enquiry by management into misconduct of a workman, the workman was entitled to be represented by a representative of the Union. Answering this question this Court observed that a workman against whom an enquiry is being held by the management has no right to be represented at such an enquiry by a representative of the Union though the employer in his discretion can and may allow to him to be so represented. In such enquiries fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not fall to be considered and the workman is best suited to conduct the case. Ordinarily, in enquiries before domestic tribunals a person accused of any misconduct conducts his own case and so it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his Union. The same view was taken by this Court in Brooke Bond India (Private) Ltd v. Subba Raman (S), (1961) 2 Lab LJ 417 (SC). That view was reiterated again in Dunlop Rubber Co. v. Workmen, (1965) 2 SCR 139: (AIR 1965 SC 1392).

"The learned Counsel for the State relied on the decisions mentioned above in support of his contention that the appellant was not entitled to have the assistance of a legal practitioner. This contention is without force. In those cases this Court considered whether a person proceeded against in an enquiry before a domestic tribunal had a right to be represented by someone else on the basis of the principles of natural justice. Therein this Court was not called upon to consider either the limits of the reasonable opportunity to defend oneself, guaranteed under Article 311 or the scope of a statutory rule. The question that falls for decision in this case did not arise for decision in those cases.

The Court also held:

"The grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no means irrelevant. The fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighed against him. The Disciplinary Authority completely ignored that circumstance. Therefore that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely
that the Disciplinary Authority refused to permit the
appellant to engage a legal practitioner in the circumstances
mentioned earlier had caused serious prejudice to the appel-
ellant and had amounted to a denial of reasonable opportunity
to defend himself.

The Court further observed:

"It is needless to say that Rule 15 is a mandatory rule. That rule
regulates the guarantee given to Government servants under
Article 311. Government servants by and large have no
legal training. At any rate, it is nobody's case that the
appellant had legal training. Moreover when a man is
charged with the breach of a rule entailing serious conse-
quences, he is not likely to be in a position to present his
case as best as it should be. The accusation against the
appellant threaten his very livelihood. Any adverse verdict
against him was bound to be disastrous to him, as it has
proved to be. In such a situation he cannot be expected to
act calmly and with deliberation. That is why Rule 15 (5)
has provided for representation of a Government servant
charged with dereliction of duty or with contravention of the
rule by another Government servant or in appropriate cases
by a legal practitioner.

"For the persons mentioned above, we think that there had been
a contravention of Rule 15 (5). We are also of the opinion
that the appellant had not been afforded a reasonable
opportunity to defend himself."

(1) Examination of witnesses—Whether rules of evidence to be
followed.

When the evidence is oral, normally the examination of the witness
will in its entirety take place before the party charged, who will have
full opportunity of cross-examining him. The position is the same when
a witness is called, the statement given previously by him behind
the back of the party is put to him; and admitted in evidence, a copy
thereof is given to the party, and he is given an opportunity to cross-
examine him. To require in that case that the contents of the previous
statement should be repeated by the witness word by word and sentence
by sentence, is to insist on bare technicalities, and rules of natural
justice are matters not of form but of substance. They are sufficiently
complied with when previous statements given by witnesses are read
over to them marked on their admission, copies thereof given to the
person charged and he is given an opportunity to cross-examine them—

In Kesoram Cotton Mills v. Gangadhar, AIR 1964 SC 708, it
was urged on behalf of the appellant that rules of natural justice were
the same whether they applied to inquiries under Article 311 or to
domestic enquiries by managements relating to misconduct by work-
men. The Supreme Court observed:

"It may be accepted that rules of natural justice do not change
from tribunal to tribunal. Even so, the purpose of rules
of natural justice is to safeguard the position of the person against whom an inquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore the nature of the inquiry and status of the person against whom the inquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a tribunal holding an inquiry and the party against whom the inquiry is being held or represented by a lawyer it may be possible to say that a mere reading of the material to be used in the inquiry may sometimes be sufficient, but where in a domestic inquiry in an industrial matter lawyers are not permitted, something more than a mere reading of statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us therefore that when one is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the inquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking, therefore, we should expect a domestic inquiry by the management to be of this kind. Even so, we recognise the force of the argument on behalf of the appellant that the main principle of natural justice cannot change from tribunal to tribunal and therefore it may be possible to have another method of conducting a domestic inquiry (though we again repeat that this should not be the rule but the exception) and that is in the manner laid down in *Shivabasappa's case*, AIR 1963 SC 375. The minimum that we shall expect where witnesses not examined from the very beginning at the inquiry in the presence of the person charged is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the inquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance we mean that it should be given at least two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined in-chief fully at the inquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic inquiry in an industrial matter. In the present case all that had happened was that the prepared statements were read over to the workmen
charged and they were asked then and there to cross-examine the witnesses. They were naturally unable to do so and in the circumstances we agree with the Tribunal—that the inquiry did not comply with the principles of natural justice. The order of the Tribunal therefore holding that the inquiries were vitiating by disregard of rules of natural justice is correct. We may add however that in spite of the above finding the Tribunal permitted termination of the service of four of these five workmen and reinstated only one. We shall deal with this aspect of the matter further when considering the appeal of the workmen."


"Normally, evidence on which the charges are sought to be proved must be led at such an enquiry in the presence of the workman himself. It is true that in the case of departmental enquiries held against public servants, this Court has observed in the *State of Mysore v. Shivbasappa Shivappa*, AIR 1963 SC 375, that if the deposition of a witness has been recorded by the Enquiry Officer in the absence of the public servant and a copy thereof is given to him, and an opportunity is given to him to cross-examine the witness after he affirms in a general way the truth of his statement already recorded that would conform to the requirements of natural justice; but as has been explained by this Court in *Kesoram Cotton Mills, Ltd. v. Gangadhar*, AIR 1964 SC 708, these observations must be applied with caution to enquiries held by domestic tribunals against the industrial employees. In such enquiries it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence.

"Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he is giving evidence against a particular individual who is present before him, and, therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses *ex parte* and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements even though the witnesses concerned make a general statement on the latter occasion that their statements already recorded correctly represent what they stated. In our opinion, unless there are compelling reasons to do so, the normal procedure should be followed and all evidence should be recorded in the presence of the workman."
who stands charged with the commission of acts constituting misconduct."

In Union of India v. T. R. Verma, AIR 1957 SC 882 : (1958) SCR 499, the Supreme Court has observed that the Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed—Union of India v. T. R. Verma, (1958) SCR 499 : AIR 1957 SC 882.

In State of Mysore v. S. S. Makapur, (1963) 2 SCR 943, the Court laid down the principle as under:

"The tribunals exercising quasi judicial functions are not courts and that therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can unlike courts, obtain all information materials for the points under enquiry from all sources and through all channels without being fettered by rules and procedure, which govern proceedings in court. The only obligation the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain.

"What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts."

In U. R. Bhatt v. Union of India, AIR 1962 SC 1344, the Supreme Court observed:

"The Enquiry Officer is not bound by the strict rules of the law of evidence and when the appellant declined to take part in the proceedings and failed to remain present, it was open to the Enquiry Officer to proceed on the materials which were placed before him."

In Bombay State v. Nurul Latif Khan, AIR 1966 SC 269 the Court observed:

"We will assume for the purpose of this appeal that in a given case Government would be justified in placing the case
against the charge sheeted officer only on documents and may be under no obligation to examine any witnesses, though we may incidentally observe that even in such cases if the officer desires that the persons whose reports or order are being relied upon against him should be offered for cross-examination, it may have to be considered whether such an opportunity ought not to be given to the officer.”

(j) Cross-examination of witnesses

After examination, the delinquent employee is entitled to cross-examine the prosecution witness.

In Union of India v. T. R. Verma, AIR 1957 SC 882 (p. 885), the Supreme Court observed that:

“Rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given an opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them.”

In State of Madhya Pradesh v. Chintaman, AIR 1961 SC 1623 : 1961 Jab LJ 702, the Court quoted the above passage and held:

“It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and, if it appears that effective exercise of this right has been prevented by the Enquiry Officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice.”

(k) Defence evidence

It is the duty of the Enquiring Officer to take all necessary steps in the matter of calling defence witnesses reasonably within his power. No doubt an enquiring officer is not a court and may not have power to compel attendance of witnesses but the principle of natural justice require that efforts should be made to secure the attendance of such witnesses. Now it is settled law on the authority of the cases decided by the High Court that where the tribunal refuses to examine witnesses which the accused desires to be examined on the ground that it is not its duty to summon witnesses to help the accused, such a refusal is opposed to every principle of justice and good conscience which governs both Courts and tribunals.

In Tata Oil Mills Co. Ltd. v. Its Workmen, AIR 1955 SC 155, the Supreme Court held that it is for the parties concerned to produce the witnesses because the tribunal has no power to compel attendance of witnesses.

In State of U. P. v. C. S. Sharma, AIR 1968 SC 158, the Court held that no enquiry can be said to be properly conducted when the defence of the officer is either refused or ruled out and observed:

“Throughout the enquiry......Sharma had again and again given indication that he would lead evidence in this defence. At
first he had given a list of three witnesses which he later amplified to four leaving out one from the original list and adding two new names, he had also stated that he wanted to examine himself in his defence. The learned Commissioner who was holding the enquiry on more than one occasion stated that he would be afforded this opportunity and also that a date would be fixed for the examination of the defence witnesses. It is true that Sharma was plying for time and on the 2nd of February (before the date of hearing came) he put in an application that he would like an adjournment of 20 days before he submitted a final list of witnesses with their addresses. This application was rejected on February 6, but between February 6 and April 8, when the report was made, two long months passed and it was possible for the Commissioner to have fixed a date, on which if he was so minded, Sharma could bring his witnesses in support of his case or tender himself for examination. No action was taken between February 6, 1954 and April 8, 1954 to enable Sharma to lead his defence, if any, in support of his part of the case. This omission in our judgment was sufficient to vitiate the whole proceeding because no enquiry of this type in which there are charges of a criminal nature, can be said to be properly conducted when the defence of the officer is either frustrated or ruled out.

In Janki Nath Sarangi v. State of Orissa, (1969) 3 SCC 392, it was contended that the principles of natural justice were violated in the conduct of the enquiry and in support it was urged that the appellant was denied the right of leading his evidence in defence and also that he was not given inspection of some material which was used against him but was collected behind his back. The material facts giving use to the said pleas were as follows: The work was completed in the first mile in November, 1953 and January, 1954. The earth work was checked by measurement by the appellant on March 6, 1954. Later, the Executive Engineer rechecked the measurement on May 8, 1954 when the inflated measurements were detected. In the 6th mile the work was completed in October, 1953 and January, 1954. The measurements were checked on July 21, 1954 and the inflated measurements were discovered. The case of the appellant was that due to natural cause such as rain, flood, etc. the pits and the witnesses had got obliterated. The report against him was that false witnesses had been created and the earth work between the pits had been artificially raised to show a deeper digging, than was actually done. In fact the pits were supposed to go to a depth of 1 foot but they were invariably found to be only 7 to 8 inches deep. The question was whether the action of rain and/or flood was responsible for obliterating the true measurement and giving a wrong picture at that time of re-checking. In this connection, the appellant wished to examine one Mr. Mohanty or one Mr. Pujari, retired Superintending Engineers as his witnesses. The Enquiring Officer did not examine these witnesses first because he had a technical man Mr. Dass, Superintending Engineer to assist him to whom the same questions could be referred and next that 8 instances which were the subject of debate between the appellant and the Department were referred by the Enquiring Officer to the Chief Engineer for the opinion. The replies of the Chief Engineer did not appear to have been shown to the appellant in the first instance.
although he admitted that they were placed in his hands at the time when the second notice was issued to him.

From this material it was argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings were cited chief among which are *State of Bombay v. Nurul Latif Khan*, (1965) 3 SCR 135; *State of Uttar Pradesh and another v. Sri C. S. Sharma*, (1967) 3 SCR 848 and *Union of India v. T. R. Verma*, (1958) SCR 499.

**Hidayatullah C. J.** made the following observations:

“There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right. Here the question was a simple one, viz. whether the measurement book prepared for the contract work had been properly scrutinised and checked by the appellant or not. He did the checking in March, 1954 and immediately thereafter in May, 1954 the Executive Engineer re-checked the measurements and found that the previous checking had not been done properly. Between March and May there could not be much rainfall, if at all, and the marks of digging according to the witnesses could not be obliterated during that time. It is however said that at the 6th and 7th mile the checking was done in July and by that time rains might have set in. Even so the witnesses at the sites of the pits could not be so considerably altered as to present a totally wrong picture. If anything had happened the earth would have swollen rather than contracted by reasons of rain and the pits would have become bigger and not smaller. Anyway the question which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representations and curiously enough he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in this case by not examining the two retired Superintending Engineers whom he had cited or any one of them. The case was a simple one whether the measurement book had been properly checked. The pleas about rain and floods were utterly useless and the Chief Engineer’s elucidated replies were not against the appellant. In these circumstances a fetish of the principles of natural justice is not necessary to be made. We do not think that a case is made out that the principles of natural justice are violated.”
As a matter of fact the strict principles of Indian Evidence Act do not apply to the departmental trials but in the interest of justice it is very much expedient that the examination-in-chief of the witness should not be recorded behind the back of the officer charged. The examination-in-chief is a part of evidence. It will be really against the principle of natural justice that a witness is examined behind his back. Such a view has been taken by Justice Venkatarama Aiyar about a matter of dismissal of one Mr. T. R. Verma, an Assistant Controller in the Commerce Department in the Union of India. The judgment is often quoted. It is **Union of India v. T. R. Verma**, : AIR 1957 SC 882 : (1957) 13 FJR 257 : 1958 SCJ 142.

That arose out of a Writ Petition filed by a Government servant in the High Court of Punjab, calling in question an order of dismissal passed against him, on the ground that the enquiry which resulted in the order had not been conducted in accordance with the rules of natural justice. The facts were that when the petitioner, and his witnesses appeared for giving evidence, the enquiring officer took their examination on hand himself, put them questions, and after he had finished, asked them to make their statements. The complaint of the petitioner was that he had his witnesses should have been allowed to give their own evidence, and then cross-examined, and that the departure from the normal procedure in taking evidence, was a violation of the rules of natural justice.

The relevant passages of the judgment are as under:

"The main ground on which the respondent attacked the order dated September 16, 1954, was that at the enquiry held by Mr. Byrne, he was not given an opportunity to cross-examine the witnesses, who deposed against him, and that the findings reached at such enquiry could not be accepted. But the question is whether that allegation has been made out. In para 7 of this petition, the respondent stated:

'Despite repeated verbal requests of the petitioner, the Inquiry Officer did not permit him to cross-examine any witness who deposed against him.'

'But this was contradicted by Mr. Byrne, who filed counter-affidavit, in which he stated:

'(4) That it is incorrect that no opportunity was given to the petitioner at the time of the oral enquiry to cross-examine the witnesses who had deposed against the petitioner.

'(5) That all witnesses were examined in petitioner's presence and he was asked by me at the end of each examination whether he had any questions to put.

'(6) That the petitioner only put questions to one witness Shri P. Govindan Nair, and to others he did not.'

'On this affidavit, Mr. Byrne was examined in Court, and he repeated these allegations and added:

'I have distinct re-collection that I asked Shri T. R. Verma to put questions in cross-examination to witnesses.'
"It was elicited in the course of his further examination that he did not make any note that he asked Shri T. R. Verma to put questions in cross-examination to witnesses, and that might have been due to a slip on his part.

"We have thus before us two statements, one by Mr. Byrne and the other by the respondent, and they are in flat contradiction of each other. The question is which of them is to be accepted. When there is a dispute as to what happened before a Court or tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct, and there is no reason why the statement of Mr. Byrne should not be accepted as true.

"He was admittedly an officer holding a high position, and it is not suggested that there was any motive for him to give false evidence. There are moreover, features in the record, which clearly show that the statement of Mr. Byrne must be correct. The examination of witnesses began on April 20, 1953, and four witnesses were examined on that date, among them being Shri C. B. Tawakley.

"If, as stated by the respondent, he asked for permission to cross-examine witnesses, and that was refused, it is surprising that he should not have put the complaint in writing on the subsequent dates on which the enquiry was continued. To one of the witnesses, Sri P. Govindan Nair, he did actually put a question in cross-examination, and it is difficult to reconcile this with his statement that permission had been refused to cross-examine the previous witnesses.

"A reading of the deposition of the witnesses shows that the Enquiring Officer himself had put searching questions, and elicited all relevant facts. It is not suggested that there was any specific matter in respect of which cross-examination could have been but was not directed. We think it likely that the respondent did not cross-examine the witnesses because there was nothing left for him to cross-examine.

"The learned Judges gave two reasons for accepting the statement of the respondent in preference to that of Mr. Byrne. One if that there was no record made in the depositions of the witnesses that there was no cross-examination. But what follows from this? That in fact, there was no cross-examination, which is a fact; not that the request of the respondent to cross-examination was disallowed.

"Then again, the learned Judges say that the respondent was present at the hearing of the Writ petition before them that they put questions to him, and formed the opinion that he was sufficiently intelligent, and that it was difficult to believe that he would not have cross-examined the witnesses. We are of opinion that this was a consideration which ought not to have been taken into account in a judicial determination of the question, and that it should have been wholly excluded.

S.L.I.—32
On a consideration of the record and of probabilities, we accept
the statement of Mr. Byrne as true, and hold that the respon-
dent was not refused permission to cross-examine the
witnesses, and that the charge that the enquiry was defec-
tive for this reason cannot be sustained.

"The respondent attached the enquiry on two other grounds
which were stated by him in his petition in the following
terms:

'That the petitioner was cross-examined and was not enabled
to make an oral statement on his own behalf.

'That the defence witnesses were not given an opportunity
to tell their own version or to be examined by the
petitioner as their depositions were confined to answers
in reply to questions put by the Inquiry Officer.'

"In substance, the charge is that the respondent and his witnesses
should have been allowed to give their evidence by way of
examination-in-chief, and that only thereafter, the officer
should have cross-examined them, but that he took upon
himself to cross-examine them from the very start and had
thereby violated well-recognised rules of procedure. There
is also complaint that the respondent was not allowed to
put questions to them.

"Now, it is no doubt true that the evidence of the respondent
and his witnesses was not taken in the mode prescribed in
the Evidence Act but that Act has no application to enqui-
ries conducted by tribunals, even though they may be judi-
cial in character. The law requires that such tribunals
should observe rules of natural justice in the conduct of the
enquiry and if they do so, their decision is not liable to be
impeached on the ground that the procedure followed was
not in accordance with that, which obtains in a Court of
Law.

"Stating it broadly and without intending it to be exhaustive, it
may be observed that rules of natural justice require that a
party should have the opportunity of adducing all relevant
evidence on which he relies, that the evidence of the oppo-
nent should be taken in his presence, and that he should
be given the opportunity of cross-examining the witnesses
examined by that party, and that no materials should be
relied on against him without his being given an opportunity
of explaining them.

"If these rules are satisfied, the enquiry is not open to attack
on the ground that the procedure laid down in the Evidence
Act for taking evidence was not strictly followed. Vide the
recent decision of this Court in New Prakash Transport
1957 SC 232, where this question is discussed."

It is a matter of common experience that in the departmental
trials a witness deposes on oath. However, if he has to take such an
oath in front of the accused officer and has to state on oath, he will certainly state the facts with some consciousness. It is thus very much incumbent upon the Presiding Officer to examine prosecution witnesses before the accused officer.

In another case the Supreme Court has found it non-fatal if the examination-in-chief of the witnesses was recorded behind the back of the accused officer, but he was afforded an opportunity to cross-examine them. This is State of Mysore v. Shivabasappa Shivappa Makapur, AIR 1963 SC 375: (1963) 2 SCR 943. The relevant portion of the judgment runs as under:—

"The sole point for determination in this appeal, therefore, is whether the procedure adopted by the Deputy Superintendent of Police in admitting the statements of witnesses examined before Mr. Majumdar in evidence is opposed to the rules of natural justice. The question is one of importance, because as appears from the cases which have come before us the procedure followed by the Deputy Superintendent of Police in this case is the one followed by many tribunals exercising quasi-judicial powers. For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not courts and that, therefore, they are not bound to follow the procedure prescribed for trial for actions in Court nor are they bound by strict rules of evidence. They can unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."

The question as to the contents of the rules of natural justice has been subject of numerous decisions in England and in this country. Dealing with this question Lord Loreburn, L. G., observed, in Board of Education v. Rice, 1911 AG 179 (182), as follows:—

"In such cases the Board of Education will have to ascertain the law as also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty laying upon every one who decides anything. But I do not think they are bound to treat such question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contracting any relevant statement prejudicial to their view."

This statement of the law was adopted again by the House of Lords in *Local Government Board v. Arlidge*, 1915 AC 120.

This question has also been considered by the Supreme Court in several decisions. One of the earliest of them is the decision in *New Prakash Transport Co. Ltd. v. New Suwarana Transport Co., Ltd.*, 1957 SCR 98; AIR 1957 SC 232. There the facts were that a Tribunal constituted under Motor Vehicles Act had refused to grant a permit to a company to run a bus on a certain route. Then the company filed a Writ application in the High Court of Nagpur, attacking the order refusing the permit on the ground, *inter alia*, that the Tribunal had acted on a police report which was produced at the time of the hearing without giving the petitioner sufficient opportunity to meet it, and had thereby violated the rules of natural justice. Agreeing with this contention the Judges of the High Court had set aside the order. In reversing this order, the Supreme Court held that the police report was information on which the Tribunal was entitled to act, and it was read at the inquiry in the presence of the parties, and they had been heard on it, there had been sufficient compliance with the rules of natural justice.

The case of *Union of India v. T. R. Verma*, AIR 1957 SC 882; 1958 SCJ 142, was considered by the Supreme Court in *State of Mysore v. Shivabasappa*, AIR 1963 SC 375, and it was held:

"It is on the observation that 'the evidence of the opponent should be taken in his presence' that the decision of the learned Judges that the evidence of witnesses should be recorded in the presence of the person against whom it is to be used is based. Read literally the judgment quoted above (*State of Mysore v. Shivabasappa*, AIR 1953 SC 375) is susceptible of the construction which the Judges have put on it, but when read in the context of the facts stated above, it will be clear that, that is not its true import. No question arose there as to the propriety of admitting in evidence the statement of a witness recorded behind the back of a party. The entire oral evidence in that case was recorded before the enquiring officer, and in the presence of the petitioner. So there was no question of a contrast between evidence recorded behind a party and admitted in evidence against him, and evidence recorded in his presence. What was actually under consideration was the procedure to be followed by *quasi* judicial bodies in holding enquiries, and the decision was that they were not bound to adopt the procedure followed in Courts, and that it was only necessary that rules of natural justice should be observed. Discussing next what those rules required, it was observed that the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and
admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them."

This question came up for consideration by the Supreme Court in *Phulbari Tea Estate v. Its Workmen*, (1960) 1 SCR 32 : AIR 1959 SC 1111. There the facts were that one of the workmen, B. N. Das was dismissed by the management as the result of an enquiry into a charge of theft. The Industrial Tribunal set aside this order on the ground that there had been no proper enquiry. What had happened was that the management had first made an investigation, and taken statements of witnesses, and at the regular enquiry these statements were brought on record but they were not put to the witnesses, who were present, nor had copies thereof been given to the workman. The question was whether the enquiry was in accordance with rules of natural justice. In answering the it in the negative, Wanchoo, J., speaking for the Court, observed that the admission in evidence of the prior statements under the circumstances stated above was not in consonance with the principles of natural justice laid down in 1958 SCR 499 : AIR 1957 SC 882. This decision was however held to be of no assistance.

Reliance was also placed on the following observations by Chagla, C.J., in ILR 1954 Bom 915 : AIR 1954 Bom 351 :

"Even assuming that a statement of such a witness is furnished to the Government servant it is a sound rule that courts of law follow and which even domestic tribunals should follow that all evidence must be given in the presence of an accused person and in the presence of a person against whom action is proposed to be taken. It is one thing to make a statement behind the back of a person; it is entirely a different thing to make a statement in front of the Court or a domestic tribunal and in the presence of a person against whom you are going to make serious charges."

The above case (ILR 1954 Bom 915 : AIR 1954 Bom 351) was impliedly overruled in *State of Mysore v. Shivabasappa* (Supra), wherein it was held :

"But in our opinion, the purpose of an examination in the presence of a party against whom an enquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled, that statement is put to him, and made known to the opposite party, and witness is tendered for cross-examination by that party. In this view we must hold that the order dated July 5, 1956 is not liable to be set aside on the ground that the procedure followed at the enquiry by the Deputy Superintendent of Police was in violation of the rules of natural justice. It is hardly necessary to add
that clause (8) of section 545 of the Bombay Police Manual cannot be held to be bad as contravening the rules of natural justice."

In the case of State of Madhya Pradesh v. Chintaman Sadasiva, AIR 1961 SC 1623, the Supreme Court observed:

"Therefore, there is no escape from the view that so far as we are concerned the requirements of reasonable opportunity requires that the evidence on which reliance is to be placed against a charged officer must be taken in his presence and that he must then have an opportunity of cross-examining the witnesses. Any evidence, therefore—which was not taken in the presence of the charged officer could not be relied upon against him. That import of the word 'evidence' cannot only be cross-examination. It must include the entire evidence of the witness, and if the evidence has to be taken in the presence of the charged officer then no evidence which was not taken in the presence of the charged officer can be made use of."

In State of U. P. v. Om Prakash Gupta, 1969 SLR 890 : (1969) 3 SCC 775, the respondent contended that the enquiry was vitiated because the enquiry officer had relied on the statement given by some of the witnesses behind his back; and he had not been given the true copies of the statements of the witnesses recorded by the Deputy Commissioner; that the translations of those statements given to him were full of mistakes and that the Enquiry Officer was biased against him. Hedge, J., who delivered the judgment of the Supreme Court held:

"This Court has repeatedly laid down that the fact that the statements of the witnesses taken at the preliminary stage of the enquiry were used at the time of the formal enquiry, does not vitiate the enquiry if those statements were made available to the delinquent officer and he was given opportunity to cross-examine the witnesses in respect of those statements.

"It is clear from the record of the case that the respondent had been permitted to go through the statements recorded from the witness by the Deputy Commissioner and prepare his own notes; he was supplied with the English translations of these statements and that he was permitted to cross-examine those witnesses in respect of those statements. It may be that there were some mistakes could not have vitiates the enquiry. They were quite trivial mistakes. We agree reasonable time was given to the respondent to prepare his case."

It may be submitted that now Legislatures are passing the laws which clothe the Administrative Tribunals with powers, to call the witnesses as if they are civil Courts. Before a Court of law a witness is always to give his examination-in-chief in the presence of the party charged. Hence legally even an examination-in-chief can never be recorded in the absence of party charged. Attention may be drawn to the Uttar Pradesh Disciplinary Proceedings (Summoning of Witnesses and Production of Documents) Act, 1953. In section 3 of this Act,
3. Definitions—In this Act, unless there is anything repugnant in the subject or context:

(a) 'Administrative Tribunal' means the Tribunal constituted under the Disciplinary Proceedings (Administrative Tribunal) Rules, 1947.

(b) 'Government' means the Government of Uttar Pradesh.

(c) 'Departmental Enquiry' means an enquiry held against a person under and in accordance with any law or rule made under Article 309 or any rule continued under Article 313 of the Constitution of India.

(d) 'Inquiring Officer' means an officer appointed by the Government or by an officer or authority subordinate to the Government to conduct a departmental inquiry into the conduct of a person and includes any officer otherwise entitled as such to conduct the enquiry.”

Section 4 of the above Act authorises the Tribunal to punish for disobedience to its process, and is as under:

4. Power of inquiring officer and penalty for disobedience to process.—(1) Any Enquiring Officer or the Administrative Tribunal shall have the same powers in the matter of summoning of witnesses and compelling the production of documents as are conferred upon Commissioner under section 8 of the Public Servants (Inquiries) Act, 1853.

(2) The provisions of section 9 of the said Act providing for penalty for disobedience to process shall apply to any process issued by an Enquiring Officer or the Administrative Tribunal as they apply to such process issued by the Commissioner aforesaid.”

Section 8 of the Public Servants (Inquiries) Act, 1850 runs as under:

8. Powers of Commissioners—Their protection—Service of their process—Powers of Court etc., acting under commission.—The Commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by the Code of Criminal Procedure, 1898, and shall have the same powers for the summonses of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process, shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature thereto. When the commission has been issued to a Court, or other
person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission."

Section 9 of Public Servants (Inquiries Act, 1850 runs as under:

"9. Penalty for disobedience to process.—All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed."

(b) Opportunity not availed.—During the enquiry it is open to the person against whom such enquiry is held to have a full say and to make a statement with regard to all the charges which are made against him and also to examine any witness in his defence. But it does not mean that if he fails to take part in that enquiry or to give his defence, he is necessarily preclude from putting forward his defence or from examining witnesses or cross-examining such witness as may have been examined by the Enquiring Officer—See P. J. John v. State of T. C., AIR 1955 SC 160.

(1) Admission of facts

In Channabasappa Basappa Happali v. The State of Mysore, 1971 SLR 9: (1971) 1 SCC 1, the appellant was police constable. He joined the police force on August 1, 1945, in the former State of Bombay. On the States Re-organisation, he came under the jurisdiction of the the State of Mysore and it was on November 26, 1953, that he was dismissed after a departmental enquiry against him on the following facts. The petitioner had proceeded on leave for a month from January 1, 1953. On January 26, 1953, he applied for extension of leave for a month. A reply was received by him refusing leave, but only on February 21, 1953. He made a second application for extension of leave on the same date, but this extension of leave was not granted. On February 26, 1953, he undertook a 7 days' fast at a temple and wrote letters to his superior officers. A charge was framed against him under three heads which were that he was guilty of serious misconduct and indisciplinary action in that he remained absent from duty without leave or permission from January 1, 1953, that he had sent letters to his superior officers intimating his intention to go on fast with effect from February 26, 1953, "for the upliftment of the country, etc." and that he had sent copies of these letters to several newspapers also. The third charge was that he did go on fast on February 26, 1953 and continued it till March 5, 1953 at the temple contrary to the discipline of the police force. He was duly served with these charges and was also asked to obtain such copies from the record as he needed for his defence and to bring a friend to defend him if he liked. When the enquiry commenced, he was put a few questions by the enquiring officer which may be referred to in detail.

Q. (1) Have you received a copy of the charge-sheet?
A. Yes.

Q. (2) Have you understood the charges?
A. Yes.

Q. (3) Do you accept the charges framed against you?
A. Yes.
Q. (4) Have you anything to say for breaking the discipline of the Police Force?

A. I had been on leave for one month. I applied to the Sub-Inspector for the extension of my leave by another month. I thought that my leave may be extended. Hence I did not join duty on 31-1-53. I was greatly worried by the injustice done by the police to the poor public and with a view to improve the Police Force and after informing the concerned authorities, I went on fast. I do not want any help from anybody for defending myself. I do not propose to cross-examine any witness that may be examined. Nor do I propose to examine any witness on my side. I do not know the Police Manual Rules. I submitted the petition in the interests of the general public. I did not go on fast in my self-interest. I have gone so in public interest. We are living in a democratic country. So whatever is in the interest of the general public cannot run counter to the discipline of the Police Force. I pray for proper justice on the basis of my reply and the documents which are against me. I do not desire to say anything more.

Thus he did not want to take any more part in the enquiry than to have the matter adjudged on the basis of his reply and the documents which are against him. This is what he had stated in the penultimate sentence of his own statement and in the earlier part, he had unequivocally admitted the facts which had been placed in charges against him. His explanation was two-fold, namely that, he continued to absent himself because he thought that leave might have been extended and secondly that his proceeding to go on fast was in the interest of democracy and the country as a whole and also to improve the Police Force.

On appeal by special leave, Hidayat Ullah C. J. of the Supreme Court observed:

"The pleas of the petitioner are quite clear; in fact he admitted all the relevant facts on which the decision could be given against him and therefore it cannot be stated that the enquiry was in breach of any principle or natural justice. At an enquiry, facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. In this case, the facts were two-fold, that he had stayed beyond the sanctioned leave and that he had proceeded on a fast as a demonstration against the action of the authorities and also for what he called the upliftment of the country etc. These facts were undoubtedly admitted by him. His explanation was also there and it had to be taken into account. That explanation is obviously futile, because persons in the police force must be clear about extension of leave before they absent themselves from duty. Indeed this is true of every one of the services, unless of course there are circumstances in which a person is unable to rejoin service, as for example when he is desparately ill or is otherwise reasonably prevented from attending to his duties. This is not the case here. The petitioner took upon himself
the decision as to whether leave could be extended or not and acted upon it. He did go on a fast. His later explanation was that he went on a fast for quite a different reason. The enquiry officer had to go by the reasons given before him. On the whole therefore the admission was one of guilty in so far as the facts on which the enquiry was held and the learned Single Judge in the High Court was, in our opinion, right in so holding.

"It was contended on the basis of the ruling reported in Regina v. Durham Quarter Sessions Ex-pate Virgo, (1952) 2 QB 1, that on the facts admitted in the present case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English law, a plea of guilty has to be unequivocal and the Court must ask the person and if the plea of guilty is qualified the Court must not enter a plea of guilty, but one of not guilty. The police constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts of which due notice was given to him. He admitted the facts. In fact his counsel argued before us that he admitted the facts but not his guilt. We do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a police officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer the indiscipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on the facts on which the petitioner was charged and we are in full agreement with the observations of the learned Single Judge.

"The case really is not one of any merit; the plea raised before us was in ad miserocordiam. We were asked to take the view that this man was actuated by his own feeling that leave would be extended and further that his going on fast was not for the purpose of the administration but for some other purpose. Even if we were to take the admission as a whole with all its qualifications, we are quite clear that he admitted the facts necessary to establish the charge against him.

"The learned counsel for the appellant further relied upon a ruling of this Court in Jagdish Prasad Saxena v. The State of Madhya Bharat (now Madhya Pradesh), AIR 1961 SC 1070. That case is absolutely distinguishable. There are of course certain general observations about the importance of a departmental enquiry and how it should be conducted. We have here a clear case of a person who admitted the facts and did not wish to cross-examine any witness or lead evidence on his own behalf. He only stated that his acts should be adjudged on the basis of the documents which were in the case. This was done and there cannot be a
complaint that the departmental enquiry was either one-sided or not fair. On the whole therefore we are satisfied that the appellant was properly adjudged guilty of indiscipline in the departmental enquiry and the order of dismissal which was passed against him was merited. In view of the fact that we are satisfied that the appellant is one of those persons who thinks that other people in the world have to be corrected and that perhaps he is one who is impelled by his own thoughts, we think that the ends of justice would be served by not awarding costs against him. With these observations, we dismiss the appeal.”

In Jagdish Prasad Saxena v. State of Madhya Bharat, AIR 1961 SC 1070 : 19.1 Jab LJ 414, the charge-sheet against the employee was based on a statement made in an enquiry against another person. The statement did not amount to clear and unambiguous admission. The copy of the previous papers was not supplied to the delinquent employee. The questions that arose for consideration were whether the requirement of Article 311 (2) were satisfied and whether a formal enquiry was not necessary. The Supreme Court observed:

“As the previous enquiry was not directed against the appellant—Distillery Inspector as such and he was certainly not in the position of an accused in the said enquiry, even if the appellant had made some statement which amounted to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by rules. But apart from this consideration, if the statements made by the appellant do not amount to a clear or unambiguous admission of guilt failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him. Under Article 311 (2) of the Constitution of India he was required to have a reasonable opportunity of meeting the charge framed against him and in the present case before the show-cause notice was served on him he has had no opportunity at all to meet the charge. After the charge-sheet was supplied to him he did not get an opportunity to cross-examine the accused in the previous enquiries and others. He was not given a copy of the report made by the enquiry officers in the previous enquiries. He could not offer his explanation as to any of the point made against him and it appears that from the evidence recorded in the previous enquiries an inference was drawn against the appellant and show-cause notice was served on him. The appellant is justified in contending that he has had no opportunity of showing cause at all and so the requirement of Article 311 (2) is not satisfied. It is of the utmost importance that in taking disciplinary action against a public servant, a proper departmental enquiry must be held against him after supplying him with a charge-sheet and he must be allowed a reasonable opportunity to meet the allegation contained in the charge-sheet. In the present case the preliminary enquiries of a general type were held and the report did not show that the appellant was guilty of the
offence for which he was ultimately dismissed from service. The delay in giving the appellant the charge-sheet as well as in communicating to him the final order of dismissal shows that the authorities did not think that the time was the essence of the matter, and so there was hardly any justification for not holding a formal and proper enquiry after the appellant was given a charge-sheet. Therefore, the High Court was in error coming to the conclusion that no prejudice had been caused to the appellant as a result of the respondent’s failure to hold an enquiry against the appellant after supplying him with the charge-sheet. The departmental enquiry is not an empty formality, it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose.

(m) Findings and report of Enquiring Officer—How far binding on Disciplinary Authority.

Unless the statutory rule or the specific order under which an officer is appointed to hold an enquiry so requires, the enquiry officer need not make any recommendations as to the punishment which may be imposed on the delinquent officer in case the charges framed against him are held proved at the enquiry; if however, the enquiry officer makes any recommendations, the said recommendations like his findings on the merits are intended merely to supply appropriate material for the consideration of the Government. Neither the findings, nor the recommendations, are bindings on the Government—Union of India v. H. C. Goel, AIR 1964 SC 364.

(n) Enquiry by a Tribunal having no jurisdiction: Effect.

In D. S. Grewal v. The State of Punjab, AIR 1959 SC 512, an enquiry was started by the Punjab Government against the appellant, who was a member of the Superior Police Service posted to the State of Punjab for certain alleged irregularities. The appellant’s contention was that the Punjab Government had no authority to institute proceedings under the rules and grounds for filing petition was that he was appointed by the Central Government and as such the Central Government was only competent to enquire into his conduct. The Court repelled the contention and observed:

"The last contention is that the Punjab Government has no authority to institute these proceedings under the rules. It would be necessary in this connection to refer to the rules. Rule 3 provides for penalties, which are seven in the number. Rule 4 provides for the authorities, who can impose the penalties, and three of the penalties, namely, dismissal, removal or compulsory retirement, can only be imposed by the Central Government, while the other four penalties can be imposed by the State Government. Rule 5 provides the procedure for imposing penalties. The argument is that as in this case the charge against the appellant is serious, he is likely to be dismissed or removed or compulsorily retired, and therefore the
Central Government should have instituted the enquiry in this case. We are of opinion that there is no force in this contention. In the first place, it cannot be postulated at the very outset of the enquiry whether there would be any punishment at all, and even if there is going to be punishment what particular punishment out of the seven mentioned in Rule 3 would be imposed. Therefore, even on the assumption that the Government which has to impose the punishment must also institute the enquiry, it cannot be said at this stage that the Punjab Government which can impose at least four out of seven penalties is not the proper Government to institute the enquiry. In the second place, a perusal of Rule 5 shows that intention is that the enquiry would be instituted by the Government under which the officer is serving even in cases where penalty is to be imposed by the Central Government. Rule 4(2) shows that so far as the four penalties which could be imposed by the State Government are concerned, the institution of the enquiry is by the Government under whose such officer was serving at the time of commission of such act or commission which renders him liable to punishment. Rule 2 (b) defines ‘Government’, and the third clause thereof lays down that in the case of a member of service serving in connection with the affairs of State, the Government, would be the Government of that State. The appellant was serving in connection with the affairs of the State of Punjab and in his case, therefore, the Government for the purposes of Rule 5 which provides procedure for imposing penalties would be the Punjab Government. It is the Punjab Government, therefore, which could take the steps provided in Rule 5. Rule 5(1) to 5(8) provide the procedure for such enquiries and the word ‘Government’ used in these sub-rules means, in the present case, the Punjab Government, for the appellant was serving in connection with the affairs of the State of Punjab. Rule 5 (9) provides for what is to happen after the enquiry is over, and it lays down that after the enquiry has been completed and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, if the penalty proposed is dismissal, removal, compulsory retirement or reduction in rank the member of the service charged shall be supplied with a copy of the report of enquiry and be given a further opportunity to show cause why the proposed penalty should not be imposed on him. The very fact that in this rule the word ‘Government’ is not used and instead of words ‘punishing authority’ are used shows that the question of punishment arises after the enquiry is over and the relevant Government would then consider that question; and if punishment is to be one of the three provided in Rule 4 (1) the report of the enquiry officer would have to be forwarded to the Central Government so that it may determine the provisional punishment and communicate it to the officer concerned along with the report of the enquiry officer to comply with the provisions of Art. 311 (2). So far as the institution of the enquiry is concerned, Rule 5 contemplates that it will be instituted by the Government of the State.
connection with the affairs of which the officer is serving. In this case the appellant was serving in connection with the affairs of the State of Punjab, and therefore, the Punjab Government would have authority to institute the enquiry against him. The Central Government would only come into the picture after the enquiry is concluded and if it is decided to impose one of the three punishments mentioned in Rule 4 (1). This contention must also be rejected."

In S. Kapur Singh v. Union of India, (1960) 2 SCR 569 : AIR 1960 SC 493 : (1960) 1 SGA 680 : 1960 SCJ 487, the question to be decided was whether the State Government was competent to hold an enquiry against a member of the Indian Civil Service. The Court held:

"Even though the appellant was admitted to the Civil Service under a covenant with the Secretary of State for India, the special method of recruitment of the appellant to the service does not warrant the view that appellant was not employed at the material date under Government of East Punjab. By sub-section (2) of section 10 of the Indian Independence Act, 1947, in so far as it is material it was enacted that every person appointed by the Secretary of State to a Civil Service of the Crown in India who continued on and after the appointed day to serve under the Government of the Dominion of India or of any province or part thereof was entitled to receive the same conditions of service as respect remuneration, leave and pension and the same right as respects disciplinary matters or, as the case may be, as respects the tenure of his office. But sub section (2) of section 240 of the Government of India Act, as amended, a person appointed by the Secretary of State who continued in the establishment of the dominion of India was not liable to be dismissed by any authority subordinate to the Governor-General according as that person was serving in connection with the affairs of the Dominion or the province. Indisputably since India became a Republic, by Article 310 (1) of the Constitution of India, every person who is a member of the Civil Service of the Union or an All-India Service or holds any civil post under the Union, holds office at the pleasure of the President. But the power to dismiss a member of the Civil Service of the Union or of an All-India Service may not be equated with the authority conferred by statute upon the State under which a public servant is employed to direct an enquiry into the charges of misdemeanour against him. By section 2 of the Public Servants (Inquiries) Act, 1830, it is provided that wherever the Government shall be of the opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation or misbehaviour by any person in the service of the Government not removable from his appointment without the sanction of the Government, it may cause the substance of the imputations to be drawn into distinct Articles of charge and may order a formal inquiry to be made into the truth thereof, and the expression 'Government' defined in section 23 of the Act as meaning Central Government.
in case of persons employed under that Government and the State Government in the case of persons employed under that Government. The appellant was at the date when enquiry was directed, employed under East Punjab Government and there is nothing in the Constitution which abrogates the authority of the State to direct an enquiry under section 2 of the Act.

In Mohammad Ghouse v. State of Andhra Pradesh, AIR 1957 SC 246, a Judge of the Madras High Court sent his report on the enquiry into the charges against the appellant who was a subordinate judicial officer and expressed his opinion that he should be dismissed or removed from service. The High Court approved of it and passed an order suspending him until further orders. The report was then sent to the Government who issued a notice to the appellant to show cause why he should not be dismissed or removed from service. The Court held that enquiry by the High Court was competent and that the High Court was also entitled to pass orders of suspension pending Government action against the appellant.

In State of West Bengal v. Nripendra Nath, AIR 1966 SC 447, the question was "who controls the subordinate judiciary in the State and who in particular exercises disciplinary control over members of the subordinate courts of the State under the Constitution of India and what principles govern the procedure of Disciplinary Tribunal." The Supreme Court affirmed the view of the High Court reported in Nripendra Nath Bagchi v. Chief Secretary, Government of West Bengal, AIR 1961 Cal 1, and observed:

"We do not accept this construction. The word 'control' is not defined in the Constitution at all. In Part XIV which deals with services under the Union and the States the words 'disciplinary control' or 'disciplinary jurisdiction' have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word 'control' must, in our judgment, include disciplinary jurisdiction. Indeed the word may be said to be used as a term of Article because the Civil Services (Classification, Control and Appeal) Rules used the word 'control' and the only rules which can legitimately come under the word 'control' are the Disciplinary Rules. Further as we have already shown the history which lies behind the enactment of these Articles indicate that 'control' was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well as the very purpose would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may be legitimately had to the prior State of the law, the evil sought to be removed and the process by which the law was evolved. The word 'control', as we have seen, was used for the first time in the Constitution and it is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the
day-to-day working of the Court but contemplates disciplinary jurisdiction over the presiding judge. Article 227 gives to the High Court superintendence over these courts and enables the High Court to call for returns, etc. The word 'control' in Article 235 must have a different content. It includes something in addition to mere superintendence. It is control over the conduct and discipline of the judges. This conclusion is further strengthened by two other indications pointing clearly in the same direction. The first is that the order of the High Court is made subject to an appeal if so provided in the law regulating the conditions of service and necessarily indicates an order passed in disciplinary jurisdiction. Secondly, the words are that the High Court shall 'deal' with the judge in accordance with this rules of service and the word 'deal' also points to disciplinary and not mere administrative jurisdiction."

Regarding the contention that the Governor alone can initiate enquiries and cause them to be held, the Court observed:

"This argument was not presented in the High Court and does credit to the ingenuity of Mr. Sen but it is fallacious. That the Governor appoints District Judges and the Governor alone can dismiss or remove them goes without saying. That does not impinge upon the control of the High Court. It only means that the High Court cannot appoint or dismiss or remove District Judges. In the same way the High Court cannot use the special jurisdiction conferred by the two provisos. The High Court cannot decide that it is not reasonably practicable to give a District Judge an opportunity of showing cause or that in the interest of the security of the State it is not expedient to give such an opportunity. This the Governor alone can decide. That certain powers are to be exercised by the Governor and not by the High Court does not necessarily take away other powers from the High Court. The provisos can be given their full effect without giving rise to other implications. It is obvious that if a case arose for the exercise of the special powers under the two provisos, the High Court must leave the matter to the Governor. In this connection we may incidentally add that we have no doubt that in exercising these special powers in relation to enquiries against District Judges, the Governor will always have regard to the opinion of the High Court in the matter. This will be so whoever be the enquiring authority in the State. But this does not lead to the further conclusion that the High Court must not hold the enquiry any more than that the Governor should personally hold the enquiry."

(o) Ex-parte enquiry.

In U. R. Bhutt v. Union of India, AIR 1962 SC 1344 : (1962) 1 Lab LJ 656 : (1961-62) 21 FJR 478, it was held:

"The Enquiry Officer had afforded to the appellant an opportunity to remain present and make his defence. It is true that all the witnesses of the State who could have been examined
in support of their case were not examined *viva voce*, but that was because of the conduct of the appellant who declined to participate in the enquiry. He declined to take part in the proceeding and the Enquiry Officer was, in our view, justified in proceeding to act upon the materials placed before him. Once the appellant expressed a desire not to take further part in the proceeding of the Enquiry Officer, that officer was entitled to proceed *ex parte* and to act upon the materials placed before him."

But the Supreme Court has pointed out clearly that even in cases where the delinquent employee withdraws from the enquiry and does not remain present, the prescribed procedure should be followed—*Imperial Tobacco Co. of India v. Its workman*, AIR 1962 SC 1348.

In this connection the case of *N. R. Co-operative Societies v. Industrial Tribunal*, AIR 1967 SC 1182, may also be referred. In that case the Court has held that when charges are vague, a dismissal cannot be sustained even if the employee declined to take part in the proceedings and refused to co-operate.

In *Ghan Sham Das Srivastava v. State of Madhya Pradesh*, 1971 SCR 239, it was held that if the grievance that he was not paid the subsistence allowance and on that account he was unable to make himself present before the Enquiry Officer is true it must be held that the proceedings before the Enquiry Officer would be vitiated and the final order of the appointing authority cannot be sustained. But since the High Court had not made any investigation into this question which had a vital bearing on the case, the proceedings were remanded to the High Court to hear the parties on the question whether the employee was paid the subsistence allowance at any time before the disposal of the hearing before the Enquiry Officer, and whether on account of non-payment of the subsistence allowance he was unable to appear before the Enquiry Officer.

**p** Departmental enquiry: Bias

A person with a bias is disqualified to act as a judge. This principle is now well settled. It is a public policy that as far as possible judicial proceedings shall not only be free from actual bias or prejudice of the judge, but they shall be free from the suspicion of bias or prejudice.

It is exceedingly desirable that justice should be administered by persons who could not be suspected of any, even indirectly, interested motive. In the administration of justice, whether by a recognised legal Court or by persons, who although not a legal public Court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration any person who is to take part in it should not be in such a position that he might be suspected of being biased.

The principles governing the doctrine of bias *vis-a-vis* judicial tribunals are well settled and they are (i) no man shall be a judge in his own cause; (ii) justice should not only be done but manifestly and undoubtedly seem to be done. The two maxims yield the result that if
a member of judicial body is subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the tribunal; and that "any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a judge, and any interest, thought not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias". The said principles are equally applicable to authorities, though they are not Courts of justice or judicial tribunals, who have to act judicially in deciding the rights of other, i.e., authorities who are empowered to discharge quasi judicial function—Nageshwara Rao v. State of Andhra Pradesh, AIR 1959 SC 1376.

In quasi judicial proceedings the authority empowered to decide the dispute between the opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interested in one party or the other should not, even formally take part in the proceedings though in fact he does not influence the mind of the person, who finally decides the case. This is on the principle that justice should not only be done, but should manifestly and undoubtedly seem to be done.—Ibid.

In Nageshwara Rao v. A. P. S. R. T. Corporation, AIR 1959 SC 308, the scheme framed under the Motor Vehicles Act, 1939 was challenged inter alia on the ground that the Secretary of the State Government was biased as he had formulated the scheme and was interested in the enforcement of the scheme. It was held that the hearing given by the Secretary, Transport Department was violative of the principles of natural justice regarding bias and that the proceedings were bad.

In Nageshwara Rao v. State of Andhra Pradesh, AIR 1959 SC 1376, it was argued:

"This Court held in AIR 1959 SC 308 that the Secretary-in-Charge of the Transport Department was disqualified from deciding the dispute between the Department and the Private Bus Operators on the basis of the principle that a party cannot be a judge in his own cause, and that, as the Chief Minister was in charge of the portfolio of Transport, the same infirmity attached to him also, and, therefore, for the same reason he should also be disqualified from hearing the objections to the scheme published by the Undertaking; and the Chief Minister by his acts, such as initiating the scheme and speeches, showed a clear bias in favour of the Undertaking and against the Private Bus Operators and therefore on the basis of the principles of natural justice accepted by this Court, he was precluded from deciding the dispute between the said parties.

The point of bias was pressed. The Court held that unless the legislature clearly and expressly ordained to the contrary the principles of natural justice cannot be violated. The Court examined the provisions of Motor Vehicles Act, 1939 and held that the relevant provisions of the Act do not sanction any distinction on the principles of natural justice, e.g., bias. The Court then drew a distinction between the
position of a Secretary of a department and the Chief Minister of the State. The Minister-in-charge of a department under the rules shall be primarily responsible for the disposal of the business pertaining to that department, but the ultimate responsibility for the advice is on the entire ministry. But the position of the Secretary of the department is different. Under the said rules, the Secretary of a department is its head e.g. he is a part of the department. There is an essential distinction between the functions of a Secretary and a Minister; the former is a part of the department and the latter is only primarily responsible for the disposal of the business pertaining to that department. On this distinction the previous judgment of this Court was based, for in that case, after pointing out the position of the Secretary in that department, it was held that "though the formal orders were made by the Chief Minister, in effect and substance, the enquiry was conducted and personal hearing was given by one of the parties to the dispute itself."

The argument that the Chief Minister is part of the department and constituted as a Statutory Undertaking under the Act was repelled. On the facts of the case on point regarding bias, the Court held:

"If it had been established that the Chief Minister made the speeches extracted in Exhibits VI, IX and X, there would have been considerable force in the argument of the learned counsel for the appellants; but no attempt was made to prove that the Chief Minister did in fact make those speeches. It is true that the extracts from the newspapers were filed before the Chief Minister and they were received subject to proof; but no person who heard the Chief Minister making those speeches filed an affidavit before him. The Chief Minister in this particular case did not admit the statement attributed to him."

It is true that in judicial or quasi-judicial proceedings justice must not only be done but must appear to be done to the litigation public. It is equally true that when a lawyer is charged for professional misconduct and is given the privilege of being tried by a tribunal of the Bar Council, the enquiry before the tribunal must leave no room for a reasonable apprehension in the mind of the lawyer that the tribunal may have been even indirectly influenced by any bias in the mind of any of the member of the tribunal. In Manak Lal v. Dr. Prem Chand, AIR 1955 SC 425, the Bar Council Tribunal appointed to make inquiry into the alleged misconduct of the appellant who was an advocate of the Rajasthan High Court consisted of three members with one C as its Chairman. C had filed his Vakalatnama on behalf of the opposite parties in proceedings under section 145, Criminal P. C. on 23rd August, 1952 and had in fact argued the case on that date. The appellant had acted as a pleader for applicants in section 145 proceedings out of which the misconduct proceedings arose. The Court held that the Constitution of the Tribunal suffered from a serious infirmity in that C was appointed a member of the tribunal and in fact acted as its Chairman. It was further held that actual proof of prejudice in such cases might make the appellant's case stronger but
such proof was not necessary in order that the appellant should effectively raise the argument that the tribunal was not properly constituted. The decision in (1914) 1 KB 608 was held to, in no way, justify the contention that even if the constitution of the tribunal is held to be defective or improper, the proceedings taken before the tribunal and the orders subsequently passed in pursuance of the report cannot be successfully challenged unless it is shown that the defective constitution of the tribunal had in fact led to the prejudice of the appellant.

In the absence of a statutory provision the fact that a judge sits in appeal on an application against a judgment after he has decided the case would not by itself render the judgment of the Court invalid. In a strictly technical sense therefore it is true to say that a judge is not incompetent to sit in appeal on application against his own judgment. But the Courts are not merely concerned to deal with cases in a right spirit of legalism. It is of the essence of a judicial trial that the atmosphere in which it is held must be of calm detachment and dispassionate and unbiased application of the mind. It may be pertinent to observe that since the Federal Court was constituted and after the Supreme Court was invested with jurisdiction to try appeals there has occurred no case in which a Judge who had tried a case in the High Court or elsewhere sat in appeal against his own judgment sitting in the Federal Court or in the Supreme Court. The practice prevailing in the High Courts including a Judge against whose judgment an appeal or proceedings in the nature of an appeal is filed, appears to have also fallen into desuetude and it is proper that it should. Whatever may have been the historical reasons in England and whatever may be the technical view as to the constitution of a Bench in which one or more Judges sit after they have expressed their opinion not tentative but final—the practice which permits a Judge to sit in appeal against his own judgment or in cases in which he had an opportunity of making up his mind and to express in conclusion on the merits of the dispute has little to commend itself for acceptance. It cannot be agreed that the circumstances, that a particular Judge delivered a final opinion in the appeals filed by the plaintiffs and thereafter sat in the Full Bench even after objection was raised by the plaintiffs to his participation may be discarded altogether from consideration in deciding whether in the light of other circumstances the plaintiffs had a fair trial and they were afforded an adequate opportunity of presenting their case before an unbiased Court. If the circumstances established by the other evidence disclose a prima facie case of bias, the fact that the Judge notwithstanding the objection raised by the plaintiffs sat in the Full Bench after expressing his final opinion may have to be taken into account. It cannot be doubted that the Judges of the Mysore High Court were not willing to consider any request of the plaintiffs for formation of a Bench which did not include Judges who had expressed final opinion. Nor did they consider his applications for adjournment with sympathy. The attitude may appear to be somewhat rigid, but that attitude by itself may not justify an inference of bias. Bias in favour of the executors is sought to be inferred from close friendship of the Chief Justice with one of the defendants, and the expression of opinion by the other Judge on the merits—such expression of opinion being consistent with the practice prevailing in the Court—and refusal to grant facility to the plaintiffs
to secure the presence of their chosen Counsel. These grounds either individually or collectively do not justify us inferring contrary to the view of the High Court that the Judges had forfeited their independence and impartiality and had acted not judicially but with bias—Vishwa Nathan v. Abdul Wajid, AIR 1963 SC 1.

By the common law, judge who has interest in the result of a suit is disqualified from acting except in cases of necessity, were no other Judge has jurisdiction.

If there is an alternative forum it is obvious that the exception would not apply. In modern times the doctrine of necessity is not usually applied by courts and the same result is sometimes obtained by statutory authorisation later given for interested parties to adjudicate. In the ultimate analysis there is no difference between the doctrine of necessity and statutory authorisation later given because the principle in both the cases is that the principles of natural justice yield place to statutory provisions. In the first case the intention of the Legislature is gathered by the fact that no other Tribunal is provided; in the second case the intention is apparent from the statutory authorisation itself. In other words, if the statute itself confers a power on authority and imposes a duty on it which may have the effect of making him a judge in his own cause or to decide a dispute in which he has an official bias, the doctrine of bias stands qualified to the extent of the statutory authorisation.

It is an elementary principle, that (in the absence of statutory authority or consensus agreement) no man can be a judge in his own cause. Therefore where persons have a direct interest in the subject matter of an enquiry before an inferior Tribunal take part in adjudicating upon it, the Tribunal is improperly constituted and is without jurisdiction, and the Court will grant an order of prohibition to restrain it from adjudicating, or an order of certiorari to quash a determination arrived at by it—See AIR 1956 SC 559.

In A. K. Kralpok and others v. The Union of India and others, 1969 SLR 4+5, the contention that the mere fact that one of the members of the Board was biased against some of the petitioners cannot vitiate the entire proceedings was repelled by the Court. In that case the acting Chief Conservator was a party to the preparation of the select list in order of preference and that he was shown as No. 1 in the list. To that extent he was undoubtedly a judge in his own cause, a circumstance which is abhorrent to the concept of justice of this Court.

In Province of Bombay v. Kushasdas Advani, AIR 1960 SC 222, the Court has held that there is no bar to a person issuing the show-cause notice to try it himself and the principle that a prosecutor cannot be judge is not strictly applicable to departmental enquiries.

In State of Uttar Pradesh v. C. S. Sharma, AIR 1968 SC 158, the Court observed:

"We may not omit to state that there was an allegation against the Commissioner that he was biased against Sharma. It does appear that the Commissioner, in one of his letters, stated that he heard witnesses and satisfied himself that
Sharma was definitely corrupt. This statement of the Commissioner showed that he approached the case with a feeling that Sharma was guilty although the State Government cannot be said to share this bias of the Commissioner. We would have said something more about this, if the occasion had demanded this, but as we are upholding the order of the High Court on the ground that no reasonable opportunity was afforded to Sharma to lead his evidence, it is not necessary to say whether an officer in the position of a Commissioner, who on the basis of secret enquiries behind the back of the delinquent officer has reached the conclusion that there are good grounds for holding that the officer is corrupt, should himself conduct the enquiry. That matter may be left for consideration in another case."

(q) Whether Enquiry Officer need make recommendations as to punishment.

In Union of India v. H.C. Goel, (1964) 4 SCR 718, it has been observed that unless the statutory rules or the specific order under which an officer is appointed to hold an enquiry so requires, the Enquiry Officer need not make any recommendations as to punishment which may be imposed on the delinquent officer in case the charges framed against him are held proved at the enquiry, if, however, the Enquiry Officer makes any recommendations the said recommendations, like his findings on the merits, are intended merely to supply material for the consideration of the Government. Neither the findings nor the recommendations are binding on the Government.

The question of imposing punishment can only arise after enquiry is made and the report of the Enquiry Officer is received. It is for the punishing authority to propose the punishment and not for the enquiring authority. The latter has, when so required, to appraise the evidence, to record its conclusion and if it thinks proper to suggest the appropriate punishment. But neither the conclusion on the evidence nor the punishment which the enquiring authority may regard as appropriate is binding upon the punishing authority. There is no provision which compels the President to impose only the sentence proposed by the Enquiry Officer. It was for the President to arrive at a tentative conclusion as to the guilt of the appellant and in imposing the punishment, having regard to the gravity of the misdemeanour found proved. The powers of the President were not circumscribed by the proposal as to the punishment by the Enquiry Officer which the latter was incompetent to make—A. N. D'Silva v. Union of India, AIR 1962 SC 1130: (1962) 2 SCJ 126.

In the absence of any rules or any statutory provisions to the contrary the enquiring officer is not required to specify any punishment which may be imposed on the delinquent officer. His task is merely to hold an enquiry into the charges and make his report setting forth his conclusions and findings in respect of the said charges. Sometimes the enquiring officers do indicate the nature of the action that may be taken against the delinquent officer, but that, ordinarily, is outside the scope of the enquiry. That being so, not much significance can be attached to the recommendation made by the enquiring officer in the present case. Besides, it is absolutely clear that under the relevant rules the punishment proposed to be imposed on the respondent was justified
even on the findings recorded against him by the enquiring officer, and so, it would be idle to contend that unless the appellants (punishing authority) had differed from conclusions of the enquiring officer in respect of the charges which he held not proved, they could not have legitimately thought of imposing the said punishment on him. Therefore, the argument that the appellants did not accept the findings recorded by the enquiring officer in favour of the respondent must be rejected—State of Assam v. Bimal Kumar Pandit, (1964) 2 SGR 1 (12) : AIR 1963 SC 1612 : (1963) 1 Lab LJ 295.

B. SECOND STAGE ENQUIRY

At this second stage no enquiry is held and the competent authority has to consider the record of enquiry which generally consists of the followings:

1. Charges against the employee.
2. Statement of allegations.
3. Defence written statement.
4. Oral and documentary evidence considered during the enquiry.
5. Interim orders, if any.

The impression that Article 311 particularly as it stood before its amendment requires one before issuing the show-cause notice to be followed by another enquiry thereafter, is not the requirement of the principle of natural justice—Suresh Kishi George v. University of Kerala, AIR 1969 SG 198.

At this stage the delinquent employee is not entitled to ask for a repetition of those stages over again when the enquiry report and the evidence collected is placed before the Competent authority for his consideration—Joseph John v. State of Trav. Co., AIR 1955 SG 160.

In Khem Chand v. Union of India, AIR 1958 SC 300, it was pointed out that the delinquent employee was entitled to show that the conclusions arrived at in the Enquiry report are bad and are not warranted by the facts on the record.

In State of Assam v. Bimal Kumar Pandit, AIR 1963 SC 1612 : (1964) 2 SGR 1 : (1963) 1 Lab LJ 295, the Supreme Court laid down the procedure to be followed by the Competent authority as under:

'It is now well settled that a public officer against whom disciplinary proceedings are intended to be taken is entitled to have two opportunities before disciplinary action is taken against him. An enquiry must be conducted according to the rules prescribed in that behalf and consequently with the requirements of natural justice. At this enquiry, the public servant concerned would be entitled to test the evidence adduced against him by cross-examination, where necessary, and to lead his own evidence. In other words, at this first stage of the proceedings, he is entitled to have an opportunity to defend himself. When the enquiry is over and the enquiring
officer submits his report, the dismissing authority has to consider the report and decide whether it agrees with the conclusions of the report or not. If the findings in the report are against the public officer and the dismissing authority agrees with the said findings, a state is reached for giving another opportunity to the public officer to show cause why disciplinary action should not be taken against him. In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the guilt of the public officer as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. There is no doubt that in response to this notice, the public officer is entitled to show cause not only against the action proposed to be taken against him, but also against the validity or correctness of the findings recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails to substantiate his innocence, the action proposed to be taken against him is either unduly severe or not called for. This position is not in dispute.

"The High Court seems to have taken the view that in order that the public officer may have a reasonable opportunity, the dismissing authority must indicate its conclusions on the findings recorded by the enquiring officer and must specify reasons in support of them. According to this view, the fact that the copy of the report made by the enquiring officer was sent to the delinquent officer along with the notice indicating the nature of the action proposed to be taken against him, does not help to meet the requirement of Article 311 (2). The argument is that unless this course is adopted, it would not be clear that the dismissing authority had applied its mind and had provisionally come to some conclusions both in regard to the guilt of the public officer and the punishment which his misconduct deserved. It may be conceded that it is desirable that the dismissing authority should indicate in the second notice its concurrence with the conclusions of the enquiring officer before it issues the said notice under Article 311 (2). But the question which calls for our decision is if the dismissing authority does not expressly say that it has accepted the findings of the enquiring officer against the delinquent officer, does that introduce such an infirmity in the proceedings as to make the final order invalid? We are not prepared to answer this question in the affirmative. It seems to us that it would be plain to the delinquent officer that the issuance of the notice indicating the provisional conclusions of the dismissing authority as to the punishment that should be imposed on him, obviously and clearly implies that the findings recorded against him by the enquiring officer have been accepted by the dismissing
authority; otherwise there would be no sense and no purpose in issuing notice under Article 311 (2). Besides, we may add that in the present case, the affidavit made by appellant No. 2 clearly shows that before the impugned notice was served on the respondent, the Government had accepted the findings of the Enquiring Officer which means that the Government agreed with the Enquiring Officer in regard to both sets of findings recorded by him. Therefore, we do not think that the failure to state expressly that the dismissing authority has accepted the findings recorded in the report against the delinquent officer, justifies the conclusion that the notice given in that behalf does not afford a reasonable opportunity to the delinquent officer under Article 311 (2). On receiving the notice in the present case it must have been obvious to the respondent that the findings recorded against him by the Enquiring Officer had been accepted by the appellants and so, we think it would not be reasonable to accept the view that in the present case, he had no reasonable opportunity as required by Article 311 (2).

“We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311 (2). In such a case, it would be obviously necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. There may also be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and against him on other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in their entirety, it is another matter; but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or all of those recorded in his favour and proceeds to specify the nature of action proposed to be taken on its own conclusions, it would be necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be based not only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer are, according to the dismissing authority, proved. In order to give the delinquent officer a reasonable opportunity to show cause under Article 311 (2), it is essential that the conclusions provi-
sionally reached by the dismissing authority must, in such cases, be specified in the notice. But where the dismissing authority purports to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that the dismissing authority must say that it has so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do no think that the words used in Article 311 (2) justify the view that the failure to make such a statement amounts to contravention of Article 311 (2). In dealing with this point, we must bear in mind that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in a commonsense manner, the respondent would not have found any difficulty in realising that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in their entirety.”

(a) Competent authority to be satisfied

As already mentioned elsewhere in this chapter, neither the findings nor the recommendations of the Enquiry Officer are binding on the competent authority. If there are charges against the servant, it is for the competent authority to be satisfied that the servant is guilty and deserves the punishment proposed. The satisfaction of the enquiry officer cannot take the place of the satisfaction of the competent authority, as this would amount to his acting in a mechanical way. Even where the Enquiry Officer gives a finding that any charge is not proved, it is open to the Competent authority to disagree and decide otherwise if justified by the records of enquiry placed before him.

At the end of the enquiry the Enquiry Officer appreciates the evidence records his conclusions and submits his report to the Government concerned. After the report is received by the Government the Government is entitled to consider the report and the evidence led against the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. The enquiry report along with the evidence recorded constitute the material on which Government has ultimately to act. That is the only purpose of the enquiry held by competent officer and the report which he makes as a result of the said enquiry. Therefore, the High Court was in error in coming to the conclusion that the Government concerned was not justified in differing from the findings recorded by the Enquiry Officer. As the report of the Enquiry Officer is not binding on the Government, the constitutional safeguard afforded by Article 311 (1) and (2) cannot be said to have been contravened by the Government and the grievance made by the delinquent officer in that behalf must fail—Union of India v. H. C. Goel, AIR 1964 SC 364 : 1963 Cr LJ (SC) 153 : (1963-64) 25 FJR 159 : (1964) 1 Lab LJ 38.

In a departmental enquiry against a railway employee, the Enquiry Committee disbelieved the evidence of witnesses and came to the conclusion that the charge was not proved beyond reasonable doubt. The General Manager, who was the Disciplinary Authority, however, did not agree and held the employee guilty of the charge.
The Supreme Court held that it was open to the General Manager to do so and he was not bound by the conclusion reached by the Enquiry Committee—Railway Board, New Delhi v. Naraiyan Singh, (1969) 1 SCC 502.

In Union of India v. H. C. Goel, AIR 1964 SC 364, it was held that the findings of facts recorded by an enquiry officer are not binding on the Government and that the Government is competent to take a different view on evidence adduced against the Government servant.

In A. N. D'Silva v. Union of India, AIR 1962 SC 1130, the Supreme Court held that it was for the punishing authority to propose the punishment and not for the enquiring authority and that neither the conclusion on the evidence nor the punishment which the enquiry officer regarded as appropriate was binding upon the punishing authority.

In State of Assam v. Bimal Kumar Pandit, AIR 1963 SC 1612 : (1964) 2 SCR 1, the Supreme Court observed:

“In the absence of rules or any statutory provisions to the contrary, the Enquiry Officer is not required to specify the punishment which may be imposed on the delinquent officer. His task is merely to hold an enquiry into the charges and make his report setting forth his conclusions and findings in respect of the said charges. Sometimes the enquiring officers do indicate the nature of the action that may be taken against the delinquent officer, but that ordinarily is outside the scope of the enquiry. That being so, not much significance can be attached to the recommendation made by the Enquiring Officer in the present case. Besides, it is absolutely clear that under the relevant rules, the punishment proposed to be imposed on the respondent was justified even on the findings recorded against him by the Enquiring Officer, and so, it would be idle to contend that unless the appellants had differed from the conclusions of the Enquiring Officer in respect of the charges which he held not proved, they could not have legitimately thought of imposing the said punishment on him.”

In Joseph John v. State of Trav. Co., AIR 1955 SC 160, the Supreme Court held that it was necessary for the Competent authority to draw his own conclusions upon the facts collected for him and place before him and the servant was also entitled to persuade the Competent authority to come to a different conclusion from that arrived at by the Enquiry Officer.

In V. K. Javali v. State of Mysore, AIR 1966 SC 1397, it was, however, held that the findings of the Enquiry Officer could not be lightly brushed aside.

(b) Satisfaction of the Enquiring Authority is immaterial

(Please refer to previous topic.)

(c) Notice to show cause

Before a Government servant is dismissed, removed or reduced in rank two opportunities should be given to him. The first opportunity
should be to meet the charges against the person concerned on facts; and when the authorities have formed their views on the facts and are in a position to propose the punishment to be awarded a second opportunity should be given to the employee to show cause why the punishment proposed should not be imposed on him. The second notice has been held by the Court to be essential.

There is no express requirement of two notices under the Article. But the stage at which Article 311 (2) prescribes an opportunity to show cause against the action proposed is when the Government has reached a tentative conclusion as to the punishment which would be appropriate. The necessity for two notices arises out of the words 'action proposed to be taken' in the Article. The notice of charges may be required by the Service Rules but the notice of the proposed punishment is a constitutional injunction whose infringement is fatal.

A second opportunity is to be given to the Government servant concerned after the charges had been brought home to him as a result of the enquiry. If the Competent authority were to determine before the charges were proved that a particular punishment would be meted out to the Government servant concerned he may well feel that the Competent authority had framed an opinion against him generally on the subject-matter of the charge or at any rate as regards the punishment itself. This will be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also seem to have been done. When the report of the Enquiry Officer is accepted by the Competent authority and it confirms the opinion that the punishment of dismissal proposed should be inflicted on the Government servant concerned, it was on that stage being reached that he was entitled to have a further opportunity given to him to show cause why the particular punishment should not be inflicted on him. If this is not done there can be no getting away from the fact that Article 311 (2) has not been fully complied with and the Government servant concerned has not had the benefit of all the constitutional protection and accordingly his dismissal cannot be supported—Khem Chand v. Union of India, 1958 SGK 1(8): AIR 1958 SC 300: 1958 SCA 222: 1958 SCJ 497: 1LR 1958 Punj 1062: (1958) 1 Lab LJ 539.

The authority competent to issue second show-cause notice is the authority competent to take action proposed.

(1) Punishing authority failing to indicate in notice its concurrence with conclusions of Enquiry Officer.

It is no doubt desirable that the dismissing authority should indicate in the second notice its concurrence with the conclusions of the Enquiry Officer before it issues the notice under Article 311 (2) of the Constitution. But the failure to so state expressly in the notice does not necessarily justify the conclusion that the notice given in that behalf does not afford a reasonable opportunity to the delinquent officer under Article 311(2) and amounts to a contravention of Article 311(2). If the dismissing authority differs from the findings either wholly or partially, recorded in the enquiry report, it is essential that the provisional conclusions reached by the dismissing authority must be stated in the notice in order to give the delinquent officer a reasonable opportunity to show cause under Article 311 (2). But where the dismissing authority purported to proceed
to issue the notice after accepting the enquiry report in its entirety and a copy of the enquiry report was also enclosed along with the notice, it must have been obvious to the delinquent officer that the findings recorded against him by the Enquiring Officer had been accepted, and so it would not be reasonable to accept the view that the civil servant concerned had no reasonable opportunity as required by Article 311 (2). From the fact that the enquiry report had suggested the punishment of withholding of three increments while in the show-cause notice the action proposed was removal from service, it cannot be inferred that the dismissing authority did not accept the findings recorded by the Enquiring Officer in favour of the delinquent officer—State of Assam v. Bimal Kumar Pandit, AIR 1963 SC 1612.

In Swadeshi Cotton Mills v. State Industrial Tribunal, U.P., AIR 1961 SC 138, the Supreme Court appears to have taken the view that it is not quite necessary for the Competent authority to recite in the second show-cause notice its concurrence with the conclusions of the Enquiry Officer.

(ii) Reasons for agreeing with Enquiring Officer need not be given unless rules specifically require.

In dealing with the question as to whether it is obligatory or the State Government to give reasons in support of the order imposing penalty on the delinquent officer, the fact cannot be overlooked that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an Enquiry Officer appointed in that behalf. The enquiry is followed by a report and the Public Service Commission is consulted, where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer, also, it seems somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, it cannot be said that, as a matter of law, the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are no doubt quasi judicial, but having regard to the manner in which these enquiries are conducted, an obligation cannot be imposed on the State Government to record reasons in every case—State of Madras v. A R Srinivasan, AIR 1966 SC 1827 : 1966 SCWR 524.

In Union of India v. K. Rajappa Menon, 1970 (2) FLR 341 (SC), a show-cause notice was served giving the findings of the Enquiring Officer and it was stated that it had been tentatively decided by the Chief Commercial Superintendent that the respondent should be dismissed from service. The notice was served after the Chief Commercial Superintendent had recorded the following order:

"The employee in his reply dated August 3, 1963 to this charge-sheet has not accepted the charges contained in the same."
An enquiry, therefore, was arranged. It was held by the Assistant Commercial Superintendent.....I have seen the enquiry proceedings. I find that the procedure has been followed correctly; that the accused has been given every reasonable opportunity for his defence and I agree with the findings of the enquiry Officer that all the charges mentioned in the charge-sheet have been established. Since these are serious charges, it is tentatively decided to impose the penalty of dismissal from service on Shri K. Rajappa Menon, Assistant Station Master ....... He should, therefore, be asked to show cause why he should not be dismissed from service accordingly."

The respondent filed a petition under Article 226 of the Constitution in the High Court and a number of points were raised before the Single Judge. The only point which prevailed with him was that the Chief Commercial Superintendent had not recorded reasons as required by Rule 1713 of the Conduct and the Disciplinary Rules. The Division Bench on appeal affirmed the judgment of the Single Judge. When the case came up before the Supreme Court, Grover, J., disagreed with the High Court and observed:

"Rule 1713 of the Conduct and Disciplinary Rules does not lay down any particular form or manner in which the Disciplinary Authority should record its findings on each charge. All that the rule requires is that the record of the enquiry should be considered and the Disciplinary Authority should proceed to give its findings on each charge. This cannot and does not mean that it is obligatory on the Disciplinary Authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in details and write as if it were an order or judgment of a Judicial Tribunal. The rule certainly requires the Disciplinary Authority to give considerations to the record of the proceedings which, as expressly exhibited in Ex. R. 8, was done by the Chief Commercial Superintendent. When he agreed with the findings of the Enquiry Officer that all the charges mentioned in the charge-sheet had been established, it meant that he was affirming the findings on each charge and that would certainly fulfil the requirement of the rule. The rule after all has to be read not in a pedantic manner but in a practical and reasonable way and so read it is difficult to escape from the conclusion that the Chief Commercial Superintendent had substantially complied with the requirement of the rule. The interference by the High Court on the ground that there had been non-compliance with Rule 1713 was not justified."

(iii) Show-cause notice against any of three major punishments:
Effects.

In Hukum Chand Malhotra v. Union of India, AIR 1959 SC 536 A : 1959 SCJ 419 : (1959) 1 SCR (Supp) 892, it was contended that where the second show-cause notice specified all the three punishments, dismissal, removal or reduction in rank as being in contemplation, it showed that the authority concerned had not applied its mind to the report and as such there was no opportunity given to show
cause against the actual punishment sought to be inflicted upon the servant. The Court repelled the contention and observed:

"Therefore, the real point for decision both in I. M. Lal’s case AIR 1948 PC 121 and Khem Chand’s case AIR 1958 SC 300, was that no opportunity had been given to the Government servant concerned to show cause after a stage had been reached when the charges had been established and the Competent authority had applied its mind to the gravity or otherwise of the charges proved and tentatively proposed the punishment to be given to the Government servant for the charges so proved. It is true that in some of the observations made in those two decisions the words ‘actual punishment’ or ‘particular punishment’ have been used, but those observations must, however, be taken with reference to the context in which they were made.

"Let us examine a little more carefully what consequences will follow if Article 311 (2) requires in every case that the ‘exact’ or ‘actual’ punishment to be inflicted on the Government servant concerned must be mentioned in the show-cause notice issued at the second stage. It is obvious and Article 311 (2) expressly says so, that the purpose of the issue of a show-cause notice at the second stage is to give the Government servant concerned a reasonable opportunity of showing cause why the proposed punishment should not be inflicted on him; for example, if the proposed punishment is dismissal, it is open to the Government servant concerned to say in his representation that even though the charges have been proved against him, he does not merit the extreme penalty of dismissal, but merits a lesser punishment, such as removal or reduction in rank. If it is obligatory on the punishing authority to state in the show-cause notice at the second stage the ‘exact’ or ‘particular’ punishment which is to be inflicted, then a third notice will be necessary if the State Government accepts the representation of the Government servant concerned. This will be against the purpose for which the second show-cause notice was issued.

"Then, there is another aspect of the matter which has been pointedly emphasized by Dulat, J. If in the present case the show-cause notice had merely stated the punishment of dismissal without mentioning the other two punishments, it would still be open to the punishing authority to impose any of the lesser penalties of removal or reduction in rank and no grievance could have been made either about the show-cause notice or the actual punishment imposed. Can it be said that the enumeration of the other two punishments in the show-cause notice invalidated the notice? It appears to us that the show-cause notice in the present case by mentioning the three punishments gave a better and fuller opportunity to the appellant to show cause why none of the three punishments should be inflicted on him. We desire to emphasize here that the case before us is not one in which the show-cause notice is vague or
of such a character as to lead to the inference that the punishing authority did not apply its mind to the question of punishment to be imposed on the Government servant. The show-cause notice, dated 14th April, 1954, stated in clear terms that 'the President is provisionally of opinion that a major penalty, namely, dismissal, removal or reduction, should be enforced on you.' Therefore, the President had come to a tentative conclusion that the charge proved against the appellant merited any one of the three penalties mentioned therein and asked the appellant to show-cause why any one of the aforesaid three penalties should not be imposed on him. We see nothing wrong in principle in the punishing authority tentatively forming the opinion that the charges proved merit any one of the three major penalties and on that footing asking the Government servant concerned to show cause against the punishment to be taken in the alternative in regard to him. To specify more than one punishment in the alternative does not necessarily make the proposed action any the less definite; on the contrary, it gives the Government servant better opportunity to show cause against each of those punishments being inflicted on him, which he would not have had if only the severest punishment had been mentioned and a lesser punishment not mentioned in the notice had been inflicted on him.”

(III-a) Proposed punishment based on previous punishment a bad record

It is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his bad record, this should be included in the second notice so that he may be able to give an explanation. Under Article 311 (2) of the Constitution of India, a Government servant must have reasonable opportunity not only to prove that he is not guilty of the charges levelled against him but also to establish that the punishment proposed to be imposed is either not called for or is excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action. If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment, he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based on the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his previous record would necessarily be taken with consideration by the Government in inflicting punishment on him; nor it would be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point,
namely, that, what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remark of his superior officers, that he had an adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable but whether he has been given an opportunity to give his explanation. The doctrine of ‘presumptive knowledge’ or that of ‘purposeless enquiry’ cannot be accepted as their acceptance will be subversive of the principle of “reasonable opportunity.” It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first charge of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinises it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent upon the nature of the subject-matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject-matter of charge at the first stage of the enquiry. But nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same.

In State of Mysore v. K. Manche Gowda, AIR 1964 SC 506: (1964) 1 SCA 305: (1964) 1 SCWR 7, the second show-cause notice did not mention that the Government intended to take the previous punishments of the officer proceeded against into consideration in proposing to dismiss him from service. On the contrary the said notice put him on the wrong scent, for it told him, that it was proposed to dismiss him from service as the charges proved against him were grave. But the order of dismissal showed that but for the previous record the Government might not have imposed the penalty of dismissal on him and might have accepted the recommendation of the Enquiry Officer and the Public Service Commission of imposing the penalty of reduction in rank. The Supreme Court held that the order indicated that the show-cause notice did not give the only reason which influenced the Government to
dismiss the respondent from service. This notice clearly contravened the provisions of Article 311 (2) of the Constitution as interpreted by Court.

(iv) Disciplinary authority tentatively determining to impose particular punishment before explanation to show-cause notice, if illegal.

The contention that the disciplinary authority is not entitled to have finally made up its mind before the explanation to the second show-cause notice has been received by it and at a stage prior to the issuance of the notice is wholly untenable. The procedure which is to be followed under Article 311 (2) of the Constitution, of affording a reasonable opportunity includes the giving of two notices, one at the enquiry stage and the other when the competent authority as a result of the enquiry tentatively determines to inflict a particular punishment. It is quite obvious that unless the disciplinary or the competent authority arrives at some tentative decision it will not be in a position to determine what particular punishment to inflict and a second show-cause notice cannot be issued without such a tentative determination—Union of India v. K. Rajappa Menon, (1969) 2 SCWR 22.

(v) Notice to show-cause not issued formally in the name of Rajpramukh—if provisions of Article 166 contravened and Show-Cause Notice invalid.

As the show-cause notice was issued on behalf of the Government and was signed by the Chief Secretary of the United States of Travancore-Cochin who had under the rules of business framed by the Rajpramukh the charge of the portfolio of "service and appointments" at the Secretariat level in the State, this was substantial compliance with the directory provisions of Article 166 of the Constitution of India, clauses (1) and (2) of Article 166 are directory and non-compliance with them does not result in the order being invalid and that in order to determine whether there is compliance with these provisions all that is necessary to be seen is whether there is substantial compliance with these requirements. In the present case there can be no manner of doubt that the notice signed by the Chief Secretary of the State expressed to be on behalf of the Government and giving opportunity to the petitioner to show cause against him was in substantial compliance of the provisions of Article 166. The petitioners accepted this notice and in pursuance of it applied for further time to put in his defence. Therefore the contention that as the notice was not expressed as required under Article 166 it was invalid and therefore the requirements of Article 311 were not satisfied in this case must be held to be devoid of force—P. Joseph John v. The State of Travancore Cochin, AIR 1955 SC 160.

(cc) Duty of Enquiry Officers to disclose material acted upon to delinquent employee.

The principle, in this regard has been laid down by the Supreme Court in State of Mysore v. S. S. Makapur, (1963) 2 SCR 493:

"For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising
*quasi* judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts."

It has been further laid down by the Supreme Court in *The Collector of Central Excise and Land Customs v. Sanawarmal Purohit*—Civil Appeals Nos. 1362—1363/1967, decided on 16-2-1968—that:

"A *quasi* judicial authority would be acting contrary to the rules of natural justice if it acts upon information collected by it which has not been disclosed to the party concerned and in respect of which full opportunity of meeting the inferences which arise out of it has not been given."

The above two extracts, it will be noted, emphasize that rules of natural justice can be considered to have been violated only if the authority concerned acts upon information collected by it and the said information has not been disclosed to the party against whom the material has been used.

It is highly improper for an enquiry officer during the conduct of an enquiry to attempt to collect any materials from outside sources and not make that information, so collected, available to the delinquent officer and further make use of the same in the enquiry proceedings. There may also be cases where a very clever and astute enquiry officer may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusions recorded by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by the Enquiry Officer, without its having been disclosed to the delinquent officer, it can be stated that the enquiry proceedings are vitiated. It was, under such circumstances, that the Supreme Court, in *Executive Committee of U. P. State Warehousing Corporation v. Chandra Kiran Tyagi*, (1969) 2 SCC 838, accepted the view of the High Court that the enquiry proceedings were vitiated by the Enquiry Officer collecting information from outside sources and utilising the same in his findings recorded against the delinquent officer without disclosing that information to the accused officer. It was, again, under similar circumstances that the Supreme Court in *Sanawarmal Purohit's* case, (supra),
upheld the order of the High Court holding the enquiry proceedings to be contrary to the principles of natural justice when the Enquiry Officer had collected information from third parties and acted upon the information so collected, without disclosing the same to the accused. If the disciplinary authority himself had been also the Enquiry Officer and, during the course of the enquiry he had collected materials behind the back of the accused and used such materials without disclosing the same to the officer concerned, the position will be still worse and the mere fact that such an order passed by the disciplinary authority had even been confirmed by an appellate authority without anything more, will not alter the position in favour of the department.

In State of Assam v. Mahendra Kumar Das, AIR 1970 SC 1255 : (1970) 2 SCC 659 : (1970) 1 SCC 709, the respondent a permanent Sub-Inspector of Police was placed under suspension from July 24, 1957 as a result of a confidential enquiry conducted by the Superintendent of Police, Anti-Corruption Branch. Certain charges were framed against him by the Sub-Divisional Police Officer authorised under section 7 of the Police Act, 1961, who conducted the enquiry. The respondent cross-examined the witnesses on the side of prosecution and examined some witnesses on his side. The Enquiry Officer found him guilty. The Superintendent of Police sent a memo with a copy of the report of the Enquiry Officer to the respondent asking him to submit his explanation. The respondent’s request for being furnished with copies of depositions of the witnesses recorded by the Enquiry Officer was rejected by the Superintendent of Police. The respondent submitted his explanation. The Superintendent of Police dismissed the respondent from service holding him guilty of the charges. The respondent’s appeal and revision to the higher authorities failed. The respondent filed a Writ petition in the High Court challenging the disciplinary proceedings initiated against him on the ground: (1) that the Enquiry Officer had used the material gathered from the Anti-Corruption Branch behind his back, (2) that the request for supply of copies of the statements of witnesses was arbitrarily rejected, and (3) that the refusal to supply a copy of the report of the Anti-Corruption Branch resulted in violation of the principles of natural justice. The High Court accepted the third ground and allowed the Writ petition. The State appealed to the Supreme Court.

Vaidialingam, J., observed:

“In Paragraph 10 of his Writ petition the respondent has alleged that the Enquiry Officer had, during the course of the enquiry, maintained regular correspondence and contacted with the Deputy Superintendent of Police, Anti-Corruption Branch, Gauhati. In Para 12 he had further alleged that the Enquiry Officer started recording statements of witnesses on and from June 23, 1958 and after recording the statements of thirteen witnesses, came to Gauhati on July 14, 1958 and had consultation with the Deputy Superintendent, Anti-Corruption Branch about the proceedings against the respondent and also went through the record of the Anti-Corruption Branch on July 15, 1958. The request of the respondent for being furnished with a copy of the report
of the Anti-Corruption Branch was not complied with. He further alleged that the enquiry proceedings show that the Enquiry Officer had taken into consideration, against the respondent, the report of the Anti-Corruption Branch.

"In the counter-affidavit on behalf of the State, filed in the Writ petition, it was contended in Para 10 that the report of the Anti-Corruption Branch being a confidential document and not having been used as an exhibit in the disciplinary proceedings, the respondent was not entitled to a copy of the same. It was further averred in Para 11 that the findings of the Enquiry Officer, Barpeta, recorded against the respondent were based on the evidence recorded during the enquiry and not on any consultation with the Anti-Corruption Branch Officers. It was further averred in Para 13 that as the report of the Anti-Corruption Branch was not exhibited in the disciplinary proceedings, there was no question of the Enquiry Officer taking the said report into consideration and, as a matter of fact, also the report was not taken into consideration by the Enquiry Officer and the findings against the respondent had been recorded on the basis of the evidence recorded by the Enquiry Officer and no part of it is based on the report of the Anti-Corruption Branch.

"From the above averments it will be noted that the respondent no doubt made a grievance of the consultation stated to have taken place during the midst of the enquiry between the Enquiry Officer and the Anti-Corruption Branch. But his specific averment was that the findings against him recorded in the enquiry were based upon the report of the Anti-Corruption Branch the copy of which was not furnished to him. The State, on the other hand, did not controvert the fact that the Enquiry Officer did have consultation with the Anti-Corruption Branch on the dates mentioned in the record of proceedings. But according to the State, no part of any information contained in that report had been taken into account in the enquiry proceedings and that on the other hand the report of the Enquiry Officer was exclusively based on the evidence adduced during the enquiry....

"But, in the case before us, it is no doubt true that the Enquiry Officer has made a note that he consulted with the Deputy Superintendent of Police, Anti-Corruption Branch on July 14 and 15, 1958 and perused the records relating to the charges. But the enquiry report does not show that materials, if any, collected by the Enquiry Officer on those two days, have been utilised against the respondent. We do not find any warrant for the High Court’s view that:

‘there is no doubt that the S. D. P. O. took into consideration the materials found by the Anti-Corruption Branch...’

"On the other hand, a perusal of the report shows that each and every item of charge had been discussed with reference to the evidence bearing on the same and findings recorded on the basis of such evidence. Therefore, it cannot be stated
that the Enquiry Officer has in this case taken into account materials of any that he may have collected from the Anti-Corruption Branch. Nor is there anything to show that, in the discussion contained in his report, the Enquiry Officer was in any way influenced by the consultation that he had with the Anti-Corruption Branch. If so, it cannot be held that the enquiry proceedings are violative of the principles of natural justice.

"The fact that a copy of the report of the Superintendent of Police, Anti-Corruption Branch, dated December 21, 1957 was not furnished to the respondent is, in our opinion, of no consequence in relation to the actual enquiry conducted against the respondent. That report was necessitated in view of the complaints received against the respondent and the enquiry made by the Anti-Corruption Branch was only for the purpose of enabling the Government to consider whether disciplinary proceedings should be initiated against the respondent. On receipt of the report, the Government felt that disciplinary proceedings will have to be initiated against the respondent and that is how the enquiry proceedings were commenced. The validity of the enquiry will have to be decided only by the manner in which it has been conducted. So far as that is concerned, it is clear from the record that the respondent had a full opportunity of participating in the enquiry and adducing evidence on behalf of himself and of cross-examining the witnesses for the prosecution and the entire evidence was recorded in his presence. The non-furnishing of the copy of the report of the Superintendent of Police, Anti-Corruption Branch, does not vitiate the enquiry proceedings.

"Over and above these circumstances, it is also to be seen that the Enquiry Officer was not the disciplinary authority competent to impose the punishment against the respondent. The Competent authority is the Superintendent of Police. The show-cause notice, issued on October 18, 1958, as well as the order of dismissal passed by the Superintendent of Police, dated December 3, 1958, clearly show that the said officer has independently gone into the evidence on record in respect of the charges for which the respondent was tried and has, after taking into account the explanations furnished by him, independently comes to the conclusion that the respondent is guilty. Similarly, the Deputy Inspector-General of Police, Range Assam, before whom the respondent filed an appeal has also very elaborately and in considerable detail discussed the entire evidence on record and has agreed with the conclusions regarding the guilt of the respondent. We have already held that there is no violation of the rules of natural justice in the enquiry proceedings. Even assuming that there was any defect in the said enquiry proceedings, inasmuch as the punishing authority and the appellate authority, the Superintendent of Police and the Deputy Inspector-General of Police, respectively, have independently considered the matter and found the
respondent guilty on the evidence on record, it must be held that in the circumstances of this case there has been no violation of the principles of natural justice when the order of dismissal was passed.

"We may state that the respondent, when he sent his explanation on November 21, 1958, to the show-cause notice issued by the Superintendent of Police on October 18, 1958 did not make any grievance regarding the consultation by the Enquiry Officer with the Anti-Corruption Branch on July 14 and 15, 1958. For the first time the respondent took this ground of objection to the enquiry proceedings only when he filed the appeal before the Deputy Inspector-General of Police and the latter has quite rightly rejected this objection holding that any consultation that the Enquiry Officer had with the Anti-Corruption Branch has not affected the case in any way since the findings had been recorded against the respondent entirely on the evidence adduced during the enquiry. The High Court has not considered the various aspects, referred to above. Both the contentions of the learned counsel for the appellant, in the circumstances, will have to be accepted and, in consequence, it must be held that the view of the High Court that the order of dismissal is illegal and void is erroneous.

"Mr. Mukherjee, learned counsel, for the respondent raised the contention that the materials on record disclose that the respondent was appointed permanent Sub-Inspector by the Inspector-General of Police whereas the order of dismissal has been passed by a subordinate authority, the Superintendent of Police and therefore the order of dismissal is illegal and void. Normally, this contention should not be entertained, because it is stated by the High Court that apart from the two points considered by it, no other grounds of objection were raised by the respondent against the order of dismissal. But, if really the records support this contention of Mr. Mukherjee, that will make the order of dismissal illegal and so we permitted the counsel to raise this contention. But, after a reference to the material on record, we are satisfied that this contention is devoid of merit.

"The respondent, no doubt, averred in his Writ petition that he was appointed to the substantive post of Sub-Inspector of Police by order of the Inspector-General of Police, Assam, and therefore the order of dismissal passed by a subordinate authority viz., the Superintendent of Police, is illegal and ultra vires. In the counter-affidavit filed before the High Court, the State maintained that the Superintendent of Police was the appointing authority of a Sub-Inspector of Police and it placed reliance upon Rule 66, as corrected, by the Correction Slip No. 150, dated June 1, 1938 of the Assam Police Manual, Part III. The State further categorically stated that the Superintendent of Police is the appointing and punishing authority of the Sub Inspector of Police and the respondent has been properly and validly dismissed by
the competent authority. Rule 66, referred to above, clearly supports the contention of the State in this regard.

"Annexure 'X' to the counter-affidavit of the State in the High Court is the order of the Inspector-General of Police, Assam, dated December 16, 1952. That refers to the selection for confirmation as Sub-Inspectors of Police of the persons mentioned therein. The respondent is Serial Number 5, in the said order. Note No. 2 to this order specifically directs the Superintendents of Police to send to the Inspector-General of Police, Assam, copies of confirmation orders issued by them in respect of the officers. In accordance with the orders of the Inspector-General of Police, dated December 16, 1952, the Superintendent of Police passed an order under D. O. No. 3777, dated December 31, 1952 that among other officers, the respondent, who was officiating as Sub-Inspector, has been selected for confirmation as Sub-Inspector of Police (Unarmed Branch) with effect from September 1, 1951 and that he has been confirmed as Sub-Inspector of Police (Unarmed Branch) from the same date and absorbed against an existing substantive vacancy in the district. These order clearly show that the respondent was appointed permanent Sub-Inspector of Police not by the Inspector-General of Police but by the Superintendent of Police. Obviously because of these records, such a contention, as is now taken on behalf of the respondent, was not raised before the High Court."

(d) Non-supply of copy of Enquiry Officer's report : Effect

The failure on the part of the competent authority to provide the plaintiff with a copy of the report of the Enquiry Officer amounted to denial of reasonable opportunity contemplated by Article 311 (2) of the Constitution. The plaintiff was not aware whether the Enquiry Officer reported in his favour or against him. If the report was in his favour, in his representation to the Government he would have utilised its reasoning to dissuade the Competent authority from coming to a contrary conclusion, and if the report was against him he would have put such arguments or material as he could, to dissuade the Competent authority from accepting the report of the Enquiry Officer. Moreover, the Competent authority had the report before him and the tentative conclusions arrived at by the Enquiry Officer were bound to influence him, and in depriving the plaintiff of a copy of the report he was handicapped in not knowing what material was influencing the Competent authority. The enquiry report along with the evidence recorded constitute the material on which the Government has ultimately to act. That is the only purpose of the enquiry held by a competent officer and the report he makes as a result of the said enquiry. It is true that the question whether reasonable opportunity has or has not been afforded to the Government servant must depend upon the facts of each case, but it would be in very rare cases indeed in which it could be said that the Government servant is not prejudiced by the non-supply of the report of Enquiry Officer.—State of Maharashtra v. Bai Shankar Avalram Joshi and another, (1969) SCWR 868 : 1969 SCC 804 : (1969) 2 SCJ 779 : AIR 1969 SC 1302 : 1969 Serv L.R. 268.
In State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313: (1966) 2 SCJ 777: (1966-67) 28 FJR 464, as observed by the Supreme Court, a copy of the report made against him was not supplied to the respondent and even when he was heard before the order of dismissal was passed against him, he had no means of knowing what grounds had weighed with the Enquiry Committee when it made a report against him. The Supreme Court held that having regard to the procedure adopted by the State authorities in appointing the Enquiry Committee, in formulating the questionnaire containing the charges against the respondent, in making the report, and in dealing with the recommendations made by the Chief Secretary from time to time, the High Court was right in coming to the conclusion that the respondent had not received a reasonable opportunity to make his defence, and that the procedure of the enquiry and the report made by the Committee, as well as the final order of dismissal passed against the respondent have contravened the safeguards guaranteed by section 14 (2) of the Ordinance.

In this State of Gujurat v. R. C. Teredesai and another, (1969) 2 SCA 223: (1969) 2 SCJ 740: AIR 1969 SC 1294: (1969) 2 SCC 128: 1969 Serv LR 519, the question for determination was whether omission to supply to the first respondent a copy of the recommendations of the Enquiry Officer in the matter of punishment, although a copy of his report containing his findings on the various charges was supplied, amounted to a failure to provide reasonable opportunity of making a representation against the penalty proposed within the meaning of Article 311 (2) of the Constitution. On behalf of the State it was urged that the Enquiry Officer was not required to make any recommendation about the punishment which was to be imposed on the first respondent on the charges against him which had been found to have been proved. It was pointed out that the sole duty of the Enquiry Officer was to give his conclusions or findings on the charges which he was called upon to enquire into and the recommendations which he made in the matter of punishment were wholly redundant and irrelevant. For that reason it was not at all necessary that the first respondent should have been supplied a copy of the recommendations relating to punishment.

The Supreme Court held:

"Now it is correct that the Enquiry Officer is under no obligation a duty to make any recommendations in the matter of punishment to be imposed on the servant against whom the departmental enquiry is held, and his function merely is to conduct the enquiry in accordance with law and to submit the record along with his findings or conclusions on the various charges which have been preferred against the delinquent servant. But if the Enquiry Officer proceeds to recommend that a particular penalty or punishment should be imposed in the light of his findings or conclusions the question is whether the officer concerned should be informed about his recommendations. In other words since such recommendations for part of the record and constitute appropriate material for consideration of the Government it would be essential that the material should not be withheld."
from him so that he could, while showing cause against
the proposed punishment, make a proper representation.
The entire object of supplying copy of the report of the
Enquiry Officer is to enable the delinquent officer to satisfy
the punishing authority that he is innocent of the charges
framed against him and that even the charges are held to
have been proved the punishment proposed to be inflicted
is unduly severe. If the Enquiry Officer has also made re-
commendations in the matter of punishment that is likely to
affect the mind of the punishing authority even with
regard to penalty a punishment to be imposed on such officer.
The requirement of a reasonable opportunity therefore,
would not be satisfied unless the entire report of Enquiry
Officer including his views in the matter of punishment are
disclosed to the delinquent servant."

In Union of India v. H. C. Goel, (1964) 2 SCR 718, unless it has been
observed that unless the statutory rules or the specific order under which
an officer is appointed to hold an enquiry so requires the Enquiry Officer
need not make any recommendations as to the punishment which may be
imposed on the delinquent officer in case the charges framed against him
are held proved at the enquiry; if however, the Enquiry Officer makes
any recommendations the said recommendations like his findings on the
merits are intended merely to supply appropriate material for the
consideration of the Government.

(e) Reply to show-cause notice

In answer to a second show-cause notice under Article 311 (2) a
Government servant is entitled to make his representation both on the
merits as well as on the quantum of punishment. In other words he is
entitled to show the following things:

(1) that the evidence adduced against him is not worthy of evi-
dence and does not prove his guilt;

(2) that the constitutional requirements were not complied with
in the enquiry;

(3) that rules of natural justice were not followed by the En-
quiry Officer;

(4) that the punishment is severer than warranted.

See Khem Chand v. Union of India, AIR 1958 SC 300:

When a stage is reached when definite conclusions have been come
to as to charges, and the actual punishment to follow is provisionally
determined on, that the statute gives the civil servant an opportunity
for which sub-section (3) of section 240 of the Government of India Act,
1935 (which corresponds to Article 311 of the Constitution) makes pro-
visions, and that at that stage a reasonable opportunity has to be
afforded to the civil servant concerned. There was no anomaly in the
view that the statute contemplates a reasonable opportunity at more
than one stage. In the present case the petitioner had reasonable
opportunity at both stages to enter upon his defence. He fully availed
himself of the first opportunity and though a reasonable time was also
given to him at the second stage he failed to avail himself of it and it
is not open to him now to say that the requirements of clause (2) of Article 311 have not been satisfied. Before filing his written statement before the Enquiry Commissioner the petitioner and his counsel were afforded facility to inspect the various files concerning the charges which he had to meet. After inspection of the files he filed written statement explaining those charges. He was defended in the enquiry by a leading lawyer and afforded fullest opportunity to examine and cross-examine the witnesses examined by the Commissioner. After the enquiry was concluded the petitioner was provided with a copy of the report of the Commissioner and was asked to show cause against the action proposed to be taken against him. He applied for two months time to show cause. This was granted. He made a further application for further time. This was also partially granted. He again asked for further time which was refused. It is difficult to say that the time allowed to him was not reasonable as he had taken part in the enquiry before the Commissioner and all the evidence had been taken in his presence and he had full opportunity to defend himself. All the material on which the Commissioner had reported against him on the charges found proved was given in the report of the Commissioner and that was supplied to him with a show-cause notice. The time allowed was more than sufficient for him to enter on his defence and having failed to do so he cannot be heard to say that he was not given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him—P. Joseph John v. State of Travencore Cochin, AIR 1955 SC 160 : 1955 SCR 1011 : 1955 SCA 258 : 1955 SCJ 221 : (1955) 1 Mad LJ (SC) 134 : (1956) 1 Lab LJ 235.

(f) Personal hearing

An opportunity of making oral representation is not a necessary postulate of an opportunity of showing cause within the meaning of Article 311 (2) of the Constitution. Since the rules of natural justice do not include an opportunity for a personal hearing, the enquiry is not vitiated by the consideration that the petitioner was denied an opportunity to present his case personally. In other words, a party has no right to have an oral hearing at the stage when a show-cause notice has been issued. There is no constitutional guarantee to an officer to ask for oral hearing at the stage of show-cause notice—Kapoor Singh v. Union of India, AIR 1960 SC 493 : (1960) 2 SCR 569 : (1960) 1 SCA 680 : 1960 SCJ 487 : ILR 1960 Punj 824 ; See also U. R. Bhatt v. Union of India, AIR 1962 SC 1344.

(g) Previous record—When can be taken into consideration to determine punishment.

The point came up before the Supreme Court in State of Mysore v. Manche Gowda, AIR 1964 SC 506, where it was observed:

"Under Article 311 (2) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity must be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is
proposed to take such action—See (the decision of this Court) State of Assam v. Bimal Kumar Pandit, Civil Appeal No. 832 of 1962; AIR 1963 SC 1612. If the grounds are not given in the notice, it would be well-nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment; he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that would necessarily be taken into consideration by the Government in inflicting on him; nor it would be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that, what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished; it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of 'presumptive knowledge' or that of 'purposeless enquiry', as their acceptance will be subversive of the principle of 'reasonable opportunity.' We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

"Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment,
should be made specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends to some extent, upon the nature of the subject-matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject-matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same.

“In the present case the second show-cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it was proposed to dismiss him from service as the charges proved against him were grave. But, a comparison of paragraphs 3 and 4 of the order of dismissal shows that but for the previous record of the Government servant, the Government might not have imposed the penalty of dismissal on him and might have accepted the recommendation of the Enquiry Officer and the Public Service Commission. This order, therefore, indicates that the show-cause notice did not give the only reason which influenced the Government to dismiss the respondent from service. This notice clearly contravened the provisions of Article 311 (2) of the Constitution as interpreted by Court.”

If the past record of a public servant is taken into consideration by the punishing authority for the purpose of imposing a lesser punishment (proposed by the Enquiry Officer on the ground that he was found guilty of the charges framed against him), and not for the purpose of increasing the quantum or nature of punishment then the order of removal cannot be challenged on the ground that in the show-cause notice against the proposed punishment it was not stated at his past record would be taken into consideration—State of U. P. v. Harish Chandra Singh, (1969) 2 SCC 541 : AIR 1969 SC 1020 : (1969) 1 SCC 403 : 1969 Lab IC 1402 : 1969 MLJ (Cr) 734.

(h) Consultation with Public Service Commission

The provisions of Article 320 (3) (c) are not mandatory and non-compliance with those provisions does not afford a cause of action to

In P. Joseph John v. State of Travancore Cochin, AIR 1955 SC 160, the report of the Enquiring Officer was placed before the Public Service Commission and the latter approved the action proposed to be taken. The appellant was given another opportunity to show cause but he did not avail himself of that opportunity or submit any explanation or show any cause on which the Public Service Commission could be consulted. It was held that the order of dismissal having been made, there was in the circumstances no further necessity to consult the Public Service Commission.¹

(1) Enquiry Officer acquitting employee of first two charges and finding him guilty of third charge—Punishing authority relying on charges on which employee was acquitted: Effect.

The appellant, who was a forester, was placed under suspension and several charges were framed against him. The Enquiry Officer by his finding, acquitted the appellant of the first two charges; but found him guilty of the third charge. He recommended that the appellant be reinstated in service and as punishment he suggested that the period of suspension may be treated as punishment. When the matter came before the Conservator of Forests he called upon the appellant to show cause why he should not be dismissed from Government service. In this notice he expressed the view that the punishment which was proposed was extremely light for such serious offences. The appellant showed cause. The Conservator of Forests did not only act upon the third charge but also upon the other two charges which he held were proved against him. In doing so, he differed from the findings given by the Inquiring Officer. Later on, representations being made to Government the order of dismissal was modified into one of discharge from service.

The appellant filed a petition under Articles 226 and 227 of the Constitution challenging the order of discharge from service. The High Court dismissed the Writ petition.

When the matter came up before the Supreme Court it was held that if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fairplay and natural justice. If the Conservator of Forests wanted to use them, he should have appraised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld—Narayan Misra v. State of Orissa, (1969) 1 SCWR 829.

(j) Order of dismissal based on several grounds some of which unsustainable—Order, if bad.

In Railway Board v. Niranjan Singh, (1969) 1 SCC 502, the question that arose before the Supreme Court was whether the appellate

¹ Please refer to Chapter IV for details.
Court was right in its view that if an order of removal was based on number of grounds and one or more of those grounds were found to be unsustainable, the order was liable to be struck down. The Supreme Court replied the question as under:

"It was not disputed before us that the first charge levelled against the respondent is a serious charge and it would have been appropriate for the General Manager to remove the respondent from the service on the basis of his findings on that charge. But we were told that we cannot assume that the General Manager would have inflicted that punishment solely on the basis of that charge and consequently we cannot sustain the punishment imposed, if we hold that one of the two charges on the basis of which it was imposed is unsustainable. This contention cannot be accepted in view of the decision of this Court in *State of Orissa v. Bidyabhusan Mahapatra*, (1962) 1 SCR (Supp) 648, wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which the punishment imposed can lawfully be imposed it is not for the Court to consider whether the ground alone would have weighed with the authority in imposing the punishment in question".

(k) **Punishment**

The question of imposing punishment can only arise after enquiry is made and the report of the Enquiry Officer is received. It is for the punishing authority to propose the punishment and not for the enquiring authority. The latter has when so required to appraise to evidence to record its conclusion and if it thinks proper to suggest the appropriate punishment. But neither the conclusion on the evidence nor the punishment which the enquiring authority may regard as appropriate is binding upon the punishing authority—*A. N. D'Silva v. Union of India*, AIR 1962 SC 1150 : (1962) 2 SCJ 126 : (1962) 1 SCR (Supp) 968.

The Service Rules merely prescribe the diverse punishment which may be imposed upon delinquent public servants. The rules do not provide for specific punishments for different misdemeanours. The rules leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misdemeanour found proved against a delinquent public servant. The Constitution merely guarantees the protection of a reasonable opportunity of showing cause against the action proposed; it does not guarantee that the punishment shall not be more severe than a prescribed punishment—**Ibid**.

Whereafter the report of the Enquiry Officer was received, the employee concerned was called upon to show cause against his proposed dismissal from service and was afforded an opportunity to make his defence the President does not violate guarantee of reasonable opportunity imposing the punishment of removal from service instead of dismissal—**Ibid**.

Where the show-cause notice merely states the graver punishment without mentioning the lighter punishments, it would still be open to the punishing authority to impose any of the lesser penalties and no
grievance can be made either about the show-cause notice or the actual punishment—Hukum Chand Malhotra v. Union of India, AIR 1959 SC 536.

Punishment as such is not justiciable—See State of Orissa v. Bidyabhusan, AIR 1963 SC 773.

(1) Punishment Order : Communication

In State of Punjab v. Amar Singh, AIR 1966 SC 1313, the Supreme Court pointed out that the order becomes effective only after it is communicated or published and not on the mere passing of it by the punishing authority—See also Bachhitar Singh v. State of Punjab, 1963 SC 395 and State v. Sodhi Sukhdev Singh, AIR 1961 SC 493.

6. Power of Civil Court to interfere

Where an order of removal passed against a Government servant after a departmental enquiry is challenged by a suit for a declaration that the order of removal was unconstitutional, illegal and inoperative, the Court cannot sit in judgment over the domestic tribunals and state that on the evidence adduced in the departmental proceedings, the charges were not brought home and that the findings of the domestic tribunal were wrong. Courts are concerned in such suits only with the question whether reasonable opportunity was given to the plaintiff in the enquiry to meet the charges brought against him and, if principles of natural justice were observed in the inquiry—See U. R. Bhatt v. Union of India, AIR 1962 SC 1344 : (1961-62) 21 FJR 478 : (1962) 1 Lab LJ 656.

The enquiry under Article 311 is a domestic enquiry and the Court is not concerned with the question whether on evidence before the officer or the authority passing the order against the Civil servant, there was sufficient evidence to justify the order. The guarantee under Article 311 is of the regularity of the enquiry. If the enquiry is not vitiated on the ground of procedural irregularity the Court is not concerned to decide whether the evidence justified the order—Kshirode Behari Chakravarty v. The Union of India, 1970 SLR 321.

In other words, the courts are not permitted to appreciate evidence at departmental enquiry. It is enough if the rules of natural justice have been complied with. The Court is not to sit as a court of appeal.

The Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are no. justiciable nor is the penalty open to review by the court. If the order of dismissal may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the Enquiry Officer or the tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there had

In that case the High Court considered that two out of the five charges could not be sustained and directed the Government to review the case for imposing punishment. The Supreme Court by its decision reversed the order of the High Court (reported in AIR 1960 Orissa 68) and observed:

"The High Court has held that there was evidence to support the findings on heads (c) and (d) of charge (1) and charge (2). In respect of charge (1) (b) the respondent was acquitted by the Tribunal and it did not fall to be considered by the Governor. In respect of charges (1) (a) and (1) (e) in view of the High Court 'the rules of natural justice had not been observed'. The recommendation of the Tribunal was undoubtedly founded on its findings on charges (1) (a), (1) (e), (1) (c), (1) (d) and charge (2). The High Court was of the opinion that the findings on two of the heads under charge (1) could not be sustained, because in arriving at the findings the Tribunal had violated rules of natural justice. The High Court, therefore, directed that the Government of the State of Orissa should decide whether 'on the basis of those charges, the punishment of dismissal should be maintained or else whether a lesser punishment would suffice. It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on charges (1) (a) and (1) (e) were vitiated for reasons set out by it, because in our judgment the order of the High Court directing the Government to reconsider the question of punishment cannot, for reasons we will presently set out, be sustained. If the order of dismissal was based on the findings on charges (1) (a) and (1) (e) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was prima facie, guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal. The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not 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. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under Article 309 of the Constitution. But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is"
justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with is not, justiciable. Therefore, if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the Enquiry Officer of the Tribunal *prima facie*, make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question."

In dealing with Writ petitions filed by public servants who have been dismissed or otherwise dealt with so as to attract Article 311 (2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of di-missal which may be passed against a Government servant found guilty of the charges framed against him are in the nature of *quasi judici*al proceedings and there can be little doubt that a Writ of *certiorari* for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence. The High Court cannot, however, consider the sufficiency or adequacy of the evidence, but has only to enquire whether the order is justified "if the whole of the evidence led in the enquiry is accepted as true"—*Union of India v. H. G. Goel*, AIR 1964 SC 364.

The High Court is not constituted under Article 226 of the Constitution as a Court of appeal over the decision of a statutory authority bearing the appeal. Where there is some evidence which the appellate authority has accepted and which evidence may reasonably support the conclusion that the officer was guilty of improper conduct, it is not the function of the High Court in a petition for Writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the statutory authority has acted without or in excess of its jurisdiction or where it has committed an error of law apparent on the face of the record—*Somnath Sahu v. The State of Orissa and others*, (1969) 3 SCC 384.
7. Exceptions

There are three classes of cases as laid down by the proviso in Article 311 where a departmental enquiry 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 if satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold such an enquiry, and (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 enquiry. Since there would be no enquiry, 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 enquiry has been held—M. Gopalkrishna Naidu v. The State of Madhya Pradesh, AIR 1968 SC 240 : 1968 SCD 97.

(a) Conviction on Criminal charge. Proviso (a) to Article 311 (2), Constitution.

Proviso (a) to clause (2) of Article 311 of the Constitution dispenses with a notice in the case of conviction on a criminal charge. The whole object of the proviso is to avoid duplication of enquiry in the matter where already there has been a regular trial by a competent Court and the person has had ample chance of defending himself.

The immunity of a Civil servant from dismissal etc., without compliance with the provisions of Article 311 (2) is taken away under proviso (a) in a case where the dismissal etc. is based upon the ground of conduct which resulted in his conviction on a criminal charge. In order to sustain an order of dismissal from service there must be a conviction by a competent Court.

The words “led to his conviction” mean in the context they have been used, not merely to bring a criminal charge against the delinquent servant but further imply that as a result of consequence it has ended in conviction also. A proceeding will not be said to have led to his conviction if it had not resulted ultimately in conviction or as a consequence of appeal, has failed in an acquittal. Appeal is a continuation of the proceedings commenced on the criminal charge and it does not conclude in a conviction where an appeal is preferred against the order of the trial Court or of any subsequent Court until these subsequent proceedings have finally ended. There is no conclusion of the proceedings which, therefore, cannot be said to have resulted in a conviction until either the order has become final by efflux of time or has been upheld, when an appeal or revision is preferred, by the higher Court.

A question sometimes arises if the conviction on a criminal charge referred to a conviction after appointment or if it included a conviction before the appointment also.
The plain grammatical meaning of the provision does not admit of such a construction. The 'ground of conduct' mentioned therein would refer to a conviction on a criminal charge both before and after the appointment. If the authorities have knowledge of the conviction earlier they might well refuse to appoint the person concerned; but if for some reason they cannot get the information earlier until after the appointment, they may take action and discharge him on that basis even without the elaborate procedure of Article 311 of the Constitution, as the proviso will be attracted to the case.

(b) Proviso (b) to Article 311 (2), Constitution

It would be noticed that in respect of both the stages special circumstances may arise in consequence of which the superior authority may dispense with the service of notice on the delinquent public servant. In the first stage he may not comply with the provisions of Rule 55, and proceed with the enquiry ex parte if the person concerned has abscended or where it is for other reasons considered impracticable to communicate with him, but this he can do only "for special and sufficient reasons to be recorded in writing." At the second stage also he may dispense with the issue of notice if he is satisfied that for some reasons to be recorded in writing "it is not reasonably practicable" to give the public servant concerned an opportunity of showing cause against the proposed punishment. It is true that at both the stages the satisfaction is the 'subjective' satisfaction of the superior authority holding the enquiry. But Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and proviso (b) to clause (2) of Article 311 of the Constitution requires that the reasons for such satisfaction should be recorded in writing, thereby giving some sort of limited jurisdiction to Court to examine whether they are good reasons, in law, or no reasons at all. It is also true that according to clause (3) of Article 311 of the Constitution the satisfaction of the authority concerned is final.

But there is abundant authority for the view that though for adequate grounds to be recorded in writing the superior authority may dispense with the service of notice (at both the stages) on the delinquent public servant if he is satisfied due to special circumstances that it will not be practicable to serve the notice on him and though by clause (3) of Article 311 his satisfaction is declared to be final, the Courts have limited jurisdiction to examine the reasons given by him with a view to satisfy themselves that he did not act with "unreasonable readiness" or with "culpable complacency" or by not applying his mind to the relevant facts.

In clause (b) it is only the authority empowered to dismiss etc., a person who has to be satisfied that it is not reasonably practicable to hold the enquiry provided by clause (2) and his decision in terms of clause (3) would be final - Sardari Lal v. Union of India, (1971) 1 SCC 411.

(c) Termination of service for security reasons: Proviso (c) to Article 311 (2), Constitution.

The applicability of clause (2) of Article 311 requiring "reasonable opportunity of showing cause against the action" is excluded by virtue of sub-clause (c) of the proviso. In exceptional circumstances enumerated in the proviso, the Constitution takes away the right of being
afforded reasonable opportunity of showing cause under Article 311 (2) and it is such opportunity which the President or the Rajpramukh on his satisfaction, in the interest of the security of the State, can dispense with.

(i) Whether President or the Governor is bound to give reasons for his satisfaction—The satisfaction herein referred to is the subjective satisfaction of the authority concerned. It is subscribed by any objective standards and, therefore, it cannot be questioned in a Court of law except on the ground of mala fides—See A. K. Gopalan v. State of Madras, AIR 1950 SC 27—(A case under Preventive Detention Act).

It is obvious that what the proviso requires is satisfaction of the President about the expediency of not giving an opportunity to the employee concerned in the interest of the security of the State. To make such matter a justiciable issue would mean that the Court should be also satisfied about such expediency and then only the order of the President passed under the powers given by the Constitution should be upheld by the Court. This would amount to substituting satisfaction of the Court in place of the satisfaction of the President. It is possible that what may satisfy the President may not satisfy the Court what may be found expedient by the President may not be so found by the Court. If courts were to demand proof of such satisfaction and the evidence of materials on which the satisfaction was reached, the courts would be virtually depriving the President of the powers and confidence which the Constitution in its wisdom has reposed in the President.

It may be mentioned in this connection that the difference in the language between proviso (b) and proviso (c) is significant. The former proviso specifically requires that the reason should be recorded in writing by the authority. This requirement is not found in proviso (c) thereby indicating that the power given to the President or the Governor is unfettered and no reasons need be recorded.

Thus, the President or the Governor is not bound to give reasons for his satisfaction.

(ii) Whether personal satisfaction of President or the Governor essential—In clause (c) it is the President or the Governor alone, as the case may be, who has to be satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.

There are several Articles under which the President is required to be satisfied before an action is taken. Clause (c) of the proviso to clause (2) of Article 311 is one of such provisions. The other provision which also deals with the question of satisfaction about the security of India being threatened etc. is the one contained in Article 352 which relates to Proclamation of Emergency. Article 356 says that if the President on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution he may make a proclamation as provided in the Article. Article 360 which contains provisions relating to financial emergency
also employs the language "if the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect." The enumeration of the aforesaid Article is merely illustrative and not exhaustive. In such cases, it is the President who has to be personally satisfied on the material placed before him about the various matters on which action has to be taken. Such functions may pertain to the executive power of the union which is vested in him under Article 53 (1) but these cannot fall within Article 77 (1) which is confined to executive action of the Government of India. Apart from the Articles mentioned above there are several other Articles which may also be considered in this connection. It would be best to refer to the observations in Jayantilal Amrit Lal Shodhan v. F. N. Rana and others, (1964) 5 SCR 294: AIR 1964 SC 648: (1964) 2 SCA 284:

"The power to promulgate ordinances under Article 123, to suspend the provisions of Articles 268 and 279 during an emergency; to declare a financial emergency under Article 360; to make rules regarding the recruitment and conditions of service of persons appointed to posts and services in connection with the affairs of the Union under Article 309—to enumerate a few out of the various powers are not powers of the Union Government; these are powers vested in the President by the Constitution and are incapable of being delegated or entrusted to any other body or authority under Article 258 (1). The plea that the very nature of these powers is such that they could not be intended to be entrusted under Article 258 (1) to the State or officer of the State, and, therefore, the clause must have a limited content, proceeds upon an obvious fallacy. Those powers cannot be delegated under Article 258 (1) because they are not powers of the Union, and not because of their special character. There is a vast array of other powers exercisable by the President—to mention only a few—appointment of judges; Article 124 and 217, appointment of Committees of Official Language Act: Article 344, appointment of Commissions to investigate conditions of backward classes: Article 340, appointment of special offices for scheduled castes and tribes: Article 338, exercise of his pleasure to terminate employment Article 310, declaration that in the interest of the security of the State it is not expedient to give to a public servant sought to be dismissed an opportunity contemplated by Article 311 (2)—these are executive powers of the President and may not be delegated or entrusted to another body or officer because they do not fall within Article 258".

The above case was followed by the Supreme Court in Sardarlal Lal v. Union of India, 1971 (1) SCC 411: 1971 SLR 168, where Grover J. delivering judgment for the Court observed:

"........the function in clause (c) of the proviso to Article 311 (2) cannot be delegated by the President to any one else in the case of a Civil servant of the Union. In other words, he has to be satisfied personally that in the interest of the
security of the State, it is not expedient to hold the enquiry prescribed by clause (2). In the first place, the general consensus has been that executive functions of the nature entrusted by the Articles, some of which have been mentioned before and in particular those Articles in which the President has to be satisfied himself about the existence of certain fact or state of affairs cannot be delegated by him to any one else. Secondly, even with regard to clause (c) of the proviso there is a specific observation in the passage extracted above from the case of Jayantilal Amrit Lal Shodhan, that the powers of the President under that provision cannot be delegated. Thirdly the dichotomy which has been specifically introduced between the authority mentioned in clause (b) and the President mentioned in clause (c) of the proviso cannot be without significance. The Constitution-makers apparently felt that a matter in which the interest of the security of the State had to be considered should receive the personal attention of the President or the Head of the State and he should be himself satisfied that an inquiry under the substantive part of clause (2) of Article 311 was not expedient, for the reasons stated in clause (c) of the proviso in the case of a particular servant.

“We are not impressed with the reasoning of the High Court with reference to Article 77 (2). If the function or the power exercisable under clause (c) of the proviso under consideration could not be delegated or allocated to any one else by the President Article 77 (2) will not stand in the way of the Court in the matter of examining the validity of the order.”

8. Whether fresh proceeding can be started in respect of same matter: Double jeopardy

In Devendra Pratap Narain Raj Sharma v. State of U. P., AIR 1962 SC 1334 : (1962) 2 SCJ 289 : (1962) 1 Lab LJ 266 : 1962 All LJ 437 : ILR (1962) 1 All 636, as a result of an enquiry the employee was dismissed from service. He challenged the order of dismissal on the ground that no reasonable opportunity was given to him to defend his case as required under Article 311. The High Court held the order to be void, inoperative and illegal. The employee was reinstated but fresh departmental proceedings were started against him in respect of the same subject-matter. He contended that the Government was not competent to direct such fresh enquiry. The Supreme Court held that where the order was not set aside on merits, but on the ground of non-observance of the rules of natural justice, it was open to the disciplinary authority to enquire into the allegations again in accordance with law. It would be better to quote the following passage from the judgment:

"An adjudication on the merits by a quasi judicial body may or may not debar commencement of another enquiry in respect of the same subject-matter. But in this case we are concerned with the scope of the High Court order. The binding effect of a judgment depends not upon any technical consideration of form, but of substance. The High Court
in the appeal filed by the appellant in Suit No. 163 of 1954 did not exonerate the appellant from the charges. The High Court decreed the suit on the ground that the procedure for imposing the penalty was irregular, and such a decision cannot prevent the State from commencing another enquiry in respect of the same subject-matter consistently with the provisions of Articles 310 and 311. In Dwarkachand's case ILR (1957) Raj 1049, in a previous enquiry the public servant concerned had been exonerated; and in Mohan Singh Chaudhari's case ILR (1957) Punj 1833, a decision by the Civil Court declaring illegal an order dismissing a public servant by an officer not authorised in that behalf was held binding on all the parties in proceedings under Article 226 till such decision was set aside in accordance with law. In Kanak Chandra's case ILR (1955) Assam 191, it was held that an order in exercise of powers of revision by the Governor under the authority reserved to him setting aside an order of censure passed by a subordinate authority and dismissing the public servant concerned from service did not amount to a second departmental enquiry. These cases donot lend support to the proposition that after an order passed, in an enquiry against a public servant imposing a penalty is quashed, by a civil Court, no further proceeding can be commenced against him even if in the proceeding in which the order quashing the enquiry was passed, the merits of the charge against the public servant concerned were never investigated."

As was held in S. A. Venkataraman v. Union of India, AIR 1954 SC 375 : 1954 SCR 1150 : 1954 SCA 466 : 1954 CrLJ 993, Article 20 does not apply even where one of the enquiries had been a judicial one before a Court of law. In that case the petitioner was at first proceeded against under the Public Servants (Enquiry) Act, 1850 and was dismissed from service. Subsequently, the Police submitted charge-sheet against the petitioner under sections 161 and 165, Indian Penal Code and section 5 (2) of the Prevention of Corruption Act and summons were issued. It was contended on behalf of the petitioner that he having been punished by the order of dismissal, he could not be prosecuted over again for the same charge. He relied on the principle of autre fois convict (double jeopardy). But the Court repelled the contention and held that the purpose of a departmental enquiry held against a Government servant was merely to help the Government to come to a definite conclusion regarding the conduct of a Government servant and to decide what penalty, if any, should be imposed upon him. Such a proceeding before the Inquiry Officer cannot be held to be of criminal quasi criminal nature even assuming that the charges which the said servant has been called upon to meet are in substance the same as will be covered by section 5 (2) of the Prevention of Corruption Act and sections 161 and 109 of the Penal Code. An enquiry made and concluded under Act 37 of 1850 did not amount to prosecution and punishment for an offence as contemplated by Article 20 (2) of the Constitution.

In State of Andhra Pradesh v. Sree Ram Rao, AIR 1963 SC 1723, (in paragraph 8 at page 1727) the Court observed as under:
"The Enquiry Officer appears to have stated that the judgment of the Magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental enquiry against that public servant. In so stating, the Enquiry Officer did not commit any error."

9. Discretion of Government to hold enquiry or launch prosecution: Provision if discriminatory

It is for the Government to decide what action should be taken against the Government servant for certain misconduct. Such a discretion in the Government does not mean that the provision of departmental enquiry on such charges of misconduct is in violation of the provisions of Article 14. The Service Rules apply equally to all the members of the service; i.e., to all persons similarly placed and are not, therefore, discriminatory. The Government has the discretion in every case considering the nature of the alleged misconduct and other circumstances whether a criminal prosecution should be launched or not. The Government is also free to conduct departmental proceedings after the close of the criminal proceedings, if instituted. There is, therefore, nothing illegal to the Government instituting departmental proceedings in such cases—Pratap Singh v. State of Punjab, AIR 1964 SC 72.

10. Departmental Enquiry and Criminal Prosecution


In State of Andhra Pradesh v. Rama Rao, AIR 1963 SC 1723: (1964) 3 SCR 25, it has been held that the judgment of the Magistrate is not always binding on the departmental authorities.

In R. P. Kapoor v. Union of India, AIR 1964 SC 784, the Court made the following pertinent observations while dealing with a similar question at (page 792 in para 9):

“If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal, proceedings may follow where the acquittal is other than honourable.”

An enquiry by a domestic tribunal in good faith in exercise of powers statutorily vested in it into the charges of misconduct against an employee does not amount to contempt of Court merely because an enquiry into the same charges is pending in a civil or criminal Court. The initiation and continuation of disciplinary proceedings in good faith do not obstruct or interfere with the cause of justice in the pending court proceeding—Jang Bahadur Singh v. Baijnath Tiwari, AIR 1969 SC 30: 1968 SCD 913: (1969) 1 SCR 134.

The question whether the principles of natural justice had been violated in not giving due and proper weight to the finding of the criminal Court can only depend on the facts of each case R. P. Kapur v. Union of India, AIR 1964 SC 787.

S.L.I.—39
In *S. A. Venkataraman v. Union of India*, 1954 SCR 1150 : 1954 SCJ 461; AIR 1954 SC 375, the Court held that the dismissal of a Government servant following on a report in the departmental enquiry for corruption did not prevent a criminal prosecution being launched against him in respect of the acts for some of which he had been dismissed.

In *Tukaram Gookar v. S.N. Shukla*, AIR 1968 SC 1050, the Supreme Court held that initiation and continuance of proceedings for imposition of penalty on the appellant for his alleged implicit in the smuggling of gold under section 112 (b) of the Custom Act, 1962 did not amount to a contempt of Court though his trial in a criminal Court for offences under section 135 (b) of that Act and other similar offences was eminently identical. The Court observed:

"To constitute contempt of Court, there must be involved some 'act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority' or 'something calculated to obstruct or interfere with the course of the justice or the lawful process of the Court' *Reg v. Gray*, (1900) 2 QB 36; *A. R. Perens v. The King*, 1951 AC 482 at p. 488. The Customs Officers did nothing of this kind. They are acting bona fide and discharging their statutory duties under sections 111 and 112. The power of adjudicating penalty and confiscation under those sections is vested in them alone. The criminal Court cannot make this adjudication. The issue of the show-cause notice and proceedings thereunder are authorised by the Act and are not calculated to obstruct the course of justice in any Court. We see no justification for holding that the proceedings amount to contempt of Court."

In *Delhi Cloth and General Mills Ltd. v. Kushal Bhan*, (1960) 3 SCR 227; AIR 1960 SC 806 and *Tata Oil Mills Co. Ltd. v. The Workmen*, AIR 1965 SC 155, the Court held that a domestic enquiry by the employer into the charges against a workman was not vitiated because it was held during the pendency of a criminal trial into the same or similar charges. It may be desirable to stay the domestic enquiry pending the final disposal of the criminal case but the enquiry could not be characterised as mala fide merely because it was held during the pendency of the criminal proceedings.

11. **Initiation of Departmental Proceeding : Cancellation of leave preparatory to retirement**

In *Pratap Singh v. State of Punjab*, AIR 1964 SC 72, it was alleged by the petitioner that recalling him from leave preparatory to retirement already granted to him, placing him under suspension pending an enquiry and starting on enquiry against him was illegal for the reason that such action on the part of Government was contrary to and not permitted by the relevant Service Rules applicable to him. The Court observed:

"The relevant rules on the topic as well as their interpretation have all been dealt in the judgment of *Dyayal*, J. (the minority judgment), and we agree in the main with his
conclusion that the orders impugned were not beyond the power of the Government. We should, however, add that we should not be taken to have accepted the interpretation which Dayal, J., has placed on each one of the several rules which he has considered."

12. Notice terminating his service given by servant during period of suspension—Legality—Disciplinary proceedings, if valid

In V. P. Govindoroniya v. The State of Madhya Pradesh, 1970 SLR 329; (1970) 1 SCC 362, Rule 12 (a) and (b) of Madhya Pradesh Government Servants (Temporary and Quasi permanent Service) Rules, 1960 was considered and it was observed:

"In the present case, the 'Rules' do not provide for suspension during the pendency of an enquiry. Therefore, the impugned order of suspension cannot be considered as an order suspending the contract of service. From that conclusion it follows that when the appellant issued the notice terminating his services on June 6, 1964, the contract of service was in force and it was open to him to put an end to the same. For the reasons mentioned above, we hold that the High Court erred in opining that the true effect of the order of suspension made by the State Government on May 7, 1964 was to suspend the contract of service.

"This takes us to the legality of the notice served by the appellant on June 6, 1964. That notice was evidently issued under Rule 12 of the 'Rules'. That rules reads:

'12 (a) Subject to any provision contained in the order of appointment or in any agreement between the Government and the temporary Government servant, the service of a temporary Government servant who is not in quasi permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant:

Provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice; or, as the case may be, for the period by which such notice falls short of one month or any agreed longer period:

Provided further that the payment of allowances shall be subject to the conditions under which such allowances are admissible.

(b) The period of such notice shall be one month unless otherwise agreed between the Government and the Government servant:"
There is hardly any room for dispute that the notice contemplated by the main clause (a) of Rule 12 can be given either by the Government or its temporary servant. The rule in question specifically says so. It is not necessary for us in the present case to decide whether the two provisos to that rule or clause (b) thereof apply to a notice given by a Government servant. The appellant has assumed that those provisions also apply to a notice given under that rule. We shall for the purpose of this case proceed on the basis of that assumption and see whether the appellant has satisfied that part of the rule also.

The material portion of the notice given by the appellant on June 6, 1964 reads thus:

"Whereas the undersigned holds no charge this day and is not on duty and intends to bring the termination of his employment with the Government of M. P. forthwith on receipt of this writing; and

Whereas, as required by the service rules the undersigned do hereby forfeit and relinquish his claim for one month's pay or allowance whichever is necessary. Now, therefore, this notice is hereby served as required under the rules on receipt whereof the relationship of employer and employee now existing between the Government of Madhya Pradesh and the undersigned shall cease to exist and consequently all rights, duties and obligations arising from and under the aforesaid relationship shall hereafter absolutely cease."

This notice was received by the Government on June 9, 1964. In that notice, the appellant has unequivocally informed the Government that he has terminated his services with the Government. This part of the notice satisfies the requirements of the main part of Rule 12 (a). In that very notice he has also intimated that any amount payable by him to the Government under the provisos to Rule 12 (a) may be forfeited from the amounts due to him from the Government. It may be noted that considerable amount must have been due to him towards his salary during the period of his suspension. By his notice he intimated to the Government that the amounts due from him to the Government under the provisos to Rule 12 (a) may be deducted from that amount. We fail to see how this notice is not in accordance with the requirements of Rule 12. In our opinion the High Court was wrong in holding that the notice in question did not comply with the requirements of the said rule.

No other ground was urged on behalf of the respondent in support of the order of the High Court.

From the above findings, it follows that ever since June 9, 1964, the appellant was not in the service of the Government. Therefore, it was not open to the Government to take any disciplinary proceedings against him. Hence the impugned orders are liable to be quashed."
CHAPTER VIII

WHO CAN DISMISS OR REMOVE?

SYNOPSIS

1. Authority who can dismiss or remove a Government servant.
2. Appointing authority.
3. No dismissal or removal by an authority subordinate to appointing authority.

1. **Authority who can dismiss or remove a Government Servant**

Article 311 of the Constitution does not speak of the dismissing authority but it only says that no servant shall be dismissed or removed by any authority subordinate to that by which he was appointed, which means by virtue of Article 311 (1) the Appointing authority gets the power of dismissal. There is presumably no order where any authority is vested with dismissing power. It is only the appointing power which is conferred, that by itself implies the power of dismissal, removal or of taking disciplinary proceedings. By virtue of Article 311 (1) as already stated, the Appointing authority always assumes jurisdiction to punish.

The above view was also recognised by the proviso to section 96-B of the Government of India Act, 1919 which ran as under:

“But no person in the service (the civil service of the Crown) may be dismissed by any authority subordinate to that by which he was appointed.”

Section 16 of the General Clauses Act, 1897 also provides that “where, by any act of the Governor-General-in-Council or Regulation power to make by any appointment is conferred then unless a different intention appears, the authority having power to make the appointment, shall also have power to suspend or dismiss any person appointed by it in exercise of that power.”

In **Bool Chand v. Kurukshetra University**, AIR 1968 SG 292, the Court observed as under:

“There is no express provision in the Kurukshetra University Act or the Statutes thereunder which deals with the termination of the tenure of office of Vice-Chancellor. But on that account we are unable to accept the plea of the appellant that the tenure of office of a Vice-Chancellor under the Act cannot be determined before the expiry of the period for which he is appointed. A power to appoint ordinarily implies a power to determine the employment.”

A similar view was expressed in **S. R. Tewari v. District Board, Agra**, (1964) 3 SCR 55 : AIR 1964 SG 1680:

“Power to appoint ordinarily carries with it the power to determine the appointment, and a power to terminate may, in the absence of restrictions, express or implied be exercised,
subject to the conditions prescribed in that behalf by the authority competent to appoint."

In *Lekhraj v. Deputy Custodian, Bombay*, AIR 1966 SC 334, the question arose whether the power of appointment conferred upon the Custodian under section 10 (1) of the Administration of Evacuee Property Act, 1960 confers by implication upon the Custodian the power to dismiss or suspend any person appointed. The answer is clearly furnished by section 16 of the General Clauses Act, and what is relevant for the purpose of the case in hand is only what the Supreme Court said regarding the application of this section in the interpretation of statutory provisions. The Court said:

"The principle underlying the section is that the power to terminate is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power."

Rule 52 of the Civil Services Rules, if it originally applied to the High Court staff, must, after 1935, be read by substituting "Chief Justice" in the place of the Local Government wherever it occurs therein and making other consequential alterations. Thus read, there can be no doubt that as from the commencement of the Government of India Act, 1935, the power of dismissal of a member of the High Court staff, including the Registrar of the original Side of the High Court, would vest in the Chief Justice. The Constitution has made no change in this respect and Article 313 would also continue Rule 52 as above adapted. Article 299 (1) which in terms vests the power of appointment in the Chief Justice is equally effective to vest in him the power of dismissal. This results from section 16 of the General Clauses Act, which by virtue of Article 367 (1) applies to the construction of the word "appointment" in Article 299 (1)—*Prodyat Kumar Bose v. Chief Justice of Calcutta High Court*, 1956 SCA 79.

In *Lekhraj Satramdas v. N.M. Shah*, AIR 1966 SC 334, section 14 of the Punjab General Clauses Act (1 of 1898) was considered by the Supreme Court. Section 14 of the Punjab General Clauses Act runs as under:

"Where by any Punjab Act, a power to make any appointment is conferred, then unless a different intention appears, the authority having the power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority by it in exercise of that power."

In this case the Counsel for the appellant urged that since the general rule was given in a statutory form, the validity of the exercise of the power to determine the tenure of the office of the appellant must be found in section 14 of the Punjab General Clauses Act, 1898. Counsel said that section 14 had no application to the interpretation of the Kurukshetra University Act, because clause 4 (vii) of the Statutes which prescribed that the appointment of a Vice- Chancellor would ordinarily be for a period of three years disclosed a different intention. But clause 4 (vii) of the Statutes did not purport to confer upon a person appointed Vice-Chancellor an indivisible right to continue in office for three years; the clause merely places a restriction upon the power
of the Chancellor, when fixing the tenure of the office of Vice-Chancellor. Counsel also urged that under section 14 of the Act power to appoint includes power to dismiss, but not to determine employment. In support of that contention he urged that in relation to the tenure of service of a public servant, the expression "to dismiss" had come to mean to determine employment as a measure of punishment. The Court considered the arguments and observed:

"But section 14 of the General Clauses Act is general provision: it does not merely deal with the appointment of public servants. It deals with all appointments, and there is no reason to hold, having regard to the context in which the expression occurs, that the authority invested with the power of appointment has the power to determine employment as a penalty, but not otherwise. The expression 'dismiss' does not in its etymological sense necessarily involve any such meaning as is urged by counsel for the appellant. The implication that dismissal of a servant involves determination of employment as a penalty has been a matter of recent development since the Government of India Act, 1935 was enacted. By that Act certain restrictions were imposed upon the power of the authorities to dismiss or remove members of the civil services from employment. There is no warrant, however, for assuming that in the General Clauses Act, 1898, the expression 'dismiss' which was generally used in connection with the termination of appointments was intended to be used only in the sense of determination of employment as a measure of punishment.

"The expression 'Punjab Act' is defined in section 2 (46) of the Punjab General Clauses Act as meaning an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, 1861 to 1909, or any of those Acts, or the Government of India Act, 1915, or by the Local Legislature or the Governor of the Punjab under the Government of India Act, or by the Provincial Legislature or the Governor of the Punjab or by the Provincial Legislature or the Governor of East Punjab under the Government of India Act, 1935, or by the Legislature of Punjab under the Constitution. By section 14 (1) of the Kurukshetra University Act, 12 of 1956, it was declared that on the commencement of the Act, the Statutes of the University shall be those as set out in Schedule I. The Statutes incorporated in the First Schedule were made by the Legislature and must, for the purpose of section 14 of the Punjab General Clauses Act, be regarded as 'Punjab Act'. They do not cease to be 'Punjab Act' merely because they are liable to be altered by the University Court in exercise of the power conferred by section 14 (2) of the University Act.

"In Sita Ram v. State, AIR 1968 All 207, the Court said: section 16 of the General Clauses Act provided that where a power of appointment is conferred by any Act or Regulation, then unless a different intention appears the authority having the power to make the appointment shall also have
power to suspend or dismiss any person appointed by it in exercise of that power. However, the provisions of section 16 of the General Clauses Act will not apply to the interpretation of the rules framed under Article 309 of the Constitution for the simple reason that the provisions of the General Clauses Act as such apply only to the interpretation of an Act passed by the Legislature or a Regulation.

"It has, however, to be seen whether the principle underlying section 16 of the General Clauses Act can be applied to the interpretation of the Lekhpals Service Rules, 1958, framed under Article 309 of the Constitution. It can so apply if the provisions contained in section 16 of the General Clauses Act embody a rule of general interpretation.

"In our opinion section 16 of the General Clauses Act embodies a rule of general interpretation and unless the context otherwise requires, it must be held that the authority competent to appoint had, also by implication, been authorised to dismiss or remove the Lekhpal who was a person in civil employment of the State. A perusal of the Lakhpals Service Rules, 1958, clearly indicates that the intention must have been to confer the power of dismissal also on the Assistant Collector, who was specifically authorised to appoint a Lekhpal."

In State of Assam v. Kripnath Sarma, AIR 1967 SC 459: (1967) 1 SCR 499: (1967) 2 Lab LJ 576, the Supreme Court has held that the appointing authority has the power of dismissal even if the appointment was made on the recommendation or advice of another body. In that case it was also held that where certain persons who were appointed to certain posts, were deemed to be appointed to certain posts created under the Statute the Appointing authority under the Statute would not have the power to dismiss the deemed appointees.

It would be better if we quote the following passage from the judgment in Bool Chand v. Kurukshtetra University AIR 1968 SC 292:

"If the appointment of the Vice-Chancellor gave rise to the relation of master and servant governed by the terms of appointment, in the absence of special circumstance, the High Court would relegate a party complaining of wrongful termination of the contract to a suit for compensation, and would not exercise its jurisdiction to issue a high prerogative Writ compelling the University to retain the services of the Vice-Chancellor whom the University does not wish to retain in service. But the office of a Vice-Chancellor is created by the University Act; and by his appointment the Vice-Chancellor is invested with statutory powers and authority under the Act. The Petition filed by the appellant in the High Court is a confused document. Thereby the appellant did plead that the relation between him and the University was contractual, but that was not the whole pleading. The appellant also pleaded with some circumspection that since he was appointed to the office of Vice-Chancellor which is created by the Statute, the tenure of his
appointment could not be determined without giving him an opportunity to explain why his appointments should not be terminated. The University Act, the Statutes and Ordinances do not lay down the coditions in which the appointment of the Vice Chancellor may be determined; nor does the Act prescribe any limitations upon the exercise of the power of the Chancellor to determine the employment. But once the appointment is made in pursuance of a Statute, though the appointing authority is not precluded from determining the employment, the decision of the appointing authority to terminate the appointment may be based only upon the result of an enquiry held in a manner consistent with the basic concept of justice and fairplay. This Court observed in State of Orissa v. Dr. (Miss) Binapani, AIR 1967 SC 1269:

'It is one of the fundamental rules of our Constitutional setup that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially, would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.'

"The power to appoint a Vice-Chancellor has its source in the University Act; investment of that power carries with it the power to determine the employment; but the power is coupled with duty. The power may not be exercised arbitrarily; it can be only exercised for good cause, i.e., in the interests of the University and only when it is found after due enquiry held in a manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as Vice-Chancellor.

"In Rudge v. Baldwin, 164 AC 40, a Chief Constable who was subject to the Police Acts and Regulations was, during the pendency of certain criminal proceedings in which he was arrested and charged together with other persons, with conspiracy to obstruct the course of justice, was suspended from duty by the Borough Watch Committee. The Chief Constable was acquitted by the jury on the criminal charges against him and he applied to be reinstated. The Watch Committee at a meeting decided that the Chief Constable had been negligent in the discharge of his duties and in purported exercise of the powers conferred on them by section 191 (4) of the Act of 1882 dismissed him from office. No specific charge was formulated against him, but the Watch Committee in arriving at their decision, considered his own statements in evidence and the observations

S. L. I.—40
made by the Judge who acquitted him, in support of the order of dismissal. The Chief Constable appealed to the Home Secretary who held that there was sufficient material on which the Watch Committee could properly exercise their power of dismissal under section 191 (4). The decision of the Home Secretary was made final and binding on the parties by section 2 (3) of the Police Appeals Act, 1927. The Chief Constable then commenced an action for a declaration that the purported termination of his appointment as Chief Constable was illegal, ultra vires, and void, and for payment of salary. The action was taken on appeal to the House of Lords. The House of Lords (Lord Evershed dissenting) held that the decision of the Watch Committee to dismiss the Chief Constable was null and void, and that accordingly notwithstanding that the decision of the Home Secretary was made final and binding on the parties that decision could not give validity to the decision of the Watch Committee. Lord Reid observed at p. 65:

“So I shall deal first with cases of dismissal. These appear to fall into three classes: (1) dismissal of a servant by his master, (2) dismissal from office held during pleasure, and (3) dismissal from an office where there must be something against a man to warrant his dismissal.”

“‘The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence, it depends on whether the facts emerging at the trial prove breach of contract.

“Then there are many cases where a man holds an office at pleasure. Apart from judges and others whose tenure of office is governed by statute, all servants and officials of the Crown hold office at pleasure and this has been held even to apply to a colonial judge, Terrel v. Secretary of State for the Colonies. It has always been held, I think rightly, and the reason is clear. As the person having the power of dismissal need not have anything against the officer he need not give any reasons.

“So I come to the third class, which includes the present case. There I find an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation. The case of the appellant falls within the third class mentioned by Lord Reid, and the tenure of his office could not be interrupted without first informing him of what was alleged against him and without giving him an opportunity to make his defence or explanation.”
In State of U.P. v. Ram Nareshimal, 1970 SLR 819, the respondent who was a member of the subordinate service in the Irrigation Department was transferred to the Planning Department where he was given an option to remain in the Planning Department or to go back to his parent department. A letter issued by the Government dated May 21, 1958 contemplated that a fresh appointment of staff elected to remain in the Planning Department would be made but apparently later on the Government realised that it was not necessary to pass such an order of re-appointment. The powers to dismiss the subordinate staff were delegated to Development Commissioner. The question that arose for decision before the Supreme Court was whether a member of the staff previously of another department who had opted for Planning Department was liable to be dismissed by the Development Commissioner. The Supreme Court arrived at the following conclusion:

"It was not necessary that the Development Commissioner should have issued a fresh order of appointment of the respondent. The respondent was a member of the subordinate service and by having been transferred to the Planning Department he has not ceased to be member of the service. If a person is a member of the service and he is transferred from one department to another it is not necessary should be re-appointed to the service he should be appointed to the Department to which he is transferred. As soon as he is transferred permanently he begins to hold the permanent post which he starts holding in the transferee department. It is true that the letter issued by Government dated May 21, 1958, contemplated that a fresh appointment of staff who elected to remain in the Planning Department would be made but apparently later on the Government realised that it was not necessary to pass such an order of re-appointment. The respondent having elected not to go back to his parent department became an employee of the Planning Department and, therefore, the Development Commissioner was entitled to dismiss him. Assuming, however, that the respondent had not been permanently transferred and further assuming that he was still on deputation in Planning Department even then the Development Commissioner was entitled to dismiss the respondent by virtue of various orders. The order dated May 21, 1958 clearly places the control over the entire staff on deputation from the Irrigation Department to the Planning Department with the Development Commissioner. The word 'control' is a wide word and includes disciplinary jurisdiction. In the context there is no doubt that it was the intention to give disciplinary jurisdiction on the entire staff on deputation to the Development Commissioner. The previous order dated July 15, 1965 had vested the power of transfer and punishment in the Development Commissioner. The later order in no way confers lesser powers on the Development Commissioner. There is nothing in the Constitution which debars the Government from conferring powers on an officer other than the appointing authority to dismiss a Government servant provided he is not subordinate in rank to the appointing officer or authority. Therefore, necessary powers were
conferred on the Development Commissioner to dismiss persons on deputation in the Planning Department."

The Chief Justice of a High Court can dismiss the Registrar on the original side of the High Court—AIR 1956 SC 285 : (1955) 2 SCR 1331.

The proper authority to dismiss a judicial officer is the Government. Where the High Court approves of a report made by a Judge of the High Court against an officer and forward it to the State Government for action and thereupon the State Government issues notice to the concerned judicial officer to show cause, there is no violation of Article 311 and a mere order of suspension by the High Court pending the passing of a final order by the Government is not one of dismissal or removal—Mohammad Ghouse v. State of Andhara, 1959 SCJ 225 : AIR 1957 SC 246 : 1957 SCR 414 : 1957 SCC 180.

By the combined operation of clause 15 (2) of the Commencement and Transitory Provisions Order, 1936 and Government of India (Adaptations of Indian Laws) Order, 1937, the conditions of service applicable to civil servants continued to remain unaltered, until, other provisions were made under the Government of India Act, 1935. Again, the (Adaptations of Indian Laws) Order, 1937, expressly provided by clause 9 that the rules framed under the Punjab Land Revenue Act, 1887, adapted or modified, shall not be rendered invalid. The authority of the Financial Commissioner which remained in force by virtue of clause 9 was exercisable except as provided by the Adaptation of Indian Laws Order, 1937. By section 241 (2) of the Government of India Act, 1935, the conditions of service, in the case of persons serving in connection with the affairs of a Province were to be such as may be prescribed by rules made by the Governor or by persons authorised to make rules for that purpose. But this provision was, still other provisions were made, subject to clause 15 (2) of the Commencement and Transitory Provisions Order, 1936. Clause 7 of the Adaptation of Indian Laws Order on which reliance was placed by counsel of the applicant in support of his contention that the Governor alone could exercise the powers of dismissal under the rules because he was the corresponding authority does not also assist the appellant. The clause applies only to those cases where the authority competent at the date of passing of any Indian law, to exercise any powers or authorities or discharge any functions, ceased to exist and a corresponding new authority was constituted by or under any part of the Government of India Act, 1935. The clause did not apply where only the powers of an authority were vested in another authority, the former authority not otherwise ceasing to function. The conditions of service of Civil Servants having remained unaltered even after the Government of India Act, 1935, was brought into operation by virtue of the Commencement and Transitory Provisions Order, 1936 and Adaptation of Indian Laws Order, 1937, having made express provision saving the rules as well as the authority granted under the rules to the Financial Commissioner, the order of the Financial Commissioner dismissing the appellant from the service was not unauthorised. The contention that by enactment of section 241 of the Government of India Act, 1935, Civil servants serving a Province could be dismissed, after that Act was brought into operation, only by the Governor of the Province and by no other authority has, therefore, no force. Further also the contention that the Tehsildari Rules, 1932, stood expressly repealed by the Punjab Civil Services Rules, 1941 and the
powers of the Financial Commissioner to dismiss a Tehsildar could not thereafter be exercised cannot be accepted. It was expressly enacted in Rule 1.4 that the Punjab Civil Services Rules were not to apply to any person for whose appointment and conditions of services special provision was made by or under any law for the time being in force. Special provision did, in fact, exist for the appointments and conditions of service of Tehsildars under the law for the time being in force and those rules are not shown to have been superseded and abrogated by the Punjab Civil Services Rules, 1941. Such notifications have never been brought to this Court’s notice. The record, therefore, does not support the contention that the Punjab Tehsildari Rules were not in operation at the date of dismissal. There is also nothing to show that the Financial Commissioner was not invested at the material time with the power to dismiss a Tehsildar—Gian Singh v. The State of Punjab and another, (1962) 3 SCR 515 : AIR 1962 SC 219 : (1962) 1 SCJ 641.

The sanction of the Head of the Department for the prosecution of an Assistant Medical Officer is useless as he is not competent to remove the accused from service—AIR 1968 SC 1292.

2. Appointing Authority

In State of Assam v. Kripa Nath Sarma, AIR 1967 SC 459 : (1967) 2 SCJ 877 : (1967) 1 SCR 499, the Supreme Court held that though under the Assam Elementary Education Act, 1962, the Assistant Secretary had to appoint teachers on the advice of the Board, he was still the appointing authority and could dismiss those appointed by him. It would be better to quote the following passage from the judgment:

‘Now, as we read section 14 (3) (iii) of the Act, it is obvious that the power of appointment is only in the Assistant Secretary, though that power has to be exercised on the advice of the Committee constituted under section 16 of the Act. Even assuming that the recommendation of the Committee is necessary before appointment is made by the Assistant Secretary, the fact still remains that it is not the Committee which appoints, and the appointment is made only by the Assistant Secretary. Even if the word ‘advice’ in this provision is equated to the word ‘recommendation’, it is still clear that the Committee only recommends and it is the Assistant Secretary who is the appointing authority on the recommendation of the Committee. It may be that the Assistant Secretary cannot make the appointment without the advice or recommendation of the Committee. Even so, in law, the appointing authority is only the Assistant Secretary, though this power is to be exercised on the advice or recommendation of the Committee. In these circumstances, it cannot be said that there is any different intention appearing from the fact that the appointment has to be made on the recommendation or advice of the Committee. The appointing authority would still be the Assistant Secretary and no one else, and there is no reason why, if he is the appointing authority, he cannot dismiss those appointed by him with the aid of section 18 of the 1915 Act. We cannot agree with this view of the High Court.'
"But there is another difficulty in the present case which stands in the way of Assistant Secretary having the power to dismiss teachers who had been taken over under section 34 (2) of the Act and thus become appointed before the Act came into force. Section 18 of the 1915 Act says that the authority having power to make an appointment shall have the power to suspend or dismiss any person appointed by it in exercise of that power. Therefore, the authority which appoints can only dismiss such persons as have been appointed by it. It cannot dismiss persons appointed by any other authority, for such persons have not been appointed by it in the exercise of the power as appointing authority. In the present case, as we have already pointed out, the office of the Assistant Secretary of the State Board was created for the first time by the Act. Therefore all those persons who had been appointed before the Act came into force could not possibly be appointed by the Assistant Secretary, for there was no such authority in the earlier enactment repealed by the Act. In the earlier Act the appointing authority was the School Board, for there was no Assistant Secretary of the State Advisory Board thereunder. Therefore a person appointed before the Act came into force by the School Board cannot be said to have been appointed by the Assistant Secretary of the State Board or its predecessor the State Advisory Board, for there was no such authority in the earlier enactment. In the circumstances we are of opinion that the Assistant Secretary could not dismiss teachers appointed before the Act came into force, for there was no such authority existing before that.

"It is, however, urged that section 55 provides that all appointments under the 1954 Act shall be deemed to have been made under the Act and, therefore, the appointments under the 1954 Act by the School Boards must be deemed to have been made by the Assistant Secretary under section 14 (3) (iii) of the Act. We are of opinion that this contention cannot be accepted in view of the specific provision contained in the Act under section 34 (2) and section 38. Section 34 (2) lays down that all teachers and other employees of schools maintained by the School Board would be taken over by the State Board. This being a specific provision relating to teachers, we cannot take recourse to the general deeming provision contained in section 55 (2) with respect to appointment of teachers and other employees of schools maintained by School Board. Further section 38 specifically says that all teachers then existing would be deemed to have been employed by the State Board. Reading, therefore, section 34 (2) and section 36 together, the conclusion is inevitable that there is no occasion for the application of the deeming provision in section 55 (2) in the case of these teachers. In the face of these two specific provisions the general deeming provision contained in section 55 (2) cannot be used to come to the conclusion that those teachers who were existing from before, are to be deemed to have been appointed by the Assistant Secretary under section 14 (3)
(iii). We are, therefore, in agreement with the High Court, though for slightly different reasons, that the services of the respondent-teachers could not be terminated by the Assistant Secretary of the State Board under section 14 (3) (iii) of the Act read with section 18 of the 1915 Act."

3. No dismissal or removal by an authority subordinate to appointing authority

Article 311 says that a member of a civil service of a State cannot be dismissed by an authority subordinate to that by which he was appointed, i.e., if the officer is appointed by the State Government he cannot be dismissed by a person subordinate to that Government. It does not prevent the authority duly and legally substituted in the place of the original authority, who appointed the member of a civil service, from dismissing him for in that case the substituted authority is not an authority subordinate to that appointing him.

The significance of the protection under Article 311 (1) is that the Government servants mentioned by it are entitled to the judgment of the authority by which they were appointed or some authority superior to such authority and that they shall not be dismissed or removed by a lessor authority in whose judgment they may not have the same faith, and in that sense a certain amount of security of tenure will be ensured—Parshottam Lal Dhingra v. Union of India, AIR 1958 SC 36 : 1958 SCR 828 : 1958 SCJ 217.

In view of Article 311 (1) of the Constitution, a civil servant cannot be lawfully dismissed by any authority subordinate to that by which he was appointed. A protection like the one given by Article 311 (1) cannot be taken away even by rules framed either under Article 309 or under any relevant statute. In Article 311 (1) the word "subordinate" has reference to the rank and not to functions. For purposes of Article 311 (1) the appointing authority to the authority who in fact appointed the civil servant, even though he may be superior to the authority entitled under the departmental rules to appoint that person. The clause does not, however, require that the dismissal must be ordered by the same authority, who made the appointment, or his direct superior. There is sufficient compliance with the requirements of this clause if the dismissing authority is of the same rank or grade—Mahesh Pd. v. State of U. P., AIR 1955 SC 70 : 1955 SCJ 153.

The word "subordinate" occurring in Article 311 (1) has reference to subordination in rank and not subordination in respect of powers and duties. Article 311 (1) cannot be read as implying that the removal must be by the very same authority who made the appointment or by his direct superior. It is enough that the removing authority is of the same rank or grade—Mahesh Prasad v. State of U. P., AIR 1955 SC 70 : 1955 SCJ 153 : (1955) 1 SCR 965.

In State of Uttar Pradesh v. Harish Chandra Singh, AIR 1969 SC 1020 : 1969 SCC 403 : (1969) 2 SCJ 541, it was held that as the
Additional District Judge, after examining the evidence and Para 406 of the Police Regulations came to the conclusion that the plaintiff had been appointed by the Deputy Inspector-General of Police, that was a finding of fact and binding on the Court. The contention that there had been a breach of Article 311 (2) of the Constitution of India because although the plaintiff was appointed by the Inspector-General of Police he had been removed by the Deputy Inspector-General was overruled.
CHAPTER IX
WHO CAN CLAIM PROTECTION OF ARTICLE 311

SYNOPSIS

1. Protection not limited to permanent employees: If it extends to temporary employees also:
(a) Procedure and Principles for disciplinary action against a temporary public servant.
(b) Preliminary enquiry against a temporary public servant—Scope—Article 311 (2) is not attracted.
2. Probationers:
(a) Period of probation.
3. Officiating persons.
4. Quasi permanent employees.
5. Civil Post:
(a) Civil post: Meaning.
7. Mauzadars.
8. Tahsildars.
10. Civilians in Defence service.

1. Protection not limited to permanent employees: If it extends to temporary employees also: Principles

It is now well settled that temporary Government servants are also entitled to the protection of Article 311 (2) of the Constitution in the same manner as permanent Government servants if the Government takes action against them meting out one of the three punishments namely, dismissal, removal or reduction in rank—Appar Apar Singh v. State of Punjab, 1971 SLR 71; Union of India v. R. S. Dhaba, (1969) 1 SCWR 922 : 1969 SLR 442; Divisional Personnel Officer, Southern Railway v. S. Raghavendrachari, AIR 1966 SC 1529 ; (1966) 3 SCR 106.

But this protection is available where discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. It is also not disputed that the mere use of expressions like “terminate” or “discharge” is not conclusive and in spite of the use of such innocuous expressions the Court has to apply the two tests namely—(1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the servant had been punished. Further even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the services the motive operating on the mind of the Government is wholly irrelevant—Champaklal Chimanlal Shah v. The Union of India, (1964) 5 SCR 190 : AIR 1964 SC 1854 ; (1964) 1 Lab LJ 752 ; 66 Bom LR 319.

Article 311 does not, in terms, say that the protections of that Article extend only to persons who are permanent members of the services or who hold permanent civil posts. To limit the operation of the protective provisions of this Article to these classes of persons

( 321 )
will be to add qualifying words to the Article which will be contrary to sound principles of interpretation of a Constitution or a Statute. In the next place, clause (2) of Article 311 refers to "such persons as aforesaid" and this reference takes us back to clause (1) of that Article which speaks of a person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or State". These persons also come within Article 310 (1) which, besides them, also includes persons who are members of a defence service or who hold any post connected with defence, Article 310 also is not, in terms, confined to persons who are permanent members of the specified services or who hold permanent posts connected with the services therein mentioned. To hold that Article covers only those persons who are permanent members of the specified services or who hold posts connected with the services therein mentioned will be to say that persons, who are not permanent members of those services or who do not hold permanent posts therein, do not hold their respective offices during the pleasure of the President or the Governor, as the case may be, a proposition which obviously cannot stand scrutiny. Coming to Article 311, it is obvious that if that Article is limited to persons who are permanent members of the services or who hold permanent civil posts, then the constitutional protection given by clauses (1) and (2) will not extend to persons who officiate in a permanent post or in a temporary post and consequently such persons will be liable to be dismissed or removed by an authority subordinate to that by which they were appointed or be liable to be dismissed, removed or reduced in rank without being given an opportunity to defend themselves. The latter classes of servants require the constitutional protections as much as the other classes do and there is nothing in the language of Article 311 to indicate that the Constitution-makers intended to make any distinction between the two classes. There is no apparent reason for such distinction. It is said that persons who are merely officiating in the posts cannot be said to "hold" the post, for they only perform the duties of those posts. The word "hold" is also used in Articles 58 and 66 of the Constitution. There is no reason to think that our Constitution-makers intended that the disqualification referred to in clause (2) of the former and clause (4) of the latter should extend only to persons who substantively held permanent posts and that persons officiating in permanent or temporary posts would be eligible for election as President or Vice-President of India. There could be no rational basis for any such distinction. Just as Article 310, in terms, makes no distinction between permanent and temporary members of the services or between persons holding permanent or temporary posts in the matter of their tenure being dependent upon the pleasure of the President or the Governor, so does Article 311, make no distinction between the two classes, both of which are, therefore, within its protections and the decisions holding the contrary view cannot be supported as correct—\textit{Parshottam Lal Dhingra v. Union of India}, AIR 1958 SC 36 : 1958 >CR 828 : 1958 SCJ 217.

Shortly put, the principle is that when a servant has right to a post or to a rank, either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and \textit{prima facie} a punishment, for it operates as
a forfeiture of his right to hold that post or that rank and to get emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary, either on promotion or that on an officiating basis and whose temporary service has not ripened into a quasi permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be punishment and he will be entitled to the protection of Article 311. In other words and broadly speaking, Article 311 (2) will apply to those cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time then such termination in the manner provided by the contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Article 311".—Parshottam Lal Dhingra v. Union of India, AIR 1958 SC 36 : 1958 SCR 828 : 1958 SCJ 217.

In Dhingra's case the appellant joined the railway service as a signaller in 1924. He became Deputy Chief controller in 1947 and Chief Controller in 1950. In 1952 the appellant was selected for the post of Assistant Superintendent, Railway Telegraphs which was Class II post. On July 2, 1951, a notice of appointment was issued from the headquarters, notifying that "Mr. Parshottam Lal, Officiating, Chief Controller, is appointed to officiate in Class II service as Asstt. Supdt. Rly. Telegraphs Headquarters Office vice Mr. Sahu Ram whose term of temporary re-employment expires on the afternoon of 3rd July, 1951". On April 28, 1953, S.S.T.E.I./Hd.Qrs. made certain adverse remarks against the appellant in his confidential report for the year ending March 31, 1953. This confidential report came before C.S.T.E., on May 25, 1953, who confirmed the views expressed by S.S.T.E. and added his own opinion which was also adverse to the appellant. According to the usual practice obtaining in the office the aforesaid remarks were placed before the General Manager, who on June 11, 1953, remarked thereon as follows:

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

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

"......He is, however, inclined to be hasty in his decision. His office work is scrappy and does not show attention to detail. His relations with staff as well as officers have not been happy. He has displayed a tendency to resort freely to transfers and punishment of staff, as a means of correcting their
faults and in regard to officers has not maintained the proper tone and approach in official notings, discussions and letters to Divisions.

"The above shortcomings have been brought to his notice on a number of occasions both in person and in writing, without any improvement."

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

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

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

"With reference to your letter No. 3780, dated 30th December, 1953, the Board desires that you should inform Shri Parshottam Lal Dhingra that his reversion for general unsatisfactory work will stand, but that this reversion will not be a bar to his being considered again for promotion in the future if his work and conduct justify. He should also be informed that he has, in his representation, used language unbecoming of a senior official, and that he should desist from this in future.

"You may watch his work up to the end of March, 1955, and judging from his work and conduct, you may treat him as eligible for being considered for promotion as Assistant Transportation Superintendent in the selection that may be made after March, 1955."

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

The Court held: Where a person is appointed to a temporary post for a fixed term to say five years his service cannot in the absence of a contract or a service rule permitting its premature termination be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the rules read with Article 311 (2). The premature termination of the service of a servant so appointed will prima facie, be a dismissal or removal from service by way of punishment and so within the purview of Article 311 (2). Further, take the case of person who having been appointed temporarily to a post has been in continuous service for more than three years or has been certified by the appointing authority as fit for employment in a quasi permanent capacity, such person, under Rule 3 of the 1949 Temporary Service Rules, is to be in quasi permanent service which, under Rule 6 of those rules can be terminated (i) in the circumstances and in the manner in which the employment of a Government servant in a permanent service can be terminated, or (ii) when the appointing authority certifies that a reduction has occurred in the number of posts available for Government servants not in permanent service. Thus, when the service of Government servant holding a post temporarily ripens into a quasi permanent service as defined in the 1949 Temporary Service Rules, he acquires a right to the post although his appointment was initially temporary and, therefore, the termination of his employment otherwise than in accordance with Rule 6 of those Rules will deprive him of his right to that post which he acquired under the Rules and will prima facie, be a punishment and regarded as a dismissal or removal from service so as to attract the application of Article 311.

In K. S. Srinivasan v. Union of India, AIR 1958 SC 419, the Court by a majority approving decision in Dhingra's case held that the servant did not in fact enjoy the quasi permanent status and then laid down that as the termination of service was due to the reduction in the strength of the service, there had been no violation of Article 311 (2) of the Constitution. In that case the following orders of the Government were challenged in appeal before the Supreme Court:

"Shri Srinivasan was declared quasi permanent in the Grade of Public Relations Officer. All India Radio (Rs. 450—25—500—EB-30—800) with effect from the 1st May, 1949. In 1952 all the posts of Public Relations Officers excepting one in the External Services Division were held in abeyance as a measure of economy. The only post that survived the economy drive was assigned to the permanent incumbent. Shri Srinivasan would have had to be retrenched in 1952; for quasi permanency does not preclude retrenchment and there was no other officer in the grade of Public Relations Officer who was non-quasi-permanent and who could have been discharged in preference to him. He was irregularly transferred as Asstt. Station Director, in an officiating capacity. He applied for one of the posts of Assistant Station Director when they were advertised by the Union Public Service Commission in 1953, but was rejected. Subsequently, he
was allowed to carry, also irregularly, the quasi permanent status in the grade of Public Relations Officer while holding the post of Assistant Station Director, vide Directorate General, All India Radio's Order No. 1 (113) SI/52, dated 14th December, 1953. The Union Public Service Commission have not accepted this transfer as it is in contravention of the Union Public Service Commission (Consultation) Regulations. Since he has been rejected for the post of Assistant Station Director in an open selection and also since the Union Public Service Commission have not accepted his transfer, the Government of India regret that they are unable to allow him to continue in the post of Assistant Station Director. He is, therefore, required to relinquish charge of the post of the Assistant Station Director immediately.

"To save him the hardship of retrenchment, the question of offering Shri Srinivasan alternative employment has been considered. There is no intention of reviving the posts of Public Relations Officers that were held in abeyance in 1952. For publicity and public relations work of All India Radio, a few posts of Assistant Information Officers in the scale of Rs. 350—25—500—EB—30—620 have been sanctioned on the strength of the Press Information Bureau and it is proposed to absorb him on temporary basis, against one of these posts. The absorption in this post also is subject to the approval by the Union Public Service Commission to whom a reference has been made. Meanwhile, after relinquishing the charge of the post of Assistant Director, he should report himself for duty to the principal Information Officer, Press Information Bureau, New Delhi. The question of fixation of his pay in the grade of Assistant Information Officer, with a view to protecting his present salary will be taken up after he has joined duty."

The appellant was appointed to the Public Relations Officer’s grade in the All India Radio in a quasi permanent capacity. His services, however, were terminated because of the reduction in the post. But he was appointed to officiate as Assistant Station Director in a purely temporary capacity “until further orders”. Later, further orders were passed by the same authority confirming the order appointing the appellant Assistant Station Director and concluding,

"under the provision contained in the Ministry of Home Affairs Office Memorandum No. 54/136/51-HGS, dated 24th April, 1952, Shri Srinivasan (the appellant) will carry with him the quasi permanent status of his former post of Public Relations Officer while holding the Post of Assistant Station Director.”

The Supreme Court by majority held that the post of Assistant Station Director was not a post in the same grade or cadre as that of the Public Relations Officer and that being the position, the appellant had no quasi permanent status in the post of Assistant Station Director and his service was liable to be terminated when there was a reduction in the number of posts of Public Relations Officers within the meaning
of clause (ii) of Rule 6 nor was he entitled to the benefit of the proviso to clause (ii) so far as the post of Assistant Station Director was concerned. The Supreme Court then concluded that there had been no violation of the constitutional guarantee under Article 311 (2) in the case of the appellant.

It may, however, be pointed out that in this *Bone J.* did not agree with the majority view and observed:

"Why should we take a narrower view of a mere set of rules than this Court and the Federal Court and the Privy Council have taken of the Constitution and the Act of a Legislature and even of a Supreme Parliament? Why should we give greater sanctity and more binding force to rules and regulations than to our own Constitution? Why should we hesitate to do justice with firmness and vigour? Here is Government straining to temper justice with mercy and we, the Courts, are out-shylocking Shylock in demanding a pound of flesh, and why? because 'it is written in the bond'. I will have none of it. All I can see is a man who has been wronged and I can see a plain way out. I would take it."

In *Madan Gopal v. State of Punjab*, AIR 1962 SC 630 : (1963) 3 SCR 716, the Court laid down:

"It is now well settled that the protection of Article 311 (2) of the Constitution applies as much to a temporary public servant as to a permanent public servant. By virtue of Article 311 of the Constitution the appellant was not liable to be dismissed or removed from service until he had been given reasonable opportunity against the action proposed to be taken in regard to him. The appellant was given no such opportunity and Article 311 of the Constitution was, therefore, not complied with.......

"In this case the enquiry made by the Settlement Officer was made with the object of ascertaining whether disciplinary action should be taken against the appellant for his alleged misdemeanour. It was clearly an enquiry for the purpose of taking punitive action including dismissal or removal from service if the appellant was found to have committed the misdemeanour charged against him. Such an enquiry and order consequent upon the report made in the enquiry will not fall within the principle of Ram Narayan Das's case, (1961) 1 SCR 606 : AIR 1961 SC 177."

In *Union Territory, Tripura v. Gopal Chandra*, AIR 1963 SC 601 : (1964) 2 SCJ 293 : (1963) 1 SCR (Supp) 266, the Supreme Court after holding that when the termination of a temporary public servant was according to the terms of contract, Article 311 did not apply, laid down that the burden to prove that the termination amounted to dismissal lay on the public servant and observed:

"There is no similarity between the enquiry made under section 33 of the Industrial Disputes Act and an enquiry made by the Court where the order of dismissal of a public servant
is impugned. The Court in dealing with the case of a public servant only adjudicates upon the validity of the act of the authority concerned; the Court is not called upon to sanction a proposed dismissal. The enquiry to be made by the Court is restricted to the observance of the rules prescribed by the Constitution. It would, therefore, be impossible to assimilate the content of an enquiry contemplated to be made under section 33 of the Industrial Disputes Act before granting permission to terminate employment of a workman, into the enquiry to be made by the Civil Court, when the public servant claims that he is denied the protection under Article 311 or that his employment has been terminated in violation of rules framed under Article 309 of the Constitution."

If a temporary servant or a probationer is served with an order by which his services are terminated, and the order unambiguously indicates that the said termination is the result of punishment sought to be imposed on him, he can legitimately invoke the protection of Article 311 and challenge the validity of the said termination on the ground that the mandatory provisions of Article 311 (2) have not been complied with. The appropriate authority possesses two powers to terminate the services of a temporary public servant; it can discharge him and in that case Article 311 will not apply. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in a straightforward way. In such a case Article 311 will apply. Before discharging a temporary servant, the authority may have to examine the question about the suitability of the said servant to be continued and acting bona fide in that behalf, the authority may also give a chance to the servant to explain; but such an enquiry would be held only for the purpose of deciding whether the temporary servant should be continued or not. There is no element of punitive proceedings in such an enquiry; in such a case, it would not be open to the temporary servant to invoke the protection of Article 311. On the other hand, in some cases the authority may choose to exercise its power to dismiss a temporary servant and that would necessitate a formal departmental enquiry in that behalf. If such a formal enquiry is held, and an order terminating the services of a temporary servant is passed as a result of the finding recorded in the said enquiry, prima facie the termination would amount to the dismissal of the temporary servant.

It is in this connection that it is necessary to remember cases in which the services of a temporary servant have been terminated directly as a result of the formal departmental enquiry and cases in which the termination may not be the direct result of the enquiry; and this complication arises because it is now settled by decisions of this Court that the motive operating in the mind of the authority terminating the services of a temporary servant does not after the character of the termination and is not material in determining the said character. Take the case where the authority indicates a formal departmental enquiry against a temporary servant but whilst the enquiry is pending it takes the view that it may not be necessary or expedient to terminate the services of the temporary servant by issuing the order of dismissal against him. In order to avoid imposing any stigma which an order of dismissal necessarily implies the enquiry is stopped and an order
of discharge *simpliciter* is served on the servant. Therefore, the termination of services of the temporary servant which in form and in substance is no more than his discharge effected under the terms of contract or the relevant rule, cannot in law be regarded as his dismissal because the appointing authority was actuated by the motive that the said servant did not deserve to be continued for some alleged misconduct. That is why in dealing with temporary servants against whom formal departmental enquiry may have been commenced but were not pursued in the end, the principle that the motive operating in the mind of the authority is immaterial, has to be borne in mind.

If a formal departmental enquiry has been held in which findings have been recorded against the temporary servant and as a result of the said findings, his services were terminated the fact that the order by which his services are terminated ostensibly purports to be a mere order of discharge would not disguise the fact that in substance and in law the discharge in question of the order is inconclusive, it is the substance of the matter which determines the character of the termination of service. The real character must be determined by reference to the material facts that existed prior to the order. Where a temporary servant attacks the validity of his discharge on the ground of *mala fide* on the part of the authority and while resisting the plea of *mala fides* set up by the servant, the authority refers to certain facts justifying the order of discharge and these facts relate to the misconduct, negligence or inefficiency of the said servant, it cannot logically be said that in view of the plea thus made by the authority long after the order of discharge it should be held that the order of discharge was the result of the considerations set out in the said plea. What the Court will have to examine in each case would be having regard to the material facts existing up to the time of discharge, is the order of discharge, in substance one of dismissal? If the answer is that notwithstanding the form which the order took, the appointing authority, in substance really dismissed the temporary public servant *Jagdish Mitter v. Union of India*, AIR 1964 SC 449; 1964 SCW 75; See also *Champak Lal v. Union of India*, AIR 1964 SC 1834: (1964) 5 SCR 190, which is also to the same effect.

The fact that an enquiry is made into a complaint does not mean that, if the services of a temporary Government servant are terminated after a report is received, any punishment is inflicted entitling the Government servant to reasonable opportunity to show cause against the termination within Article 311 (2). An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution—*State of Uttar Pradesh v. Abdul Khaliq and another*, (1969) 1 SCWR 1086.

Thus the following are the propositions in respect of the termination of services of the probationers or temporary Government servants:

1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.
(2) The circumstances preceding or attendants on the order of termination have to be examined in each case, the motive behind it being immaterial.

(3) If the order visits the public servant with any evil consequences or casts an aspectment against his character or integrity it must be considered to be one by way of punishment no matter whether he was a mere probationer or a temporary servant.

(4) An order of termination of service in an exceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service does not attract the operation of Article 311 of the Constitution.

(5) If there be a full-scale departmental enquiry envisaged by Article 311 i.e., an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said Article 311. The State of Punjab and another v. Sukh Raj Bahadur, (1963) 3 SCR 234; 1968 SLR 701.

In Madan Gopal v. State of Punjab, AIR 1963 SC 531: (1963) 3 SCR 716; (1963) 2 SCJ 185, Madan Gopal was appointed an Inspector of Consolidation in 1953. This appointment was on temporary basis and terminable with one month's notice. It appears that in 1955, Madan Gopal was served with a charge-sheet alleging that he had received Rs 150 as illegal gratification from one Darbara Singh and had demanded Rs. 30 as illegal gratification from one Ude Singh. After the officer submitted his explanation, an enquiry was conducted and the enquiry officer made his report in which a finding was made against the officer in regard to the charge that he had received Rs. 150/- as illegal gratification from Darbara Singh. The report was submitted on February 22, 1955. The record of the said case shows that the Settlement Officer who apparently held the departmental enquiry against Madan Gopal had found that he was guilty of the charges and had recommended that he should be removed from service immediately. Soon, thereafter, on March 17, 1955, an order was passed terminating the officer's services forthwith and informed him that in lieu of notice he would get one month's pay as required by rules. It is significant that though the order in form purported to be one of discharge, the Deputy Commissioner who issued the said order in terms indicated that he agreed with the Enquiry Officer's finding that Madan Gopal had accepted bribes. In that connection, the Court emphasised the fact that the enquiry made by the Settlement Officer was made with the object of deciding whether disciplinary action should be taken against Madan Gopal for his alleged misconduct, and it was also observed that as a result of the said enquiry and in consequence of the finding made at the said enquiry, the order of discharge was passed. Thus notwithstanding the form which the order took, it was a case of dismissal in substance. That is why the Court set aside the order as being illegal inasmuch as it had contravened Article 311 (2). In this petition, Madan Gopal had alleged that no reasonable opportunity was given to him to show cause against the order of dismissal as required by Article 311; and in view of the Supreme Court's decision that the discharge of Madan Gopal was
in fact and in substance one of dismissal, the plea made by him under Article 311 (2) succeeded. This case illustrates the proposition that in dealing with the complaints made by public servants against their discharge from public service, what matters is not the form of the order by which their services are terminated but the substance of it.


"It would thus be noticed that the four cases which we have considered by way of illustration dealt with different aspects of the problem pertaining to temporary servants who are discharged or reverted and naturally, on each occasion, observations were made in relation to the particular aspects with which the Court was concerned. We are satisfied that the principles laid down in all these decisions are in no sense inconsistent.

The Court then proceeded to consider the case in hand:

'However, the appellant's contention that the order of discharge passed against him on the face of it shows that it is not discharge but dismissal, cannot be rejected. We have already observed that Article 311 applies to temporary servants or probationers, so that if it is shown that instead of terminating their services by one month's notice under the terms of the contract or the relevant rules the authority proceeds to dismiss them, it is incumbent on the authority to afford to the said temporary servants or probationers the protection guaranteed by Article 311 (2). The appellant's contention is that in the present case, the order itself shows that it is not a discharge but a dismissal, and that naturally involves the question as to the construction of the order. The order runs thus:

'Shri Jagdish Mitter, a temporary II Division Clerk of this office having been found undesirable to be retained in Government service is hereby served with a month's notice of discharge with effect from November 1, 1949.'

"No doubt the order purports to be one of discharge and as such, can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers, to the fact that the appellant was found undesirable to be retained in Government service, it expressly casts a stigma on the appellant and in that sense, must be held to be an order of dismissal and not a mere order of discharge. The learned Additional Solicitor-General attempted to argue that what the order really meant was that the Government did not think it
desirable or necessary to continue the appellant in its employment. He fairly conceded that the words used in the order were somewhat unfortunate, but he urged that the order should be liberally construed and should be held to have been passed by the authority by virtue of its power to terminate the services of the appellant on one month's notice. We are not prepared to accept this argument. It is obvious that to say that it is undesirable to continue a temporary servant is very much different from saying that it is unnecessary to continue him. In the first case, a stigma attaches to the servant, while in the second case termination of service is due to the consideration that a temporary servant need not be continued, and in that sense, no stigma attaches to him. It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be: Does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question be in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal. That being so, we are satisfied that the High Court was in error in coming to the conclusion that the appellant had not been dismissed, but had been merely discharged. It is conceded that if the impugned order is construed as one of dismissal the appellant has been denied the protection guaranteed to temporary servants under section 240 (3) of the Government of India Act, 1935, or Art. 311 (2) of the Constitution, and so, the order cannot be sustained."

In *Ram Gopal Chaturvedi v. State of Madhya Pradesh*, (1969) 2 SCC 240: 1969 Jab LJ 865 : 1969 SCR 429, the appellant was a temporary Government servant and was not in quasi permanent service. His services could be terminated on one month's notice under Rule 2 of the Madhya Pradesh Government Servants Temporary and Quasi Permanent Service Rules, 1960. There was no provision in the order of appointment or in any agreement that his services could not be so terminated.

It was argued that the order terminating the appellant's services was passed by way of punishment without giving the appellant an opportunity to show cause against the proposed action and was therefore violative of Article 311 of the Constitution.

No charge-sheet was served on the appellant nor was any departmental inquiry held against him. The High Court passed a resolution that the State Government should terminate the appellant's services.
Having regard to this resolution the State Government passed the impugned order. The Supreme Court held that on the face of it, the order did not cast any stigma on the appellant's character on integrity nor did it visit him with any civil consequences and that it was not passed by way of punishment and the provisions of Article 311 were not attracted. It was also held that it was immaterial that the order was preceded by an informal inquiry into the appellant's conduct with a view to ascertain whether he should be retained in service—See also State of Punjab v. Sukhraj Bahadur, (1969) 1 SCJ 51: (1968) 3 SCR 234 : 1968 SLR 701.  

(a) Procedure and principles for disciplinary action against a temporary public servant.

It is well-known that Government does not terminate the services of a public servant be he even a temporary servant, without reason; nor is it usual for Government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end. Similarly, a Government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above the Government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his work. The same post where the post is held as a temporary measure. The dissatisfaction with the work or conduct of a temporary servant may arise on a complaint against him. In such cases two courses are open to Government. It may decide to dispense with the services of the servant or revert him to substantive post without any action being taken to punish him for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Article 311 (2). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry the explanation of the Government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the servant concerned that charges are then framed against him and he is asked to show cause why disciplinary action be not taken against him. An Enquiry Officer (who may be himself in the case where the appointing authority is other than Government) is appointed who holds enquiry into the charges communicated to the servant concerned after taking explanation and this enquiry is held in accordance with the principles of natural justice. That is what is known as a formal departmental enquiry into the conduct of a public servant. In this enquiry evidence both documentary and oral may be led against the public servant concerned and he has a right to cross-examine the witnesses tendered against him. He has also the right to give documentary and oral evidence in his defence if he thinks necessary to do so. After the enquiry is over the Enquiry Officer makes a report to the Government or the authority having power to take action against the servant concerned. The Government or the authority makes
up its mind on the enquiry report as to whether the charges have been proved or not and if it holds that some or all the charges have been proved, it determines tentatively the punishment to be inflicted on the public servant concerned. It then communicates a copy of the Enquiry Officer's report and its own conclusion thereon and asks him to show cause why the tentative punishment decided upon be not inflicted upon him. This procedure is required by Article 311 (2) of the Constitution of India in the case of the three major punishments, i.e., dismissal, or removal, reduction in rank. The servant concerned has then an opportunity of showing cause by making representation that the conclusions arrived at, at the departmental enquiry are incorrect and in any case the punishment proposed to be inflicted is too harsh—Champaklal Chimanlal Shah v. The Union of India, (1964) 5 SCR 190 : AIR 1964 SC 1854 : 66 Bom LR 319 : (1964) 1 Lab LJ 752.

(b) Preliminary enquiry against a temporary public servant—Scope—Article 311 (2) is not attracted

A preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out and it is very necessary that the two should not be confused. Even where Government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct, a preliminary enquiry is usually held to satisfy Government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post. Therefore, when a preliminary enquiry of this nature is held in the case of a temporary employee or a Government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry, when Government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments, viz., dismissal, removal and reduction in rank may be inflicted on the Government servant. Therefore, as far as the preliminary enquiry is concerned there is no question of its being governed by Article 311 (2) of the Constitution of India for that enquiry is really for the satisfaction of Government to decide whether punitive action should be taken under the contract or the rules in the case of a temporary Government servant or a servant holding higher rank temporarily to which he has no right. In short, a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of the Government, though usually for the sake of fairness, explanation is taken from the Government servant even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government, and it is only when the Government decides to hold a regular departmental enquiry for the purposes of inflicting one of these major punishments that the Government servant gets the protection of Article 311 and all the rights that protection implies. That is why the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, is irrelevant—Champaklal Chimanlal Shah v. The Union
2. Probationers

It is well-settled that a probationer or a temporary servant can be discharged if it is found that he is not suitable for the post which he is holding. This can be done without complying with the provisions of Article 311(2) of the Constitution of India unless the services are terminated by way of punishment. Suitability does not depend merely on the excellence or proficiency in work. There are many other factors which enter into consideration for confirming a person who is on probation. A particular attitude or tendency displayed by an employee can well influence the decision of the confirming authority while judging his suitability or fitness for confirmation.—Dr. T.C.M. Pillai v. The Indian Institute of Technology, Guindy Madras, 1971 S.L.R. 679.

The main question for decision in Parshottam Lal Dhingra v. Union of India, AIR 1958 SC 36, was whether the appellant-Dhindra had been reduced in rank by way of punishment as a result of the order of the General Manager of the Railway. Though, in that case, this Court decided that the order impugned had not that effect, this Court went elaborately into all the implications of the service conditions, with particular reference to Railway Service Rules and the constitutional provisions contained in section 240 of the Government of India Act, 1935 and Article 311 of the Constitution. The elaborate discussion in that judgment has reference to all stages of employment in the public services including temporary posts, probationers, as also confirmed officers. In so far those observations have a bearing on the termination of service or discharge of probationary public servant they may be summarised as follows:

1. Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated, without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant, or removing him from service.

2. The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

3. But, if instead of terminating such a person’s service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311 (2) of the Constitution.

4. In the last-mentioned case, if the probationer is discharged on any of those grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to a removal
from service within the meaning of Article 311 (2) of the Constitution and will, therefore, be liable to be struck down.

(5) But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the Probationary Civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employee thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such cause.

In **State of Bihar v. Gopi Kishore**, AIR 1960 SC 689 : (1960) 1 Lab LJ 577 : (1959-60) 17 FJR 390 : 1960 BLJR 270, the Supreme Court considered **Dhingra's case** and laid down the law on the rights of probationers in Government service as under:

"It would thus appeal that in the instant case, though the respondent was only a probationer, he was discharged from service really because the Government had, on enquiry, come to the conclusion, rightly or wrongly, that he was unsuitable for the post he held on probation. This was clearly by way of punishment and, therefore, he was entitled to the protection of Article 311 (2) of the Constitution. It was argued on behalf of the appellant that the respondent, being a mere probationer, could be discharged without any enquiry into his conduct being made and his discharge could not mean any punishment to him, because he had no right to a post. It is true that, if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could discharge him without holding any enquiry into his alleged misconduct. If the Government proceeded against him in that direct way, without casting any aspersions on his honesty or competence, his discharge would not, in law, have the effect of a removal from service by way of punishment and he would, therefore, have no grievance to ventilate in any Court. Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and an incompetent officer. He had the right in those circumstances, to insist upon the protection of Article 311 (2) of the Constitution. That protection not having been given to him, he had the right to seek his redress in Court. It must, therefore, be held that the respondent had been wrongly deprived of the protection afforded by Article 311(2) of the Constitution."

In **State of Orissa v. Ram Narayan Das**, AIR 1961 SC 177 : (1961) 1 SCJ 209 : (1961) 1 SCR 606, the Supreme Court was dealing with a case of a Sub-Inspector on probation in the Orissa Police Force, who had been discharged. His case that the discharge amounted to dismissal had been upheld by the Orissa High Court, but was rejected by the Supreme Court in appeal, because the Supreme Court came to the conclusion that the impugned order
of discharge could not properly be held to be an order of dismissal. It is true that the impugned order of discharged did refer to the adverse comments made against the probationer’s conduct and did say that it was, therefore, no good retaining him further in service and that, \textit{prima facie} would amount to attaching the stigma to the probationer who was discharged; nevertheless the order was construed by the Supreme Court to be an order of discharged \textit{simpliciter} and no more, because Rule 55 (b) of the Civil Services (Classification, Control and Appeal) Rules required that before the services of a probationer were terminated, an enquiry had to be held about his competence after giving him an opportunity to show cause against the grounds alleged against him, and it was because such an enquiry had to be held that the result of the enquiry was communicated to the probationer when he was discharged. In other words, the statements in the order of discharge on which the probationer had relied for the purpose of showing that the said order amounted to dismissal, had to be made in the order as a result of the requirements of Rule 55 (b), and so, the Supreme Court came to the conclusion that merely on the strength of the said statements, the impugned order could not be characterised as an order of dismissal. In dealing with this question, the Supreme Court observed that the enquiry against the respondent (probationer) was for ascertaining whether he was fit to be confirmed, and so, “an order discharging a probationer following upon an enquiry to ascertain whether he should be confirmed” could not, in law, be treated as an order of dismissal. Thus, this decision illustrates the importance of the character of the enquiry held against a temporary servant which may ultimately lead to the termination of his services. It also emphasises that if the probationer’s contention had been upheld it would virtually have meant that every order of discharge passed against a probationer after complying with the requirements of Rule 55 (b) would have to be treated as an order of dismissal and that obviously cannot be right.

The Supreme Court in this case quoted the following passage from Dhingra’s case:

“Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not \textit{per se} dismissal, or removal as has been held by this Court in \textit{Satish Chandra Anand v. The Union of India}. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311 (2) as has also been held by this Court in \textit{Shyam Lal v. State of U. P.}. In short, if the termination of service is founded on the right flowing from contract or the service rules then, \textit{p imo facie}, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal, removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is
sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. ....... As already stated, if the servant has got a right to continue in the post then unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of service of such a servant on such ground must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowance. It puts an indelible stigma on the officer affecting his future career ....... ... But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. ....... The use of the expression 'terminate' or 'discharge' is not conclusive. In spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service."

The Court then proceeded to observe:

"The respondent had no right to the post held by him. Under the terms of his employment, the respondent could be discharged in the manner provided by Rule 55-B. Again mere termination of employment does not carry with it 'any evil consequences' such as forfeiture of his pay or allowances, loss of his seniority, stoppage or postponement of his future chances of promotion, etc. It is then difficult to appreciate what 'indelible stigma affecting the future career' of the respondent was cast on him by the order discharging him from employment for unsatisfactory work and conduct. The use of the expression 'discharge' in the order terminating employment of a public servant is not decisive; it may, in certain cases, amount to dismissal. If a confirmed public servant holding a substantive post is discharged, the order would amount to dismissal or removal from service; but an order discharging a temporary public servant may or may not amount to dismissal. Whether it amounts to dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry."
"Where under the rules governing a public servant holding a post on probation, an order terminating the probation is to be preceded by a notice to show-cause why his services should not be terminated, and a notice is issued asking the public servant to show cause whether probation should be continued or the officer should be discharged from service the order discharging him cannot be said to amount to dismissal involving punishment. Undoubtedly, the Government may hold a formal enquiry against a probationer on charges of misconduct with a view to dismiss him from service, and if an order terminating his employment is made in such enquiry, without giving him a reasonable opportunity to show cause against the action proposed to be taken against him within the meaning of Article 311 (2) of the Constitution, the order would undoubtedly be invalid."

The Court also said:

"This proposition, in our judgment, does not derogate from the principle of the other cases relating to termination of employment of probationers decided by this Court nor is it inconsistent with what we have observed earlier. The enquiry against the respondent was for ascertaining whether he was fit to be confirmed. An order discharging a public servant, even if a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification, may appropriately be regarded as one by way of punishment, but an order discharging a probationer following upon an enquiry to ascertain whether he should be confirmed, is not of that nature. In Gopi Kishore Prasad's case the public servant was discharged from service consequent upon an enquiry into alleged misconduct, the Enquiry Officer having found that the public servant was unsuitable for the post. The order was not merely discharging a probationer following upon an enquiry to ascertain whether he should be continued in service, but it was an order as observed by the Court 'clearly by way of punishment'. There is in our judgment no real inconsistency between the observations made in Parshottam Lal Dhirangra's case and Gopi Kishore Prasad's case. The third proposition in the latter case refers to an enquiry into allegations of misconduct or inefficiency with a view, if they were found established, to imposing punishment and not to an enquiry whether a probationer should be confirmed. Therefore, the fact of holding an enquiry is not decisive of the question. What is decisive is whether the order is by way of punishment in the light of tests laid down in Parshottam Lal Dhirangra's case."

In Ravendra Chandra v. Union of India, AIR 1963 SC 1552 (1964) 2 SCR 135, the appellant was selected for the post of Programme Assistant in the All India Radio on May 3, 1949, and was appointed on probation for one year, and the letter of appointment said that during the said period his services might be terminated without any notice and without any cause being assigned. He was asked to accept the offer on this condition. The appellant accepted the offer and joined;
service on June 4, 1949. His period of probation expired on June 3, 1950, but it was extended from time to time. On July 4, 1952, the appellant was informed that his probation period could not be extended and was called upon to show cause why his services should not be terminated. The appellant showed cause. He was finally informed that the explanation given by him was not satisfactory and that his services were to be terminated after August 31, 1952.

The Supreme Court laid down the law on the point as under:

"... ... it is equally well-settled that a Government servant who is on probation can be discharged and such discharge would not amount to dismissal or removal within the meaning of Article 311 (2) and would not attract the provision of that Article where the service of a probationer is terminated in accordance with the rules and not by way of punishment. A probationer has no right to the post held by him and under the terms of his appointment he is liable to be discharged at any time during the period of his probation subject to the rules governing such cases—State of Orissa v. Ram Narayan Das, AIR 1961 SC 177. The appellant in this case was undoubtedly a probationer. There is also no doubt that the termination of his service was not by way of punishment and cannot, therefore, amount to dismissal or removal within the meaning of Article 311. As a probationer he would be liable to be discharged during the period of probation subject to the rules in force in that connection."

Coming to the facts of the case the Court said:

"It has been contended on behalf of the appellant that this was not sufficient compliance with Rule 55-B. That rule lays down that the probationer shall be appraised of the grounds on which it was proposed to terminate his services and given an opportunity to show cause against it. We are of opinion that the appellant's contention must be rejected. The appellant was appraised of the grounds on which it was proposed to discharge him. But what is urged is that the elaborate procedure provided in Rule 55 should have been gone through under Rule 55-B also. Rule 55, however, deals with cases of removal, dismissal or reduction in rank which are specially covered by Article 311 (2) of the Constitution and the procedure prescribed therein is meant for these three major punishments. That procedure is not meant to be applicable under Rule 55-B which deals with the discharge of a probationer which is not a punishment at all. Therefore, in a case covered by Rule 55-B all that is required is that the defects noticed in the work which makes a probationer unsuitable for retention in the service should be pointed out to him and he should be given an opportunity to show cause against the notice, enabling him to give an explanation as to the faults pointed out to him and show any reason why the proposal to terminate his services because of his unsuitability should not be given effect to. If such an opportunity is given to a probationer and his
explanation in reply thereto is given due consideration, there is, in our opinion, sufficient compliance with Rule 55-B. Generally speaking, the purpose of a notice under Rule 55-B is to ascertain, after considering the explanation which a probationer may give whether he should be retained or not and in such a case it would be sufficient compliance with that rule if the grounds on which the probationer is considered unsuitable for retention are communicated to him and any explanation given by him with respect to those grounds is duly considered before an order is passed.”

The Court also held:

“We agree with the High Court that though the letter of appointment say in so many words that the probation was likely to be extended, it was implicit therein that the probation would continue till such time as the appellant was confirmed or discharged and so would the term in the appointment letter that his services were liable to be terminated without any notice and without any cause being assigned, during the period of probation.”

In Hartwell Prescott Singh v. U. P. Government, AIR 1957 SC 886, it was held that in the case of person employed in a temporary capacity on probation whose services could, according to the conditions of service contained in the service rules, be terminated by a month’s notice if he failed to make sufficient use of his opportunities or to give satisfaction, the termination of his services according to the rules did not amount to dismissal or removal from service within the meaning of the Article. It was also held that in principle there could be no distinction between the termination of his services in accordance with the conditions of his service and the termination of the services of a person under the terms of a contract.

In State of Punjab and another v. Sukhraj Bahadur, (1969) 1 SCJ 51 : (1968) 3 SCR 234 : 1968 SLR 701, the case of the petitioner was that the impugned order in fact terminated his services under the State Government, and removed him from the said service. The petitioner was not afforded any opportunity to show cause against the charges contained in the charge-sheet or against the proposed punishment. As such there was violation of the provisions of Article 311 (2) of the Constitution. The Supreme Court held that in this case, the respondent did not cease to be a probationer at the time when the impugned order was passed on him. Although the period of probation was fixed at 18 months and although the respondent had passed all the departmental examinations, he could not merely, as a consequence thereof, be considered to be holding a post substantively. Apart from the question as to the right of the respondent under the Punjab Civil Service Rules, the respondent could not complain merely because he had been reverted to the post formerly held by him. He would have cause to complain if he could show that the order of reversion was by way of punishment. In fact, the holding of an enquiry is not decisive of the question whether the order is by way of punishment. In this case the departmental enquiry did not proceed beyond the stage of submission of a charge-sheet followed by the respondent’s explanation thereto. The enquiry was not proceeded with; there were no sittings
of any Enquiry Officer, no evidence recorded and no conclusion arrived at on the enquiry. Thus there was no regular departmental enquiry as envisaged by Article 311 (2) of the Constitution and there was no question of any violation of that Article.

The case of S. Sukhbans Singh v. State of Punjab, AIR 1962 SC 1711 : (1963) 1 SCR 416 : 64 Punj LR 1008 : 1962 ALJ 883, concerned a Tehsildar who was recruited in the year 1936 and appointed as an Extra-Assistant Commissioner on probation in 1945. In 1952 he was reverted to the post of Tehsildar by an order duly served on him. This order was followed by a warning it was clearly stated that the officer was guilty of misconduct in several respects. It appears that the officer challenged the validity of the order reverting him to the post of a Tehsildar on the ground that it amounted to punishment, and he also alleged that it was the result of mala fides. The Supreme Court considered the relevant material adduced in the proceedings which showed that the record of the officer was extremely satisfactory and that the order reverting him showed that the Government was acting mala fide. Thus the decision in this case was based mainly, if not solely, on the ground that the reversion of the officer was mala fide. It is true that in the course of the judgment, the Supreme Court has observed that having regard to the sequence of events which led to the reversion followed by the warning administered to the officer considered in the light of his outstanding record, the reversion could also be held to be a punishment; but the officer's plea which proved effective was the plea of mala fides against the Government.

It would be better if we study the following passage from the judgment:

"It is common ground that the period of probation of the appellant was not extended by the Governor in exercise of the power conferred upon him by one of the provisos to Rule 22. The question to be first considered is what was the position of the appellant after the expiry of his probationary period of eighteen months? Upon this point the learned single Judge after quoting the observations of Khosla, J., in another case said:

"Thus according to this Court a man who is on probation does not merely because his probation continues for more than the period prescribed by the rules become a permanent servant of the State but if the period of probation is unduly prolonged or the confirmation is unduly delayed, confirmation will be assumed. In the present case the petitioner was recruited to the Provincial Civil Service with effect from 31st May, 1945 and he continued to work as an officer of the service upto 17th May, 1952. According to the rules the period of probation was eighteen months and here is no indication that his period of probation was by order of the Governor extended...... I am, therefore, of the opinion that the petitioner was not on probation as is submitted by the State."

"Then the learned Judge went on to observe:

'No rule has been cited and I do not know of any which would show that a person who has been recruited by
the Public Service Commission can, after having been in service for seven years or so, be reverted merely on the ground that he is officiating.'

"If the learned Judge meant by all this that a probationer must be deemed to have been confirmed in his post by sheer lapse of time we think, with respect that he was in error. A probationer cannot, as rightly pointed out by the Division Bench, automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. The rules governing the Provincial Civil Service of Punjab do not contain any provision whereby the probationer at the end of the probationary period is automatically absorbed as a permanent member of the Civil Service. What happens to such a person is clearly set out in Rule 24 cited supra. Under the aforesaid rule such a probationer is merely qualified for substantive permanent appointment. Reading Rules 23 and 24 together it would appear that where a probationer is not reverted by the Government before the termination of his period of probation he continues to be probationer but acquires the qualification for substantive permanent appointment.

"It has been held by this Court in Parshottam Lal Dhingra v. Union of India, 1958 SCR 828 : AIR 1958 SC 36, that Article 311 makes no distinction between permanent and temporary posts and extends its protection equally to all Government servants holding permanent or temporary or officiating in any one of them. But the protection of Article 311 can be available only where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. One of the tests laid down in that case for determining whether the termination of service was by way of punishment or otherwise is whether under the Service Rules, but for such termination, the servant has the right to hold the post.

"Reliance is placed upon Rule 24 of the Punjab Civil Service Rules and it is said that since it qualifies a probationer for being absorbed in a substantive permanent appointment it gives him a right and the reversion of such a person deprives him of that right and thus amounts to punishment. The provision of Article 311 (2) are said to be attracted to the situation and whereas here, they have not been complied with the reversion must be regarded as illegal.

"This argument assumes that a probationer who continues to be such without being reverted after the expiry of the period of probation has a legal right to be confirmed or to be treated as if he were confirmed. The rule in question says no more than this that at the end of the probationary period the probationer, unless reverted or absorbed in a substantive post will be eligible for being made permanent. In other words, it means that he will continue to be a probationer unless he is reverted or absorbed in a permanent
post. But the very fact that a person is a probationer implies that he has to prove his worth, his suitability for the higher post in which he is officiating. If his work is not found to be satisfactory, he will be liable to be reverted to his original post even without assigning any reason. It would, therefore, not be correct to say that a probationer has any right to the higher post in which he is officiating or a right to be confirmed. A probationer being merely made eligible for being absorbed in a permanent post is in no better position.

"Event hough that this is so a probationer cannot be as pointed out in Dhindra’s case. 1958 SCR 828 : AIR 1958 SC 36, punished for misconduct without complying with the requirements of Article 311 (2). The question then is whether it can be said that the appellant was no punished. The sequence of events which led up to a departmental enquiry against him, his exoneration his transfer to Jullunder the unsuccessful attempt of Mr. Kashyap, the Dy. Commissioner, to have the transfer cancelled followed by his being asked to stop collecting funds for the Government College and then by his reversion on 20th May, 1952, would go to show that the reversion was not in the ordinary course... The circumstances clearly show that the action of the Government was mala fide, and the reversion was by way of punishment for misconduct without complying with the provisions of Article 311 (2). The reversion of the appellant is therefore illegal."

**Period of probation:**

When the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continuing in that post as a probationer by implication. The reason is that such an implication is negativized by the service rule for binding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post of implication. The *State of Punjab v. Dharamsingh*, AIR 1968 SC 1210 : (1968) 3 SCR 1 : 1968 SCR 247 : 17 Fac LR 9 : (1968) 2 SCA 328.

In *State of U. P. v. Akbar Ali*, AIR 1966 SC 1842 : (1966) 3 SCR 820, the Supreme Court observed:

"The scheme of the rules is clear; confirmation in the post which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer. It has been held by this Court that when a first appointment is made on probation for a specified period and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation, he continues as a probationer only and acquires no
substantive right to hold the post. If the order of appointment itself states that at the end of the period of probation the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of the period of probation”.

In Hartwell Prescott Singh v. U. P. Government, AIR 1957 SC 886 : 1958 SCR 509 : 1958 SCA 1 : 1957 All WR (HC) 690 : 1958 SCJ 146 : 1958 MLJ (Cr) 127, it was held that he continued to be a probationer in the subordinate service although he had served the Government in the subordinate service for about 8 years and served the Government continuously for another period of ten years in the provincial service. It was so held on the strength of an entry in the gradation list that he was being treated as a probationer in the subordinate service.

3. Officiating Persons

A person officiating in a post has no right to hold it for all times. He may have been given the officiating post because the permanent incumbent was not available having gone on leave or being away for some other reasons. When the permanent incumbent comes back, the person officiating is naturally reverted to his original post. This is no reduction in rank for it was the very term on which he had been given the officiating post. Again, sometimes a person is given an officiating post to test his suitability to be made permanent on it later. Here again, it is an implied term of the officiating appointment that if he is found unsuitable he would have to go back. If, therefore, the appropriate authorities find him unsuitable for the higher rank and then revert him back to his original lower rank, the action taken is in accordance with the terms on which the officiating post had been given. It is in no way a punishment and is not, therefore, a reduction in rank, when the reversion has not in any way affected him so far as his condition and prospect of service are concerned. He, of course, loses the benefit of the appointment to the higher rank but that by itself cannot indicate that the reversion was by way of punishment because he had no right to continue in the higher post or to the benefits arising from it—The State of Bombay v. F. A. Abraham, AIR 1962 SC 794 ; Union of India v. R. S. Dhaba, (1969) 1 SCWR 922 : 1969 SLR 442 ; State of Assam v. Biraja Mohan Deb and others, (1969) 2 SCWR 583 : U.J. (SC) 675.

In Parshottam Lal Dhirga v. Union of India, 1958 SCR 829, the Court held:

“It is, therefore, quite clear that appointment to a permanent post in a Government service, either on probation or an
S.L.I.—44
officiating basis, is, from the very nature of such employment, itself of a very transitory character and, in the absence of a special contract or specific rule regulating the conditions of service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time.”

It is, however, true that even an officiating person may be reverted to his original rank by way of punishment. It was, therefore, observed in Dhingra’s case:

“Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty.”

In Madhav Laxman Vaikunthe v. State of Mysore, AIR 1962 SC 8 : (1962) 1 SCR 886 : (1962) 1 SCJ 134 : 64 Bom LR 396, the petitioner was holding the rank of a Mamlatdar in the first grade and was officiating as a District Deputy Collector. Subsequently, a departmental enquiry was held against him for misconduct as a result of which he was reverted to his original rank as Mamlatdar for a period of three years. Ultimately he was promoted to the selection grade but even so the order of reversion passed against him remained effective and affected his place in the selection grade. The Court observed:

“In every case of reversion from an officiating higher post to his substantive post, the civil servant concerned is deprived of the emoluments of the higher post. But that cannot, by itself, be a ground for holding that the second test in Dhingra’s case, namely whether he has been visited with evil consequences can be said to have been satisfied. Hence, mere deprivation of higher emoluments as a consequence of reversion cannot amount to the ‘evil consequence’ referred to in the second test in Dhingra’s case, 1958 SCR 828, they must mean something more than mere deprivation of higher emoluments. That being so, they include, for example, forfeiture of substantive pay, loss of seniority, etc. Applying the test to the present case, it cannot be said that simply because the appellant did not get a Deputy Collector’s salary for three years, he was visited with evil consequences of the type contemplated in Dhingar’s case, 1958 SCR 828. Even if he had been reverted in the ordinary course of the exigencies of the service, the same consequences would have
ensued. If the loss of the emoluments attaching to the higher rank in which he was officiating was the only consequence of his reversion as a result of the enquiry against him, the appellant would have no cause of action. But it is clear that as a result of the order, dated August 11, 1948 (Ex. 35) the appellant lost his seniority as a mamlatdar, which was his substantive post. That being so, it was not a simple case of reversion with no evil consequence; it had such consequence as would come within the test of punishment as laid down in Dingra's case, 1958 SCR 828. If the reversion had not been for a period of three years, it could not be said that the appellant had been punished within the meaning of the rule laid down in Dingra's case, 1958 SCR 828. It cannot be asserted that his reversion to a substantive post for a period of three years was not by way of punishment. From the facts of this case it is clear that the appellant was on the upward move in the cadre of his service and but for this aberration in his progress to a higher post, he would have, in the ordinary course, been promoted as he actually was some time later when the authorities realised perhaps he had not been justly treated, as is clear from the order of Government, dated March 26, 1951, promoting him to the higher rank with effect from August 1, 1950. But that belated justice meted out to him by the Government did not completely undo the mischief of the order of reversion impugned in this case. It is clear to us, therefore, that as a result of the order of reversion aforesaid, the appellant had been punished that the order of the Government punishing him was not wholly regular. It has been found and that the requirements of section 210(3) of the Government of India Act, 1935, corresponding to Article 311 (2) of the Constitution, had not been fully complied with. His reversion in rank, therefore, was in violation of the Constitutional guarantee......"

In Union of India and others v. R. S. Dhaba, (1969) 3 SCC 603: 1969 SLR 442: (1969) 1 SCWR 922, the respondent joined the Income-tax Department as an upper division clerk. He was confirmed as an upper division clerk with effect from December, 1, 1949. On October 25, 1951 he was promoted as In pector of Income-tax in an officiating capacity. On April 8, 1953 the respondent was "promoted to officiate until further orders as Income-tax Officer, Class II, Grade III".

On May 22, 1954 the respondent was reverted from his officiating position of Income-tax Officer, Class II as his work was not considered satisfactory. The order of reversion reads as follows:

"ORDER

Establishment Gazetted Class II Income-tax Officer—Reversion of Shri R. S. Dhaba, officiating Income-tax Officer, Class II at present employed as Income-tax Officer, E. Ward, Ludhiana having been found unsuitable after trial to hold the post of Income tax Officer, Class II, is hereby reverted as officiating Inspector, Income-tax with immediate effect.

Sd./S. R. MEHTA,
Commissioner of Income-tax."
The respondent thereupon moved the High Court for grant of a Writ to quash the order of reversion. It was contended on behalf of the respondent that the order of reversion was made by way of punishment and the provisions of Article 311 of the Constitution were attracted and the procedure contemplated by that Article should have been followed. The single Judge allowed the Writ petition holding that the reversion of the respondent from the officiating position of Income-tax Officer, Class II to a lower position of officiating Inspector of Income-tax was tantamount to a reduction in rank and the respondent was entitled to the safeguards provided in Article 311 of the Constitution. The appellants took the matter in appeal under the Letters Patent but the appeal was dismissed.

It was contended on behalf of the respondent that the order of reversion was made by way of punishment and the provisions of Article 311 (2) of the Constitution were attracted. It was pointed out that in his demi-official letter dated February 6, 1964 Mr. M. Kasivisvanatha Pillai, the then Commissioner of Income-tax, said that the respondent should be reverted because of the large number of complaints which the department had received against the integrity of the respondent and the bad reports received by him from his superiors. It was said that the Commissioner was largely influenced by the complaints received against the respondent about his honesty while coming to the conclusion that he was not suitable for the post of Income-tax Officer.

The Supreme Court did not agree with the argument that the order of reversion was punitive in character and that the procedure of Article 311 (2) of the Constitution was applicable and observed:

"In the order of reversion dated May 22, 1964 there is nothing to show that a stigma was attached to the respondent. No reference is made to the imputation on the integrity of the respondent and the only reason given is that the respondent was found unsuitable to hold the post of Income-tax Officer, Class II. It is well-established that a Government servant who is officiating in a post has no right to hold it for all time and the Government servant who is given an officiating post holds it on the implied term that he will have to be reverted if his work was found unsuitable. In a case of this description a reversion on the ground of unsuitability is an action in accordance with the terms of which the officiating post is held and not a reduction in rank by way of punishment to which Article 311 of the Constitution could be attracted. It is of course well-settled that temporary Government servants are also entitled to the protection of Article 311 (2) of the Constitution in the same manner as permanent Government servants if the Government takes action against them meting out one of the three punishments, namely, dismissal, removal or reduction in rank—See Parshottam Lal Dhirga v. Union of India, 1958 SCR 828. But this protection is only available where the dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and no otherwise. As pointed out in Parshotam Lal Dhirga's case (Supra) the two tests applicable in a matter of this description are:
(1) whether the Government servant has a right to the post or the rank, or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the Government servant had been punished. Further, even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the express of implied terms of the contract of employment or under the statutory rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant. The test for attracting Article 311 (2) of the Constitution in such a case is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary employees—See the decision of this Court in Champa Pal Chimanlal Shah v. The Union of India, (1964) 5 SCR 190. In the present case, however, the order of reversion does not contain any express words of stigma attributed to the conduct of the respondent and, therefore, it cannot be held that the order of reversion was made by way of punishment and the provisions of Article 311 of the Constitution are consequently attracted. This view is supported by the decision of this Court in The State of Bombay v. F. A. Abraham, AIR 1962 SC 794, in which the respondent who held the substantive post of Inspector of Police and had been officiating as the Deputy Superintendent of Police was reverted to his original rank of Inspector without being given any opportunity of being heard in respect of the reversion. His request to furnish him with reasons of his reversion was refused. Later a departmental enquiry was held behind his back in respect of certain allegations of misconduct made against him in a confidential communication from the District Superintendent of Police to the Deputy Inspector-General of a Police but these allegations were not proved at the enquiry. The Inspector-General of Police thereafter wrote to the Government that the respondent's previous record was not satisfactory and that he had been promoted to officiate as Deputy Superintendent of Police in the expectation that he would turn a new leaf but the complaint made in the confidential memorandum was a clear proof that the respondent was habitually dishonest and did not deserve promotion. As the order of reversion was maintained by the Government, the respondent filed a suit challenging the order. The suit was decreed by the Court of first instance and the decree was affirmed by the High Court on appeal. On further appeal to this Court it was held that the reversion of the respondent on the ground of unsuitability was an action in accordance with the terms on which the officiating post was being held and was not a reduction in rank by way of punishment to which section 240 of the Government of India Act, 1915 would be attracted. The appeal of the Government was allowed and the suit of the
respondent dismissed. A similar view was expressed by this Court in *I. R. Saksena v. State of Madhya Pradesh*, and *Jasbir Singh Bedi v. Union of India and others*.

"We are accordingly of opinion that in the present case the High Court was in error in holding that the reversion of the respondent from the position of officiating Income-tax Officer, Class II to a lower position as Inspector of Income Tax was tantamount to a reduction in rank and, therefore, the respondent was entitled to the safeguards provided in Article 311 of the Constitution."

4. Quasi-Permanent Employees

This class of employees is recognised by the Service Rules and are a particular class of temporary servants. A public servant in temporary employment, by length of service cannot claim the status of a 'quasi permanent' employee, he may acquire the status by an express declaration. Under Rule 3 of the Central Civil Services (Temporary Service) Rules, 1949 before an employee can be deemed to be in quasi permanent service, it is incumbent on him to show that not only has he been in continuous Government service for more than three years but also that the appointing authority had issued a declaration as contemplated in Rule 3(ii) of said Rules. Otherwise the requirement nugatory as to declaration as contained in the definition in Rule 2 (b) becomes and the definition becomes contradictory to Rule 3 itself. In *Champaklal Chimanlal Shah v. Union of India*, AIR 1964 SC 1854 : (1964) 5 SCR 190 : 66 Bom LR 319 : (1964) I Lab LJ 752, it was held that though the appellant had completed 3 year's service but as the Government had not issued certificate of suitability he could not be deemed to be quasi-permanent. It was further held that both the conditions of Rule 3 of Temporary Service Rules should be fulfilled for claiming this status.

In *K. S. Srinivasan v. Union of India*, 1958 SCR 1295 : AIR 1958 SC 149, the Supreme Court has said that quasi permanent status is a creature of the rules and a servant who seeks the benefit of Rule 3 must be held to be bound by the proviso to Rule 4 (b) of the Rules.

In *Champaklal Chimanlal Shah v. Union of India*, AIR 1964 SC 1854, it was held that quasi permanent service began from the date on which a declaration was issued under Rule 3 of the Central Civil Service (Temporary Service) Rules, 1949.

In *Parshottam Lal Dhingra v. Union of India*, AIR 1958 SC 36, the Court considered the quasi permanent status and observed:

"Further take the case of a person who having been temporarily appointed to a post has been in continuous service for more than three years or has been certified by the appointing authority as fit for employment in a quasi permanent capacity, such person under Rule 3 of the 1949 Temporary Service Rules, is to be in quasi permanent service which, under Rule 6 of those Rules, can be terminated i) in the circumstances and the manner in which the employment of a Government servant in a permanent service can be terminated, or (ii) when the appointing authority certifies that a reduction has occurred in the number of posts
available for Government servants not in permanent service. Thus when the service of a Government servant holding a post temporarily ripens into a quasi permanent service as defined in the 1949 Temporary Service Rules, he acquires a right to the post although his appointment was initially temporary and, therefore, the termination of his employment otherwise than in accordance with Rule 6 of those Rules will deprive him of his right to that post which he acquired under the rules and will prima facie be a punishment and regarded as a dismissal or removal from service so as to attract the application of Article 311."

To understand the point, the following provisions of the Central Civil Services (Temporary Service) Rules, 1949 are reproduced below. It may be pointed out that these Rules have now been superseded by the Central Civil Services (Temporary Service) Rules, 1965.

Section 2 (b): "Quasi permanent service" means temporary service commencing from the date on which a declaration made under Rule 3 takes effect and consisting of periods of duty and leave (other than extraordinary leave) after that date;

Section 2 (c): "Specified post" means the particular post, or the particular grade of posts within a cadre, in respect of which a Government servant is declared to be quasi permanent under Rule 3;

Section 3: A Government servant shall be deemed to be in quasi permanent service—

(i) if he has been in continuous Government service for more than three years;

(ii) if the appointing authority being satisfied as to his suitability in respect of age, qualifications, work and character for employment in a quasi permanent capacity, has issued a declaration to that effect, in accordance with such instructions as the Governor-General may issue from time to time.

Section 4: (a) A declaration issued under Rule 3 shall specify the particular post or the particular grade of posts within a cadre, in respect of which it is issued, and the date from which it takes effect.

(b) Where recruitment to a specified post is required to be made in consultation with the Federal (now Union) Public Service Commission, no such declaration shall be issued except after consultation with the Commission.

Section 6: (1) The service of a Government servant in a quasi permanent service shall be liable to termination—

(i) in the same circumstances and in the same manner as a Government servant in permanent service, or

(ii) when the appointing authority concerned has certified that a reduction has occurred in the number of posts available for Government servants not in permanent service:

Provided that the service of a Government servant in quasi permanent service, shall not be liable to termination under clause (ii)
so long as any post in the same grade and under the same appointing authority as the specified post held by him, continues to be held by a Government servant not in permanent or quasi permanent service:

Provided further that among Government servants in quasi permanent service when specified posts are in the same grade and under the same appointing authority, termination of service consequent on reduction of posts shall ordinarily take place, in order of juniority in the list referred to in Rule 7.

(2) Nothing in this rule shall affect any special instructions issued by the Government regarding the manner and the order in which temporary Government servants belonging to any Scheduled Caste or Scheduled Tribe may be discharged.

Section 7: (1) Subject to the provisions of this rule, a Government servant in respect of whom a declaration has been issued under Rule 3, shall be eligible for permanent appointment on the occurrence of a vacancy in the specified posts which may be reserved for being filled among persons in quasi permanent service, in accordance with such instructions as may be issued by the Governor-General in this behalf from time to time.

Explanation.—No such declaration shall confer upon any person to claim a permanent appointment to any post:

(2) Every appointing authority shall, from time to time, after consulting with appropriate Departmental Promotions Committee, prepare a list, in order of precedence, of persons in quasi permanent service who are eligible for permanent appointment. In preparing such a list, the appointing authority shall consider both the seniority and merit of the Government servants concerned. All permanent appointments which are reserved under sub-rule (1) under the control of any such appointing authority shall be made in accordance with such list:

Provided that the Government may order that a permanent appointment to any grade or post may be made purely in order of seniority.

Section 8: A Government servant in quasi permanent service and holding a specified post shall, as from the date on which his service is declared to be quasi-permanent, be entitled to the same conditions of service in respect of leave, allowance and disciplinary matter as Government servant in permanent service holding the specific post.

Section 9: Deals with the gratuity payable to a quasi permanent servant in his service is terminated otherwise than by a disciplinary measure or by resignation.

Section 10: Records the rights of a quasi permanent servant after his appointing to the permanent cadre.

These Rules were considered by the Supreme Court in K. S. Srinivasan v. Union of India, AIR 1958 SC 419, as follows:

"Before considering the true scope and effect of the relevant clause, it is necessary to say a few words about the Temporary Service Rules. At the same time the rules were publish-
ed, Government also issued memorandum explanatory of
the Rules. It was therein stated that the term 'quasi permanent' service had been evolved with the object of attaching certain benefits to such service and with regard to Rule 4 (a) the memorandum stated—

'Under Rule 4 (a) Government servant has to be declared as quasi-permanent in respect of a particular post; such a post may be an isolated one or it may be a post in a cadre consisting of several posts. In case, where a cadre is split up into several grades it may belong to one of such grades within the cadre. A Government servant who is declared as quasi-permanent in respect of a particular post may be shifted from one post to another within the cadre or grade concerned due to reduction in post or other causes. Such shifting does not affect his rights.'

'As to Rule 6 (1) the memorandum gave the following explanation:

'This rule relates to security of tenure of a quasi permanent Government servant. It should be noted that except in the event of reduction in the number of posts in the cadre or grade concerned, the termination of service of a quasi-permanent Government servant will have to be made in the same manner as the case of a permanent Government servant. For example, if the services are to be terminated on grounds of indiscipline or inefficiency, it will be necessary to institute formal proceedings against him. He has also got a superior right of retention in service over that of purely temporary employees, in the grade in which he is quasi permanent.'

'The question before us is whether the impugned order of September 7, 1955, was in consonance with Rule 6 (1). This question has two aspects—first, the true scope and effect of clause (ii) and second, the effect of the proviso thereto. We take up first clause (ii). Was there a reduction in the present case within the meaning of clause (ii)? We think the answer must be in the affirmative. In the order, dated December 14, 1953, which was an order in favour of the appellant, it was clearly stated that in August, 1952, all the posts of Public Relations Officers, except the one in the External Services Division, were held in abeyance. In the impugned order of September 7, 1955, it was stated that in 1952 all the posts of Public Relations Officers excepting one in the External Services Division were held in abeyance as a measure of economy and the only post that survived the economy drive was assigned to a permanent incumbent. Learned counsel for the appellant has sought to draw a distinction between 'keeping a post in abeyance' and 'reducing a post' and has suggested that the latter expression means abolishing a post permanently or temporarily whereas the former expression merely suggests not filling the post for the
time being. Words and phrases necessarily take their meaning from the context in which they are used. In clause (ii) the expression used ‘is reduction ... in the number of posts available for Government servants not in permanent service.’ Learned counsel for the respondent has rightly pointed out that the entire clause should be read to understand what is meant by reduction, and in that context, reduction is not necessarily confined to abolition, permanent or otherwise. He has given an illustration to clarify the meaning. Assume that the permanent holder of a post goes on deputation; the post then becomes available for temporary or quasi-permanent officers. When, however, the permanent man returns from deputation, there is a reduction in the number of posts available for Government servants not in permanent service. We agree with the learned counsel for the respondent that the word ‘reduction’ in the context of clause (ii) is not necessarily confined to abolition, and keeping certain posts in abeyance comes within the expression. It may be further pointed out that in the order of September 7, 1955, it was clearly stated that the Government had no intention of reviving the posts of Public Relations Officers kept in abeyance since 1952; therefore, for all practical purposes, the posts have been abolished.

“We do not think that there is any charm in the word ‘certifies’ which occurs in clause (ii). It is clear that the appellant was informed as far back as May, 1952, by a memorandum from the appointing authority that it was decided to keep the post (which the appellant held) in abeyance. There is nothing in the clause which prevents the appointing authority from certifying by means of a memorandum instead of by a mere formal order.”

Coming to the facts of the case the Court held:

“In conclusion we wish to say that apart from any consideration of mere legal right, this is a hard case. The appellant was in service for about nine years without any blemish and his service was terminated on the reduction of certain posts; he was told—wrongly it now appears—that he had a quasi-permanent status in the post of Assistant Station Director. The appellant states that the Union Public Service Commission did not consider his suitability for the post of Assistant Station Director, because he claimed quasi-permanent status in that post. The correspondence with the Union Public Service Commission shows that the appellant’s case was not considered from the promotion quota of 20% because he held a post which was not (to use the expression of the Commission) ‘in the field of promotion’. If the appellant is right in his statement that he was not considered for direct recruitment because he claimed quasi-permanent status then obviously there is an apparent injustice; the appellant is then deprived of consideration of his claim both from the promotion and direct quotas. We invite the attention of the authorities concerned to this aspect of the case and hope that they will consider the appellant’s case sympathetically and give him proper relief.”
In Hartwell Prescot Singh v. Uttar Pradesh Government, AIR 1957 SC 886, the Court held that a declaration as contemplated in Rule 3 of the Central Civil Services (Temporary Service) Rules, 1949 was essential before a service could be regarded as quasi permanent service.

In Union of India v. Prem Prakash Madha, 1969 SLR 655, it was held that a public servant in temporary employment, by mere length of service could not claim the status of a "quasi permanent employee" he may acquire the status only by an express declaration.

5. Civil Posts

(a) "Civil post" : Meaning

The expression "civil post" is not defined in the Constitution of India. Reading however, Articles 310 and 311 together, the conclusion is inescapable that the expression "civil post" as used in Article 311, means "a post or office on the civil side of the administration" as distinguished from "post connected with defence". The expression "civil post" means an appointment in office on the civil side of the administration.

In State of Assam v. Kanak Chandra, AIR 1967 SC 884 : (1967) 1 SCR 679 : (1967) 1 SCWR 228 : 1967 SCD 521 : (1967) 2 SCJ 461 : 14 Fac LR 299, the Supreme Court observed:

"There is no formal definition of 'post' and 'civil post'. The sense in which they are used in the Service Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence ; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. In Article 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. The heading and sub-heading of Part XIV and Chapter I emphasise the element of service."

6. Village Munsifs

In Gazula Dasaratha Ram Rao v. State of Andhra Pradesh, (1961) 2 SCA 410 : AIR 1961 SC 564 : (1961) 1 SCJ 310, the question before the Court was whether section 6 (1) of the Madras Hereditary Village Offices Act (III of 1895) in so far as it made discrimination on the ground of descent only was violative of fundamental right under Articles 14 and 16 of the Constitution. It was contented that the office of Village Munsif was an office under the State. The Court examined the various provisions of the Act and observed:

"... These provisions show, in our opinion, that the office of Village Munsif under the Act is an office under the State. The appointment is made by the Collector the emoluments are granted or continued by the State, the Collector, has disciplinary powers over the Village Munsif including the
power to remove, suspend or dismiss him, the qualification for appointment can be laid down by the Board of Revenue—all these show that the office is not a private office under a private employer but is an office under the State. The nature of the duties to be performed by the Village Munsif under different provisions of the law empowering him in that behalf also shows that he holds a public office. He not only aids in collecting the revenue but exercises power of a Magistrate and of a Civil Judge in petty cases. He has also certain police duties as to repressing and informing about crime, etc.

"Even if we assume for the purpose of argument that Articles 309 and 310 and other Articles in Chapter I, Part XIV of the Constitution relate only to an organised public service like the Indian Administrative Service, etc., and ex-cadre posts under a direct contract of service which have not yet been incorporated into a service, we do not think that the scope and effect of clauses (i) and (ii) of Article 16 can be cut down by reference to the provisions in the Service Chapter of the Constitution."

The question of applicability of Article 14 of the Indian Constitution was also raised before the Court and on this point the Court laid down:

"Article 14 enshrines the fundamental right of equality before the law or the equal protection of the law within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds, religion, race, caste, sex, place of birth or any of them. It is available to citizens only; but is not restricted to any employment or office under the State. Article 16, clause (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and clause (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Article 15 does not mention 'descent' as one of the prohibited grounds of discrimination, whereas Article 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Article 16 in the matter of employment or appointment to any office under the State should be cut down by reference to the provisions in Part XIV of the Constitution which relate to services or to provisions in the earlier provisions do not enshrine any fundamental right of citizens; they relate to recruitment, conditions and tenure of service of persons, citizens or otherwise, appointed to a civil service or to posts in connection with the affairs of the Union or any State. The word 'State', be it noted, has a different
connotation in Part III relating to fundamental rights; it includes the Government and Parliament of India, the Government and Legislature of each of the States and all local or other authorities within the territory of India, etc. Therefore, the scope and ambit of the service provisions are to a large extent distinct and different from the scope and ambit of the fundamental right guaranteeing to all citizens an equality of opportunity in matters of public employment. The preamble to the Constitution states that one of its objects is to secure to all persons equality of status and opportunity. Article 16 gives equality of opportunity in matters of public employment. We think that it would be wrong in principle to cut down the amplitude of a fundamental right by reference to provisions which have an altogether different scope and purpose. Article 13 of the Constitution lays down inter alia that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with fundamental rights, shall, to the extent of the inconsistency, be void. In that Article ‘law’ includes custom or usage having the force of law. Therefore, even if there was a custom which has been recognized by law with regard to a hereditary village office, custom must yield to a fundamental right . . .”

7. Mouzadars

In State of Assam v. Kanak Chandra, AIR 1967 SC 384, the Supreme Court held that a mouzadar in Assam held a civil post under the Government and that he was entitled to the rights guaranteed by Article 311 of the Constitution. The Court defined the “civil post” and laid down as follows:

“There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State’s right to select and appoint the holder of the post, its right to suspend and dismiss, its right to control the manner and method of his doing the work and a payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

“In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds ‘office’ during the pleasure of the Governor of the State, except as expressly provided by the Constitution—see Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached; an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of a post. A post may be created
before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.

"Judged in this light, a mouzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a mouzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is responsible officer exercising delegated powers of Government, Mouzadars in the Assam Valley are appointed Revenue Officers and ex officio Assistant Settlement Officers Originally, a mouzadar may have been a revenue farmer and an independent contractor. But having regard to existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.

"Counsel for the State stressed the fact that normally a mouzadar does not draw a salary. But a post outside the regularly constituted services need not necessarily carry a definite rate of pay." The post of a mouzadar carries with it a remuneration by way of a commission on collection is of Government dues. Counsel stressed the fact that a mouzadar is not a whole-time employee. But a post outside the regularly constituted services may be a part-time employment. The conditions of service of a mouzadar enable him to engage in other activities."

8. Tahvildars

In State of U. P. v. A. N. Singh, AIR 1965 SC 360, the Supreme Court in appeal affirmed the decision in State of U. P. v. A. N. Singh, AIR 1961 All 515, wherein it was laid down that the Tahvildar being appointed by the Treasurer, who was himself a servant of the Government and not in the position of an independent contractor, held a civil post within the meaning of Article 311 of the Constitution.

9. Servants of Life Insurance Corporation

In Life Insurance Corporation v. Sunil Kumar Mukherji, AIR 1964 SC 847, relief was granted to the servants of the Corporation under the provision of the Act even though it was said that Article 311 of the Constitution might be held to be inapplicable to them.

10. Civilians in Defence Service

In Lekhraj Khurana v. Union of India, (1971) 1 SCC 780, the appellant was appointed in a supervisory post in the Army Ordnance
Corps. The appellant was served with charge-sheets by the Ordnance Officer, Administration, Shakurbasti, Delhi where he was posted at that time calling upon him to submit his defence to the charges of making serious false allegations against his superior officer. The appellant asked for grant of time for submitting his defence and he also demanded copies of certain documents etc., to prove his case. While this inquiry was pending he was served with an order by the Ordnance Officer, Administration, Shakurbasti, Delhi, which was as follows:

"Under instructions received from Army Headquarters you are hereby given one month's notice of discharge with immediate effect, service being no longer required. Your services will be terminated on 25th June, 1951."

The Appellant challenged the legality of the above order principally on the ground that it had been passed by an officer who was subordinate to the authority who appointed him and that no inquiry "as required by Fundamental Rules and under the provisions of the Constitution of India" had been held in the matter of allegations against him and that no adequate opportunity had been afforded to him of defending himself or of showing cause against the action proposed to be taken. He also raised the question of the order being vitiated by mala fides. In the written statement filed by the Union of India it was stated that the appellant had been appointed as a Labour Supervisor in the Extra Temporary Establishment by COO/Ordnance Officer, Incharge, Ammunition Depot, Kasubegu under the authority of Financial Regulations, India, Part I, Volume 25 and not by the Governor-General. It was pleaded, inter alia, that it was decided by the Government of India vide Army Headquarters' letter, dated May 25, 1951, to terminate the services by serving one month's notice. Consequently a notice of discharge from the service was given to him by the Ordnance Officer, Administration, who was competent to serve the notice on him under the authority of the Army Order No. 1/02/1943, read in conjunction with Financial Regulations referred to before.

The sole material issue which was framed was whether the order, removing the appellant from service was illegal, wrong, void ultra vires and inoperative. The Trial Judge held that Article 311 of the Constitution was applicable to the case of the appellant and that his removal had not been ordered by the appointing authority. The suit was decreed. The respondent preferred an appeal which was decided by the Additional District Judge, Delhi. It was held by him that Article 311 was not applicable to the appellant as he held a post connected with defence. According to the District Judge the appellants' services were terminated under Rule 5 the Civilians in Defence Service (Temporary Servive) Rules, 1949, hereinafter called the 'Rule'. It was found that the order terminating the services had been passed by the proper authority. The appeal was allowed and the suit was dismissed. The appellant appealed to the High Court which was dismissed. His appeal was heard along with certain other appeals in which similar points were involved. It was found that the salary of the appellant was paid out of the estimates of the Ministry of Defence and he was intimately connected with the defence of the country not as a combatant but as a person holding a post the object of which was exclusively to serve the Military Department. In the opinion of the High Court, Articles 309 and 310 were
applicable to the case the appellant but Article 311 was inapplicable. On the question whether the services of the appellant were terminated without complying with the rules the High Court expressed the view that the breach of such rules did not give the aggrieved party a right to go to the Court. Reliance in that connection was placed on the decision of the Privy Council in R. Venkatrao v. Secretary of State, AIR 1937 PC 31, and certain other cases in which that decision was followed. In the case of the appellant the other point which appears to have been argued on his behalf and which was decided by the High Court related to the allegation of mala fides. The decision went against him on that point.

When the matter came before the Supreme Court it was held:

"The question whether the case of the appellant was governed by Article 311 of the Constitution stands concluded by two decisions of this Court. In Fugatrai Mahinchand Ajwani v. Union of India, C.A. 1185 of 1965, decided on 6-2-1967, it was held that an Engineer in the Military Service who was drawing his salary from the Defence Estimates could not claim the protection of Article 311 (2) of the Constitution. In that case also the appellant was found to have held a post connected with Defence as in the present case. This decision was followed in S. P. Behl v. Union of India, C.A. 1918 of 1966, decided on 8-3-1968. Both these decisions fully cover the case of the appellant so far as the applicability of Article 311 is concerned.

"Learned counsel for the appellant sought to argue that since the appellant was admittedly governed by the rules which were framed under section 241(2) of the Government of India Act, 1935, he was entitled to the protection of section 240 of that Act. Chapter I of Part I of the Act related to the Defence Services. According to section 238, sections 235, 236 and 237 were applicable to persons who not being members of his Majesty's Forces held or had held posts in India connected with the equipment or administration of those forces or otherwise connected with Defence as they applied in relation to persons who were or had been members of those forces. Section 240, to the extent it is material, was in the following terms:

'Section 240 —(1) Except as expressly provided by this Act every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during his Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

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

"Section 241 provided for recruitment and conditions of service.

"On behalf of the appellant it was contended that since his conditions of service were governed by the rules which
were framed under the above section, section 240 was clearly applicable and his services could not have been terminated in terms of sub-section (2) of that section by any authority subordinate to that by which he was appointed nor could he be dismissed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. At no stage of the proceedings in the Courts below the appellant relied on section 240 of the Government of India Act and rightly so because the order of his discharge or termination of service was made after the Constitution had come into force. It was apparently for that reason that protection was sought from Article 311 and not section 240 of the Government of India Act, 1935. We see no reason or justification in the present case for determining whether a person holding a civilian post which is connected with the defence and for which he is paid salary and emoluments from the Defence Estimates would be governed by the provisions of section 240 of the Government of India Act if the provisions of that Act were not applicable to the case of such a servant.

"The next question is whether Rule 5 of the Rules was applicable and whether the appellant could claim the benefit of that rule. It provided, inter alia, that the service of a temporary Government servant who is not in quasi permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant. The view of the High Court that the rules were not justiciable cannot be sustained as the decision of the Privy Council in Venkataramo's case (Supra) and the other cases following that view have not been accepted as laying down the law correctly by this Court. It has been held that the breach of a statutory rule in relation to the conditions of service would entitle the aggrieved Government servant to have recourse to the Court for redress; vide The State of Uttar Pradesh and others v. Ajodhya Prasad, (1961) 2 SCR 671 and State of Mysore v. M. H. Bellary, (1964) 7 SCR 471. Now Exhibit P.-3 which is a letter, dated May 26, 1951 and which was produced by the appellant himself shows that one month's notice of discharge was given by the Ordnance Officer, Administration, under instructions received from the Army Headquarters. A copy of another letter Exh. P-2, dated May 27, 1951, was produced according to which it had been decided by the Government of India that the services of the appellant be terminated by giving him one month's notice. It is true that the original of that letter was not produced although it had been summoned by the appellant. It is at least clear that the Ordnance Officer, Administration, had served the notice of discharge under instructions from the Army Headquarters. In this view of the matter there is no substance in the contention raised on behalf of the appellant that the order of discharge had not been made by the
appointing authority. At any rate before the High Court there was no challenge to the finding of the learned District Judge on the point and a question of fact cannot be allowed to be reopened at this stage. The learned counsel for the appellant attempted to reopen the finding on the question of *mala fides* and also invoked the rule of natural justice in so far as the appellant had not been afforded any opportunity of showing cause against his discharge or termination of services. In the appeal before this Court the finding on the point of *mala fides* must be accepted as final and the appellant cannot be allowed to reagitate that matter. As regards the applicability of the rule of natural justice it has not been shown to us how under the general law of master and servant, in the absence of any protection conferred by Article 311 of the Constitution such a rule can be invoked.”
CHAPTER X

SYNOPSIS

1. Judiciary—High Court Judges.
   (i) Determination of age.
   (ii) Question of deciding age—Consultation with Chief Justice of India.
   (iii) Whether Judge whose age is in dispute is entitled to personal hearing.

2. Subordinate judiciary.
   (a) Scope of Articles 233 to 237.
   (b) Consultation with High Court, if necessary.
   (c) Appointment and Promotion of persons as District Judge—Order of Governor, if legal.
   (d) Posting, transfer, etc.
   (e) Recruitment of persons other than District Judges.
   (f) Consultation with State Public Service Commission is nominal.
   (g) Combined cadre comprising District Judges, Registrar, High Court—Judicial Officers in Secretariat—Procedure to be followed in appointment, posting and transfer, etc.
   (h) High Court : Meaning of.
   (i) Rules : Validity of.
   (j) Control over subordinate Courts.
   (k) Reduction in Rank.

3. Staff of the Supreme Court and High Courts.


(a) History of the Status of the subordinate Police Force.
(b) U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 and Power to dismiss.
(c) Procedure followed in enquiry after Constitution, if discriminatory.
(d) Para 486 of U. P. Police Regulations : Scope and effect.
(e) Reasonable opportunity to Police Officers.
(f) Re-organisation of States—Reversion of officiating Sub-Inspector of Police to the post of Head Constable.
(g) Compulsory retirement of Police Officer—Section 10, Madras District Police Act (24 of 1959).
(h) Power of Government to invoke revisional Jurisdiction.
(i) Holding of departmental enquiry for the same offence.
(j) Prosecution under section 29, Police Act, is not necessary before taking departmental proceedings.

5. Railway Services.
   (a) Rules 148 (3 and 149 (3), Railway Establishment Code if violate Article 311.


7. Servants of Statutory Companies and Corporations, etc.

1. Judiciary—High Court Judges.

Article 217 deals with the mode of appointment of Judges of High Courts, their tenure and their qualifications. The authority to make the appointment is the President who has to make the appointment after consultation with the Chief Justice of India, the Governor of the State and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court under Article 222 of the Constitution a High Court Judge is liable to be transferred outside the State.

A High Court Judge “shall hold office until he attains the age of sixty-two years.”

(i) Determination of age.

The President in whose name all executive functioning of the Union of India are performed is by Article 217 (3) of the Constitution, invested with judicial power of great significance which has bearing on the independence of the Judges of the higher Courts. The President is by Article 74 of the Constitution the Constitutional head who acts on the advice of the Council of Ministers in the exercise of his functions. Having regard to the very grave consequences resulting from even the initiation of an enquiry relating to the age of a Judge, the Constitution-makers have thought it necessary to invest the power in the President. In the exercise of this power even the slightest suspicion or appearance of misuse of that power should be avoided. Otherwise the independance of judiciary is likely to be imperilled. Even in the matter of serving
notice and asking for representation from a Judge of the High Court where a question as to his age is raised the President's Secretariat should ordinarily be the channel the President should have consultation with the Chief Justice of India as required by the Constitution and that there must be no interposition of any other body or authority, in the consultation between the President and the Chief Justice of India. Normally an opportunity for an oral hearing should be given to the Judge whose age is in question and the question should be decided by the President on consideration of such materials as may be placed by the Judge concerned and the evidence against him after the same has been disclosed to him. The President acting under Article 217 (3) performs a judicial function of grave importance under the scheme of the Constitution of India. He cannot act on the advice of his Ministers. Notwithstanding the declared finality of the order of the President the Court has jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral considerations or the rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence. But the Supreme Court will not sit in appeal over the judgment of the President nor will the Courts determine the weight which should be attached to the evidence. Appreciation of the evidence is entirely left to the President and it is not for the Courts to hold that on the evidence placed before the President on which the conclusion is founded, if they were called to decide the case they would have reached some other conclusion — The Union of India v. Jyoti Prakash Mittar, 1971 SLR 203.

The retrospective operation of Article 217 (3) postulates that this provision must be read in the Constitution as from January 26, 1950; and so it will apply even in regard to the determination of the ages of Judges of High Courts who had been appointed to their office before the actual provision was inserted, in the Constitution by the Amendment Act of 1963. This provision vests the jurisdiction to determine the question about the judge's age exclusively in the President and so it follows that in the presence of this provision, no Court can claim jurisdiction to deal with the said question. Now the question about the age of a Judge of a High Court has to be determined only in one way and that is the way prescribed by Article 217 (3) — AIR 1965 SC 961 : (1965) 1 SC WR 524.

Where the question was whether the decision of the President of India as to the age of a Judge of the Calcutta High Court given on 15th May, 1961 before the introduction of Article 217 (3) in the Constitution should be regarded as a decision under Article 217 (3) because of its retrospective operation, it being found, that having regard to the circumstances in which the enquiry was made the Judge was justified in contending that his age could not be determined by the executive in proceedings initiated by it, the impugned order passed by the President must be held to suffer from the serious infirmity that the evidence of the Judge was not available to the President when he reached his decision. The question concerning the age of the Judge on which a decision was reached by the President on May 15, 1961 affected him in a very serious manner; and so considerations of natural justice and fair play required that before the question was determined by the President, the Judge should be given a chance to adduce his evidence. That is why on the whole it would not be possible to accept the contention that the order
passed by the President on May 15, should be treated as a decision within the meaning of Article 217 (3)—Ibid.

If a dispute is raised about the age of a sitting Judge and in support to it, evidence is adduced which prima facie throws doubt on the correctness of the date of birth given by a Judge at the time of his appointment it is desirable that the said dispute should be dealt with by the President because it is of utmost importance that in matters of this kind, the confidence of the public in the varacity of a statement made by a Judge in respect of his age must be scrupulously maintained, and where a challenge is made to such a statement, it is in the interest of the dignity and status of the Judge himself as much as in the interest of the purity and reputation of the administration of justice, that the dispute should be resolved and the matter cleared up by the decision of the President—Ibid.

In determining the age of a High Court Judge under Article 217 (3), the question as to what procedure should be followed in deciding the age, what opportunity should be given to the Judge whose age is being decided, and other allied questions pertaining to the decision, are entirely within the discretion of the President. The provision requires that before the President reaches his decision, he has to consult the Chief Justice of the India; it is clearly a mandatory requirement of clause (3). It is also implicit in this provision that before the President reaches his decision on the question, he ought to give the Judge concerned a reasonable opportunity to give his version in support of the age stated by him at the time of his appointment and produce his evidence in that behalf. How this should be done, is of course, for the President to decide; but the requirement of natural justice that the Judge must have a reasonable opportunity to put before the President his contention, his version and his evidence, is obviously implicit in the provision itself. It is also clear that the decision of the President under Article 217 (3) is final, and its propriety, correctness or validity is beyond the reach of the jurisdiction of Courts—Ibid.

As a matter of law, a Judge cannot cease to be a judge merely because a dispute has been raised about his age and the same is being considered by the President and he should not be required to step down from his office. But in dealings with his legal position, considerations of prudence and expediency cannot be ignored. If a dispute arises about the age of a Judge, any prudent and wise Chief Justice would naturally think of avoiding unnecessary complications by refusing to assign any work to the sitting judge if, at the time when the dispute had been raised, it appears that the allegation is that at the relevant time the Judge in question has reached the age of superannuation—Ibid.

A Judge of the High Court whilst he is in office must satisfy the constitutional requirement that he has not attained the specified age and it would be unreasonable for any Judge to suggest that the question about his age cannot be raised just because he made a declaration before his appointment, and without any examination of the question, the said declaration was accepted by the Government of India when his appointment was made. Apart from the Government of India, it would prima facie be theoretically open to any litigant to raise the question about the competence of a Judge to hold his office as such on the ground that he has attained the specified age, and if a serious allegation is made in that behalf, it may have to be judicially determined in a proper

(II) Question of deciding age—Consultation with Chief Justice of India—Nature of.

Consultation contemplated by the Constitution of India is not a dialogue under Article 217 (3). The President is required to consult the Chief Justice of India before determining the question as to the age of a Judge of the High Court. The President must before deciding the age of a Judge, under Article 217 (3), obtain the advice of the Chief Justice of India. For obtaining that advice the President undoubtedly must make available all the evidence in his possession to the Chief Justice of India. The Chief Justice has to submit his advice to the President on that evidence. It is not a condition of the validity of the decision by the President that the President and the Chief Justice should meet and discuss across a table the pros and cons of the proposed action or the value to be attached to any piece of evidence laid before the President and made available to the Chief Justice. The procedure of sending to the Chief Justice of India the file of papers relating to the evidence against the respondent and in his favour, and of obtaining his advice fully comply with the constitutional requirements as to consultation with the Chief Justice of India when he tendered his advice to the President—The Union of India v. Jyoti Prakash Mitter, 1971 SLR 203 (214 and 215).

(III) Whether Judge whose age is in dispute is entitled to personal hearing.

There is nothing in clause (3) of Article 217 of the Constitution of India which requires that the Judge whose age is in dispute should be given a personal hearing by the President. The President may in appropriate cases in the exercise of his discretion, give to the Judge concerned an oral hearing but he is not bound to do so. An order made by the President, which is declared final by clause (3) of Article 217 is not invalid merely because no oral hearing was given by the President to the Judge concerned. An opportunity to make representation to the Judge, after apprising him of the evidence which is likely to be used against him and consideration of the representation and the evidence comply with the requirements of Article 217 (3).

Article 217 (3) of the Constitution of India does not guarantee a right of personal hearing in a proceeding of judicial nature, the basic rules of natural justice must be followed. But it is not necessarily an incident of the rules of the natural justice that personal hearing must be given to a party likely to be affected by the order. Except in proceedings in Courts a merely denial of opportunity of making an oral representation will not vitiate the proceedings. A party likely to be affected by a decision is entitled to know the evidence against him, and to have an opportunity of making a representation. He, however, cannot claim that an order made without affording him an opportunity of personal hearing is invalid. The President is performing a judicial function when he determines a dispute as to the age of a Judge but he is not constituted by the Constitution a Court. If upon the evidence the President was of the view that the disputed question may be decided without giving an opportunity of personal hearing, the Supreme Court cannot set aside the order on the ground that the order was made without following the rules of natural justice—The Union of India v. Jyoti Prakash Mitter, 1971 SLR 203.
2. Subordinate Judiciary

(a) Scope of Articles 233 to 237

The gist of the provisions in Articles 233 to 237 may be stated. Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State. There are two sources of recruitments, namely, (i) service of the Union or of the State, and (ii) members of the Bar. The said Judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court. But in the case of appointments of persons to the judicial service other than as District Judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission. But the High Court has control over all the District Courts and Courts subordinate thereto, subject to certain prescribed limitations—Chandra Mohan v. State of Uttar Pradesh, AIR 1966 SC 1987 : (1967) 2 SC] 717 : (1967) 1 SCR 77.

(b) Consultation with High Court, if necessary.

The exercise of the power of appointment by the Governor is conditioned by his consultation with the High Court, that is to say, he can only appoint a person to the post of District Judge in consultation with the High Court. The object of consultation is apparent. The High Court is expected to know better than the Governor in regard to the suitability or otherwise of a person, belonging either to the ‘judicial service’ or to the Bar, to be appointed as District Judge. Therefore, a duty is enjoined on the Governor to make the appointment in consultation with a body which is the appropriate authority to give advice to him. This mandate can be disobeyed by the Governor in two ways, namely, (i) by not consulting the High Court at all, and (ii) by consulting the High Court and also other persons. In one case he directly infringes the mandate of the Constitution and in the other he indirectly does so, for his mind may be influenced by other persons not entitled to advise him. That this constitutional mandate has both a negative and positive significance is made clear by the other provisions of the Constitution. Wherever the Constitution intended to provide more than one consultant, it has said so—See Articles 124 (2) and 217 (1). Wherever the Constitution provided for consultation of a single body or individual, it said so—See Art. 222. Article 124 (2) goes further and makes a distinction between persons who shall be consulted and persons who may be consulted. These provisions indicate that the duty to consult is so integrated with the exercise of the power that the power can be exercised only in consultation with the person or persons designated therein. If the rules empower the Governor to appoint a person as District Judge in consultation with a person or authority other than the High Court, the said appointment will not be in accordance with the provisions of Article 233 (1) of the Constitution—Chandra Mohan v. State of U. P., AIR 1966 SC 1987 : (1967) 2 SC] 717 : (1967) 1 SCR 77.

Consultation with the High Court is mandatory and not directory. If what the High Court has to say is received with ill-grace or rejected out of hand, consultation loses all its meaning and becomes a mockery and hence the opinion of the High Court is entitled to the highest regard—State of Assam v. Ranga Mohammad, (1967) 1 SCR 454 : (1967) 2 SC] 448 : AIR-1967 SC 903.

No doubt the appointment of a person to be a District Judge rests with the Governor but he cannot make the appointment on his own
initiative and must so in consultation with the High Court. The underlying idea of the Article is that the Governor should make up his mind after there has been a deliberation with the High Court. The High Court is the body which is intimately familiar with the efficiency and equality of officers who are fit to be promoted as District Judges. The High Court alone knows their merits as also demerits. This does not mean that the Governor must accept whatever advice is given by the High Court but the Article does require that the Governor should obtain from the High Court its views on the merits or demerits of persons among whom the choice of promotion is to be limited. If the High Court recommends A while the Governor is of opinion that B's claim is superior to A's it is incumbent on the Governor to consult the High Court with regard to its proposal to appoint B and not A. If the Governor is to appoint B without getting the views of the High Court about B's claims vis-a-vis A's to promotion, B's appointment cannot be said to be in compliance with Article 233 of the Constitution.

Consultation with the High Court under Article 233 is not an empty formality. So for as promotion of officers to the cadre of District Judges is concerned the High Court is best fitted to adjudge the claims and merits of persons to be considered for promotion. The Governor cannot discharge his function under Article 233 if he makes an appointment of a person without ascertaining the High Court's views in regard thereto—C. Prasad v. Patna High Court and others, (1969) 3 SCC 56: 1970 SLR 825.

In the above noted case, towards the end of September, 1968 the High Court had to consider the question of some one taking charge as District and Sessions Judge from the retiring incumbent, S. C. Chakravarty. The High Court, as already noted, wanted to fill that post by M. P. Singh who was an Additional District Judge at Singhbhum but for some reason or other was not free to join immediately and it became necessary to make some temporary arrangement. The Registrar wrote a letter to the Secretary that the Senior Additional District Judge of Arrah be temporarily appointed to act as District and Sessions Judge with effect from 1st October, 1968 and as in the view of the High Court Misra was the senior officer in that cadre the Court recommended his appointment to the Government. The Secretary wrote back to the Registrar on 30th September that Government had no objection to notify the Senior Additional District Judge as temporary District and Sessions Judge of Shahabad but from the records at the Secretariat it appeared that Misra was not the senior officer. On 2nd October, 1969 the Registrar wrote to the Secretary that as Chakravarty had already retired it was necessary to appoint Misra the senior Additional District Judge to act temporarily as District and Sessions Judge without any loss of time so that any urgent bail application, etc., might be disposed of and requested that necessary notification be issued immediately. There was no response from the Secretariat. The Registrar followed his memorandum of October 2, by writing to the Secretary again on October 4, the subject-matter of the letter being:

"Correction of the Bihar Civil List so as to rank Govind Mohan Misra, C. S. S. Sinha and J. N. Singh No. 1 above C. M. Prasad and D. N. Sinha."

The Registrar forwarded copies of the representatives of the three respondents and gave the Court's view that there was justification for correcting the civil list as suggested in the representations. Reference was made to the letters of the 4th October, 1962 and 21st November,
1962 mentioned above and it was pointed out that the decision of the Government to give Respondents 3 and 4 the status of Additional District and Sessions Judges with effect from 15th January, 1963 by upgrading the posts they were holding was based on the fact that they had been recommended earlier than the petitioner and D. N. Sinha to officiate as Additional District and Sessions Judges and that the last two officers had started to function as such from 23rd January, 1963. It was further pointed out that J. P. Singh, respondent No. 5, could not take over charge earlier than 6th February, 1963, because the Court had required him to finish the part-heard Sessions Case which he was trying as Assistant Sessions Judge before joining his post on promotion. The Court therefore requested the Government to correct the Bihar Civil List as suggested. Government does not seem to have taken any action on the letters of 2nd and 4th October. On receipt of a copy of the Court's direction on the representation of Respondents 3, 4 and 5 the petitioner started moving on his own behalf and addressed a memorial to the Chief Secretary to the Government of Bihar through the Registrar of High Court on October 15, 1968. In substance the complaint of the petitioner was that the High Court was not right in accepting the representation of Respondents 3, 4 and 5 and placing them above him in the gradation list. He prayed that the order of the High Court in this respect might not be implemented until the disposal of his appeal by the Government and that promotion to the senior scale of Bihar Superior Judicial Service be kept pending until then. Government reacted to this by a notification, dated 17th October, 1968, appointing the petitioner as temporary District and Sessions Judge, Shahabad, until the appointment of a permanent officer in the vacancy caused by the retirement of Chakravarty. The letter of the Secretary to the Registrar of even date was to the effect that Government was until then not able to consider the recommendation of the High Court forwarded in its letter of October 4, 1968 regarding revision of seniority and it could not accept the position that the petitioner should be treated as junior to Misra and therefore it would not be desirable to notify Misra as officiating District and Sessions Judge pending finalisation of the posting of a regular District and Sessions Judge. With regard to the High Court's recommendation of 4th October Government stated that it would take time to examine the same.

The question arose whether the action of the Government in issuing the notification of October 17, 1968 was in compliance of Article 233 of the Constitution.

The Court observed:

"The correspondence noted above which passed between the High Court and the Secretariat from 28th September, 1968 to 7th October, 1968 shows that whereas the High Court had definitely taken the view that Misra as the senior Additional District and Sessions Judge should be directed to take charge from Chakravarty, the Government was not of the view that according to the records in its appointment department Misra was the senior officer at Shahabad among the Additional District and Sessions Judges. Government never suggested to the High Court that the petitioner was senior to Misra or that the petitioner had a better claim than

S.L.I.—47
Misra's and as such was the person fit to be appointed temporarily as District and Sessions Judge. Before the notification of October 17, 1968 Government never attempted to ascertain the views of the High Court with regard to the petitioner's claim to the temporary appointment or gave the High Court any indication of its own views with regard thereto excepting recording dissent about Misra's being the senior officer in the cadre of Additional District and Sessions Judges at Arrah.

"It was strenuously contended on behalf of the State of Bihar that the materials before the Court amply demonstrate that there had been consultation with the High Court before the issue of the notification of October 17, 1968. It was said that the High Court had given the Government its views in the matter; the Government was posted with all the facts and there was consultation sufficient for the purpose of Article 233. We cannot accept this. Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation. In our opinion, the notification of October 17, 1968 was not in compliance with Article 233 of the Constitution. In the absence of consultation the validity of the notification of October 17, 1968 cannot be sustained."

If the rule empowers the Governor to appoint a person as District Judge in consultation with a person or authority other than the High Court, the said appointment will not be in accordance with the provisions of Article 233 (1) of the Constitution. It is clear from the rules that the High Court is practically reduced to the position of a transmitting authority of the lists of suitable candidates for appointment prepared by the Selection Committee. The only discretion left to it is to refuse to recommended for appointment all or some of the persons included in the lists sent to it by the Selection Committee. It cannot scrutinise the other applications which are screened by the Selection Committee. It cannot recommend for appointment persons not found in the lists. Under the rules the consultation of the High Court is an empty formality. The Governor prescribes the qualifications, the Selection Committee appointed by him select the candidates and the High Court has to recommend from the lists prepared by the said Committee. This is a travesty of the constitutional provision. The Governor in effect and substance, does neither consult the High Court nor acts on its recommendations, but only consults the Selection Committee or acts on its recommendations. The relevant rules contravene the constitutional mandate of Article 233 (1) and (2) of the Constitution and are therefore, illegal Chandra Mohan v. State of Uttar Pradesh, 1965 ALJ 778 : 1966 AWR (HC) 537 : AIR 1966 SC 1987.

Under the Rajasthan Judicial Service Rules the entire work of scrutinising the applications, interviewing the applicants, selection
of eligible candidates and preparation of the lists is done by the Selection Committee and not by the High Court. The only function entrusted under the Rules to the High Court is that of transmitting to the Governor the list prepared by the committee. The Rules, therefore, do not provide for consultation of the High Court and, therefore, contravenes Article 233 which envisages consultation with the High Court and not with any other body of such as the Selection Committee which cannot substitute the High Court even though the members thereof happen to be three judges of the High Court—See (1963) 1 SCJ 577 : AIR 1967 SC 1599 : (1967) 2 SCR 585 : 1967 Gr LJ 1589.

(b) Appointment and promotion of persons as District Judge—Order of Governor, if legal.

In State of Assam and another v. Kureswar Saikla and others, (1969) 3 SCC 505 : 1960 SLR 833, the respondents on conviction by Sri U. N. Rajkhwala in Session Trial challenged their conviction inter alia on the ground that Sri Rajkhwala was not entitled to hold the post of District and Sessions Judge. The High Court held that the promotion of Sri Rajkhwala by the Governor as Additional District Judge purporting to act under Article 237 was void because he could only be promoted by the High Court acting under Article 235. Articles 233 and 235 of the Constitution are reproduced below:

Article 233—

“(1) Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.”

Article 235—

“The control over District Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.”

Consequently, his further appointment as District Judge by the Governor was also declared by the High Court to be void. The High Court, however, held that Rajkhwala’s simultaneous ‘promotion’ as Additional Sessions Judge was valid as that post was not included in the Judicial Service of the State and the Governor was competent to make the appointment. The High Court also held that his further appointment as Sessions Judge was also valid. The High Court, therefore, did not disturb the conviction and also did not pronounce
any opinion whether the judgments given as District Judge by Rajkhowa were void since that question did not arise on a petition for a writ of *quo warranto*. When the matter came before the Supreme Court, it was observed:

"Chapter VI of Part VI of the Constitution deals with subordinate Courts. The history of this Chapter and why judicial services came to be provided for separate from other services has been discussed in *The State of West Bengal v. Nripendra Nath Bagchi*, (1966) 1 SCR 771. This service was provided for separately to make the office of a District Judge completely free of executive control. The Chapter contains six Articles (233 to 237). We are not concerned with Article 237 in the present case. Article 235 vests in the High Court the control over District Courts and Courts subordinate thereto, including the posting and promotion and grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge. By reason of the definitions given in Article 236, the expression ‘Judicial Service’ means a service consisting exclusively of persons intended to fill the post of District Judge and other Civil Judicial posts inferior to the District Judge and the expression ‘District Judge’ includes among others an Additional District Judge and an additional Session Judge. The promotion of persons belonging to the judicial service but holding post inferior to a District Judge vests in the High Court. As the expression ‘District Judge’ includes an Additional District Judge and an Additional Session Judge, the rank above those persons whose promotion is vested in the High Court under Article 235. Therefore, the promotion of persons to be Additional District Judges or Additional Sessions Judges is not vested in the High Court. That is the function of the Governor under Article 233. This follows from the language of the Article itself:

‘(a) Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

*   *   *

"The language seems to have given trouble to the High Court. The High Court holds:

‘(1) ‘appointment to be’ a District Judge is to be made by the Governor in consultation with the High Court *vide* Article 233; and

(2) ‘promotion’ of a District Judge and not promotion ‘to be a District Judge’ is also to be made by the Governor in consultation with the High Court *vide* Article 233."

"The High Court gives the example of selection grade posts in the cadre of District Judges which according to it is a case of promotion of a District Judge."
"The reading of the Article by the High Court is, with respect, contrary to the grammar and punctuation of the Article. The learned Chief Justice seems to think that the expression 'promotion of' governs 'District Judge' ignoring the comma that follows the word 'of'. The Article, if suitably expanded, reads as under:

'Appointments of persons to be, and the posting and promotion of (persons to be), District Judge, etc.'

"It means that appointment as well as promotion of persons to be District Judges is a matter for the Governor in consultation with the High Court and the expression 'District Judge' includes an Additional District Judge and an Additional Sessions Judge. It must be remembered that District Judges may be directly appointed or may be promoted from the subordinate ranks of the judiciary. The Article is intended to take care of both. It concerns initial appointment and initial promotion of persons to be either District Judges or any of the categories included in it. Further, promotion of District Judges is a matter of control of the High Court. What is said of District Judges here applies equally to Additional District Judges and Additional Sessions Judges. Therefore when the Governor appointed Rajkhowa an Additional District Judge, it could either be an 'appointment' or a promotion under Article 233. If the nomination be treated as 'promotion' of Rajkhowa from the junior service to the senior service it was a 'promotion' of a person to be a District Judge which expression, as shown above, includes an Additional District Judge. In our opinion, it was the latter. Thus there is no doubt that the appointment of Rajkhowa as Additional District Judge by the Governor was a promotion and was made under Article 233. It could not be made under Article 235 which deals with posts subordinate to a District Judge including an Additional District Judge and an Additional Sessions Judge. The High Court was in error in holding that the appointment of Rajkhowa to the position of an Additional District Judge was invalid because the order was made by the Governor instead of the High Court. The appointment or promotion was perfectly valid and according to the Constitution."

(d) Posting, transfer, etc.

Under Article 233 the Governor is only concerned with the appointment, promotion and posting to the cadre of District Judges, but not with the transfer of District Judges already appointed or promoted and posted to the cadre—State of Assam v. Ranga Mohammed, AIR 1967 SC 903 : (1967) 2 SCJ 448 : (1967) 1 SCR 454 ; The State of Orissa v. Sudhansu Sekhar Misra and others, AIR 1968 SC 647 : (1968) 2 SCR 154 : 1968 SCD 1 : (1:68) 1 SCA 428 ; (1968) 2 SCJ 236.

The latter is obviously a matter of control of District Judges which is vested in the High Court—Ibid.

Words "service" means "judicial service"—The setting, viz., Chapter VI of Part VI of the Constitution dealing with subordinate courts, in
which the expression "the service" appears indicates that the service mentioned therein is the service pertaining to Courts. That apart, Article 236 (2) defines the expression "judicial service" to mean a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge. If this definition, instead of appearing in Article 236, is placed as a clause before Article 233 (2), there cannot be any dispute that "the service" in Article 233(2) can only mean the judicial service. The circumstance that the definition of "judicial service" finds a place in a subsequent Article does not necessarily lead to a contrary conclusion. The fact that in Article 233 (2) the expression "the service" is used whereas in Articles 234 and 235, the expression "judicial service" is found is not decisive of the question whether the expression "the service" in Article 233(2) must be something other than the judicial service, for the entire chapter is dealing with the judicial service. The definition is exhaustive of the service. Two expressions in the definition bring out the idea that the judicial service consists of hierarchy of judicial officers starting from the lowest and ending with District Judges. The expressions "exclusively" and "intended" emphasised the fact that the judicial service consists only persons intended to fill up the posts of District Judges and other civil judicial posts and that is the exclusive service of judicial officers. Having defined "judicial service" in exclusive terms, having provided for appointments to that service and having entrusted the control of the said service to the care of the High Court, the makers of the Constitution would not have conferred a blanket power on the Governor to appoint any person from any service as a District Judge. After India attained Independence in 1947, recruitment to the Indian Civil service was discontinued and Government of India decided that the members of the newly created Indian Administrative Service would not be given judicial posts. Thereafter District Judges have been recruited only from either judicial service or from the Bar. There was no case of a member of the executive having been promoted as a District Judge. If that was the factual position at the time the Constitution came into force, it is unreasonable to attribute to the makers of the Constitution, who had so carefully provided for the independence of the judiciary, an intention to destroy the same by an indirect method. What can be more deleterious to the good name of the judiciary than to permit at the level of District Judges, recruitment from the executive departments? Therefore, the history of the services also supports the construction that the expression "the service" in Article 233 (2) can only mean the judicial service.

(e) Recruitment of persons other than District Judges.

Article 234 deals with the recruitment of persons other than district judges to the judicial service and runs as under:

"Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."

(f) Consultation with State Public Service Commission is not nominal.

The requirement of consultation with the State Public Service Commission and the High Court is not nominal—State of Assam v. Ranga Mohammad, (1967) 1 SCR 454; (1967) 2 SCJ 448; AIR 1967 SC 903.

(g) Combined cadre comprising District Judges, Registrar, High Court and Judicial Officers in Secretariat—Procedure to be followed in appointment, posting and transfer, etc.

The cadre in question consists of three parts, i.e. (1) presiding officers of District Courts, (2) the Registrar of the High Court, and (3) the Judicial Officers working in the Secretariat. No doubt all these officers belong to the judicial service of the State and they were before 1962 presiding over District Courts or Courts subordinate to them and as such were under the control of the High Court. Hence without the consent of the High Court the Government could not have posted them to administrative posts in 1962. It must be presumed that they were taken over by the Government with the consent of the High Court. While sparing the services of any judicial officer to the Government it is open to the High Court to fix the period during which he may hold any executive post. At the end of that period the Government is bound to allow him to go back to his parent department unless the High Court agrees to spare his services for some more time in other words the period during which a judicial officer should serve in an executive post must be settled by agreement between the High Court and the Government. If there is no such agreement it is open to the Government to send him back to his parent department at any time it pleases. It is equally open to the High Court to recall him whenever it thinks fit. If only there is mutual understanding and appreciation of the difficulties of one by the other, there will be harmony. There is no reason why there should be any conflict between the High Court and the Government. Except for very good reasons, the High Court should always be willing to spare for an agreed period the services of any of the officers under its control filling up such executive posts as may require the services of judicial officers. The Government in its turn should appreciate the anxiety of the High Court that judicial officers should not be allowed to acquire vested interest in the Secretariat. Both the High Court and the Government should not forget the fact that powers are conferred on them for the good of the public and they should act in such a way as to advance public interest. If they act with that purpose in view, as they should, then there is no room for conflict and no question of dominating the other arises. Each of the organ of the State has a special role of its own and the Constitution expects all of them to work in harmony in a spirit of service. It was open to the High Court to recall a judicial officer working as Law Secretary or Additional Law Secretary or a Member Sales Tax Tribunal and post him as presiding officer of District Courts as he had not been placed at the disposal of the Government for any definite period. The above said posts cannot be considered as District Courts or Courts subordinate to District Courts within the meaning of Article 235 of the Constitution. It was beyond the powers of High Court to post a judicial officer as Law Secretary or as Superintendent and Legal Remembrancer or as Deputy Law Secretary.
The post of Registrar can be filled by the Chief Justice. To hold otherwise would be to contravene Article 229 of the Constitution of India—


**H High Court : Meaning of.**

The term “High Court” in the context of Article 234 means the High Court of the State concerned and not any High Court in India—AIR 1963 SC 268; (1963) 1 SCR 707.

There is nothing in Chapter VI of Part VI either expressly or by necessary implication to indicate that the term “High Court” in Articles 233, 234 and 235 means the whole Court that is to say, all the judges of the High Court. These Articles do not prescribe any procedure how the High Court is to act in the matter of consultation or in the matter of exercising the control vested in it. The meaning of the “High Court” should not be split up according to the importance of the function. The constitution by recognizing the rule-making power of the High Court under Article 225, intended to leave this to the High Court itself. By framing appropriate rules the High Court would lay down as to which function will be performed by the whole Court, that is to say, by all the judges, and which one by committees consisting of lesser number of judges or even by individual judges—(1968) 1 SCJ 577; AIR 1967 SC 1599; (1967) 2 SCR 585.

**I Rules : Validity.**

A rule framed under Article 234 prescribing qualifications for eligibility for appointment to the post of District Munsif making a classification between one class of advocates and the rest will be unconstitutional and ultra vires, as being irrational and having no nexus between the basis of the said classification and the object intended to be achieved by the relevant scheme—AIR 1963 SC 268; (1963) 1 SCR 707; (1962) 2 SCA 660.

**J Control over subordinate Courts.**

Article 235 of the Constitution deals with control over subordinate Courts and runs as under:

"**Control over subordinate Courts**—The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the condition of his service prescribed under such law."

Under Article 235 of the Constitution, the High Court is the authority which has the power of promotion in respect of persons belonging to the State Judicial service holding any post inferior to that of a District Judge. Article 235 read with the Civil Services (Classification, Control and Appeal) Rules makes it clear that there is no
right of promotion which the plaintiff could have claimed to enforce by action in a Court. Rule 49 of the Service Rules gives only a safeguard to a public servant that punishment by way of withholding of promotion shall not be imposed unless he has been given adequate opportunity of showing cause against the action proposed to be taken. Moreover Rule 49 comes into play only when proceedings are taken by way of disciplinary action against a public servant. Since there were no disciplinary proceedings against the plaintiff neither Rule 49 nor Rule 55-A was applicable to his case—AIR 1962 SC 1704 : (1963) 1 SCR 437.

In the above case, the High Court in exercise of its sole authority selected some in preference to the plaintiff for promotion from among Munsifs to high posts of Subordinate Judges, it was held that there was no violation of Articles 14 and 16 (1) and the exercise of power by the High Court is not justiciable.

In State of West Bengal v. Nripendra Nath, AIR 1966 SC 447 : (1966) 2 SCJ 59, affirmed the decision of the Calcutta High Court and observed:

"We do not accept this construction. The word 'control' is not defined in the Constitution at all. In Part XIV which deals with Services under the Union and the States the words 'disciplinary control' or 'disciplinary jurisdiction' have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word 'control' must, in our judgment, include disciplinary jurisdiction. Indeed the word may be said to be used as a term of art because the Civil Services (Classification, Control and Appeal) Rules used the word 'control' and the only rules which can legitimately come under the word 'control' are the Disciplinary Rules. Further as we have already shown, the history which lies behind the enactment of these Articles indicate that 'control' was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well the very purpose would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may be legitimately had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word 'control', as we have seen, was used for the first time in the Constitution and it is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day-to-day working of the Court but contemplates disciplinary jurisdiction over the presiding judge. Article 227 gives to the High Court superintendence over these Courts and enables the High Court to call for returns, etc. The word 'control' in Article 235 must have a different content. It includes something in addition to mere superintendence. It is control over the conduct and

S.L.I.—48
discipline of the judges. This conclusion is further strengthened by two other indications pointing clearly in the same direction. The first is that the order of the High Court is made subject to an appeal if so provided in the law regulating the conditions of service and necessarily indicates an order passed in disciplinary jurisdiction. Secondly, the words are that the High Court shall ‘deal’ with the judge in accordance with his rules of service and the word ‘deal’ also points to disciplinary and not mere administrative jurisdiction."

Regarding the condition that as the Governor alone can appoint or dismiss or remove the District Judges, the Governor alone can initiate enquiries and cause them to be held and the High Court could not hold them, the Supreme Court observed:

“This argument was not presented in the High Court and does credit to the ingenuity of Mr. Sen but it is fallacious. That the Governor appoints District Judges and the Governor alone can dismiss or remove them goes without saying. That does not impinge upon the control of the High Court. It only means that the High Court cannot appoint or dismiss or remove District Judges. In the same way the High Court cannot use the special jurisdiction conferred by the two provisos. The High Court cannot decide that it is not reasonably practicable to give a District Judge an opportunity of showing cause or that in the interest of the security of the State it is not expedient to give such an opportunity. This the Governor alone can decide. That certain powers are to be exercised by the Governor and not by the High Court does not necessarily take away other powers from the High Court. The provisos can be given their full effect without giving rise to other implications. It is obvious that if a case arose for the exercise of the special powers under the two provisos, the High Court must leave the matter to the Governor. In this connection we may incidentally add that we have not doubt that in exercising these special powers in relation to enquiries against District Judges, the Governor will always have regard to the opinion of the High Court in the matter. This will be so whoever be the enquiring authority in the State. But this does not lead to the further conclusion that the High Court must not hold the enquiry any more than that the Governor should personally hold the enquiry.”

Where a judge of the High Court after an enquiry into charges against a subordinate judicial officer expressed the opinion that he should be dismissed or removed from service and the High Court passed an order of suspension against the judicial officer until further orders and forwarded the Report of the High Court Judge to the Government for action, whereupon the Government issued a notice to the judicial officer to show cause why he should not be dismissed or removed from service, it was held that it was the appropriate authority under Article 311 that proposed to take action and it was for that authority to pass the ultimate order in the matter, that the order passed by the High Court was merely
one of suspension pending final orders by the Government, that the order was neither one of dismissal nor of removal from service within Article 311, that further under Rule 13 of the Madras, Civil Services (Classification, Control and Appeal) Rules it is the High Court that is constituted as the authority which may impose suspension pending enquiry into grave charges under Rule 17 (e) against the members of the State Judicial Service and that the order in question fell within the rule and was perfectly intra vires—Mohd. Ghouse v. State of Andhra Pradesh, 1957 SCJ 225 : AIR 1957 SC 246 : 1957 SCR 414.

(k) "Reduction in rank".

In the context of the judicial service of West Bengal "reduction in rank" would imply that a person who is already holding the post of a subordinate judge has been reduced to the position of a Munsif. But subordinate Judges in the same cadre hold the same rank, though they have to be listed in the order of seniority in the civil list. Therefore, losing some places in the seniority list in the same cadre, namely, of subordinate Judges does not amount to reduction in rank within article 311 (2)—AIR 1962 SC 1704 : (1963) 1 SCR 437.

In G. S. Nagmati v. The State of Mysore, (1969) 3 SCC 325 : 1970 SLR 911, a preliminary enquiry was held by a Judge of Mysore High Court against the appellant who was working as the Principal Subordinate Judge and on receipt of his report, the High Court of Mysore requested the Government to appoint K. S. Hedge as Specially Empowered Authority to hold the departmental enquiry into the conduct of the appellant under Rule 11 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1967. Accordingly Hedge, J. framed charges against the appellant, received his explanation and concluded the enquiry. The appellant was found guilty of the charge and in his report to the Governor, Hedge, J., recommended that the appellant may be reduced to the rank of a Civil Judge, Junior Division (Munsif) and that he shall not be considered for promotion as a Civil Judge, Senior Division (or as Subordinate Judge) for a period of two years. On receipt of the report the Governor of Mysore considered the case of the appellant and held that the charge was fully established. The Governor of Mysore issued a notification under Article 311 (2) of the Constitution to the appellant asking him to show cause why he should not be compulsorily retired from service. The appellant submitted his representation to the Governor of Mysore. Thereafter the Governor passed an order, directing compulsory retirement of the appellant. The appellant submitted an application to the Chief Minister of Mysore and another application to the Governor of Mysore to review the order. The review application was rejected by the Governor. The appellant thereafter filed a writ petition, before the Mysore High Court challenging the order of the Governor and praying that he should be reinstated in service with all consequential benefits. The writ petition was dismissed by the High Court at the stage of admission without notice to the respondent.

It was argued on behalf of the appellant that disciplinary proceedings initiated by the Governor culminating in his order holding that the charge against the appellant was proved and imposing punishment of compulsory retirement are in contravention of Article 235 of the Constitution and are liable to be set aside. It was pointed out that under
Article 235 the High Court alone had the power to hold disciplinary proceedings against Officers belonging to the judicial service of a State holding posts inferior to that of a District Judge and no other Authority was competent to initiate disciplinary proceedings or to impose punishment against subordinate Judges. It was also contended that Rules 8, 9 and 11 of the Mysore Rules are ultra vires of Article 235 of the Constitution.

Article 235 of the Constitution reads:

"The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

The relevant provisions of the Mysore Civil Service (Classification, Control and Appeal) Rules, 1967 are as follows:

"2. **Interpretation.**—In these rules, unless the context otherwise requires—

(a) ...

(b) ...

(c) 'Disciplinary Authority' in relation to the imposition of a penalty on a Government servant, means the authority competent under these rules to impose on him that penalty;

(d) ...

(e) 'Governor' means the Governor of Mysore acting on the advice of the Council of Ministers;"

Rule 8 states:

"**Nature of penalties.**—The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on Government servants, namely:

(i) fine in the case of Government servants belonging to State Civil Service, Class IV;

(ii) censure;

(iii) withholding of increments or promotion;

(iv) recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the State Government, or to the Central Government, any other State Government, any person, body or authority to whom the Service of the Officer had been lost;

(v) reduction to a lower service, grade or post, or to a lower time-scale or to a lower stage in a time-scale;"
(vi) compulsory retirement;
(vii) removal from service which shall not be a disqualification for future employment;
(viii) dismissal from service which shall ordinarily be a disqualification for future employment.”

Rule 9 states:

“Disciplinary authorities.—(1) The Governor may impose any of the penalties specified in Rule 3 on any Government servant.

(2) Without prejudice to the provision of sub-rule (1), but subject to the provisions of sub-rule (3):

(a) the High Court of Mysore may impose on Government servants belonging to Mysore Judicial Service holding posts inferior to the post of a District Judge, any of the penalties specified in clauses (ii), (iii) and (iv) of Rule 3;

(b) ... ... ...

(3) Notwithstanding anything contained in this rule, no penalty specified in clauses (v) to (viii) of Rule 3 shall be imposed by any authority lower than the Appointing Authority.”

Rule 11:

“Procedure for imposing major penalties.—(1) Without prejudice to the provisions of any law applicable to the Government servant, no order imposing on the Government servant, any of the penalties specified in clauses (v) to (viii) of Rule 8 shall be passed except after an inquiry held, as far as may be, in the matter hereinafter provided.

(2) The Disciplinary Authority or any authority specially empowered by it in this behalf (hereinafter in this rule referred to as “specially empowered authority”) shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority or any authority specially empowered by it in this behalf, a written statement of his defence and also to state whether he desires to be heard in person.

(3) The Government servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Disciplinary Authority or specially empowered authority such records are not relevant for the purpose or it is against the public interest to allow him access thereto.

(4) ... ... ...
(5) ... ... ...
(6) ... ... ...
(7) At the conclusion of the inquiry the Inquiring Authority shall prepare a report of the inquiry, record its findings on each of the charges together with the reasons therefor. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed, it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the fact constituting them or has had no opportunity of defending himself against them.

(8) ... ... ...

(9) ... ... ...

(10) (i) If the Disciplinary Authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in clauses (v) to (viii) of Rule 8 should be imposed, it shall—

(a) furnish to the Government servant a copy of the report of the Inquiring Authority and, where the Disciplinary Authority is not the Inquiring Authority a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority; and

(b) give him a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed action.

(ii) (a) In very case in which it is necessary to consult the Commission, the record of the inquiry, together with a copy of the notice given under clause (i) and the representation made in response to such notice, if any, shall be forwarded by the Disciplinary Authority to the Commission for its advice.

(b) On receipt of the advice of the Commission, the Disciplinary Authority shall consider the representation, if any, made by Government servant as aforesaid, and the advice given by the Commission and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case.

(iii) If any case in which it is not necessary to consult the Commission, the Disciplinary Authority shall consider the representation, if any, made by the Government servant in response to the notice under clause (i) and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case.”

Ramaswami, J., while delivering the judgment observed:

“In The State of West Bengal v. Nripendra Nath Baschi, AIR 1966 SC 447 : (1966) 2 SCJ 59, it was held by this Court that the word ‘Control’ as used in Article 235 includes disciplinary control or jurisdiction over District Judges. By that Article the High Court is made the sole custodian
of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the Court but contemplates disciplinary jurisdiction over the presiding Judge. The question that fell for consideration in that case was whether the enquiry ordered by the Government and conducted by an Executive Officer of the Government against a District and Sessions Judge contravened the provisions of Article 235 of the Constitution which vested in the High Court the control over the District Court and the Courts subordinate thereto. In our opinion the principle of this decision applies to the present case. It was, however, contended on behalf of the respondent that by its letter dated October 23, 1963, the High Court had itself requested the Government to appoint Mr. Justice K. S. Hegde as Specially Empowered Authority to hold departmental enquiry into the conduct of the appellant. It was said that the provisions of Article 235 of the Constitution have been substantially complied with. A copy of the letter of the High Court is Enclosure 1 to the affidavit filed by the respondent in this Court. It is not possible for us to examine the validity of this argument because the writ petition of the appellant was dismissed in limine by the High Court and we have not the advantage of the judgment of the High Court on the disputed facts of this case.

"In these circumstances we consider that this appeal should be allowed and the judgment of the High Court, dated July 16, 1965 should be set aside and the case should be remanded to the High Court for being disposed of according to law. The High Court should make an order admitting the writ petition and issue notice to the respondent giving it an opportunity to file any counter-affidavit. Thereafter the High Court should deal with the case in accordance with the law laid down by this Court in Baschil's case. It is desirable that the case should be dealt with as expeditiously as possible."

3. Staff of the Supreme Court and High Courts

Articles 146 and 229 of the Indian Constitution provide for appointments and conditions of service of officers and members of the staff attached to the Supreme Court or the High Court. The Articles read as under:

"146 Officers and servants and the expenses of the Supreme Court. - (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to an office connected with the Court save after consultation with the Union Public Service Commission."
(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause, shall so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

"229. Officers and servants and the expenses of High Courts.—(1) Appointment of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or Officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or Officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rule made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The Administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of the Fund."

The Chief Justice of a High Court possesses the power of appointment, dismissal and discipline in regard to the staff and servants of the High Court—Pradyut Kumar Bose v. Chief Justice of Calcutta High Court, AIR 1956 Cal 265: (1955) 2 SCR 1331.

Officers and members of the staff attached to a High Court clearly fall within the scope of the phrase "persons appointed to public services and posts in connection with the affairs of the State" and also of the phrase "person who is a member of Civil Service of a State" as used in Articles 310 and 311. The phrase "persons serving under the Government of India or the Government of a State" seems to have reference to such persons respect of whom the administrative control is vested in the respective executive Governments functioning in the name of
the President or of the Governor or of a Rajpramukh. The officers and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is clearly vested in the Chief Justice, who, under Constitution, has the power of appointment and removal and of making rules for the conditions of services. Therefore, for the dismissal of the Registrar of the Original Side of the High Court, prior consultation with the Public Service Commission is not necessary—Pradyat Kumar v. C. J. of Calcutta, AIR 1965 SC 286.

But the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof. It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. That cannot be delegated except where the law specifically so provides—is the ultimate responsibility for the exercise of such a power. As pointed out by the House of Lords in Board of Education v. Rice, (1911) AC 179 at p. 182, a functionary who has to decide an administrative matter, of the nature involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party has a fair opportunity to correct or contradict any relevant and prejudicial material.' Where, therefore, charges are made against a member of the staff of the High Court, the Chief Justice is competent to delegate to another Judge the enquiry into the charges—Pradyat Kumar Bose v. Chief Justice of Calcutta High Court, AIR 1956 SC 285 : 1956 SCJ 259 : (1955) 2 SCR 1331.

Article 229(1) which in terms vests the power of appointment in the Chief Justice is equally effective to vest in him the power of dismissal. This results from section 16 of the General Clauses Act, which by virtue of Article 367(1) of the Constitution applies to the construction of the word "appointment" in Article 229(1). Section 16(1) of the General Clauses Act clearly provides that the power of "appointment" includes the power "to suspend or dismiss"—Pradyat Kumar Bose v. Chief Justice of Calcutta High Court, AIR 1956 SC 285 : 1956 SCJ 259 : (1955) 2 SCR 1331.

4. Police Services

(a) History of the status of the subordinate Police Force.

By section 96-B of the Government of India Act, 1951, the tenure of all civil officers including police officers was at the pleasure of the Sovereign. In exercise of the powers conferred by sub-section (2) of section 96-B, Classification Rules were framed by the local Governments. In the Government of India Act, 1935, Chapter 2 of Part X dealt with civil services, their tenure, recruitment and conditions of service. The section corresponding to section 96-B of the Government of India Act, 1915, in the later Act, was section 240(1) and thereunder all members of the civil service held office during the pleasure of the Sovereign. By the Government of India Act, 1935, to every civil servant a two-fold
protection was guaranteed by clauses (2) and (3) of section 240 (1) that he shall not be dismissed from service by any authority subordinate to that by which he was appointed and that he shall 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. But these provisions did not apply to police officers for whom a special provision was enacted in section 245. That section provided:

"Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Act relating to those forces respectively."

The conditions of service of the Police Force of the subordinate ranks under the Government of India Act, 1935, therefore, were only such as were prescribed by rules framed under section 7 and section 46 (2) of the Police Act. By the Constitution of India, the distinction between police officers and other civil servants in the matter of protection by constitutional guarantee is abolished and as from January 26, 1950, the recruitment and conditions of service of all persons serving the Union or the State are now governed by Article 309 and their tenure by Article 310 of the Constitution. By Article 311, the protection granted under section 240, clauses (2) and (3) of the Government of India Act is extended to members of the Police Force as well. By Article 309, the conditions of service of public servants are made subject to the provisions of the Constitution and the Acts of the appropriate Legislature. By article 310, except as expressly provided by the Constitution (e.g., except in cases where there is an express provision for dismissal of certain public servants, e.g., Judges of the Supreme Court and of the High Courts, Comptroller and Auditor-General of India, Chief Election Commissioners), all civil servants who, under the Union of India hold office during the pleasure of the President and all civil servants who hold office under the State hold it during the pleasure of the Governor. By virtue of Article 313 of the Constitution, until other provision is made, all laws in force immediately before the Constitution and applicable to any public service which continue to exist under the Union or a State, shall continue in force so far as consistent with the Constitution; the power of the police functionaries is, therefore, preserved—Jagannath Prasad v. State of Uttar Pradesh, AIR 1961 SC 1245 : (1963) 1 SCJ 115 : (1962) 1 SCR 151 : ILR 1961 All 167.

(b) U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 and Power to dismiss.

In Jagannath Prasad v. State of Uttar Pradesh, AIR 1961 SC 1245 : (1963) 1 SCJ 115 : (1962) 1 SCR 151 : ILR 1961 All 167, the Court studied the relevant rules and Police Regulation 479 (a) and observed:

"Enquiry against the appellant, though commenced before the Constitution was concluded after the Constitution, and the order dismissing him from the Police Force was passed in December, 1950. Under Police Regulation 479 (a), the Governor had the power to dismiss a police officer. The Tribunal Rules were framed in exercise of various powers vested in the Governor including the power under section 7 of the Police Act, and by those rules, the Governor was authorised to pass appropriate orders concerning police
officers. By virtue of Article 313, the Police Regulations as well as the Tribunal Rules in so far as they are not inconsistent with the provisions of the Constitution remained in operation after the Constitution. The authority vested in the Inspector-General of Police and his subordinates by section 7 of the Police Act was not exclusive. It was controlled by the Government of India Act, 1935, and the Constitution which made the tenure of all civil servants of a Province during the pleasure of the Governor of that Province. The plea that the Governor had no power to dismiss the appellant from service and such power could only be exercised by the Inspector-General of Police and the officers named in section 7 of the Act is, therefore, without substance."

*See also State of Madras v. Sundaram, (1965) 2 SCJ 662,*

(c) Procedure followed in enquiry after Constitution, if discriminatory.

This point was also considered by the Supreme Court in *Jagannath Prasad v. State of Uttar Pradesh*, AIR 1961 SC 1245: (1963) 1 SCJ 115: (1962) 1 SCR 151: ILR (1961) 2 All 167, as follows:

"Selection by the authorities of one of two alternative procedures at a time when Article 14 was not in operation, does not, therefore, enable the appellant to contest the validity of the enquiry on the plea of denial of equal protection of the laws. It was also observed in *Quasim Rizvi's case*, 1953 SCR 589 at p. 606: AIR 1953 SC 156.

"In cases of the type (where the trial commenced before the Constitution) which we have before us where part of the trial could not be challenged as bad the validity of the other part depends on the question as to whether the accused has been deprived of equal protection in matters of procedure, it is incumbent upon the Court to consider, firstly, whether the discriminatory or unequal provisions of law could be separated from the rest and even without them a fair measure of equality in the matter of procedure could be secured to the accused. In the second place, it has got to consider whether the procedure actually followed did or did not proceed upon the basis of the discriminatory provisions. In our opinion, a mere threat or possibility of unequal treatment is not sufficient. If actually the accused has been discriminated against, then and then only he can complain, not otherwise.

"We may mention here that the impossibility of giving the accused the substance of a trial according to normal procedure at the subsequent stage may arise not only from the fact that the discriminatory provisions were not severable from the rest of the Act and the Court consequently had no option to continue from something done at the previous stage which, though not invalid at that time, precludes the adoption of a different procedure subsequently....."
"Regulation 490 of the Police Regulations sets out the procedure to be followed in an enquiry by the Police functionaries, and Rules 8 and 9 of the Tribunal Rules set out the procedure to be followed by the Tribunal. There is no substantial difference between the procedure prescribed for the two forms of enquiry. The enquiry in its true nature is quasi judicial. It is manifest from the very nature of the enquiry that the approach to the materials placed before the enquiring body should be judicial. It is true that by Regulation 490, the oral evidence is to be direct, but even under Rule 8 of the Tribunal Rules, the Tribunal is to be guided by rules of equity and natural justice and is not bound by formal rules of procedure relating to evidence. It was urged that whereas the Tribunal may admit on record the evidence which is hearsay, the oral evidence under the Police Regulations must be direct evidence and hearsay is excluded. We do not think that any such distinction was intended. Even though the Tribunal is not bound by formal rules relating to procedure and evidence, it cannot rely on evidence which is purely hearsay, because to do so in an enquiry of this nature would be contrary to rules of equity and natural justice. The Tribunal Rules and the Police Regulations in so far as they deal with enquiries against police officers are promulgated under section 7 of the Police Act, and neither the Tribunal Rules nor the Police Regulations provide an appeal against an order of dismissal or reduction in rank which the Governor may pass. The fact that an order made by a police authority is made appealable whereas the order passed by the Governor is not made appealable is not a ground on which the validity of the Tribunal Rules can be challenged. In either case the final order rests with the Governor who has to decide the matter himself.

Equal protection of the laws does not postulate equal treatment of all persons without distinction; it merely guarantees the application of the same laws alike and without discrimination to all persons similarly situated. The power of the Legislature to make a distinction between persons or transactions based on a real differentia is not taken away by the equal protection clause. Therefore, by providing a right of appeal against the order of police authorities acting under Police Regulations imposing penalties upon a member of the Police Force, and by providing no such right of appeal when the order is passed by the Governor, no discrimination inviting the application of Article 14 is practised.

"Under Rule 10 of the Tribunal Rules, the Governor is enjoined to pass an order of punishment in terms recommended by the Tribunal, whereas no such obligation is cast upon the police authority who is competent to dismiss a police officer when an enquiry is held under Regulation 49 of the Police Regulations. To the extent that Rule 10 requires the Governor to accept the recommendation of the Tribunal, the rule may be regarded as inconsistent with the Constitution, because every police officer holds office during the pleasure of the Governor, and is entitled under Article 311 (2) to a reasonable opportunity to show cause to the
satisfaction of the Governor against the action proposed to be taken in regard to him. The partial invalidity of Rule 10, however, does not affect the remaining rules; that part of the rule which requires the Governor to accept the recommendation of the Tribunal as to the guilt of the public servant concerned is clearly severable. We may observe that in considering the case of the appellant, the Governor exercised his independent judgment and passed an order of dismissal and did not act merely on the recommendation of the Tribunal. The difference between the two sets of rules on the matter under consideration does not relate to the procedure of the enquiring bodies, "but to the content of reasonable opportunity guaranteed by Article 311 of the Constitution."

(d) Para 486 of the U. P. Police Regulations: Scope and effect.

In State of U. P. v. Babu Ram Upadhya, AIR 1961 SC 751: (1961) 1 SCA 593 : (1961) 1 CrLJ 773 : (1961) 2 SCR 679, a departmental enquiry was held against a Police Sub-Inspector under the Police Regulations for an offence under section 7 of the Police Act. As a result of this he was first reduced in rank and thereafter this punishment was enhanced to a dismissal by the Inspector-General of Police. He challenged the order before the High Court which quashed the order holding that Para 486 of the U. P. Police Regulations was not followed. The material portion of Para 486 runs as follows:

"When the offence alleged against a police officer amounts to an offence only under section 7 of the Police Act, there can be no Magisterial enquiry under the Criminal Procedure Code. In such cases, and in other cases until and unless a Magisterial enquiry is ordered, enquiry will be made under the direction of the Superintendent of Police in accordance with the following rules:

1. Every information received by the Police relating to the commission of a cognizable offence by a Police Officer shall be dealt with in the first place under Chapter XIV, Criminal Procedure Code, according to law, a case under the appropriate section being registered in the Police Station concerned..........")"

When the case came before the Supreme Court, the effect and scope of Para 486 was considered and it was observed:

"The argument is that the words 'an offence under section 7 of the Police Act' take in a cognizable offence and that, therefore, this Rule provides for a procedure alternative to that prescribed under Rule 1. We do not think that this contention is sound. Section 7 of the Police Act empowers certain officers to dismiss, suspend or reduce any police officer in the subordinate rank whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same. The grounds for punishment are comprehensive; they may take in offences under the Indian Penal Code or other penal statutes. The commission of such offences may also be a ground to hold that an officer is unfit to hold his
office. Action under this section can, therefore, be taken in respect of (i) offences only under section 7 of the Police Act without involving any cognizable or non-cognizable offence, that is, simple remissness or negligence in the discharge of duty, (ii) cognizable offences, and (iii) non-cognizable offences. Paragraph 486 of the Police Regulations makes this clear. It says that when the offence alleged against a Police Officer amounts to an offence only under section 7 of the Police Act, there can be no Magisterial enquiry under the Criminal Procedure Code. This part of the Rule applies to an offence only under section 7 of the Police Act, that is, the first category mentioned above, Rule I refers to cognizable offence, i.e., the second category, Rule II to a non-cognizable offence, i.e., the third category, and Rule III applies to an offence under section 7 of the Police Act and to a non-cognizable offence. Though the word 'only' is not mentioned in Rule III, the offence under section 7 of the Police Act can, in the context, mean an offence only under section 7 of the said Act, i.e., an offence falling under the first category. So understood the three Rules can be reconciled. We, therefore, hold that as the offence complained of in the present case is a cognizable offence, it falls under Rule I and not under Rule III. We, therefore, reject this contention."

(e) Reasonable opportunity to Police Officers.

This point also came up before the Supreme Court in Jagannath Prasad's case (supra) and it was held:

"To a police officer charged with misdemeanour, opportunity in all the three branches set out in Khem Chand's case, 1958 SCR 1080 : AIR 1958 SC 300, is provided under the Tribunal Rules. There is opportunity to the police officer against whom an enquiry is made to deny his guilt and to establish his innocence; there is opportunity to defend himself by cross-examination of witnesses produced against him and by examining himself and other witnesses in support of his defence, and there is also opportunity to make his representation as to why the proposed punishment should not be inflicted. The discrimination which is prohibited by Article 14 is treatment in a manner prejudicial as compared with another person similarly circumstanced by the adoption of a law, substantive or procedural, different from the one applicable to that other person. In Kapur Singh v. Union of India. (1960) 2 SCR 569 : AIR 1960 SC 493, this Court held that by directing an enquiry against a member of the Indian Civil Service who was charged with misdemeanour under the Public Servants (Inquiries) Act, 1850, and not under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules when there was no substantial difference between the material provisions, discrimination was not practised. It was observed (at p. 581 of SCR and at p. 498 of AIR):

'Does the holding of an enquiry against a public servant under the Public Servants (Inquiries) Act, 1850, violate
the equal protection clause of the Constitution? The appellant submits that the Government is invested with authority to direct an enquiry in one of two alternative modes and by directing an enquiry under the Public Servants (Inquiries) Act which Act, it is submitted, contains more stringent provisions when against another public servant similarly circumstanced an enquiry under Rule 55 may be directed, 'Article 14 of the Constitution is infringed'."

The Court further observed:

"The primary constitutional guarantee, a member of the Indian Civil Service is entitled to, is one of being afforded a reasonable opportunity of the content set out earlier, in an enquiry in exercise of powers conferred by either the Public Servants (Inquiries) Act or Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, and discrimination is not practised merely because resort is had to one of two alternative sources of authority unless it is shown that the procedure adopted operated to the prejudice of the public servant concerned. In the case before us, the enquiry held against the appellant is not in manner different from the manner in which an enquiry may be held consistently with the procedure prescribed by Rule 55, and therefore, on a plea of inequality before the law, the enquiry held by the Enquiry Commissioner is not liable to be declared void because it was held in a manner though permissible in law, not in the manner, the appellant says, it might have been held."

In Avtar Singh v. The Inspector-General of Police, Punjab, 1968 SLR 131, it was held that every public servant, however had he may be, is entitled to have the whole of the matter brought to his notice before he was asked to show cause why a particular punishment should not be meted out to him. It was contended in that case that what is meant by the word ‘charge’ in the order sheet of the Superintendent of Police is very much the same as is meant by rules 16 and 24, Part 9 of the Punjab Police Rules, Vol. II, where it is laid down that the “defaulter” should be explained the “charges proved” against him. But the Supreme Court said that the contention was not supported by what the order sheet of the Superintendent of Police showed and that the Superintendent did not say that the Constable concerned was explained the nature of the findings on the charges against him. All that the charge-sheet showed was that the charge was explained to him. The Supreme Court then came to the following conclusion holding that there was no compliance with the requirements of Article 311 (2) of the Constitution of India.

Now the word “charge” in this context is something quite different from “findings” and it may be presumed that the Superintendent of Police knew this difference. The affidavit filed in this Court does not show that there was any real attempt to explain to the appellant on what grounds the findings proceeded and indeed what the findings themselves were. Further the affidavit which has been filed is not the affidavit of the officer who knew personally about the matter but of the
person who had the proceedings before him and quoted extracts therefrom in the affidavit and swore to their accuracy from information.

In AIR 1964 SC 423 the appellant, a member of the Indian Police Service and holding the substantive rank of Assistant Superintendent of Police (a post in the junior time scale of pay) in the State of Punjab was promoted to officiate as Superintendent of Police which was a post carrying a higher salary in the senior time scale and posted as Additional Superintendent of Police. After he had earned one increment in that post he was served with a charge-sheet and before the enquiry, which had been ordered, had started, he was reverted to his substantive rank of Assistant Superintendent of Police, the ground suggested for reversion being unsatisfactory conduct. No details of the unsatisfactory conduct were specified and the appellant was not asked for any explanation. The order entailed loss of pay as well as loss of seniority and postpone-ment of opportunity of showing cause against the action proposed of future chances of promotion. In the circumstances it was held that the order of reversion made against the appellant was in effect a “reduction in rank” within the meaning of Article 311 (2) of the Constitution, and inasmuch as he was given no opportunity of showing cause against the said order of reversion there was violation of Article 311. In this case the case reported in AIR 1962 Punj. 516 was reversed.

(f) Re-organisation of States—Reversion of officiating Sub-Inspector of Police to the post of Head Constable.

Standing Order No. 46 issued by the Inspector-General of Police, Ajmer, under section 12 of the Police Act, 1861 which lays down that “an officer who has secured officiating promotion on the basis of his place on the approved list should normally be considered for promotion earlier provided he maintains an appropriate standard, that if he fails to do so he may be reverted of his confirmation postponed”, and “he should not, however, be denied his claim to confirmation merely because although he has maintained his standard someone else promoted later is considered to have done even better”, deals not with the order in which holders of officiating posts may be reverted but with that in which they could be considered for confirmation, so that in strictness on its language the clause would not constitute the impugned reversion as one in breach of its terms. Moreover Standing Order No. 46 was not issued by competent authority under the provisions of a statute and it contained merely administrative instructions as under section 2 of the Police Act, 1861, it is not the Inspector-General of Police but the State Government that is empowered to frame rules regulating the conditions of service of members of the Police force. Therefore, the High Court was in error in treating this Order as a condition of service which was violated by the order of reversion. According to proviso to sub-section (7) of section 115 of the States Re-organisation Act, 1956 there was a guarantee that the conditions of service applicable before the appointed day, i.e., November 1, 1956 would not be varied to the disadvantage of persons in the position of the respondent except with the previous approval of the Central Government. But a mere reversion to a substantive post is not a breach of condition of service. The State Government was, therefore, competent to revert the respondent to his substantive post, unless there was direction under section 117 of the Act curtailing it, and there was no such direction. Beyond it,
subject to sub-section (7) of section 115, the powers of the State Government are not intended to be curtailed and in fact they are expressly saved by sub-section (2) of section 116 of the Act which permit a competent authority to pass in relation to such persons "any order affecting his continuance in such post or office". There is, therefore, no basis for argument that mere reversion to a substantive post is a breach of conditions of service—The State of Rajasthan v. Ram Saran, (1964) 2 SCR 982.

(g) Compulsory retirement of Police Officer—Section 10, Madras District Police Act (24 of 1859).

An order of compulsory retirement does not amount to an order of dismissal and, therefore, does not come within the language of section 10 of the Madras District Police Act, 1859. Secondly provisions of this section are subject to the provisions of Article 311 of the Constitution of India and to the rules framed by the State Government under that Act. If the order of compulsory retirement amounts, in the circumstances, on this case, to an order of dismissal, the Constitutional requirement of Article 311 that the respondent could not have been dismissed from service by an authority subordinate to that by which he was appointed has been satisfied. The respondent must have been appointed to the Police Service in 1929 by an authority subordinate to the State Government and, therefore, the State Government was competent to dismiss him. According to the entry in the schedule of the Madras Police Subordinate Service (Discipline and Appeal) Rules, 1950, framed by the State Government, in exercise of the powers conferred by section 10 of the Police Act and by certain other provisions including Article 309 of the Constitution, the authority competent to order compulsory retirement, removal or dismissal of an Inspector of Police in the districts is the Deputy Inspector-General of Police. The State Government is an authority higher than the Deputy Inspector-General of Police. This cannot be gainsaid. It cannot, therefore, be agreed to, as contended, that the higher authority contemplated by rule 4 of the Police Rules is the authority higher in rank according to the provisions that the Police Act and that such an authority could be only the Inspector-General of Police. The State Government can pass the various orders of punishment dealt with in the schedule and this is clear from rule 5 of the Police Rules, 1950, which describe the forum to which a member of the service can appeal from an order imposing any of the penalty prescribed in rule 2. According to clause (c) an appeal lies to the Governor if such an order imposing a penalty specified in rule 2 is passed by the State Government. The State Government was, therefore, competent to order the compulsory retirement of the appellant—The State of Madras v. G. Sundaram, AIR 1965 SC 1103; (1965) 2 SCJ 662; (1965) 2 Andh WR (SC) 140; (1965) 2 Mad LJ (SC) 140.

(h) Power of Government to invoke revisional jurisdiction.

In Makeswar Nath Srivastava v. The State of Bihar and others, 1971 SCR 317, the delinquent employee was exonerated by the Inspector-General of Police of the charges against him in a departmental enquiry. He was, however, reverted to lower rank by the Inspector-General on the basis of some adverse remarks in the confidential reports. On an appeal to the Government a dismissal order S.L.I.—50
was passed against the Police Officer. When the matter came before the Supreme Court, the following observations were made:

"Section 7 of the Police Act, 1861, confers on the Inspector-General of Police power to impose in a suitable case the penalty of dismissal, suspension and reduction, subject of course, to the provisions of Article 311 of the Constitution and the rules made thereunder. The power of superintendence conferred on the State Government by section 3 of the Act must, therefore, be read in the light of the provisions of section 7 under which the Legislature has conferred specific powers to the officers mentioned therein. Therefore, the State Government cannot interfere with, under the purported exercise of the general power of superintendence under section 3, with an order passed by one of the officers mentioned in section 7 in the exercise of the power conferred on them by that section, unless there is some provision which authorises or envisage such interference. Under rule 851 of the Bihar and Orissa Police Manual an appeal would lie before the Government against the order of Inspector-General reverting the appellant to his substantive post of Sub Inspector for one year. Such an appeal was filed by the appellant. But no appeal was filed by the department against the order of the Inspector-General exonerating the appellant of the charges of misappropriation and connivance of misappropriation. Under rule 851 (b), therefore, the only question before the Government was whether the order of reversion should be sustained or not. There was no other matter by way of an appeal before the Government by the Department or by anyone else being aggrieved against the order of the Inspector-General of Police by which he held that the charges against the appellant had not been established. That being so the Government could pass, in exercise of its appellate power, under rule 851 (b) such an order as it thought fit in the appeal filed by the appellant, i.e., either upholding the order of reversion or setting it aside. In the absence of any other appeal, the Government could not sit in judgment over the findings of the Inspector-General given by him under the power conferred upon him under section 7 of the Police Act, 1861. An appeal before Government having been provided for under rule 851 (b), presumably both by the delinquent Police Officer, as also by the department if aggrieved by an order passed by the Inspector-General, there would also be no question of the Government exercising its general power of superintendence under section 3 of the Act. The exercise of such a power is ordinarily possible when there is no provision for an appeal unless there are other provisions providing for it. The order of dismissal passed by Government in the appeal filed by the appellant therefore was not sustainable. Further assuming that Government could suo moto revise the order of the Inspector-General, an appeal having been filed before it, it could not so act: The fact that the power of revision is conferred on the authority possessed of appellate power indicates that the power of revision is intended to be used
when an appeal could not for some reason, be filed and the appellate authority felt that the order was so unjust or unreasonable that it should act under its revisional power. That was not the case of the Government. Nor did the Government say so in the impugned order. Therefore, there was no occasion for the Government to revise the order passed by the Inspector General exonerating the appellant of the charges preferred against him. In the absence of any other provision of law or any rule conferring on the State Government the power to pass an order of dismissal in exercise of its revisional power or power of general superintendence, the general principle, must prevail, namely, that an appellate authority in an appeal by an aggrieved party may either dismiss his appeal or allow it either wholly or partly and uphold or set aside or modify the order challenged in such appeal. It cannot surely impose on such an appellant a higher penalty and condemn him to a position worse than the one he would be in if he had not hazarded to file an appeal. Since under rule 851 (b) an appeal to the Government has been provided and the Government, had, under that rule, the appellate authority to dispose of appeals filed before it against the original order passed by the Inspector-General, it could not resort to any general power of superintendence except in cases where there is a provision conferring such a power in addition to its appellate authority and in the manner envisaged by such a provision."

(i) **Holding of departmental enquiry for the same offence.**

If the provision in para 241 of the Central Provinces and Berar Police Regulations that a Police Officer on acquittal by a criminal Court "may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment" is mandatory and not directory the order of dismissal is wholly invalid. It is quite clear that the words "may not be punished" in the collection of words used is equivalent to "shall not be punished". The obvious object of the rule-making authority was that the Police Officer in holding the departmental enquiry should not sit in review over a considered decision of a criminal Court of competent jurisdiction. It is only reasonable to think that having decided on such an object the rule-making authority had also the intention that the object should be fully achieved. Regarding the words used in the light of these considerations there is no hesitation in holding that the intention of the rule-making authority was to make this provision against departmental punishment on charge of which a Police Officer had been acquitted by a criminal Court mandatory, that is, it could be broken only on the pain of the order made in breach, becoming invalid—*State of Madhya Pradesh v. Syed Qamer Ali*, 1967 SLR 228.

(j) **Prosecution under section 29, Police Act, is not necessary before taking departmental proceedings.**

It is not necessary that a Police Officer should be prosecuted under section 29 of the Police Act, 1861, before departmental proceedings can be taken under section 7 of the Act. It may be that a Police
Officer is also liable to be prosecuted under section 29, but it is not
necessary that in every case which falls under section 7, the Police
Office should first be proceeded against under section 7. Section 7
deals with disciplinary proceedings while section 29 makes certain
breaches criminal offences. Section 29 does not in any way limit
the operation of section 7—State of Uttar Pradesh v. Harish Chandra
Singh, AIR 1969 SC 1020 : (1969) 1 SCC 403 : 1969 Lab IC 1402 :

5. Railway Services

In law, however, it is well established that where there is a
statute or statutory rule prescribing the terms of service and the mode
of dismissal as also the mode of imposing any other punishment,
laid down therein, the statute and the rules control the common
law doctrine of the pleasure of the Crown and govern the right of
civil servants. Under the Constitution of India also though there
is a recognition given to the common law doctrine of the pleasure
of the Crown in Article 310, that provision too has been made
subject to the limitation as given in the next Article, namely Article
311. This Article 311 reproduces sub-sections (2) and (3) of section 240
of the Government of India Act of 1935 with the additional proviso
(c) to clause (2) which is new. While dealing with this provision
of law in regard to the reasonableness of opportunity as referred
to in the aforesaid section 240, their Lordships of the Privy Council
in the case of High Commissioner v. I. M. Lall, AIR 1948 PC 121,
has observed that thereunder the person charged has the right to
reasonable opportunity of showing cause twice before the order of
dismissal, etc., is passed. Therefore, under Article 311, also, which
is in this respect all similar to that, there are two stages in the proceed-
ings, the first being when the charges are enquired into at this stage
the person enquired to meet the charges should be given a reasonable
opportunity to enter into his defence ; and the second stage is when
after the enquiring authority has come to the conclusion on the charges
and there arises the question of the proper punishment to be awarded.
A notice has then again to be given to show cause against the punish-
ment proposed. Therefore, it is only when both these conditions,
amongst others, are complied with that a proceeding taken under
Article 311 against a civil servant can be sustained as valid and legal.

Accordingly the Indian Railways Establishment Code, which
deals with railway servants, has on the same lines made detailed
procedure governing the conduct and discipline of railway servants.

The Indian Railway Establishment Code is the main collection
of rules and orders relating to conditions of service. Practically all
the rules in the Code correspond to the provisions in the Fundamental
Rules, the Central Civil Service Regulations (Pension Portions), the
Provident Fund Rules, etc. The Conduct Rules, the Security Rules
and the Classification Rules are also practically similar to the corres-
ponding rules applicable to Railway servants.

(a) Rules 148 (3) and 149 (3), Railway Establishment Code if
violate Article 311.

(See Chapter VI “Conditions of Service”.)
(b) Rules 148, 1702 and 1712.

In *Union of India v. Jeewan Ram*, AIR 1958 SC 905, the plaintiff was charge-sheeted for serious alleged misconduct and after his explanation he was served with an order removing him from service offering one month's pay in lieu of notice. The heading of the order was "Notice of imposition of the penalty of removal from service under item (8) of Rule 1702". It was contended on behalf of the Railway that the order was not an order imposing a penalty under Rule 1702, but was an order terminating the service in accordance with the condition of his contract of service. The Supreme Court observed:

"...It is not disputed that the provision of section 240 (3) of the Government of India Act, 1935, were not complied with in this case. What is submitted by learned counsel for the appellant is that section 240 (3) does not apply at all. In an earlier para of this judgment we have quoted in full the impugned order of 16th March, 1949. The order is headed: 'Notice of imposition of penalty of removal from service under item (8) of Rule 1702.' Learned counsel for the appellant has submitted that the heading does not correctly indicate the true nature of the order, and he emphasised the fact that the order itself talked of one month's pay in lieu of notice which, according to him, meant that the order was an order under Rule 148 (3) and (4) of the Indian Railway Establishment Code. This argument of learned counsel completely overlooks certain other significant facts. The order itself stated in clause (i) that the respondent was deprived of half of his pay during his period of suspension, that is from 8th February to 18th March, 1949, both days inclusive. This makes it abundantly clear that the order was a panel order; because if the order was a termination of service in exercise of the contractual right only, no question of withholding part of the pay of the respondent for the period 8th February to 18th March, 1949, could have arisen. Learned counsel for the appellant has drawn a distinction between suspension as a substantive punishment and suspension pending an enquiry. That distinction, however, does not affect the question at issue. The only question before us is if the order, dated 16th March, 1949, imposes penal consequences. It clearly does, because it withholds part of the pay of the respondent during the period of suspension. In clause (d) the impugned order stated that the respondent had a right of appeal under Rule 1717. That also shows that the order was intended to be a penal order. Lastly, in the plaint the respondent pointed out further penal consequences which he had suffered. He pointed out that he did not get dearness allowance and house rent allowance from 8th February to 18th March, 1949, etc. It is thus clear to us that the impugned order was a penal order, that is, an order by way of punishment and the principles laid down in the two decisions in the cases of *Parshottam Lal Dholinga* and *Khem Chand* should apply in the present case."
In the Railway Board and another v. A. Pitcherman, AIR 1972 SC 508, the question that arose for consideration was whether the new Mate substituted in place of the old Mate on December 23, 1967 to clause (b) of rule 2046 (F. R. 56) of the Indian Railway Establishment Code was valid.

In this case the respondent was originally an employee of the Madras and Southern Mahrratta Railway Company having joined service on August 16, 1927 as clerk grade I. The company was amalgamated with the Indian Railway Administration in the year 1947 and on such amalgamation, the respondent became the employee of the Indian Railway Administration. He came within the classification of a ministerial railway servant within the meaning of that expression occurring the Rule 2046. Rule 2046 deals with retirement of a railway servant. At the time of amalgamation, under clause (1) of the said rule, the date of retirement of a Railway servant, other than a ministerial railway servant, was the date on which he attained the age of 55 years. It was also provided therein that the said railway servant, after attaining the age of the retirement, may be retained in service with the sanction of the competent authority on public ground to be recorded in writing. But there was a prohibition regarding retention of such a railway servant after the age of 60 years except in very special circumstances. Clause (2) of the said rule, which deals with a ministerial railway servant, under which category the respondent falls, at the time of amalgamation was as follows:

"2046. (2) (a) A ministerial servant, who is not governed by sub-clause (b) may be required to retire at the age of 55 years, but should ordinarily be retained in service, if he continues efficient up to the age of 60 years. He must not be retained after that age except in very special circumstances which must be recorded in writing, and with the sanction of the competent authority.

(b) A ministerial servant—

(i) who has entered Government service on or after the 1st April, 1938, or

(ii) who being in Government service on the 31st March, 1938 did not hold a lien or a suspended lien on a permanent post on that date,

shall ordinarily be required to retire at the age of 55 years. He must not be retained after that age except on public grounds which must be recorded in writing, and with the sanction of the competent authority and he must not be retained after the age of 60 years except in very special circumstances."

It will be noted that under sub-clause (a), quoted above, a ministerial servant, who is not governed by sub-clause (b) may be required to retire at the age of 55 years, but if he continues to be efficient, he should ordinarily be retained in service up to the date of 60 years. Retention in service after the age of 60 years can only be under very special circumstances, to be recorded in writing and with the sanction of the competent authority. There was a further special provision made under clause (b) in respect of a ministerial servant who
had entered in Government service on or after April 1, 1938 or being in Government service on that date, did not hold a lien or a suspended lien on a permanent post on that date.

On December 5, 1962, the Railway Board addressed a communication to the General Managers of All Indian Railways that the Government were considering the question for some time whether the age of compulsory retirement of railway servants should be raised above 55 years. It was further stated that the President was pleased to direct that the age of compulsory retirement of railway servants should be 58 years subject to the three exceptions mentioned in the order. The only relevant exception was Exception No. I relating to ministerial railway servants, which was as follows:

“(1) The existing Rule 2046 (F. R. 56) (2) (a)—Rule II under which ministerial railway servants who held a lien or suspended lien on a permanent post on 31st March, 1938 are to be retained in service up to the age of 60 years subject to their continuing to be efficient and physically fit after attaining the age of 55 years, will remain in force.”

It will be seen from the decision of the Government as communicated in the above letter, that the age of retirement of railway servants was raised from 55 to 58 years. But this was subject to the restriction regarding the continuance of a ministerial servant after 55 years up to the age of 60 years as provided for under sub-clause (b) of clause (2) of Rule 2046.

On January 11, 1967, the old Rule 2046 as amended in 1962 was substituted by the new rule. The new rule consisted of four clauses. The material part of the said rule relevant to be noted are clauses (a) and (b) together with the Note to clause (b) which ran as follows:

“2046 (F. R. 56)—(a) Except as otherwise provided in this rule, every railway servant shall retire on the day he attains the age of fifty-eight years.

(b) A ministerial railway servant who entered Government service on or before the 31st March, 1938 and held on that date—

(i) a lien or a suspended lien on a permanent post, or
(ii) a permanent post in a provisional substantive capacity under clause (d) of the Rule 2003 and continued to hold the same without interruption until he was confirmed in that post.

shall be retained in service till the day he attains the age of sixty years,

Note:—For the purpose of this clause, the expression “Government Service” includes service rendered in ex-company, and ex-State Railways, and in former Provincial Government.”

Two aspects broadly emerged from the above new rule: (a) every ministerial railway servant who had entered Government service on or before March 31, 1938 and who satisfied the conditions mentioned in sub-clause (i) or (ii) of clause (b) had a right to continue in service till attaining the age of sixty years, and (b) under the Note the expression
“Government Service” in clause (b) takes in service rendered in ex-Company, ex-State Railways and in former Provincial Government. There was no controversy that the respondent held a permanent post in the Company on March 31, 1938. Therefore, under this new rule, he would be entitled to continue in service till he attained the age of sixty years, as provided in clause (b) read with the Note thereto.

On December 12, 1967, the Note to clause (b) of Rule 2046 defining the expression “Government Service” as per the order dated January 11, 1967 was deleted, and a new Note was substituted in its place. The order dated December 23, 1967 together with the new Note is as follows:

“For the existing note, substitute the following:

For the purpose of this clause the expression “Government Service” includes service rendered in a former Provincial Government and in ex-Company and ex-State Railways, if the rules of the Company or the State had a provision similar to clause (b) above.”

From the new Note, extracted above, it will be seen that the definition of the expression “Government Service” was changed. The effect of the new Note, so far as the respondent is concerned, is that whereas he was entitled to continue in service upto 60 years, as per clause (b) read with the Note thereto under Rule 2046 as substituted on January 11, 1967, now he can get service up to 60 years only if the Company had a provision similar to clause (b) of Rule 2046. There is no dispute that under the service conditions applicable to the respondent, when he was an employee of the Company, he had no right to continue in service till he attained the age of sixty years. On the other hand, under the service conditions of the Company he had to retire at the age of 55 years.

After the introduction of the new Rule 2046 on January 11, 1967, the Divisional Accounts Officer, Hubli passed an order on March 31, 1967 that the respondent was entitled to continue in office till he attained the age of 60 years. But after the new Note to clause (b) to Rule 2046 was substituted on December 23, 1967, the Divisional Accounts Officer, Hubli, passed an order on January 17, 1968 to the effect that the respondent was to retire from service on April 14, 1968 on which date he would be attaining the age of 58 years. The said order also stated that this action was being taken in view of the new Note substituted on December 23, 1967 to clause (b) of Rule 2046.

The respondent filed in the Mysore High Court, Writ Petition No. 657 of 1968 challenging the legality and validity of the order dated January 17, 1968 retiring him from service with effect from April 4, 1968. In the writ petition he had referred to his previous service in the Company and to the latter being amalgamated with the Indian Railway Administration in 1947. According to him, after such amalgamation he had become a ministerial railway servant under the Indian Railway Administration and all the rules applicable to the employees of the latter became applicable to him. In particular, he pleaded that he was entitled to continue in service, until he attained
the age of sixty years, as per the new Rule 2046 introduced on January 11, 1967, as he satisfies all the conditions prescribed under clause (b) thereof. He particularly attached the new Note to clause (b) substituted on December 23, 1967 as discriminatory and violative of Article 14 of the Constitution. According to him, the members of the Indian Railway Service similarly situated like him, will be entitled to continue in service till 60 years, whereas that right has been denied to persons like him under the new Note. He also referred to the order passed on March 31, 1967 by the Divisional Accounts Officer, Hubli in and by which it was directed that he was entitled to continue in service till 60 years. According to the respondent, the Railway Administration was not entitled to go back on this order. On these grounds, the respondent challenged the validity of the order directing him to retire on the basis of the new Note.

The appellant contested the writ petition on the ground that the order dated March 31, 1967 was passed on the basis of the Rule 2046 read with the Note, as it existed on January 11, 1967. But the position was changed by the deletion of the original Note to clause (b) and its substitution by the new Note on December 23, 1967. The appellant claimed that the service conditions of persons, like the respondent, have always been different from those serving under the Railway Administration and that by the introduction of the Note, no discrimination has been practised on any officer. On the other hand, according to the appellant, the new Note only gave effect to the conditions of service, which obtained in the Company, where the respondent originally joined service. The appellant further pleaded that the new Note did not violate Article 14 of the Constitution.

The High Court, by its judgment and order, dated October 8, 1968 has accepted the contentions of the respondent and held that the new Note substituted to clause (b) of Rule 2046 on December 23, 1967 was discriminatory and violative of Article 14 of the Constitution. In this view, the said Note was struck down. In consequence, the High Court set aside the order dated January 17, 1968 and gave a declaration that the respondent was entitled to continue in service till he attained the age of sixty years.

Mr. M. C. Setalvad, learned counsel for the appellant, Railway Board, has strenuously attached the finding of the High Court that the new Note, substituted on December 23, 1967 to clause (b), is discriminatory and violative of Article 14 of the Constitution. On the other hand, he urged that a distinction has always been made in the case of ministerial railway servant who is governed by clause (b) and those who are not so governed by that clause of Rule 2046. Different provisions regarding the age of retirement have been provided in respect of those two classes of ministerial railway servants. The new Note, Mr. Setalvad pointed out, only gives recognition to the practice that has been obtaining in respect of the ministerial railway servants under their previous employers. He further pointed out that, the Note to clause (b) of Rule 2046 incorporated on January 11, 1967 gave the benefit of the expression "Government Service" to persons, like the respondent, who have previously been working in ex-Company, Provincial Government or ex-State
Railways. The new Note keeps the same categories of employees within the expression "Government Service", but adds a qualification that in order to have the benefit of a longer period of service, they should have had such benefit under their previous employers.

Mr. Setalvad further pointed out that a Government servant has no right to continue in service till the age of 60 years and that the option to so continue him up to that age, vests exclusively within the discretion of the authority concerned. For this proposition the counsel relied on the decision of this Court in *Kailash Chandra v. Union of India*, (1962) 1 SCR 374: AIR 1961 SC 1346, interpreting clause (2) of Rules 2046 as it existed prior to the amendment in 1962. In any event, Mr. Setalvad pointed out, that the officers who had worked under a former Provincial Government, ex-Company or ex-State Railway and who have been dealt with under the new Note substituted on December 23, 1967 form a class by themselves and therefore there is a reasonable classification of such officers, and that satisfies the requirement of Article 14 of the Constitution. On all these grounds, Mr. Setalvad urged that the new Note is not discriminatory and it does not violate Article 14 of the Constitution.

Mr. R. B. Datar, learned counsel for the respondent and M/s. M. K. Ramamurthi and J. Ramamurthi, who appeared for the two interveners supported the reasoning of the High Court for holding that Article 14 was violated by the new Note to clause (b) of Rule 2046.

The Supreme Court did not accept the contention of Mr. Setalvad and observed:

"No doubt, the counsel is justified in his contention only to this limited extent, namely, that under clause (2) of rule 2046, as it existed prior to its amendment on January 11, 1967 that ministerial railway servant falling under that clause, has no right to continue in service beyond the age of 55 years and that the appropriate authority has the option to continue him in service after his attaining the age of 55 years, subject to the condition that the servant continues to be efficient. This Court in *Kailash Chandra's case*, (1962) 1 SCR 374: AIR 1962 SC 1346, had an occasion to consider rule 2046 (2) (a) as it originally stood. It was held that the ministerial railway servants falling under the said clause may be compulsorily retired on attaining the age of 55 years, but when the servant is between the age of 55 and 60 years, the option to continue him in service, subject to the servant continuing to be efficient, exclusively vests with the appropriate authority. It was further laid down that the authority is not bound to retain a railway servant after the age of 55 years, even if he continues to be efficient. It was further emphasised that the rule gave no right to a ministerial railway servant to continue in service beyond the age of 55 years.

"It is in view of the above principles laid down by this Court, we have observed, earlier, that Mr. Setalvad's contention in respect of the rule 2046, as it originally stood, is well founded.
But this Court in the above decision, had no occasion to consider the problem that now arises, by virtue of the new Note added to clause (b) of rule 2046. There is no controversy that after the amalgamation of the Company with the Indian Railway Administration, the respondent has become an employee of the latter. If so, in our opinion, the respondent is entitled to be given the same rights and privileges that are available to the other employees employed by the Indian Railway Administration. That exactly was the position under the rule 2046, as it originally stood; after its amendment on December 5, 1962 increasing the age of retirement to 5½ years; as also under the new rule 2046, incorporated on January 11, 1967. All these rules upto and inclusive of January 11, 1967 treated the former employees of the ex Company, ex State Railways and former Provincial Governments, who were amalgamated with the Indian Railway Administration in 1947, on a par with the other original employees of the Indian Railway Administration. In fact the Note to clause (b) of rule 2046 incorporated on January 11, 1967, reinforced this position, by making it clear that the expression 'Government Service' in clause (b) will include service under the various employers referred to therein.

"Mr. Setalvad placed reliance on the fact that rule 2046, as it existed up to and inclusive of January 11, 1967, dealt differently with the age of retirement in respect of: (i) a railway servant coming under clause (a), and (ii) a ministerial railway servant coming under clause (b). He further pointed out that even in respect of a ministerial railway servant coming under clause (b), the latter, in order to be eligible to have a longer age of retirement should be one who complies with the conditions mentioned therein. Those conditions are as per clause (b) existing on January 11, 1967, that the officer should have entered Government service on or before March 31, 1938. The said officer should also have the one or the other of the qualifications mentioned in sub-clauses (i) and (ii). That is, according to the learned counsel, if a ministerial railway servant has not entered Government service before March 31, 1938, he will not be eligible for the longer age of retirement. These circumstances will clearly show, according to Mr. Setalvad that the rule has been throughout maintaining a distinction, even amongst the ministerial railway servants working under the Indian Railway Administration. This argument, may on the face of it appear to be attractive; but in our opinion, it cannot be accepted. The point to be noted is that though a distinction has been made in the rule between a railway servant coming under clause (a) and a ministerial railway servant coming under clause (b), those clauses will apply uniformly to all members of the Indian Railway Administration depending upon whether they are railway servants coming under clause (a) or a ministerial railway servants coming under clause (b), as the case may be. To all railway servants coming under clause (a) the age of
retirement is the same. Similarly to all ministerial railway servants coming under clause (b), the age of retirement is again the same. Further if a ministerial railway servant does not satisfy the requirements of clause (b) he will not be eligible to get the extended period of retirement. That again will apply to all ministerial railway servants, who do not satisfy the requirements of clause (b). We are emphasising this aspect to show that no distinction has been made either in clause (a) or clause (b) regarding the uniform application in respect of the age of retirement to the officers mentioned therein and who are governed by those clauses. That is, there is no *inter se* distinction made. The distinction made in clause (b) regarding the ministerial railway servants who entered Government service on or before March 31, 1938 is again of uniform application. That rule only makes a broad distinction between the ministerial railway servants who entered Government service on or before March 31, 1938 and who entered Government service after that date. As per the Note to clause (b) to rule 2046, incorporated on January 11, 1967, the respondent is a person who has entered Government service on or before March 31, 1938 and satisfies also the requirements under sub-clause (ii) of clause (b). Similarly, another railway servant may have entered Government service under the Indian Railway Administration on or before March 31, 1938. He also, under clause (b) will be a ministerial railway servant who has entered Government service on or before March 31, 1938 and if he satisfied one or other of the conditions mentioned in sub-clauses (i) and (ii) of clause (b) he will be entitled to continue in service till 60 years. That means both persons, like the respondent, and the officers who have straight joined the service under the Indian Railway Administration, prior to March 31, 1938 and who satisfy the requirements under sub-clause (i) or sub-clause (ii) of clause (b) will be equally entitled to continue in service till they attain the age of 60 years. These facts clearly show that clauses (a) and (b) of rule 2046 had uniform application to all the employees of the Indian Railway Administration.

"Coming to the new rule 2046 incorporated on January 11, 1967, the conditions of service of persons, like the respondent, have been better crystallised. Read with the Note, under clause (b) the respondent is a ministerial railway servant, who had entered Government service on or before March 31, 1938. By virtue of clause (b), he was entitled to be retained in service till he attains the age of 60 years. It is to be noted that there is no option left with the employer, but to retain such a ministerial railway servant up to 60 years. In other words, if the ministerial railway servant satisfies the requirements of clause (b), he is, as of right, entitled to be in service, till he attains the age of 60 years. Similarly, clause (a) introduced on January 11,
1967, gives a right to a railway servant to continue in office, till he attains the age of 58 years. Here again, there is no option vested with the authorities except to continue him till that age. The option to extend the period of service of the officers mentioned in clauses (a) and (b) is dealt with under sub-clauses (d) and (e), respectively, which we have not quoted. Sub-clauses (c) and (d) deal with the granting of extension of service beyond the period mentioned in sub-clauses (b) and (a). The option to extend the service beyond the period mentioned in sub-clauses (a) and (b) may be with the authorities: but they have no voice in a railway servant coming under clause (b), continuing up to 60 years.

"That the authorities also understood the position in the manner mentioned above, is clear from the order, dated March 31, 1967, of the Divisional Accounts Officer, Hubli declaring the right of the respondent to continue in service up to 60 years. In fact, this order was passed in consequence of the new Rule 2046, substituted on January 11, 1967. Therefore, from what is stated above, it is clear that up to and inclusive of January 11, 1967, no distinction inter se apart from that made by clauses (a) and (b), between the officers of the Indian Railway Administration, from whatever source they may have come, was made. Even at the risk of repetition, we may state that under clause (b) of Rule 2046, as introduced on January 11, 1967, the original employees of the Indian Railway Administration, as well as persons, like the respondent, who came into the Indian Railway Administration in 1947, were both entitled, as of right, to continue in service till they attained the age of 60 years. This position admittedly has been changed, by altering the definition of the expression "Government Service" by the new Note to clause (b) introduced on December 23, 1967. Under that Note, it cannot be gainsaid, that distinction has been made between the original employees of the Indian Railway Administration, and the new employees, who were amalgamated with the Indian Railway Administration in 1947, but who had their previous service, with either a former Provincial Government, or an ex-Company or ex-State Railways. In the case of such employees, the benefit of the extended age of retirement, that has been given to the other employees of the Indian Railway Administration, was made available, only if the new employers had the same benefit under their previous employees. Therefore, the position is that on and after December 23, 1967, though all the employees are under the Indian Railway Administration, there will be two sets of rules relating to the age of retirement, depending upon the fact whether they were in the original employment of the Indian Railway Administration or on the fact of their coming from one or the other of the employers mentioned in the new Note. It is consequence of the new Note, that the order dated January 17, 1968 was issued by the Divisional
Accounts Officer, Hubli, that the respondent has to retire at the age of 58 years, on April 14, 1968.

"The question is whether the distinction made under the new Note to clause (b) substituted on December 23, 1967, valid? In our opinion, such a rule, which makes a distinction between the employees working under the same Indian Railway Administration is not valid. The position after the new Note was added, is that the employee who had throughout been under the Indian Railway Administration is entitled to continue in service till he attains the age of 60 years: whereas the persons, like the respondent, who are also the employees of the Indian Railway Administration, but whose previous services were with the Company, will have to retire at the age of 58 years, because a provision similar to clause (b) did not exist in the service conditions of the Company. Discrimination, on the face of it, is writ large in the new Note, which is under challenge.

"Mr. Setalvad no doubt, urged that the ministerial railway servant, who was originally employee of a Company, ex State Railway or a former Provincial Government dealt with under the new Note are a class by themselves, and, therefore, there is a reasonable classification. Once the employees dealt with under the new Note, have taken up service under the Indian Railway Administration and have been treated alike up to January 11, 1967, it follows, in our opinion that they cannot again be classified separately from the other employees of the Indian Railway Administration. Therefore, we are not inclined to accept contention that the classification of these officers, under the new Note, is a reasonable classification and satisfies one of the essential requisites of Article 14 of the Constitution, as interpreted by this Court.

"We will assume, that in dealing with the types of employees under the new Note, there is a reasonable classification. Nevertheless, the further question arises whether the reasonable classification, with the added condition in the Note incorporated on December 23, 1967, can be said to have a nexus or a relation to the object sought to be achieved by clause (b) of rule 2046? The object of rule 2146 itself is to provide for the age of retirement of the two types of officers coming under clauses (a) and (b). Where there is no indication that any further distinction inter se is sought to be made amongst the officers mentioned in clauses (a) and (b), and when a uniform age of retirement has also been fixed in respect of the officers coming under these two clauses, the classification, carving out the ex-employees of the three authorities mentioned therein, with the added condition that the rules of the Company or the State should have a provision similar to clause (b), has, in our opinion, no nexus or relation to the object of the rule.
"For the reasons given above, we are of the view that the High Court was justified in striking down the order of the Divisional Accounts Officer, Hubli, dated January 17, 1968 directing the respondent to retire from service on April 14, 1968, on which date he will attain the age of 58 years. However, it is not clear from the judgment of the High Court whether the entire new Note substituted under clause (b) of rule 2046 on December 23, 1967 has been struck down or whether it has struck down only the new condition incorporated in the said Note. Even as per the Note under clause (b), incorporated along with the new Rule 2046 on January 11, 1967, the expression 'Government Service' included service rendered in ex-Company, ex-State Railways and in a former Provincial Government, and such a provision is beneficial to the employees like the respondent.

"In the view substituted Note dated December 23, 1967 the first part of the Note including in 'Government Service' any service rendered in a former Provincial Government, ex-Company and ex-State Railways is more or less identical with the original Note of January 11, 1967, though in the new Note the order of the former employees has been slightly changed. In our opinion, the part of the new rule providing that for the purpose of clause (b) the expression 'Government Service' includes service rendered in a former Provincial Government and in an ex-Company and ex-State Railways can be allowed to stand to this extent. Therefore, the offending part in the new Note are the further words if the rules of the Company or the State had a provision similar to clause (b) above. This offending part can be deleted, without doing violence to the definition of the expression 'Government Service' even under the new Note. Therefore, it is only necessary to strike down the offending part in the Note, namely, 'if the rules of the Company or the State had a provision similar to clause (b) above' and this part of the Note alone is struck down as discriminatory and violative of Article 14 of the Constitution."

6. I. C. S. Officers

In State of Madras v. Rajagopalan, AIR 1955 SC 817, the Supreme Court held that the transfer of power to Indian hands on and from 15th August, 1947 had the effect of automatically putting an end to the services of such members of I. C. S. as were not continued by the Provincial Government."

In another Supreme Court case Kapoor Singh v. Union of India, AIR 1960 SC 493 : (1960) 2 SCR 569 : (1960) I SCA 680 : 1960 SCJ 487 : ILR 1960 Punj 824 : 1960 Mad LJ (Cr) 460, Sardar Kapur Singh, a former member of the Indian Civil Service was dismissed from service on charges of corruption and other acts of misconduct after an enquiry under the Public Servants (Enquiries) Act, 1850. The Government was invested with power to direct an enquiry under any one of the two alternative modes either under the Public Servants (Enquiries) Act, 1850 or under Rule 55 of the Civil Services (Classification, Control and
Appeal) Rules. It was contended before the Supreme Court that by holding inquiry under the Public Servants (Enquiries) Act which contained more stringent provisions, Article 14 of the Constitution was infringed when against another public servant similarly circumstanced an enquiry under Rule 55 may be directed. After a discussion of the provisions of the Constitution, the plea was negatived with these observations:

"The primary constitutional guarantee, a member of the civil service is entitled to, is one of being afforded a reasonable opportunity of the contents set out earlier in an enquiry in exercise of powers conferred by either the Public Servant (Enquiries) Act or Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and discrimination is not practised merely because resort is had to one of two alternative sources of authority unless it is shown that the procedure adopted to the prejudice of the public servant concerned. In the case before us the enquiry held against the appellant is not in manner in which an enquiry may be held consistently with the procedure prescribed by Rule 55, and therefore on a plea of inequality before law, the enquiry held by the Enquiry Commissioner is not liable to be declared void because it was held in a manner though permissible in law, not in the manner the appellant says, it might have been held."

Another contention was that the State Government had no power to order enquiries into misbehaviour. The Supreme Court held although the members of the I. C. S. were recruited on an All India basis by a special method of recruitment, they served only in connection with the affairs of the State to which they had been attached. It was further held that they were employees of the State Government and accordingly, under the Public Servant (Inquiries) Act, 1850, the State Government had the power to order enquiries into misbehaviour. The Supreme Court also made it clear that though an enquiry could be ordered by the State Government, it was the President that had the power to dismiss or remove such person.

In R. P. Kapur v. Union of India, AIR 1964 SC 787, the Supreme Court was pleased to lay down as under:

"Before we investigate what rights a member of the former Secretary of State's Services had with respect to suspension, whether as a punishment or pending a departmental enquiry or pending criminal proceedings, we must consider what rights the Government has in the matter of suspension of one kind or the other. The general law on the subject of suspension has been laid down by this Court in two cases, namely, Management of Hotel, Imperial, New Delhi v. Hotel Workers' Union, (1960) 1 SCR 476 : AIR 1959 SC 1342 and T. Cajee v. U. Jormanik Slem, (1961) 1 SCR 750 : AIR 1961 SC 276. These two cases lay down that it is well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term
in the contract itself or a statutory provision governing such contract. It was further held that an order of interim suspension could be passed against an employee while inquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or in the rules. But in such a case he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld.

"The general principle, therefore, is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand, if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles, in our opinion, apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in section 16 of the General Clauses Act, No. X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one or two ways. It may suspend any public servant during depart-
mental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Article 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise."

The Supreme Court further added:

"A review of the general law of master and servant, the provisions of the Government of India Act, 1935, of the Appeal Rules and the Fundamental Rules, discloses that the position on August 13, 1947, with respect to members of the former Secretary of State's Services with respect to suspension whether as a punishment or otherwise was as follows. Members of the former Secretary of State's Services were liable to suspension either as in interim measure or as a punishment. Where suspension was as an interim measure and not as a punishment, it could be imposed either by the Secretary of State or the Secretary of State-in-Council as the appointing authority or by the Governor-General or the Governor, as the case may be, as the statutory authority. Suspension could also be imposed by the proper authority as a punishment under the Appeal Rules and such orders of suspension were subject to appeals as provided by the Appeal Rules. There was also provision for payment during suspension in the shape of subsistence allowance which was governed generally by Fundamental Rule 53 and in the case of members of the former Secretary of State's Services, Fundamental Rule 53 was subject to section 247 (3) of the Government of India Act, 1935. Therefore, the contention of the appellant that there could be no suspension except by way of punishment under Rule 49 of the Appeal Rules before 1947 is not correct. It is equally clear that where suspension before 1947 was an interim measure and not as a punishment under Rule 49, there was no question of any appeal from such an interim suspension pending a departmental enquiry or pending a criminal proceeding. If the position on January 25, 1950 was the same as it was on August 13, 1947, the appellant could not substantially challenge the order of the Governor passed on July 18, 1959 for it would have been covered by section 247 (3) of the Government of India Act, 1935 and the appellant could not claim anything more under Article 314 of the Constitution."

The Court further observed:

"So the position before the commencement of the Constitution was that members of the former Secretary of State's Services could be suspended either as an interim measure pending departmental enquiries or pending criminal proceeding or as
a punishment. Where suspension was as an interim measure and not as a punishment such suspension could only be by the appointing authority which in the changed circumstances should be deemed to be the Government of India. Such interim suspension was not subject to any appeal. So far as suspension as a punishment was concerned, Rule 49 of the Appeal Rules applied and the authorities specified in these rules could pass an order of suspension as a punishment and that order would be subject to appeal provided in Rule 56 and other rules therein. As to the payment during the period of suspension that was governed by Fundamental Rule 53. It is this position which was protected by Article 314 of the Constitution so far as suspension of members of the former Secretary of State’s Services was concerned whether as an interim measure or as a punishment."

Although the servant is entitled to recover arrears of salary for the period of service already rendered at his usual rate of pay, he has no right to have his pay fixed at a particular rate either by raising the scale of pay already sanctioned or by way of preventing a reduction unless he has a statutory right to the same as was guaranteed to members of I. C. S. by the proviso to section 247 (1) of the Government of India Act. This was the view expressed by the Supreme Court in Accountant-General, Bihar v. N. Bakshi, AIR 1962 SC 503.

The following passage from the judgment of the Supreme Court in that case may be usefully noted:

"There is no definition of ‘remuneration’ in the Constitution, but that is not a ground for holding that the expression is used in any limited sense as merely salary. The expression ‘remuneration’, in its ordinary connotation means ‘reward, recompense pay, wages or salary for service rendered’. In R. v. Postmaster-General, (1876) 1 Q. B. D. 658, Mr. Justice Blackburn observed, ‘I think the word ‘remuneration’... means a quid pro quo. If a man gives his services whatever consideration he gets for giving his services seems to me a remuneration for them. Consequently, I think if a person was in receipt of a payment, or in receipt of a percentage, or any kind of payment which would not be actual money payment, the amount he would receive annually in respect of this would be remuneration.’ The expression ‘remuneration’ appears to have been used in the Constitution in this wide connotation. As already observed, the right to passage was originally made a part of the salary, but under the rules framed in 1926, the provision for setting apart a fixed sum of money as salary out of the General Passage Fund was altered and passages were credited to the account of members of Civil Services and debited as and when they were availed of out of the general Revenue of the State. This alteration was made merely for administrative convenience and did not alter the character of the benefit. Under the Rules of 1924, the provision for passage was part of the remuneration and it continued to be such even after the amendment of the rules in 1926."
7. Servants of Statutory Companies and Corporations, etc.

The welfare State of the service State under the present Constitution of India has encouraged a number of public undertakings where the control lies with the State and the Government. Their number, patterns, and variety are legion. They do not represent any uniform type. The control is not merely in respect of finance but also management. There has yet been no comprehensive study of work on State enterprises in India. It appears, however, that India is evolving three basic legal partners for State enterprises, namely; (1) Statutory Corporations formed by and under Special Statutes, both Parliamentary and State, (2) Government Departmental Undertakings, and (3) Government Companies under the Companies Act with special Articles and Memoranda.

The statutory corporations are created by special statutes, for instance such statutes as the Damodar Valley Corporation Act, 1948, the State Bank of India Act, 1955, the Rehabilitation Finance Administration Act, 1948; and the Road Transport Corporation Act, 1950. Different corporations called statutory corporations are established by these different Acts. These are special statutes creating special corporations with special powers and with special provisions. It will be wrong to assume that the corporations established by different statutes are of the same pattern. They vary naturally according to the purpose they have in view. The Damodar Valley Corporation established by the Damodar Valley Corporation Act, 1948, creates the Corporation as a body corporate with perpetual succession and common seal under section 3 of the Act but with no shareholding and Board of Directors, the participating Governments providing the capital. It expressly provides by section 5 that every member of a corporation shall be a whole time servant of the Corporation.

The Rehabilitation Finance and Administration Act, 1948, establishes another type of Corporation by the name of Rehabilitation Finance Administration which is a body corporate, with perpetual succession, common seal, and again without shares and without a Board of Directors but it is managed by a Chief Administrator called a Chairman appointed by the Central Government and three officials and non-officials appointed and nominated by the Central Government. Its funds are provided by the Central Government and the moneys are deposited with the Reserve Bank of India or its agents or invested with such securities as may be approved by the Central Government. The Central Government again has powers to give directions under section 19 of the Act. Similarly the Road Transport Corporation Act, 1950 sets up the Road Transport Corporation which is another type of body corporate with perpetual succession and common seal.

The Corporation is managed by a Chairman and such number of other members as the State Government may deem fit. This is also a Parliamentary statute. The Chief Executive Officer, the General Manager and Chief Accounts Officer are appointed by the State Government. The capital of the Corporation may be provided by the Central Government and the State Government in such proportions as may be agreed, but the Corporation is given the power to raise by issue of shares such capital as may be authorised by the State Government. But again these
shares of the Corporation are not transferable except in accordance with
the rules made under this Act. Similarly additional capital may be
found by issue of new shares. The shares, the principal and the dividend
are guaranteed by the State Government.

Again the State Bank of India Act, 1955, establishes the State Bank
as a body corporate with perpetual succession and common seal but with
a share capital and section 10 provides for transferability of the shares of
the State Bank subject to the limitations imposed there in respect of the
Reserve Bank holding of the shares. Section 7 of the State Bank of India
Act, 1955 provides for a transfer of service of the existing members of the
Imperial Bank to the State Bank making an express provision for exclu-
sion of the operation of the Industrial Disputes Act to such employees.

The Life Insurance Corporation Act, 1956 establishes again a
different type of corporation called the Life Insurance Corporation of
India which is a body corporate having a perpetual succession and
common seal, but with no share capital and no Board of Directors as
such although section 210 of the Act provides that the Corporation may
appoint one or more persons to be the Managing Director or Directors of
the Corporation.

It will be thus seen from different examples drawn from different
statutes that statutory corporations are governed entirely by the terms
and conditions of the particular statutes creating such corporations. In
spite of control both of finance and functions by the State or a Govern-
ment in such statutory corporations its service is generally regarded not
as a civil service or civil post under the State within the meaning of
Article 311 of the Constitution although it is unwise even in such cases
of statutory corporations governed by statutes to formulate any rigid
general principle for the simple reason that a statute may by its very
term say that its employees will be regarded as Government’s servants
holding civil posts under the State within the meaning of Article 311 of
the Constitution.

The second type of pattern of State enterprises is provided by the
usual departmental undertakings. Many Government Departments like the
Railway and the Post Office and Public Works provide numerous exam-
pies of such departmental undertakings. The line of demarcation between
departmental undertakings and statutory corporations is legally clear
although even departmental or State undertakings have in fact created
practical problems. Indeed the Estimates Committee of Parliament in
its Sixteenth Report points out that “State undertakings had become
adjuncts to Ministries and are treated more or less on same lines as in
subordinate organizations.” It has said that the nomination of civil
servants to the Board of Directors or the Committee of Management of
many of these State enterprises paves the way to the interference of the
Ministry in their internal management of which the recent experience of
the Life Insurance Corporation is held up as a telling example.

The third basic pattern is the Government Companies under the
Companies Act. The nature and character of these Government Com-
panies under different sections of the Companies Act specially under
sections 617 and 620 of the Companies Act has already been indicated.
There is perhaps another kind of State enterprise which may be described to be "non-Government Companies but with Government Control". Its example is Chemicals and Allied Products Export Promotion Council. This Export Promotion Council is a Company is (sic) incorporated under the Indian Companies Act. It is company limited by guarantee. Its object is to support, maintain and increase exports of chemical, pharmaceutical and other allied products. Here again the Central Government exercises a good deal of control. It has been held by a Single Judge of the Calcutta High Court in S. R. Mukherjee v. Chemicals and Allied Products Export Promotion Council, 65 Cal WN 1172 : AIR 1962 Cal 10, that an employee of Promotion this Export Promotion Council cannot be said to hold a civil post under the State and as such he was not a civil servant within the meaning of Article 311 of the Constitution. It is said there that such a Council was neither a "public body" nor a public authority nor carrying out statutory duties in appointing or dismissing its employees so that they could not avail of the high prerogative writ under Article 226 of the Constitution.

The position therefore, of Companies registered and incorporated under the Companies Act and particularly of the Government Companies has been the subject of good deal of Judicial thought and decision. A learned Single Judge In re V. S. Hariharan, AIR 1960 Andh Pra 518, considered the question of the Hindustan Shipyard Limited. This again is an example of a company registered under the Companies Act, where the Government of India subscribed 80 per cent. of the share capital and 10 out of the 13 Directors were nominated by the Government of India and where large subsidies and advances were given by the Union Government from the Shipping Development Fund and the Government of India had the controlling and administrative authority over the Company. Even then it was held that these features would not make any difference to the jural character of the Company and that it still remained a limited liability company. No writ of certiorari was allowed to run against such a company in that case.

On an analysis and review of these different types of State enterprises it is not possible to come to any uniform general formula to hold that in no cases where there is a statutory corporation governed by a statute or in no case of Government Companies can there be a civil post or a post under the State within the meaning of Article 311 of the Constitution.

Attempts to evolve a rigid uniform formula to bring in different establishments of controlled institutions of this kind within the ambit of 'civil service' or 'civil post under the State' is, bound to fail. A certain amount of flexible in interpretation guided by the facts of each case is a necessity in the present context of the governmental administration. The orthodox limits and ideas of a civil service or a civil post under the State may not today exhaust all such categories under Article 311 (1) of the Constitution. At the same time the other extreme also will be equally inappropriate if it includes all kinds of miscellaneous and hybrid institutions, mostly private or quasi-private with aids or controls or 'sponsoring' financial or otherwise from the Government within 'civil service' or 'a civil post under the State'. Between these
two extremes the Courts in the present state of law should have to find in each case on its own merits whether a particular service in a particular case is a civil service of civil post under the State within the meaning of Article 311 (1) of the Constitution. No doubt within these two extremes on either side there are many other intermediate stages where one test or another or combination of many tests will determine the decision in a particular case either in favour of the post being under the State or against the post being a civil post under the State within the meaning of Article 311 (1) of the Constitution.

With regard to the question whether the employee of a statutory corporation holds civil post under the Union or the State the following principles deductible from case-law may be laid down, namely:

(i) A statutory corporation has a separate and independent existence and is a different entity from the Union or the State Government with its own property and its own fund and the employees of the corporation do not hold civil post under the Union or the State;

(ii) it makes little difference in this respect, even though the Union or the State holds the majority shares of the corporation and controls its administration by policy directives or otherwise;

(iii) it also makes little difference if such a statutory corporation imitates or adopts the fundamental rules to govern the service conditions of its employees;

(iv) although the ownership, control and management of the statutory corporation may be in fact vested in the Union or State, yet then in the eye of law the corporation is its own master and is a separate entity and its employees do not hold any civil post under the Union or the State;

(v) if, however, the State or the Union controls a post under a statutory corporation in such a manner that it can create or abolish the post or can regulate the conditions subject to which the post is or will be held and if the Union or the State pays the holder of the post out of its own funds, then although the post carries the name of an office of the statutory corporation, it may be a civil post under the State or the Union.

A statutory body and the powers possessed by such a body are to be found in the Act or the rules framed thereunder. Removal, dismissal or reduction in rank will have to be in accordance with these and the principles of natural justice.

In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But this is tainted by the perennial fallacy that because something cannot be cut and dry or nicely weighed or measures, thereof, it does not
exist. The idea of negligence is equally unsusceptible of an exact definition, but what a reasonable man would regard as fair procedure in particular circumstances are equally capable of serving as decision in law and natural justice as it had been interpreted in the Courts is much more definite than that—Ridge v. Baldwin, (1963) 2 All ER 66.

In Mafatul Baror v. Divisional Controller, AIR 1966 SC 1364, the procedure to be followed for terminating the service of a person employed in a statutory corporation was discussed before the Supreme Court. In that case, under certain regulations of the Corporation the Corporation could inflict punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause. The Supreme Court considered the point and observed as under:

"It is true that respondent may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such persons reasonable opportunity to show cause why he be not removed. The appellant is entitled to a reasonable opportunity to show cause which includes an opportunity to deny his guilt and establish his innocence which he can do only when he knows that the charges levelled against him are and the allegations on which such charges are based."

The various High Courts have held that the Corporation is not a department of the Government and its servants are therefore not Government servants so as to be entitled to the protection of Article 311 of the Constitution. The proper remedy for the petitioner would be to file a suit for the damages for wrongful dismissal, even assuming that he had been wrongfully dismissed. There are observations in the judgment of their Lordships of the Supreme Court in the case of Parhottam Lal Dhingra v. Union of India, AIR 1963 SC 36, where their Lordships of the Supreme Court held that in case where the provisions of Article 311 of the Constitution did not apply the remedy of the dismissed servant was only by way of a suit for wrongful dismissal. The exact words in which their Lordships had expressed themselves are as follows:

"In other words, and, broadly speaking, Article 311 (2) will apply to those cases where the Government servant had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank."

In Dr S. L. Agarwal v. The General Manager, Hindustan Steel Ltd., (1970) 1 SCC 117, the appellant was appointed as Assistant Surgeon on probation for one year by the Board of Directors, Hindustan Steel Ltd., Ranchi, with effect from 22-10-1959 and after the completion of the period of probation he was employed on a contract for 5 years. Under the terms of contract either side could terminate the contract by 3 months' notice. On December 15, 1964, the General Manager terminated his services with effect from March 15, 1965, after the expiry of 3 months' notice under the contract. The appellant filed a Writ petition in the High Court contending that his services were wrongly
terminated without giving him the protection under Article 311 of the Constitution. The respondent contended that Article 311 was not applicable to him as he was employed by a Corporation and he neither belonged to the Civil Service of the Union nor held a civil post under the Union. The High Court dismissed the petition. On appeal to the Supreme Court, it was held:

'The question that arises in this case is; whether the employees of a Corporation such as the Hindustan Steel Ltd., are entitled to the protection of Article 311? This question can only be answered in favour of the appellant if we hold that the appellant held a civil post under the Union. It was conceded before us that the appellant could not be said to belong to the civil service of the Union or the State. Article 311, on which this contention is based, 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 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 reasons, 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, as the case may be, is satisfied that in the interest of 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.'

"Clause (2) of the Article, which gives the protection opens with the words "no such person as aforesaid" and these words take one back to clause (1) which describes the person or
persons to whom the protection is intended to go. Clause (1) speaks of; (i) persons who are members of (a) a Civil Service of the Union, or (b) an all-India Service, or (c) a Civil Service of a State or (ii) hold a civil post under the Union or a State. (a), (b) and (c) refer to the standing services which have been created in the Union and the States and which are permanently maintained in strength. In addition to the standing services there are certain posts which are outside the permanent services. The last category in Article 311 (1) therefore speaks of such posts on the civil side as opposed to the military side. Incumbents of such posts also receive protection.

"In the present case the appellant did not belong to any of the permanent services. He held a post which was not borne on any of the standing services. It was, however, a civil post as opposed to a military post. So far the appellant’s case is clear but the clause speaks further that such posts must be under the Union or a State. The question thus is whether the servant employed here can be said to have held the post under the Union or a State? The appellant contends that since Hindustan Steel Limited is entirely financed by the Government and its management is directly the responsibility of the President, the post is virtually under the Government of India.

"This argument ignores some fundamental concepts in relation to incorporated companies. In support of the contention that the post must be regarded as one under the Union the appellant relies on some obiter observations of a single Judge in M. Verghese v. Union of India and others, AIR 1963 Cal 421. In that case the petitioners were drivers working for the Durgapur Project under Hindustan Steel Limited. The learned single Judge considered the question by analysing the set up of Hindustan Steel Limited. He found that it was a Government company and a private limited company, although it did not include in its name any notice that it was a private company. He referred in detail to the various provisions in the Articles of Association as also in the Indian Companies Act which rendered the ordinary company law inapplicable in certain respects and conferred unlimited powers of management on the President of India and his nominees. He also found that Hindustan Steel Limited was entirely owned by the Union of India. From this the learned Judge wished to infer that Hindustan Steel Limited was really a department of the Government but he did not express this opinion and decided the case on another point. The appellant contends that the conclusion which the learned single Judge did not draw in the Calcutta case is the conclusion to draw in this appeal. We must, according to him, hold that there is no difference between Hindustan Steel Limited and a department of the Government and that the service under Hindustan Steel Limited is a service under the Union.

"On the other hand, in State of Bihar v. Union of India and another, (1970) 1 SCC 67, Hindustan Steel Limited was
not held to be a "State" for purposes of Article 131. The question whether Hindustan Steel Limited was subject to the jurisdiction of the High Court under Articles 226 and 227 was left open. In dealing with the above conclusion, reference was made to the incorporation of Hindustan Steel Limited as an independent company and thus a distinct entity. In Praga Tools Corporation v. G. V. Imanuel and others, 1969 (1) SCC 585, it was pointed out that a company in which 88% of the capital was subscribed by the Union and the State Governments could not be regarded as equivalent to Government because being registered under the Companies Act it had a separate legal existence and could not be said to be either Government Corporation or an industry run by or under the authority of the Union Government. Similar views were also expressed in the High Courts. In Lachmi and others v. Military Secretary to the Government of Bihar, AIR 1956 Pat. 398 the expression "civil post under the Union or the State was held to mean that the civil post must be in the control of the State and that it must be open to the State to abolish the post or regulate the conditions of service. Although the case concerned a Mali employed in Raj Bhawan, it was held that it was not a post under the State even though the funds of the State were made available for paying his salary. In a later case Subodh Ranjan Ghosh v. Sindri Fertilizers and Chemicals Ltd., AIR 1957 Pat. 10 the employees of the Sindri Fertilizers were held not entitled to the protection of Article 311. Our brother Ramaswami (then Chief Justice) noticed that the corporation was completely owned by the Union Government; that the Directors were to be appointed by the President of India who could also issue directions. He nevertheless held that in the eye of law the company was a separate entity and had a separate legal existence. In our judgment the decision in the Patna case is correct. It has also the support of a decision reported in Ram Babu Rathaur v. Divisional Manager, Life Insurance Corporation of India, AIR 1961 All 502 and another in Damodar Valley Corporation v. Provat Roy. LX CWN 10:3. Our brother Ramaswami relied in particular upon an English case Tamlin v. Hennaford, (1950) 1 KBD 18. In that case it was held in relation to a business that although the minister was really in charge, the corporation was different from the Crown and the services of the corporation were not civil services. Justice P. B. Mukherjee of the Calcutta High Court, to whose judgment we referred earlier distinguished the English case by pointing out certain differences between the Corporation in that case and Hindustan Steel Limited. He pointed out that (a) in the English Corporation no shareholders were required to subscribe the capital or to have a voice in the affairs, (b) the capital was raised by borrowing and not by issuance of shares, (c) the loss fell upon the consolidated fund and (d) the corporation was non-profit making. In our judgment these differences rather accentuate than diminish the applicability of principle laid
down in the English case to our case. The existence of shareholders, of capital raised by the issuance of shares, the lack of connection between the finances of the corporation and the consolidated fund of the Union rather make out a greater independent existence than that of the corporation in the English case. We must, therefore, hold that the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. In these circumstances, the appellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of 'a civil post under the Union' as stated in the Article. The appellant was not entitled to the protection of Article 311. 'The High Court was, therefore, right in not affording him the protection.'
CHAPTER XI
DISMISSAL AND REMOVAL

SYNOPSIS

1. General.
2. Termination of service—when would amount to removal or dismissal.
3. Mere transfer of Government servant holding permanent post to new post, if removal.
5. Termination of Probationer’s service as per Rules.
6. Termination of service due to abolition of post—If Article 311 applies.
7. Termination of service by mutual consent.
8. Termination of service in terms of contract.
10. Dismissal or discharge after resignation.
11. President’s power to dismiss civil servant: Article 311(2) (c).
12. Dismissal order, when takes effect.
13. Dismissal order with retrospective effect, if valid.

1. General

The law relating to master and servant is not in doubt. There cannot be specific performance of contract of service and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract, he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the facts emerging at the trial proved breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants or the grounds on which it can dismiss them.

Every servant works at the pleasure of his master. The right of master to dismiss a servant even during the period of currency of a contract of service is well established. A master is not bound to file a suit for cancellation of the agreement nor he is required to institute an inquiry and afford the reasonable opportunity for defending his case. This has been made clear by the provisions of Article 310, the effect of which is to create the relationship of master and servant between the Government and its employees. Ordinarily, as between master and servant, there can be no question of the servant being entitled to a declaration that he continues in service in respect of his dismissal by the master. The employees of the Government have been able to seek such declarations only because of the protection provided in the Constitution.

The exercise of pleasure is, therefore, not justiciable except to the extent covered by Article 311, etc. The persons who can claim protection of Article 311, Constitution of India, have already been discussed in Chapter IX.

Now we would examine the case law on the point.
2. Termination of service When would amount to removal or dismissal.

When a person is appointed substantively to a permanent post in Government service he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency and other disqualifications and appropriate proceedings are taken under the service rules read with Article 311 (2) of the Constitution of India. Termination of service of such a servant so appointed must per se be a punishment, for it operates a forfeiture of the servants rights and brings about a premature end of his employment. Again where a person is appointed to a temporary post for a fixed term of say five years his service cannot in the absence of a contract or a service rule permitting its premature termination, be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence, inefficiency, or other disqualification and appropriate proceedings are taken under the rules read with Article 311 (2). The premature termination of the service of a servant so appointed will prima facie be a dismissal or removal from service by way of punishment and so within the purview of Article 311 (2). Further in the case of a person who having been appointed temporarily to a post has been in continuous service for more than three years or has been certified by the appointing authority as fit for employment in a quasi-permanent service, such person under rule 3 of the 1949 Temporary Service Rules is to be in quasi-permanent service which under rule 6 of those rules can be terminated; (i) in the circumstances and in the manner in which the employment of a Government servant in a permanent service can be terminated, or (ii), when the appointing authority certifies that a reduction has occurred in the number of posts available for Government servants not in permanent service. Thus when the service of a Government servant holding a post temporarily ripens into quasi-permanent service, as defined in the 1949 Temporary Service Rules, he acquires a right to the post although his appointment was initially temporary and, therefore, the termination of his employment otherwise than in accordance with rule 6 of those Rules will deprive him of his right to that post which he acquired under the rules and will prima facie be a punishment and will be regarded as dismissal or removal from service so as to attract the application of Article 311. Except in the three cases first mentioned a Government servant has no right to his post and the termination of service of a Government servant does not, except in those cases, amount to a dismissal or removal by way of punishment. Thus where a person is appointed to a permanent post in a Government service on probation the termination of his service during or at the end of the period of probation will not ordinarily by itself be punishment, for the Government servant so appointed has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. Likewise if the servant is appointed to officiate in a permanent post or to hold a temporary post other than one for a fixed term, whether substantively or on probation or on an officiating basis, under the general law, the implied term of his employment is that his service may be terminated on reasonable notice and the termination of the service of such a servant will not per se amount
to dismissal or removal from service. Shortly put the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and **prima facie** a punishment, for it operates as a forfeiture of his right to hold post or the rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be punishment. One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination had the right to hold the post—If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service by itself will be punishment and he will be entitled to the protection of Article 311. In other words and broadly speaking Article 311 (2) apply to those cases where the Government servant, had he been employed by a private employer will be entitled to maintain an action for wrongful dismis-sal removal or reduction in rank. To put it in another way, if the Government has by contract express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules, is, **prima facie** and **per se** not a punishment and does not attract the provisions of Article 311.

It does not follow that except in the three cases mentioned above, in all other cases, termination of service of a Government servant who has no right to his post e.g. where he was appointed to a post temporary or permanent, either on probation or on officiating basis and had not acquired a quasi-permanent status, the termination cannot, in any circumstance, be a dismiss-al or removal from service by way of punishment. Cases may arise where the Government may find a servant unsuitable for the post on account of misconduct, negligence, inefficiency or other disqualification. If such a servant was appointed to a post permanent or temporary, either on probation or on officiating basis, then the very transitory character of the employment imputes that the employment was terminable at any time on reasonable notice given by the Government. Again if the servant was appointed to a post permanent or temporary on the express condition or term that the employment would be terminable on say one month's notice, then the Government might at any time serve the requisite notice. In both cases the Government may proceed to take action against the servant in exercise of its powers under the terms of the contract of employment, express or implied, or under the rules regulating the conditions of service, if any be applicable and ordinarily in such a situation the Government will take that course. But the Government may take the view that a simple termination of service is not enough and that the conduct of the servant has been such he deserves a punishment entailing penal consequences, namely loss of pay or allowances. In such a case the Government may choose to proceed against the servant on the basis of his misconduct, negligence, inefficiency or the like and inflict on him the punishment of dismissal,
removal or reduction carrying with the penal consequences. In such a case the servant will be entitled the protection of Article 311 (2). The position may, therefore, be summed up as follows. Any and every termination is not dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal. Likewise the termination by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311 (3). It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists under the contract or the rules, to terminate the service, the motive operating on the mind of the Government is wholly irrelevant. In short if the termination of service is found on the right flowing from contract or the service rules then prima facie the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank the Government may, nevertheless choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification then it is a punishment and the requirements of Article 311 must be complied with. A termination of the service of such a person on such grounds must be a punishment and therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank then the very reduction from that rank will operate as a penalty for he will then lose the emoluments and privileges of rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be punishment. But the mere fact that the servant has no title to the post or the rank and the Government has by contract, express or implied, or under the rules the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion then that circumstance may indicate that although in form the Government had purported to exercise the right to terminate the employment or to reduce the servant to a lower rank, under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions the Court has to apply the two tests maintained above, namely (1) whether the servant had a right to the post or the rank, or (2) whether he has not been
visited with evil consequences of the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service of the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to Government servant have not been complied with the termination of the service or the reduction in rank must be held to be wrongful and in violative of the constitutional right of the servant *Parskhotam Lal Dhingra v. Union of India*, 1958 SCR 828 : AIR 1958 SC 36 : 1958 SCJ 217 : 1958 SCA 37.

Article 311 of the Constitution of India has application only when there is an order of dismissal or removal. It is not every termination of the services of an employee that falls within the operation of Article 311 and that it is only when the order is by way of punishment that it is one of dismissal or removal under that Article. If a person has a right to continue in office either under service rules or under a special agreement, a premature termination of his services would be a punishment. And likewise if the order would result in loss of benefits already earned and accrued that would also be punishment. In the present case the terms of employment provide for the services being terminated on a proper notice and so, no question of premature termination arises. Rule 7 of the Railway Services (Safeguarding of National Security) Rules, 1949, preserves the rights of the employees to all the benefits of pension, gratuities and the like, to which they would be entitled under the rules. Thus, there is no forfeiture of benefits already acquired. Further no rule imposing the disability of ineligibility for re-employment in respect of a person who was discharged under the rules, has been pointed out. The order terminating the services under rule 3 of the Security Rules stands on the same footing as an order of discharge under rule 148 of the Railway Establishment Code and it is neither one of dismissal nor of removal within the meaning of Article 311 of the Constitution of India—*P. Balakotahal and others v. The Union of India and others*, 1958 SCR 1052 : AIR 1958 SC 232 : 1958 SCA 209 : 1958 SCJ 451.

3. **Mere transfer of Government servant holding permanent post to new post, if removal.**

Mere transfer of the Government servant to the new post did not bring into effect his removal from the Government service. It is, however, correct that when the order of his transfer was initially passed no provision was made for his retaining lien on any permanent post and if that position had been maintained, the appellant would no doubt, have lost his rights to pension and gratuity. Under rule 361 of the Madras Pension Code the service of an officer does not qualify for pension unless it conforms to the following three conditions:

*First*: The service must be under Government.

*Second*: The employment must be substantive and permanent.

*Third*: The service must be paid by Government.

On transfer of the appellant the first and the third conditions continued to be satisfied but the employment of the appellant in a substantive permanent post ceased. Subsequently Government's sanction
was accorded to the creation of a super-numerary post in the State Service not borne on the Indian Civil Administrative Cadre with the same disqualification and in the same scale of pay which the appellant was drawing when he was holding the post which was placed in the cadre of the Indian Administrative Service. The super-numerary post was created with effect from the date of the transfer of the appellant and it was laid down that it would exist until such time as the appellant was confirmed in another post. The appellant was thus provided a lien on this super-numerary post in the State Service which has been created for an indefinite period and is to continue in existence as long as the appellant holds it and is not confirmed in any other permanent post. This super-numerary post is thus clearly covered by the definition of permanent post given in rule 9 (22) of the Madras Government Fundamental Rules so that the appellant now holds lien on a permanent post and, consequently, satisfies the second condition for qualifying for pension laid down in rule 361 of the Madras Pension Code. There is, therefore, no force in the submission that the orders made by the Government have resulted in any punishment being inflicted on the appellant by prejudicing his rights to pension and gratuity—K. Gopaul v. The Union of India and others, AIR 1967 SC 1864 : (1967) 3 SCR 627 : (1968) 1 Lab LJ 584.

4. Words “dismissal” and “removal” : Meaning and scope

The word “dismissal” and “removal” have nowhere been defined in the Indian Constitution. These are technical words taken from the service rules where they are used to denote the two major categories of punishment Khemchand v. Union of India, AIR 1958 SC 300.

The terms must be understood in the same sense in which they have been used in the relevant rules of the appropriate civil service setting out the various penalties to which a civil servant can be subjected for indiscipline or misconduct and must be based on misconduct or indiscipline—Satish Chandra Anand v. Union of India, AIR 1953 SC 250. According to Rule 49 “removal” does not ordinarily disqualify from future employment, whereas “dismissal” ordinarily does disqualify from any future employment by the State and “discharge” of a person engaged under contract in accordance with the terms of the contract does not amount to dismissal or removal within the meaning of the rule—Ibid. These terms are used in the same sense in Article 311—Ibid.

In Moti Ram Deka v. N. E. Frontier Railway, AIR 1964 SC 60, Subba Rao, J. made the following observations:

“What is the scope of the relevant words, ‘dismissal’ and ‘removal’ in Article 311 of the Constitution? The general rule of interpretation which is common to statutory provisions as well as to constitutional provisions is to find out the expressed intention of the makers of the said provisions from the words of the provisions themselves. It is also equally well settled that, without doing violence to the language used, a constitutional provision shall receive a fair, liberal and progressive construction, so that its true objects might be promoted. Article 311 used two well-known expressions ‘dismissed’ and ‘removed’. The Article does not, expressly or by necessary implication, indicate
that the dismissal or removal of a Government servant must be of a particular category. As the said Article gives protection and safeguard to a Government servant who will otherwise be at the mercy of the Government, the said words shall ordinarily be given a liberal or at any rate their natural meaning, unless the said Article or other Articles of the Constitution, expressly or by necessary implication, restrict their meaning. I do not see any indication anywhere in the Constitution which compels the Court to reduce the scope of the protection. The dictionary meaning of the word 'dismiss' is 'to let go'; 'to relieve from duty'. The word 'remove' means 'to discharge, to get rid off, to dismiss'. In their ordinary parlance, therefore, the said words mean nothing more or less than the termination of a person's office. The effect of dismissal or removal of one from his office is to discharge him from that office. In that sense, the said words comprehend every termination of the services of a Government servant. Article 311 (2) in effect lays down that before the services of a Government servant are so terminated, he must be given a reasonable opportunity of showing cause against such a termination. There is no justification for placing any limitation on the said expressions, such as that the dismissal or removal should have been the result of an enquiry in regard to the Government servant's misconduct. The attempt to imply the said limitation is neither warranted by the said expressions used in the Article or by the reason given, namely, that otherwise there be no point in giving him an opportunity to defend himself. If this argument be correct, it would lead to an extraordinary result, namely, that a Government servant who has been guilty of misconduct would be entitled to a 'reasonable opportunity' whereas an honest Government servant could be dismissed without any such protection. In one sense the conduct of a party may be relevant to punishment; ordinarily punishment is meted out for misconduct, and if there is no misconduct there could be no punishment. Punishment is, therefore, correlated to misconduct, both in its positive and negative aspects. That is to say, punishment could be sustained if there was misconduct and could not be meted out if there was no misconduct. Reasonable opportunity given to a Government servant enables him to establish that he does not deserve the punishment, because he has not been guilty of misconduct. That apart a Government servant may be removed or dismissed or many other reasons, such as retrenchment, abolition of post, compulsory retirement and others. If an opportunity is given to a Government servant to show cause against the proposed action, he may plead and establish that either there was no genuine retrenchment or abolition of posts or that others should go before him.

"Now let me see whether the history of this constitutional provision countenances any such limitation on the meaning of the said expressions. As we have already noticed, the
concept of tenure at pleasure was first introduced in the Government of India Act, 1919.

Under section 96-B of that Act:

"(1) Subject to the provisions of this Act or rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed.... .......

"It will be seen that under this section the said concept was introduced subject to a condition; it may also be noticed that the section used only one word 'dismissed'. In England, under that doctrine, services of a Government servant, whether he is a permanent or a temporary servant, can be terminated without any cause whether he is guilty of misconduct or not. Therefore, when the word 'dismissed' is used in section 96-B of the Act in the context of the exercise of His Majesty's pleasure, that word must have been used in the natural meaning it bears, i.e., terminated. But that section was subject to the provisions of the rules made under that Act. In exercise of the powers conferred under the Act on the Secretary of State for India in Council he framed certain rules in December, 1920 and with subsequent modifications they were published on May 27, 1930. The said rules were designated as the Civil Services (Classification, Control and Appeal) Rules. Rule 49 of those rules provided for certain penalties and clause (6) thereof dealt with 'Removal from the civil service of the Crown, which does not disqualify from future employment', and clause (7) provided for dismissal from the civil service of the Crown, 'which ordinarily disqualified from future employment'.

"The explanation to that rule reads thus:

'The termination of employment—

(a) of a person appointed on probation during or at the end of the period of probation, in accordance with the terms of the appointment and the rules governing the probationary service; or

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

(c) of a person engaged under a contract, in accordance with the terms of his contract does not amount to removal or dismissal within the meaning of this rule or Rule 55.'

"The explanation makes it clear that the three specified categories of termination covered by the explanation would
amount to dismissal or removal but for the explanation. That is to say, the expression 'termination' is synonymous with the term 'dismissal' or 'removal'. Rule 55 of the rules provided a machinery for dismissing or removing or reducing in rank a Government servant; he should be given thereunder an adequate opportunity to defend himself. Then came the Government of India Act, 1935. In section 240 thereof the expression used 'dismissal', and that term in the context of the exercise of His Majesty's pleasure could have meant only 'termination' of services, though in view of the explanation to Rule 49 of the rules quoted above, the three specified categories of termination mentioned in the explanation might, by construction, be excluded from the natural meaning of the word 'dismissal'. Then we come to Article 311 of the Constitution with certain modifications incorporated the provisions of section 240 of the Government of India Act, 1935. It introduced the expression 'removal' in addition to the word 'dismissal' presumably inspired by Rules 49 and 55 of the Rules. The natural meaning of the said terms takes in every act, of termination of service; but if construed with the help of Rule 49 of the Rules, their meaning may be cut down by excluding the three categories of termination covered by the explanation in the manner prescribed therein, if the termination was otherwise than that prescribed therein, it would still be dismissal or removal. If so, the history of the constitutional provisions may lead to the conclusion that though the words 'dismissal' and 'removal' are words of widest connotation, namely, 'termination' of service of any category held under the Union, they were used in the limited sense they bear in Rule 49 of the Rules, that is to say, termination of employment excluding the three categories mentioned in the explanation. So far as the words 'removed' and 'dismissed' are concerned, Rule 49 shows that there is no appreciable difference between the two except in the matter of future employment; and Article 311, presumably copied the two words from Rule 49.

"Therefore, whether the natural dictionary meaning of the words 'dismissal' and 'removal' were adopted or the limited meanings given to these words by Rule 49 were accepted, the result, so far as a permanent employee was concerned, would be the same namely, that in the case of termination of services of a Government servant outside the three categories mentioned in the explanation, it would be dismissal or removal within the meaning of Article 311 of the Constitution with the difference that in the former the dismissed servant would not be disqualified from future employment and in the latter ordinarily he would be disqualified from such employment.

"If so, it follows that if the services of a permanent servant, which fall outside the three categories mentioned in the explanation, were terminated, he would be entitled to protection under Article 311 (2) of the Constitution."
There is no doubt that the pleasure of a President has lost some of the Majesty and power because it is clearly controlled by the provisions of Article 311 and so the field that is covered by Article 311 on a fair and reasonable construction of the words used in that Article would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there, but it has to be exercised in accordance with requirement of Article 311 - Moti Ram Deka v. N. E. Frontier Railway, AIR 1964 SC 60 : (1964)2 SCA 372 : (1964) 5 SCR 683 (per Majority).

Besides, the rule of English law pithily expressed in the Latin phrase ‘duranto bane placito’ has not been fully adopted either by section 240 of the Government of India Act, 1935 or by Article 310 (1) of the Constitution. Thus the extreme contention based on the doctrine of pleasure cannot be sustained. Similarly, it would not be possible to accept the argument that the word “removal” in Article 311 (2) should receive the widest interpretation.

Therefore, the true position is that Articles 310 and 311 must no doubt, be read together, but once the true scope and effect of Article 311 is determined, the scope and effect of Article 310 (1) must be limited in the sense that in regard to cases falling under Article 311 (2), the pleasure mentioned in Article 310 (1) must be exercised in accordance with the requirements of Article 311—Ibid.

In Shyam Lal v. State of U. P., AIR 1954 SC 369 : 1955 SCR 26 : 1954 SCA 476 : 1954 SCJ 493, the question before the Supreme Court was whether an order for compulsory retirement amounted to removal within the meaning of Article 311 and the Supreme Court held :

"Removal, like dismissal, no doubt brings about a termination of service but every termination of service does not amount to dismissal or removal. A reference to the explanation of Rule 49 quoted above will show that several kinds of termination of service do not amount to removal or dismissal. Our recent decision in Satish Chandra Anand v. Union of India, AIR 1953 SC 230 fully supports the conclusion that Article 311 does not apply to all cases of termination of service.....

"There can be no doubt that removal,—I am using the term synonymously with dismissa—generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. Such grounds, therefore, involve the levelling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer.....

"Rule 49 of the Civil Services (Classification, Control and Appeal) Rules clearly indicates that dismissal or removal is a punishment. This is imposed on an officer as a penalty. It involves loss of benefit already earned."

"It will be recalled that the opening words of section 96-B (1) of the 1915 Act were, 'subject to the provisions of this Act and the rules made thereunder' and sub-section (4) confirmed the service rules that were then in force. In spite of this it was held in R. Venkata Rao v. Secretary of State with reference to the rules made under section 96-B of the 1915 Act that, while that section assured that the tenure of office, though at pleasure, would not be subject to capricious or arbitrary action would be regulated by the rules, it gave no right to the appellant, enforceable by action, to hold his office in accordance with those rules. It was held that section 96-B of the 1915 Act and the rules made thereunder only made provisions for the redress of grievances by administrative process. As if, to reinforce the effect of that decision, the opening words quoted above were in section 240 (1) of the 1935 Act, replaced by the words 'except as otherwise provided by this Act'. The position of the Government servant was, therefore, rather insecure, for his office being held during the pleasure of His Majesty under the 1915 Act as well as under the 1935 Act the rules could not override or derogate from the Statute and the protection of the rules could not be enforced by action so as to nullify the Statute itself. The only protection that the Government servant had was that by virtue of section 96 B (1), they could not be dismissed by an authority subordinate to that by which they were appointed. The position, however, improved to some extent under the 1935 Act which by section 240 (3) gave a further protection in addition to that provided in section 240 (2) which reproduced the protection of section 96-B (1) of the 1915 Act. In other words, the substance of the protection provided by Rule 55 of the 1930, Classification Rules which required special procedure to be followed before the three major punishments of dismissal, removal or reduction in rank out of the several punishments enumerated in Rule 49 was bodily lifted, as it were, out of the rules and embodied in the Statute itself so as to give statutory protection to the Government servants. These statutory protections have now become constitutional protections as a result of the reproduction of the provisions of section 240 in Articles 310 and 311 of our Constitution."

The Court further added:

"The net result is that it is only in those cases when the Government intends to inflict three forms of punishments that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It follows, therefore, that if the termination of service is sought to be brought about otherwise than by way of punishment, then the Government servant, whose
service is so terminated, cannot claim the protection of
Article 311 (2)."

5. Termination of Probationer's Service as per Rules

In Ravindra Chandra Bannerji v. Union of India, AIR 1963 SC
1552, the Supreme Court held:

"... it is equally well-settled that a Government servant who is
on probation can be discharged and such discharge would not
amount to dismissal or removal within the meaning of
Article 311 (2) and would not attract the provision of that
Article where the service of a probationer is terminated in
accordance with the rules and not by way of punishment. A
probationer has no right to the post held by him and under
the terms of his appointment he is liable to be discharged at
any time during the period of his probation subject to the
rules governing such cases. The appellant in this case was
undoubtedly a probationer. There is also no doubt that the
termination of his service not by way of punishment and
cannot, therefore, amount to dismissal or removal within the
meaning of Article 311. As a probationer he would be liable
to be discharged during the period of probation subject to
the rules in force in that connection."

The Court further held:

"We agree with the High Court that though the letter of
appointment say in so many words that the probation was
likely to be extended, it was implicit therein that the pro-
bation would continue till such time as the appellant was
confirmed or discharged and so would the term in the
appointment letter that his services were liable to be ter-
minated without any notice and without any cause being
assigned, during the period of probation."

Two questions arose in this case: The first was whether in view
of Rule 3 (a) the appellant would not be entitled to the protection of
Rule 55-B and the second was whether he was afforded the protection
of Rule 55-B before action was taken to terminate his services if that
Rule 55-B was inserted in the Rules in November, 1969 and read thus:

"Where it is proposed to terminate the employment of a pro-
bationer whether during or at the end of the period of
probation, for any specific fault or on account of his un-
suitability for the service, the probationer shall be apprised
of the grounds of such proposal and given an opportunity
to show cause against it, before orders are passed by the
authority competent to terminate the employment."

The Supreme Court observed:

"Rule 3 (a), thus excludes the application of the Rules only in
case of persons for whose appointment and conditions of
employment special provision is made by or under any law
for the time being in force. It has not been shown to us
that any special provision has been made as to the appoint-
ment and conditions of employment of persons in the All
India Radio Service by or under any law for the time being
in force. It cannot be said, therefore, that the term already
mentioned, which appears in the letter of appointment issued to the appellant, is a special provision by virtue of any law or was inserted under any law for the time being in force. That term is nothing more than the usual term one finds in letters of appointment issued to persons appointed on probation. The High Court was therefore in our opinion no right in holding that Rule 55 B will not apply to the appellant because of this term in the letter of appointment issued to him. We hold that Rule 55-B will apply to the appellant and is not excluded by Rule 3 (a) ... ... ... 

"It has been contended on behalf of the appellant that this was not sufficient compliance with Rule 55-B. That rule lays down that the probationer shall be apprised of the grounds on which it was proposed to terminate his services and given an opportunity to show cause against it. We are of opinion that the appellant's contention must be rejected. The appellant was apprised of the grounds on which it was proposed to discharge him. But what is urged is that the elaborate procedure provided in Rule 55 should have been gone through under Rule 55-B also. Rule 55 however deals with cases of removal, dismissal or reduction in rank, which are specifically covered by Article 311 (2) of the Constitution and the procedure prescribed therein is meant for those three major punishments. That procedure is not meant to be applicable under Rule 55-B which deals with the discharge of a probationer which is not punishment at all. Therefore in a case covered by Rule 55-B all that is required is that the defects noticed in the work which make a probationer unsuitable for retention in the service should be pointed out to him and he should be given an opportunity to show cause against the notice, enabling him to give an explanation as to the faults pointed out to him and show any reason why proposal to terminate his services because of his unsuitability should not be given to a probationer and his explanation in reply thereto is given due consideration, there is in our opinion sufficient compliance with Rule 55-B. Generally speaking the purpose of a notice under Rule 55-B is to ascertain, after considering the explanation which a probationer may give, whether he should be retained or not and in such a case it would be sufficient compliance with that rule if the grounds on which the probationer is considered unsuitable for retention are communicated to him and any explanation given by him with respect to those grounds is duly considered before an order is passed."

6. Termination of service due to abolition of post—If Article 311 applies.

In Moti Ram Deka v. General Manager, N. E. F. Rly., 1964 SC 600: (1964) 5 SCR 683: (1964) 2 SCA 372: (1964) 2 Lab LJ 467, Sutba Rao, J., observed:

"There is no justification for placing any limitation on the said expressions such as that the dismissal or removal should have

S.L.I.—55
been the result of any enquiry in regard to the Government servant’s misconduct. The attempt to imply the said limitation is neither warranted by the expressions used in the Article or by the reason given, namely, that otherwise there would be no point himself. If this argument be correct it would lead to an extraordinary result, namely that a Government servant who has been guilty of misconduct, would be entitled to a ‘reasonable opportunity’ whereas the honest Government servant could be dismissed without any such protection. In one sense the conduct of a party may be relevant to punishment; ordinarily punishment is meted out for misconduct there could not be punishment. Punishment is therefore, correlated to misconduct, both in its positive and negative aspects. That is to say, punishment could be sustained if there was misconduct and could not be meted out if there was no misconduct. Reasonable opportunity given to a Government servant enables him to establish that he does not deserve the punishment because he has not been guilty of misconduct. That apart, a Government servant may be removed or dismissed for many other reasons such as retrenchment, abolition of post, compulsory retirement and others. If an opportunity is given to a Government servant to show cause against the proposed action, he may plead and establish that either there was no genuine retrenchment or abolition of posts or that others should go before him.”

The above quoted passage does lend support to the view that even in a case of abolition of a post Article 311 would be applicable and on an opportunity being given to the Government servant concerned to show cause against the proposed action, he may be able to plead that there was no genuine abolition of the post.

As already stated, in the case of Moti Ram Deka, AIR 1964 SC 600, the Supreme Court was not dealing with abolition of a post. The majority judgment of the Court did not adopt the view that Article 311 was attracted even to abolition of a post. On the contrary reference was made to the well-known case of Parshottam Lal Dhiranga v. Union of India, AIR 1958 SC 36, in which their Lordships of the Supreme Court summed up the position of a servant substantively appointed to a permanent post as under:

“In the absence of any special contract, the substantive appointment to a permanent post gives to the servant so appointed a right to hold the post until, under the rules he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years’ service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him.”

In the same judgment, at another place, the following passage occurs:

“It has already been said that where a person is appointed substantively to a permanent post in Government service,
he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311 (2)".

The first portion extracted above from the case of Parshottam Lal Dhingra v. Union of India, AIR 1958 SC 36, was specifically referred to in the later case of Moti Ram Deka and was along with some other cases, relied upon for the view that termination of the services of a permanent Government servant otherwise than on the ground of superannuation or compulsory retirement under the rules must *per se* amount to removal. As in that case there was no question of abolition of the post in the findings there was no pointed reference to the abolition of a post being one of the exceptions due to which termination of the services of such a servant would not amount to his removal or attract Article 311 of the Constitution. In the case of Moti Ram Deka v. General Manager, N. E. F. Railway, AIR 1964 SC 600, therefore, the Supreme Court does not appear to have taken a different view from that in the case of Parshottam Lal Dhingra (Supra).

6. **Termination of service by mutual consent**

The relationship between the plaintiff and the Mysore Government as from November 1, 1956 was that of an employee and the employer. For termination of service by mutual consent neither by provisions of Article 311 of the Constitution of India nor the principle of natural justice are attracted. There is no known principle of law which prohibits termination of service of a Government servant by the Government at the Government Servant’s request.

There is no merit in the contention that the termination of the services of the Government servant concerned purported to have been made under rule 360-A of the Proportional Pension Concession Rules of the Ex-Hyderabad Government, which was not in force on that date the infringed order must be held to be invalid. Even though the termination was purported to have been made on the basis of a non-existing rule the fact remains that it was ordered at the request of the Government servant concerned. It was also urged that the proportionate Pension Concession Rules were not in force after 31-10-1956, and therefore, not orders could have been passed on the basis of those rules. Assuming that those rules were not in force when the infringed order was made, the plaintiff cannot complain against the concession shown to him—Mohd. Qutubuddin v. The State of Andhra Pradesh and others, 1969 SLR 819.

7. **Termination of service in terms of contract**

(a) **Termination of services by notice in terms of contract and service conditions.**

It is well-established proposition that the services of a temporary servant or a probationer can be terminated under the rules of his
employment and such termination without anything more would not attract the operation of Article 311 of the Constitution. The services of the respondent had been terminated according to the terms of the contract of service and the order terminating the service is one _simpliciter_ and not by way of punishment. If so, the matter comes squarely within the proposition set out above and it follows that Article 311 has no application at all—_State of Nagaland v. G. Vasanatha_, 1970 SLR 637 : AIR 1970 SC 537 : 1970 Lab IC 419.

_In Somnath Sahu v. The State of Orissa and others_, (1969) 3 SCC 384, the appellant was appointed as Welfare Officer by the Indian Aluminium Co. Ltd., Calcutta with effect from 16-7-1956. On 11-3-1960 the appellant was dismissed by the company’s letter. It was to the following effect:

"Your services are hereby terminated with effect from March 11, 1960 on the following grounds:

In a conference held in Writer's office on the afternoon of March 10, 1960, in which our Personnel Manager, Mr. P. K. Krishna Pillai, Production Manager Mr. S. S. Naravan, Personnel Superintendent, Mr. S. Misra, yourself and the writer were present, you have stated:

1. that you have no confidence in the fair dealings of the Company;
2. that you would be looking for another job elsewhere and that you are only continuing your services with the Company till you secure another job;
3. that you have stated in the presence of the above mentioned Officers of the Company and the writer that you have no interest in the Company and further that you will not be showing any general interest in your work; and
4. that you will not be extending co-operation to the Personnel Superintendent who is your immediate Superior Officer.

You will also recall that in the post you had taken up an attitude of non-co-operation with your Departmental Head and that the writer had to advise you on several occasions to change your attitude and to improve your performance.

On the above grounds we have completely lost confidence in you and, therefore, it is not in the interest of the Company to keep you in our service in the responsible position of Welfare Officer.

Please vacate the Company quarter which you are presently occupy _ex gratia_ and collect your dues including one month’s notice pay which the company is pleased to give under the terms of contract you are not entitled to."

The appellant took the matter in appeal to the State Government but the appeal was dismissed. The appellant thereafter moved the
High Court for the grant of a Writ in the nature of certiorari under Article 226 of the Constitution to quash the appellate order of the State Government and the order of dismissal made by the respondent. The main question for consideration in this appeal was whether the order of dismissal was illegal because no notice was given to the appellant for his alleged misconduct and no enquiry was held into the alleged misconduct before the order of dismissal was made. It was contented for the appellant that there was a violation of principle of natural justice and the order of dismissal was defective as no notice of the allegation was given to the appellant and no enquiry was held.

Ramaswami, J. while delivering judgment for the Court observed:

"We are unable to accept this argument as correct. The order of dismissal was made by respondent No. 4 not because of any imputation of misconduct but in terms of the contract of service incorporated in the letter of respondent No. 4 dated the 25th June, 1956 which states:

"We have the pleasure in offering you a position in our Hirakud project for a trial period of six months commencing from the 16th July, 1956. You will be confirmed in the post on your satisfactory completion of the probationary period..

You will be subject to staff rules fixed or modified from time to time and after confirmation of your appointment you will also be entitled to the privilege of the Company as fixed or modified from time to time. You will undertake not to divulge any information concerning the company or its activities and to treat as confidential all process, activities, figures or any other information that may become known to you in the course of your duties. Infringement of this rule or any other misconduct, negligence or disobedience of your superiors will make you liable to instant and summary dismissal without notice or salary in lieu of notice.

The Company reserves the right to post you in any of its plants or office in India.

* * * * *

The Company will have the right to dispense with your services at any time without assigning any reason on giving you one calendar month’s notice dating from the time of such notice or alternatively, salary in lieu of notice. This clause in no way affects the Company’s rights to determine your engagement summarily as provided above for the infringement of certain rules, misconduct, negligence of orders of your superiors.

"It is clear from this letter that respondent No. 4 had a contractual right to terminate the service of the appellant without assigning any reason by giving one month’s notice or one month’s salary in lieu of notice. Upon a reading of the letter dated the 11th March, 1960 we are of opinion
that the removal of the appellant was effected in accordance with the terms of contract. It is true that in the first part of the letter respondent No. 4 has said that the appellant had refused to disclose the names of the members of the Supervisory Staff taking part in the union activities and the appellant had not extended co-operation to the Personnel Superintendent who was his immediate superior officer. For these reasons respondent No. 4, thought that the appellant failed in his duty of obedience to superior officers and was also not showing loyalty to the management. But no finding of misconduct was recorded by respondent No. 4 and the order of removal dated the 11th March, 1960 was really tantamount to a simple order of discharge under the terms of the contract. There is no element of punitive action in the order of respondent No. 4 dated the 11th March, 1960. In form and substance it is no more than an order of discharge effected under the terms of contract and it cannot in law be regarded as an order of dismissal because respondent No. 4 was actuated by the motive that the appellant did not deserve to be continued in service for alleged misconduct. We are, therefore, of opinion that respondent No. 4 was not required to issue notice to the appellant or to make an enquiry and there was no violation of principle of natural justice.

"We shall, however, assume in favour of the appellant that the order of respondent No. 4 dated the 11th March, 1960, was illegal because no enquiry into the alleged misconduct was made before making that order. Even on the assumption we are of opinion that the appellant is not entitled to the grant of a writ under Article 226 of the Constitution. The reason is that the appellant preferred an appeal to the State Government against the order of respondent No. 4, under Rule 6 (2) of the Orissa Welfare Officers' (Recruitment and Conditions of Service) Rules, 1961. Rule 6 (2) states:

"The conditions of service of a Welfare Officer shall be the same as of other members of the corresponding status in the factory; provided that, in the case of discharge or dismissal, the Welfare Officer shall have a right of appeal to the State Government whose decision thereon shall be final and binding upon the occupier."

"The appellant was heard by the State Government in support of his appeal and ultimately the State Government dismissed the appeal in its order dated the 2nd January, 1962. In these circumstances we are of opinion that the order of respondent No. 4 dated the 11th March, 1960 has merged in the appellate order of the State Government dated the 2nd January, 1962 and it is the appellate decision alone which subsists and is operative in law and is capable of enforcement. In other words the original decision of respondent No. 4 dated the 11th March, 1960, no longer subsists for it has merged in the appellate decision of the State Government and unless the appellant is able to establish
that the appellate decision of the State Government is defective in law the appellant will not be entitled to the grant of any relief. There can be no doubt that if an appeal is provided by a statutory rule against an order passed by a tribunal the decision of the appellate authority is the operative decision in law if the appellate authority modifies or reverses it. In law the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmation of the decision of the Tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which is subsisting and is operative and capable of enforcement. (See the decisions of this Court in C. I. T. v. Amritlal Bhagilal & Co., 1959 SCR 713, and Madan Gopal Rungra v. Secretary to the Government of Orissa, 1962 (Supp) 3 SCR 906.

"It is not, however, shown by the appellant in the present case that the appellate order of the State Government dated the 2nd January, 1962 is defective in law. It is contended that non-disclosure of the names of the members of the supervisory staff by the appellant was not one of the duties enjoined in Rule 7 of the Orissa Welfare Officers' (Recruitment and Conditions of Service) Rules, 1951. Apart from the duties mentioned in Rule 7 the contractual terms of employment incorporated in the letter dated the 25th January, 1956 also impose additional obligations on the appellant. It has been found by the appellate authority that there was evidence to support the finding of respondent No. 4 that the appellant was guilty of disobedience to superior officers and an act of disloyalty to the management in refusing to disclose the names of members of the supervisory staff taking part in union activities. The appellate authority also found that there was no colourable exercise of power on the part of respondent No. 4. The High Court is not constituted under Article 226 of the Constitution as a Court of Appeal over the decision of a statutory authority hearing the appeal. Where there is some evidence which the appellate authority has accepted and which evidence may reasonably support the conclusion that the officer was guilty of improper conduct, it is not the function of the High Court in a petition for Writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the statutory authority has acted without or in excess of its jurisdiction or where it has committed an error of law apparent on the face of the record. In the present case, however, it is not shown on behalf of the appellant that the statutory authority has committed any error of jurisdiction or the appellate order dated the 2nd January, 1962 is defective in law.

"For these reasons we hold that the appellant had made out no case for the grant of a Writ under Article 226 of the Constitution and this appeal must be dismissed."
On the hypothesis that the plaintiff had in fact executed a service agreement which invariably contained a clause that services would be terminated on one month's notice on either side and that there is no suggestion that that agreement in terms was different from the usual form of such service agreement as to be found in the rules, the plaintiff cannot be heard to say that no charge-sheet had been formulated against him and proceedings had not been taken thereunder, before giving him one month's pay in lieu of notice of discharge from service—


As the employment of the Government servant concerned was on the basis of a special contract and that he was discharged from service after notice provided in the contract no fundamental right has been infringed. In a petition under Article 32 (2) of the Constitution of India it must be shown that a fundamental right has been infringed. It was argued that the rights infringed are the ones conferred by Articles 14 and 16 (1) of the Constitution of India. Taking Article 14 first it must be shown that the petitioner has been discriminated against in the exercise or enjoyment of some legal right which is open to others similarly placed. The rights which are said to be infringed are those conferred by Article 311 as it is claimed by the petitioner that either he has been dismissed or removed from service without the safeguards which that Article confers. Article 311, however, has no application because that is neither a dismissal nor a removal from service nor is it a reduction in rank. It is an ordinary case of a contract being terminated by notice under one of its clauses. Therefore, no question of discrimination arises for the “law” whose protection the petitioner seeks has no application to him. There was no compulsion on the petitioner to enter into the contract he did. He was as free under the law as any other person to accept or reject the offer which was made to him. Having accepted he still has open to him all the rights and remedies available to other persons similarly situated to enforce any rights under his contract which have been denied to him, assuming there are any, and to pursue in the ordinary courts of the land such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which others similarly situated could claim. The remedy of a writ is misconceived. Article 16 (1) deals with equality of opportunity in all matters relating to employment or appointment to any office under the State. The petitioner has not been denied any opportunity of employment or appointment. He has been treated just like any other person to whom an offer of temporary employment under these conditions was made. His grievance when analysed is not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment. But of course State can enter into contracts of temporary employment and impose any special terms provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into the contract are bound by them even as the State is bound—

**Satish Chandra Anand v. The Union of India**, AIR 1953 SC 250.

In **Binoj Kumar Mukerjee v. State of Bihar and others**, 1971 SIR 314, the order by which the services of the appellant was terminated was an order of termination simpliciter and did not contain any
reflection on the conduct or work of the appellant. It was held that the mere fact that subsequently, the Government gave information on enquiry as to the background reason which led the Government to terminate the services could not convert that order into an order of dismissal so as to attract the provisions of Article 311 (2) of the Constitution of India.

8. Termination of Service under-rules


Article 311 of the Constitution of India has application only when there is an order of dismissal or removal. It is not every termination of the services of an employee that falls within the operation of Article 311 and that it is only when the order is by way of punishment that it is one of dismissal or removal under that Article. If a person has a right to continue in office either under service rules or under a special agreement, a premature termination of his services would be a punishment. And likewise if the order would result in loss of benefits already earned and accrued that would also be punishment. In the present case the terms of employment provide for the services being terminated on a proper notice and so, no question of premature termination arises. Rule 7 of the Railway Services (Safeguarding of National Security) Rules, 1949, preserves the rights of the employees to all the benefits of pension, gratuities and the like, to which they would be entitled under the rules. Thus, there is no forfeiture of benefits already acquired. Further no rule imposing the disability or ineligibility for re-employment in respect of a person who was discharged under the rules, has been pointed out. The order terminating the services under rule 3 of the Security Rules stands on the same footing as an order of discharge under the rules, has been pointed out. The order terminating the services under rule 3 of the Security Rules stands on the same footing as an order of discharge under rule 148 of the Railway Establishment Code and it is neither one of dismissal nor of removal within the meaning of Article 311 of the Constitution of India—P. Balakotaiah and others v. The Union of India and others, 1958 SCR 1052 : AIR 1958 SC 232 : 1958 SCA 209 : 1958 SCJ 451.

(b) Rule 5, Central Civil Services (Temporary Service) Rules, 1949.

The rule that applies to a temporary Government servant is rule 5 of the Central Civil Services (Temporary Service) Rules, 1949. It gives powers to the Government to terminate the services of the temporary Government servant by giving him one month’s notice or on payment of one month’s pay in lieu of notice or such shorter or longer notice or payment in lieu thereof as may be agreed to between the Government and the employee concerned. It is not understood how this rule is hit by Article 16 of the Constitution of India which provides for equality of opportunity. These Rules show that there are two classes of employees, namely (i) permanent employees, and (ii) temporary employees; the latter being divided into two sub-classes (a) quasi-permanent, and (b) temporary It is well-recognised that the Government may have to employ temporary servants to satisfy the needs of a particular contingency and such employment would be
perfectly legitimate. There can also be no doubt, if such a class of temporary servant could be recruited that there would be nothing discriminatory or violative of equal opportunity if the conditions of service of such servants are different in some respects from those of permanent employees. Further no denial of equal opportunity is seen, if out of the class of temporary employees some are made quasi-permanent depending on the length of service and their suitability in all other respects for permanent employment eventually and thus assimilated to permanent employees. The rule which applies to one class of Government servants in the matter of termination but does not apply to the other two classes cannot be said to violate equality of opportunity provided in Article 16. The classification of Government servants into these classes is reasonable and the differences in the matter of termination of service between these classes cannot be said to be discriminatory in the circumstances. In particular the very fact that the services of a Government servant is purely temporary makes him a class part from those in permanent service and such Government servant cannot necessarily claim all the advantages which a permanent servant has in the matter of security of service. Considering the nature of employment of a temporary Government servant a provision like that in rule 5 in respect of termination of service is a reasonable provision which cannot be said to deny equality of opportunity provided in Article 16. The attack therefore on rule 5 of the Central Civil Services (Temporary Service) Rules, 1949 on the ground that it is hit by Article 16 of the Constitution of India must fail—Champaklal Chimanlal Shah v. The Union of India, (1964) 5 SCR 190.

It is well settled that when employment of a temporary public servant is terminated pursuant to the terms of a contract, he is not entitled to the protection of Article 311 (2) of the Constitution of India. In the present case, it appears that the respondent had applied for re-employment in the Police Force and the Chief Commissioner was of the opinion that because the respondent was “an ex-convict in a case of theft” he could not be re-employed. There is no ground for inferring that the Superintendent of Police was seeking to camouflage an order by giving it the form of termination of employment in exercise of the authority under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949. It cannot be assumed that an order ex facie one of termination of employment of a temporary employee was intended to be one of dismissal. The onus to prove that such was the intention of the authority terminating the employment must lie upon the employee concerned. A public servant holds a civil office during the pleasure of the President or the Governor of the State according as he holds office under the Union or State. But to protect public servant a dual restriction is placed upon the exercise of the power to terminate employment. A public servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed and that he cannot 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. These protections undoubtedly apply to temporary servants as well as to public servants holding permanent employment. But the State is not prohibited by the Constitution from reserving a right by the terms of employment to terminate the services of a public servant and if in the bona fide enforcement of
that right the employment is terminated the protection of Article 311 of the Constitution will not avail him because such a termination does not amount to dismissal or removal from service—Union Territory of Tripura and another v. Gopal Chandra Datt Choudhry, AIR 1963 SC 601 : 1963 All LJ 321 : (1963) 6 Fac LR 330 : (1963) 2 Lab LJ 633.

The way in which the memorandum was drafted and the fact that in the last sentence the official concerned was asked to state why disciplinary action should not be taken against him might give an impression that the intention was to hold a formal departmental enquiry against him with a view to punishing him. But though this may appear to be so, what is important to see is what actually happened after this memorandum, for the courts are not to go by the particular name given by a party to a certain proceeding but are concerned with the spirit and substance of it in the light of what proceeded and what succeeded it. In the present case some enquiries appeared to have been held after the memorandum but were not pursued further. It is, however, clear that no formal departmental enquiry as contemplated under Article 311 (2) read with the relevant Central Services Rules was ever held after the memorandum and the matter was dropped. Thereafter the appellant was transferred from Ahmedabad to Bombay where he worked for six months and thereafter the Government came to the conclusion that his work and conduct were not satisfactory and therefore, decided to terminate his services under rule 5 of the Central Civil Services (Temporary Services) Rule, 1949. The proposition cannot be accepted that once Government issues a memorandum, like that issued in the present case, but later decides not to hold a departmental enquiry for taking punitive action, it can never thereafter proceed to take action against a temporary Government servant in terms of rule 5, even though it is satisfied otherwise that his conduct and work are not satisfactory—Champaklal Chimanlal Shah v. The Union of India, (1964) 5 SCR 190 : AIR 1964 SC 1854 : 1964 1 Lab LJ 752.

(c) Preliminary enquiry before services are terminated in terms of contract.

The mere fact that some kind of preliminary enquiry is held against a temporary servant and following that enquiry the services are dispensed with in accordance with the contract or the specific rule [e.g. rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, in this case would not mean that the termination of service amounted to infraction of punishment of dismissal or removal within the meaning of Article 311 (2) of the Constitution of India. Whether such termination would amount to dismissal or removal within the meaning of Article 311 (2) would depend upon facts of each case and the action taken by Government which finally leads to the termination of services—Champaklal Chimanlal Shah v. The Union of India, (1964) 5 SCR 190 : AIR 1964 SC 1854 : 66 Bom LR 319 : (1964) 1 Lab LJ 752.

In State of Uttar Pradesh v. Abdul Khaliq, 1969 SLR 458, it was held that an order of termination in an unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service did not attract the operation of Article 311 of the Constitution of India. In
that case the official concerned alleged that the "sudden termination of the plaintiff's services now appears to be due to the suspicious of the Sales Tax authorities based on some report of the Treasury Officer of Varanasi that the plaintiff was instrumental in identifying some fictitious person who is said to have presented a refund voucher for Rs. 300/- in the Varanasi Treasury". It appears that no charge sheet was ever served but an enquiry was made in the matter by the Assistant Sales Tax Commissioner. The Supreme Court made it clear that the fact that an enquiry is made with a complaint does not mean that, if the services of a temporary Government servant are terminated after a report received, any punishment is inflicted entitling the Government servant to reasonable opportunity to show cause against the termination within Article 311(2) of the Constitution of India.

(d) Rule 12, Madhya Pradesh Government Servants (Temporary and Quasi Permanent Service) Rules, 1960—Articles 14 and 16.

In R. G. Chaturvedi v. State of Madhya Pradesh, (1969) 2 SCC 240 : 1969 SLR 429, the appellant, who was a temporary Civil Judge, filed a Writ petition in the High Court for quashing the order terminating his order. The High Court summarily dismissed the petition. It held that the impugned order was not by way of punishment and that the appellant's services were liable to be terminated under Rule 12 of the Madhya Pradesh Government Servants (Temporary and Quasi Permanent Service) Rules, 1960 which provided:

"12. (a) Subject to any provision contained in the order of appointment or in any agreement between the Government and the temporary Government servant, the service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant:

Provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice, or as the case may be, for the period by which such notice falls short of one month or any agreed longer period:

Provided further that the payment of allowances shall be subject to the conditions under which such allowances are admissible.

(b) The periods of such notice shall be one month unless otherwise agreed between the Government and the Government servant."

When the matter came before the Supreme Court Bachawat, J., who delivered the judgment held that:

"The appellant was a temporary government servant and was not in quasi-permanent service. His services could be terminated on one month's notice under Rule 12. There was no provision in order of appointment or in any agreement that his services could not be so terminated."
"It was argued that the appellant's services could not be terminated on one month's notice as (a) his confirmation was recommended by the High Court after the expiry of the probationary period, and (b) the advertisement, dated September 9, 1960, inviting applications for the temporary posts of Civil Judges did not specifically mention that their services could be so terminated. The point that the High Court had recommended the appellant's confirmation was not raised in the High Court and cannot be allowed to be raised in this Court for the first time. The appellant's services were subject to the relevant rules and could be terminated on one month's notice under Rule 12. It is immaterial that the advertisement did not specifically mention that his services could be so terminated."

Rule 5, Civil Services (Temporary Services) Rules, 1949

An order which does not contain any express words of stigma attaching to the conduct of the employee cannot be treated as an order of punishment under Article 311 of the Constitution of India. It is true that in the present case the last letter to the respondent contained a threat that "if he did not report for duty immediately he will be liable for disciplinary action", but no disciplinary action was commenced against him and his service was terminated in exercise of the power under the Civil Services (Temporary Service) Rules, 1949. A bald order terminating the employment was passed and it recited that according to the terms and conditions of his service the respondent was given one month's notice of termination. There is nothing in the order which indicates that the order was made with the object of punishing the respondent. It cannot be inferred from the threat of disciplinary action that the order was issued to punish the respondent.—Union of India v. Prem Prakash Midha, 1969 SLR 655.


Rule 23-A of the Rajasthan Service Rules, 1951 dealing as it does with the Government's right of termination of service, must be read along with the rules of recruitment relating to the particular post on which the person, whose services are sought to be terminated in exercise of the power under that rule, is serving. So read Rule 23-A (2) protects only those temporary servants who have put in a service of more than three years, who possess the qualifications for the post and have been appointed in consultation with the Public Service Commission. The expression "qualifications to the post" in clause (2) of the rule, therefore means "qualifications on the satisfaction of which only the person in question could have been recruited to the post. That being so the term "qualifications" in the rule must relate to the qualifications laid down in the Rajasthan Subordinate Officers Ministerial Staff Rules, 1957. Rule 12 of these rules lays down the minimum qualifications required for eligibility to apply for a lower division Clerk while the rules as to passing the examination held under rule 7, as to nationality, age and physical fitness etc. are other qualifications required for the purpose of recruitment. It follows, therefore, that before a person can be recruited he has to have not only the minimum academic qualification required under rule 12 but other qualifications also, namely, nationality,
age, and the necessity of his having to pass the examination under rule 7 held on such terms and conditions as laid down by Government under that rule. Therefore, the respondent did not fall under the category of temporary servants entitled to the benefits of rule 23-A (2) of the Rajasthan Service Rules as they did not possess the qualifications there mentioned, i.e. of having passed the examination prescribed under rule 7 of the Rajasthan Subordinate Officers Ministerial Staff Rules, 1957. That being so the Government was entitled to terminate their services in accordance with rule 23-A (1) after giving them the requisite one month's notice on the ground that they failed to pass the examination required by rule 7—The State of Rajasthan and another v. Shri Fateh Chand and others, 1970 SLR 55 : AIR 1970 SC 1099 : 1970 Lab IG 870.

(e) Regulations 9-B and 15(2), Clause (7), Delhi Road Transportation Authority (Conditions of Appointment and Service) Regulations, 1952.

Even if it is assumed that the law is the same as would be applicable to a case governed by Article 311 of the Constitution, it is difficult to say that the services of the respondent were not merely terminated in accordance with regulation 9 (b) of the Delhi Road Transportation Authority (Conditions of Appointment and Service) Regulations, 1952, which governed the conditions of his employment. It may be that the notice for termination of his services was the breach of Standing Order 17 i.e. filing a Writ petition in the High Court against the demotion without exhausting departmental remedies. But the question of notice is immaterial. No charge-sheet was preferred under regulation 15 nor was an enquiry held in accordance therewith before the order under regulation 9 (b) was made. It may be that if the respondent had successfully pleaded and proved *mala fides* on the part of the authority terminating his services the impugned order could be legitimately challenged but no foundation was laid in that behalf in the plaint nor was the question of *mala fides* investigated by the Courts below. As regards the punishment having been inflicted for misconduct the order being a mere camouflage, the view that any such question could arise in the present case cannot be endorsed. Regulation 9 (b) clearly empowered the authorities to terminate the services after giving one month's notice or pay in lieu of notice. The order was inequivocally made in terms of that regulation. Even if the employers of the respondent thought that he was a cankerous person and it was not desirable to retain him in service, it was open to them to terminate services in terms of regulation 9 (b) and it was not necessary to dismiss him by way of punishment for misconduct—Delhi Transport Undertaking v. Balbir Saran Goel, 1970 SLR 371.


In State of Madhya Pradesh v. Harilhar Gopal, 1969 SCR 274, the employee was removed from service for absence from duty without leave. The order of removal was followed by grant of leave covering the period of absence. The question that arose for consideration was whether an order rendered Government incompetent to remove from
service the Government servant concerned and invalidated his removal. The conclusion of the High Court that by the order granting leave the respondent’s absence from duty was regularised, and the State Government was incompetent to remove him from service on the ground that he was absent from duty unauthorisedly could not be sustained before the Supreme Court where the following conclusion was arrived at:

“The order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of duration of service and adjustment of leave due to the respondent and for regularising his absence from duty. Attention has not been invited to any rules governing the respondent’s service conditions under which an order regularising absence of duty subsequent to termination of employment has the effect of invalidating termination. Both the orders, one terminating the employment of the respondent and the other granting leave are made by ‘order and in the name of the Governor of Madhya Pradesh’ and they are signed by Deputy Secretary to the Government of Madhya Pradesh, General Administration Department. It cannot, therefore, be held that the authority after terminating the employment of the respondent intended to pass an order invalidating the earlier order by sanctioning leave so that respondent was not to be deemed to have remained absent from duty without leave duly granted. Further the charge against the respondent was that he had absented himself “without obtaining leave in advance”. The Enquiry Officer characterised the conduct of the respondent as “irresponsible in extreme and can hardly be justified.” The Enquiry Officer clearly intended that in failing to report for duty and remaining absent without obtaining leave, the respondent acted in manner irresponsible and unjustified. On the finding of the Enquiry Officer that charge was proved the order granting leave had no effect on the charge that respondent had remained absent without obtaining leave in advance.

9. Dismissal or Discharge after resignation

Section 126 (2) of the Jammu and Kashmir Constitution is in pari materia with the provisions of Article 311 of the Constitution of India but is not ipissima verba. Whereas under the Indian Constitution there is clear provision for an enquiry and an opportunity at the enquiry and a second opportunity against the action proposed to be taken against the Government servant, the Jammu and Kashmir Constitution does not in terms state that there should be two such opportunities. It only says that the Government servant should be given a reasonable opportunity of showing cause against the action proposed to be taken against him. Even if it be assumed for the purpose of this case that the Government servant concerned was entitled to two opportunities; namely to meet the charge and then to show cause against the punishment proposed, the situation here is very different from the ordinary case of Government servant where conduct is enquired into as a result of some dereliction of duty on his part. There the charge sets out the grounds on which the action is intended to be
taken and the enquiry to be held. Here the facts are quite clear. All that had happened was that having joined her service and having taken 10 days casual leave the appellant absented herself from duty for a period of nearly a year. She was informed about what had happened and her attention was drawn to Article 128 of Jammu and Kashmir Service Regulations which provides that absence without or after the end of leave involves loss of appointment except as provided in Article 203 (4) or when due to ill-health, in which case the absentee must produce the certificate of a medical officer. In other words, doTher continued absence from service she incurred loss of appointment notice told her that she had so incurred loss of appointment and askhe her to say what she had to say. In answer she only sent her resignation. This is therefore, not one of the cases in which requirements of Constitution compel the appointing authority to hold a full dress inquiry with witnesses and opportunity to cross-examine the witnesses. This is, an exceptional case of complete dereliction of duty and of pretence of serving without even attending a day on duty. In these circumstances the charge sent to her sufficiently communicated to her what was to happen to her and she was also adequately given an opportunity of showing cause against the loss of appointment. She chose to make no representation on this point and merely sent her resignation and asked it to be accepted. In these circumstances the Jammu and Kashmir Government justified, in terminating her service. It is true that they passed an order of dismissal which made a stigma and it is probable that if this had remained so, she would have been entitled to plead that she may be given an opportunity of showing cause against the action proposed, as indeed section 126 of the Jammu and Kashmir Constitution required. But this was corrected later by a corrigendum which stated that the word “dismissal” or the word “dismissed” whenever they occurred in the previous order should be read as “discharge” or “discharged”. In other words she was treated as discharged from service when she had loss of appointment and that is the end of the mater—Dr. (Mrs.) Shashi Chaudhary v. State of Jammu and Kashmir, 1969 SLR 236.

10. President’s power to dismiss Civil Servant:
   Article 311 (2) (c)


11. Dismissal order, when taken effect

   In State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313 : (1965-66) 28 FJR 464 : (1966) 2 Lab LJ 186 : (1966) 2 SCJ 777, it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the officer concerned or was otherwise published.

12. Order of dismissal with retrospective effect, if valid

   The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say from May 20, 1949. In substance the order directed that(1)
the appellant be dismissed, and (2) the dismissal do operate retrospectively as from May, 1949. The two parts of the order are separate. The first part of the order operates as a dismissal of the appellant as from October 17, 1950 and this is valid and effective. An order of dismissal with retrospective effect is in substance, an order of dismissal as from the date of the order with super-added direction that the order should operate retrospectively as from an anterior date. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect—R. Jeevaratnam v. The State of Madras, (1966) 2 SCR 204 : AIR 1966 SC 951.

13. Order terminating service based on events prior to coming into force of Rules.

Where an authority has to form an opinion that an employee is likely to be engaged in subversive activities, it can only be as a matter of inference from the course of conduct of the employee, and his antecedents must furnish the best materials for the same. Rules 3, 4, 5 and 7 of the Railway Services (Safeguarding of National Security) Rules, 1949 are clearly prospective in that action thereunder is to be taken in respect of subversive activities which either now exist or are likely to be indulged, in future, that is to say which are in case or in post. That the materials for taking action in the latter case are drawn from the conduct of the employees prior to the enactment of the rules does not render their operation retrospective—P. Balakotalah and others v. The Union of India and others, 1958 SCR 1052 : AIR 1958 SC 232 : 1958 SCA 209 : 1958 SCJ 451.
CHAPTER XII

COMPULSORY RETIREMENT

SYNOPSIS

1. Compulsory retirement, what is.
2. Compulsory retirement, when punishment: Applicability of Article 311.
3. Compulsory retirement, when no punishment.
4. Rule as to age of retirement, classification in fixing age of retirement: Validity.
6. Fundamental Rule 56 (j): Validity: Adverse entries in confidential report: Whether an opportunity to be heard to be given.
7. Right of Government to continue the employee in service pending enquiry—Rule: Validity of.
8. Rules fixing no minimum service period for retirement: Validity.
9. Permission to retire: Government servant can change his mind subsequently.
10. Retirement due to change of age of superannuation.
11. Compulsory retirement and reduction of pension.
12. Order of compulsory retirement after enquiry: No reasons for agreeing with findings of Enquiry Tribunal: Effect.
14. Dispute regarding date of birth.
15. Order extending service unilaterally, if valid.

1. Compulsory retirement, what is

Compulsory retirement is one of the penalties imposed on a Government servant and means retiring a Government servant in employment, according to Service Rules, after he has completed a fixed period of employment but before the age of superannuation. A compulsory retirement where a public servant has no right to continue in office is not a punishment.

2. Compulsory retirement, when punishment: Applicability of Article 311.

Article 311 of the Indian Constitution does not apply if there is no element of penalty in the order. Two tests are laid down in decided cases to determine as to whether the order compulsorily retiring a Government servant attracts the provisions of Article 311 of the Constitution. The first test is to see whether the retirement involved a stigma or imputation of misconduct or incapacity. The second test is to see whether it has resulted in any loss of benefits previously earned or not. The said two tests are alternative, the satisfaction of either one of which would convert an order of termination of service into an order of punishment of removal or dismissal. The termination of service may be either by the Government servant ceasing to hold that post, or by reduction in rank consequent on an appointment or reversion to a lower post, or by compulsory retirement, when also he ceases to continue to work in that post. The two main elements to be seen are
whether he had a right to continue work in that post, and whether he has been visited with evil consequences of being deprived of the benefits already earned. Where, therefore, a Government servant under his terms and conditions of service or under his contract of service has a right to continue in a post and his service is terminated by an order of compulsory retirement or on the basis of a charge of misconduct or in efficiency or incapacity, it would be a case of punishment of removal or dismissal. Even though there may be no loss of benefits already earned, the other case of punishment of removal or dismissal would be where there may be no charge of misconduct or inefficiency or incapacity forming the basis of the order of termination of service, but the result of the termination by itself is that the Government servant concerned loses the benefits already earned by him. These tests are thus to be applied in the alternative, and, on even one of them being satisfied, the order of termination of service would become an order of punishment or removal. In the case of Shyamalal v. State of U. P. (1954) 2 LLJ 139 : (1955) 2 SCR 26 : AIR 1954 SC 369 : 1954 SCR 476 : 1954 SCJ 493 : 1954 ALJ 329, also there had been some charges of misconduct and, in fact, before the order of compulsory retirement was made, he had been given an opportunity to explain his conduct. It was, however, found that that opportunity was given not for the purpose of complying with the requirements of Article 311 of the Constitution or as a preliminary to making any order of punishment, but simply for the purpose of enabling the Government to make up its own mind whether his case was a suitable case for making an order of compulsory retirement under Article 465-A of the Civil Service Regulations. Their Lordships held that as long as the enquiry was merely to help the Government to make up its mind and was not made on the basis of the order of compulsory retirement, it could not be held that the order of compulsory retirement became an order of punishment.

The next case that we may refer to is that of State of Bombay v. Subhagchand M. Doshi, AIR 1957 SC 892 : 1958 SCR 571 : 1958 SCA 5 : 1958 SCJ 161. In that case the views expressed in Shyam Lal’s case, were confirmed. In Doshi’s case also, the order of compulsory retirement was made without including in it any reason which might have cast any stigma or implication of incapacity on Doshi. It was also a case where the order of compulsory retirement was made merely in public interest. When dealing with that case, Their Lordships clearly brought out the distinction between cases where the charge of misconduct or inefficiency is the “motive” for making the order of compulsory retirement and cases where the charge is the “basis” of the order of retirement. It was held:

"The fact to be noted is that while misconduct and inefficiency are factors that enter into the accounts where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held—and there is no duty to hold an enquiry—is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy the rules of natural justice and the requirements of Article 311 (2)."
The next case of compulsory retirement decided by the Supreme Court that may be mentioned is that of *P. Balakotaiyah v. Union of India*, AIR 1958 SC 232 : 1958 SCR 1052 : 1958 SCA 239 : 1958 SCJ 451 : (1958) 1 MLJ 162. In that case the compulsory retirement of a railway servant was ordered under Rule 3 of the Security Rules which permitted such an order being made if in the opinion of the competent authority the servant concerned was associated with others in subversive activities in such manner as to raise doubts about his reliability. In that case also, when the order for compulsory retirement was made, the order itself was not based on any finding recorded that the railway servant concerned had done one of the acts mentioned in Rule 3 of the Security Rules. The order was based on the opinion of the competent authority and it was held that the order of compulsory retirement did not amount to an order of punishment. After discussing the cases it was held there is a distinction between cases where the charge of misconduct or inefficiency is the motive for making the order of compulsory retirement and cases where the charge is the basis of the order of retirement. In the latter kind of cases only the order of compulsory retirement would be punitive in nature.

In *Bhola Nath J. Thaker v. State of Saurashtra*, AIR 1954 SC 680, it was pointed out that the services of the appellant with the Wadhwan State were during the pleasure of the ruler of the State and that the ruler of the State could have compulsorily retired him without being liable to pay him any compensation whatever and that, therefore, the position of the appellant was no better so far as the Saurashtra State also concerned. This contention was not accepted and it was held that even though the tenure of the appellant’s service with the ruler of the Wadhwan State was initially during the pleasure of the ruler, the rule put a fetter upon his powers to dispense with the services of the appellant when Dhara No. 29 of St. 2004 was enacted and that the obligation of the ruler passed to the Saurashtra State on the making over of the administration of the Wadhwan State to the Rajpramukh on the 15th March, 1948, and the Saurashtra State also could not dispense with the services of, or compulsorily retire, the appellant before he attained 60 years of age.

It was further held that if the Saurashtra State choose to compulsorily retire the appellant it could only do so on payment of reasonable compensation and in arriving at the figure of reasonable compensation the Saurashtra State would have to take into consideration the tenure of the appellant’s service with the Wadhwan State which entitled him to continue in such service until he attained the age of 60 years.

In *State of Bombay v. Subhagchand M. Doshi*, AIR 1957 SC 892 : 1958 SCR 571 : 1958 SCA 5 : 1958 SCJ 161, it was contended that according to Rule 165-A the employee could only be proceeded against on the ground of inefficiency or dishonesty, and the order of retirement being by way of punishment, the protection of Article 311 (2) was available. Reliance was placed on *Shyam Lal’s case*. This contention was repelled by the Supreme Court and the ratio deciduous of *Shyam Lal’s case*, AIR 1954 SC 369, was stated as under:

"Under the rules, an order of dismissal is punishment laid on a Government servant, when it is found that he has been
guilty of misconduct or inefficiency or the like, and it is penal in character, because it involves loss of pension which under the rules would have accrued in respect of services already put in.

"An order of removal also stands on the same footing as an order of dismissal, and it involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for re-appointment, one who is removed, is. An order of retirement differs from both an order of dismissal and an order of removal, in that it is not a form of punishment prescribed by the rules, and involves no penal consequences, inasmuch as the person retired is entitled to pension proportionate to the period of service standing to his credit.

"Now, the policy underlying Article 311 (2) is that when it is proposed to take action against a servant by way of punishment and that will entail forfeiture of benefits already earned by him, he should be heard and given an opportunity to show cause against the order. But that consideration can have no application where the order is not one of punishment and results in no loss of benefits already accrued, and in such a case, there is no reason why the terms of employment and the rules of service should not be given effect to.

"Thus, the real criterion for deciding whether an order terminating the services of a servant is one of dismissal or removal is to ascertain whether it involves any loss of benefits previously earned. Applying this test, an order under Rule 165-A compulsorily retiring a Government servant before superannuation cannot be held to be one of dismissal or removal, as it does not entail forfeiture of the proportionate pension due for past services.

"It does not make any difference in the position that the power is not to be exercised except in cases of misconduct or inefficiency. When the Government decides to retire a servant before the age of superannuation, it does so for some good reason, and that, in general, would be misconduct or inefficiency. In providing that no action would be taken except in case of misconduct or inefficiency, Rule 165-A only made explicit what was implicit in Note 1 to Article 455-A. The fact to be noted is that while misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background, and the enquiry if held—and there is no duty to hold an enquiry—is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, and the enquiry thereon must be formal and must satisfy the rules of natural justice and the requirements of Article 311 (2). It should be added that questions of the above character could arise only when the rules fix both an age of superannuation
and an age for compulsory retirement and the services of a civil servant are terminated between these two points of time. But where there is no rule fixing the age of compulsory retirement, or if there is one and the servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Article 311 (2)."

In Dalip Singh v. State of Punjab, AIR 1960 SC 1305: (1961) 1 SCR 88: (1961) 2 SCJ 58: ILR (1960) 2 Punj 863, the Supreme Court observed:

"The question whether the termination of service by compulsory retirement in accordance with service rules amount to removal from service was considered by this Court in Shyam Lal v. State of U. P. and again recently in State of Bombay v. Subhagchand M. Doshi, 1958 SCR 571. The Court decided in Shyamal's case, AIR 1954 SC 369, that two tests had to be applied for ascertaining whether a termination of service by compulsory retirement amounted to removal or dismissal so as to attract the provisions of Article 311 of the Constitution. The first is whether the action is by way of punishment and to find out that the Court said that it was necessary that a charge or imputation against the officer is made the condition of the exercise of the power; the second is whether by compulsory retirement the officer is losing the benefit he had already earned as he does by dismissal or removal. In that case in fact a charge-sheet was drawn up against the officer and an enquiry held but ultimately the order of compulsory retirement was not based on the result of the enquiry, the Court pointed out that the enquiry was merely to help the Government to make up its mind as to whether it was in the public interest to dispense with his service so that the imputation made in the charge-sheet was not being made the condition of the exercise of the power.

"The tests were applied in Doshi's case, and it was held that the provisions of compulsory retirement under Rule 156-A of the Saurashtra Civil Service Rules which the order of retirement was made there was no violation of Article 311 (2). It was pointed out that while misconduct and inefficiency are factors that enter into account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held—and there is no duty to hold an enquiry—is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy the rules of natural justice and the requirements of Article 311 (2)."

"In the case before us the order of the Rajpramukh does not purport to be passed on any charge of misconduct or inefficiency. All it states is that the compulsory retirement is for 'administrative reasons'. It was only after the appellant's own insistence to be supplied with the grounds which led
to the decision that certain charges were communicated to him. There is, therefore, no basis for saying that the order of retirement contained any imputation or charge against the officer. The fact that considerations of misconduct or inefficiency weighed with the Government in coming to its conclusion whether any action should be taken under Rule 278 does not amount to any imputation or charge against the officer.

"Applying the other test, viz., whether the officer has lost the benefit he has already earned, we find that the officer has been allowed full pension. There is no question of his having lost a benefit earned. It may be pointed out that Rule 278 itself provides for retirement on pension. If the provision had been for retirement without pension in accordance with the rules there might have been some reason to hold that the retirement was by way of punishment. As, however, the retirement can only be on pension in accordance with the rules—in the present case full pension has been granted to the officer—the retirement is clearly not by way of punishment.

In Doshi's case, 1958 SCR 571: AIR 1957 SC 892, there is (at page 579 of SCR and at page 895 of AIR) an 'observation which might at first sight seem to suggest that in the opinion of this Court compulsory retirement not amounting to dismissal or removal could only take place under a rule fixing an age for compulsory retirement. We do not think that was what the Court intended to say in Doshi's case. In Doshi's case, there was in fact a rule fixing an age for compulsory retirement at the age of 55, and in addition another rule for compulsory retirement after an officer had completed the age of 50 or 25 years of service. It was in that context that the Court made the above observation. It had not in that case to deal with a rule which did provide for compulsory retirement at any age whatsoever irrespective of the 'length of service put in. It will not be proper to read the observation in Doshi's case, referred to above as laying the law that retirement under the rule we are now considering must necessarily be regarded as dismissal or removal within the meaning of Article 311.'

In Kailash Chandra v. Union of India, AIR 1961 SC 1346: (1961) 2 SCJ 675: (1962) 1 SCA 44: 1961 All WR (HC) 487: 1961 All LJ 633: (1961) 2 Lab LJ 639, Rule 2046:2 (a) of the Railway Establishment Code, Vol. II, was considered and as to the employee's right to be retained in service till the age of 60 years, it was held:

"Reading these words without the word 'ordinarily' we find it unreasonable to think that it indicates any indication to cut down at all the right to require the servant to retire at the age of 55 years or to create in the servant any right to continue beyond the age of 55 years if he continues to be efficient. They are much more appropriate to express the intention that as soon as the age of 55 years is reached, the appropriate authority has the right to require the servant to retire but that between the age
of 55 and 60 the appropriate authority is given the option to retain the servant but he is not bound to do so.

"This intention is made even more clear and beyond doubt by the use of the word 'ordinarily'. 'Ordinarily' means 'in the large majority of cases but not invariably'. This itself emphasises the fact that the appropriate authority is not bound to retain the servant after he attains the age of 55 even if he continues to be efficient. The intention of the second clause, therefore, clearly is that while under the first clause the appropriate authority has the right to retire the servant who falls within clause (a) as soon as he attains the age of 55, it will, at that stage, consider whether or not to retain him further. This option to retain for the further period of five years can only be exercised if the servant continues to be efficient; but in deciding whether or not to exercise this option the authority has to consider circumstances other than the question of efficiency also; in the absence of special circumstances he 'should' retain the servant, but what are special circumstances is left entirely to the authority's decision. Thus after the age of 55 years is reached by the servant the authority has to exercise its discretion whether or not to retain the servant; and there is no right in the servant to be retained, even if he continues to be efficient....

"The correct interpretation of Rule 2046 (1) (a), of the Code, in our opinion, is that a railway ministerial servant falling within this clause may be compulsorily retired on attaining the age of 55 but when the servant is between the age of 55 and 60, the appropriate authority has the option to continue him in service, subject to the condition that the servant continues to be efficient but the authority is not bound to retain him even if a servant continues to be efficient".

In *Jairam v. Union of India*, AIR 1954 SC 584, the plaintiff much before his attaining the age of superannuation insisted on retiring on a preparatory leave which was accepted by the Government and he was granted leave for 11 months and 25 days. Just ten days before the expiry of this leave the plaintiff changed his mind and wanted to resume his duties. He was not allowed to do so and he filed the suit. The Court said:

"Here the plaintiff was not compelled or required to retire by anybody. If the Government required him to retire in the terms of the Fundamental Rule 56 (b) (1), it might be argued that he should have been given an opportunity to show cause that he was still efficient and able to discharge his duties and consequently could not be retired at that age. But here the situation was entirely of the plaintiff's own seeking and his own creation."

In *State of Rajasthan v. Sripat Jain*, AIR 1963 SC 1323 : (1964) 1 SCR 742, it was contended before the High Court that all kinds of compulsory retirement have to be referred to the Governor under
Rule 31 (vii) (a) of the Business Rules. Rule 31 (vii) is reproduced below for reference:

"31. The following classes of cases shall be submitted to the Governor and the Chief Minister before the issue of orders:

* * * * *

(vii) (a) Proposals for dismissing, removing or "compulsory retiring of any officer where the appointing authority is the Government.

(b) Where a review petition is proposed to be rejected and it is against an order issued after submission to the Governor under item (vii) (a) of Rule 31.

(c) In a case where, on review, the Governor decides to enhance the penalty already imposed and the enhanced penalty is one of dismissal, removal or compulsory retirement of an officer whose appointing authority or appellate authority is Government."

The Supreme Court held as under:

"There is no doubt that the words 'proposals for....compulsory retiring of any officer where the appointing authority is the Government' appearing in item (vii) (a) are general and are not qualified by the words 'as penalty' and may be open to the interpretation that all the three kinds of compulsory retirement mentioned above must be referred to the Governor. But reading these words in item (vii) (a) in the collocation in which they appear it seems to us that when that item talks of 'compulsory retiring of any officer' follow the words 'dismissing' and 'removing'. Now dismissing and removing are penalties provided by Rule 14 of the Classification Rules and it seems to us therefore that in the collocation in which the words "compulsory retiring" appear in item (vii) (a) they must be read as a penalty like dismissing and removing. Besides reference to clauses (b) and (c) of item (vii) to which the High Court did not refer at all would enforce this conclusion. clause (b) says that,

'where a review petition is proposed to be rejected and it is against an order issued after submission to the Governor under item (vii) (a) of Rule 31'.

the matter must be referred to the Governor, clause (b) therefore refers to a review petition relating to orders passed under item (vii) (a) for dismissal, removal or compulsory retirement. Now there can hardly be any reason for a review petition in the case of compulsory retirement on reaching the age of superannuation i.e., 55 years under Rule 56 of the Service Rules. We further find that review petitions are provided under the Classification Rules in Part VII and Rule 34 of the Classification Rules in particular.

S.L.I.-58
provides for Governor's powers to review. It is obvious that when clause (b) speaks of a review petition, it must be referring to the review under Part VII of the Classification Rules. Clause (b) therefore which is confined to cases under clause (a) which speaks of dismissal, removal or compulsory retirement, shows that all these are penalties as provided in Rule 14 of the Classification Rules. Further clause (c) provides that,

'where, on review, the Governor decides to enhance the penalty already imposed and the enhanced penalty is one of dismissal, removal or compulsory retirement of an officer',

the matter must be referred to the Governor. The clause makes it perfectly clear that the compulsory retirement referred to therein is a case of penalty and there can in our opinion be no doubt when we read this clause with clause (a) that compulsory retirement mentioned therein must also be of the nature of a penalty. Taking all the three clauses of item (vii) (a) as a whole, it appears that item (vii) (a) provides for a complete scheme with reference to three kinds of penalties, namely dismissal, removal and compulsory retirement and makes it incumbent that cases of this kind must be referred to the Governor. We cannot therefore agree with the High Court that compulsory retirement provided in item (vii) (a) includes all the three kinds of compulsory retirement. It must, therefore, be held that the contention of the appellant that compulsory retirement provided in item (vii) (a) is compulsory retirement as a penalty and not compulsory retirement of the other two kinds, namely, (1) compulsory on attaining the age of superannuation, and (2) compulsory retirement under Rule 244 (2), neither of which is a punishment, is correct'—State of Rajasthan v. Sripat Jain, AIR 1963 SC 1323.

In V. S. Menon v. Union of India, AIR 1963 SC 1160, the Supreme Court held that the premature termination of service of the Government servant by compulsory retirement was tantamount to removal from service by way of penalty and the Government servant had grievance which he could ventilate under Article 226 of the Indian Constitution. The High Court had taken the view that the case was governed by the decision in P. Balkotaih v. Union of India, 1958 SCR 1052. That was a case in which the services of the appellants who were railway servants had been terminated for reasons of national security under Rule 3 of the Railway Service (Safeguarding of National Security) Rules, 1949. Rule 3 in that case was practically in the same terms as Rule 3 in this case. Rule 3 in that case was held to be constitutionally valid as not being repugnant to Article 14 of the Constitution.

The Supreme Court considered P. Balkotaih's case and observed:

This Court held further that the charge drawn up against the railway servants concerned showed not only that they were Communists or trade unionists but that they were engaged in subversive activities. Hence, it could not be said that
the orders terminating their services contravened Article 19 (1) (c) of the Constitution. It was also held by the Court that Article 311 of the Constitution was not attracted to the case because that was not a case of dismissal or removal from service by way of punishment. It was also held in that case that the order terminating the services under Rule 3 of the Security Rules stood on the same footing as an order of discharge under Rule 148 of the Railway Establishment Code, and was, therefore, outside the purview of Article 311 of the Constitution. It is not disputed that there is no provision in the Rules relating to Post and Telegraph Service corresponding to Rule 148 of the Railway Establishment Code. In the instant case, therefore, the premature termination of service before the age of superannuation could be justified only by virtue of Rule 3. As Rule 3 had not been attracted to the appellant's case for reasons given above, it follows that the premature termination of the appellant's service would be tantamount to removal from service by way of penalty. Rule 3 runs as under:

"3. A Government servant who, in the opinion of the competent authority is engaged in or is reasonably suspected to be engaged in subversive activities or is associated with others in subversive activities in such a manner as to raise doubts about his reliability may be compulsorily retired from service:

Provided that a Government servant shall not be so retired, unless the competent authority is satisfied that his retention in the Public service is prejudicial to national security and unless, where the competent authority is a head of a department, the prior approval of the Governor-General has been obtained."

Where an order requiring a Government servant to retire compulsorily contains express words from which a stigma can be inferred, that order may amount to 'removal' within the meaning of Article 311 but where there are no express words in the order itself which would throw any stigma on the Government servant the Court cannot look into the background resulting in the passing of such order in order to discover whether some kind of stigma could be inferred. On the question of mala fides, the only relevant consideration is whether the order was made for ulterior purposes or purposes other than those mentioned in the order—\textit{I. N. Saksena v. State of Madhya Pradesh}, AIR 1967 SC 1264.

\textbf{In State of U. P. v. Madan Mohan, AIR 1967 SC 1260}: (1967) 2 SCR 333; (1967) 1 SCWR 521; (1967) 1 SCJ 805; 1967 SQD 954: 19 Fac LR 262, the Supreme Court held that the tests laid down in \textit{Jagdish Mitter v. Union of India}, AIR 1964 SC 449, equally apply to the case of compulsory retirement. In that case the order of retirement was as under:

"I am directed to say that the Governor has been pleased to order in the public interest Article 463-A and Note (1) thereof of the Civil Service Regulations, the compulsory retirement with effect from September 1, 1960 of Sri Madan Mohan Nagar, Director, State Museum, Lucknow, who completed 52
years of age on July 1, 1960, and 28 years and 3 months of qualifying service on 31st May, 1960, as he has outlived his utility."

The Court held that one could easily infer stigma from the words of the above order:

In *I. N. Saksena v. State of Madhya Pradesh*, (1967) 2 SCR 496; AIR 1967 SC 1264; (1967) 1 SGWR 521; (1967) 1 SCJ 805; (1967) 2 Lab LJ 427: 15 Fac lR 56: 1567 Jab LJ 507, the Government of Madhya Pradesh issued a memorandum on February 28, 1963, raising the age of retirement from 55 to 58 years. Clause 5 of the memorandum there said that the appointing authority might require a Government servant to retire after he had attained the age of 55 years without assigning any reason. The appellant in that case was given an extension beyond the age of 55 years. He had attained the age of 55 years in the month of August, 1963. Thereafter, in the month of September, 1963, it was communicated to him that he was to retire on December 31, 1963. On November 29, 1963, a notification was issued by the Madhya Pradesh Government which was published in the Gazette on December 6, 1963, F. R. 56, was amended to that effect that the date of compulsory retirement of a Government servant, other than a Class IV employee, was the date on which he attained the age of 58 years. Only Scientific and Technical personnel might be retained in service after the age of compulsory retirement with the sanction of the competent authority subject to their fitness and suitability for work, but they should not ordinarily be retained beyond the age of 60 years. The date of retirement of a Class IV Government servant was the date on which he attained the age of 60 years. The new rule came into effect from March 1, 1963.

The most noticeable feature in the Madhya Pradesh case was that the amended F. R. 56 did not contain any power of the appointing authority to require a Government servant to retire compulsorily after the age of 55 years without assigning any reason though such a power was to be found in the order, dated February 28, 1963. It was held in *Saksena’s case* (*supra*) that F. R. 56 published on December 6, 1963 was the only rule applicable to Saksena and therefore the notice which had been given in the month of September to retire him with effect from the afternoon of December 31, 1963 could not be upheld. The implication of the Madhya Pradesh decision is that there could be an order extending the services of the Government servant by general order and if an order contained a power to retire a person after the age of 55 years without assigning any reasons such a power was valid and defensible.

The Supreme Court referred to *Jagdish Mitter’s case*, AIR 1964 SC 449, and held:

'Where an order retiring a Government servant to retire compulsorily contains express words from which a stigma can be inferred, that order would amount to removal within the meaning of Article 311. But where there are no express words in the order itself which would throw any stigma on the Government servant, we cannot delve into Secretariat file to discover whether some kind of stigma can be inferred on such research.......

"
“In the circumstances we hold that as the order does not expressly contain any words from which any stigma can be inferred, it cannot amount to an order of removal. What the appellant wants us to hold is that the mere fact that a Government servant is compulsory retired before he reaches the age of superannuation is in itself a stigma. But this is against the consistent view of the Court that if the order of compulsory retirement before the age of superannuation contains no words of stigma, it cannot be held to be a removal requiring action under Article 311.”

3. Compulsory retirement, when no punishment.

In *P. Balakotlah v. Union of India*, AIR 1958 SC 232 : 1958 SCR 1052 : 1958 SCA 209 : 1958 SCJ 451 : (1958) 1 MLJ 162, *Venkatarama Aiyar, J.*, has held that if a person had a right to continue in office either under the Service Rules or under special arguments, a premature termination of his service would be a punishment, and likewise if the order would result in loss of benefits already earned and accrued that would also be a punishment.

It is well to remember that the aforesaid announcement of the Supreme Court do negative the argument often urged that compulsory retirement in any case does not amount to dismissal or removal under Article 311 (2) because it entails no forfeiture of the rights and benefits that have already accrued.

The authorities further clarify the position that compulsory retirement, where a person had a right to continue in office, except on ground of misconduct, negligence, inefficiency or other disqualifications, is a punishment. They, however, do not hold that compulsory retirement where a public servant has no right to continue in office is also a punishment.

The earlier authorities concerning this aspect like *Shyamlal v. State of U. P.*, AIR 1954 SC 369 and *State of Bombay v. Subhagchand*, AIR 1957 SC 82 have not been dissented from. In other words, the test of the order not resulting in loss of benefits already earned and accrued is not conclusive in all cases and Article 311 (2) is attracted where the public servant who has been retired has a right to continue in the post except on grounds of misconduct.

The test, therefore, is whether a right to continue in the post except for misconduct, negligence, inefficiency or other good and sufficient cause is claimed. It follows, that when such a right is not claimed because the State has an absolute right to retire, the constitutional guarantee contained in Article 311 (2) is not attracted.

In *Shyam Lal v. State of U. P.*, AIR 1954 SC 369, the Supreme Court observed:

“The argument is that a compulsory retirement of an officer was nothing but his removal from service within the meaning of Article 311 and as Rule 4 as well as Note (1) to Article 465-A of the Civil Service Regulations sanctioned compulsory retirement without assigning any reason which, in
substance, meant without giving him any opportunity to show cause against such action being taken in regard to him, it become repugnant to Article 311 of the Constitution and, therefore, became void.

"The argument, although plausible and attractive, was nevertheless rejected by the High Court and we think it rightly did so. A brief study of the history and development of the rule now embodied in Article 311 and a consideration of the language of that Article and the relevant rules will amply confirm the correctness of this conclusion."

The Court further added:

"In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity .......... Rule 49 of the Civil Services (Classification, Control and Appeal) Rules clearly indicates that dismissal or removal is a punishment. This is imposed on an officer as a penalty. It involves loss of benefits already earned........... But an officer who is compulsory retired does not lose any part of the benefit that he has earned...........

"There is no diminution of the accrued benefit. It is said that compulsory retirement like dismissal or removal deprives the officer of the chance of serving or getting his pay till he attains the age of superannuation and thereafter to get an enhanced pension and that is certainly a punishment. It is true that in that wide sense the officer may consider himself to be punished, but there is a clear distinction between the loss of benefit already earned and the loss of prospect of earning something more.

"In the first case it is a present and certain loss and is certainly a punishment but the loss of future prospect is too uncertain for the officer may die or be otherwise incapacitated from serving a day longer and cannot, therefore, be regarded in the eye of law as a punishment."

In Union of India v. Col. J. N. Sinha and another, (1970) 2 SCC 458 : 1970 SLR 748, the petitioner was compulsorily retired by the Government of India under fundamental Rule 56 (j). It was alleged that, among other things, the lack of opportunity to show cause amounted to denial of natural justice. The High Court accepted the contention and issued a writ of certiorari. The validity of Fundamental Rule 56 (j) was not questioned before the High Court nor before the Supreme Court.

The Supreme Court, examined Fundamental Rule 56 (j) in the following words:

"Fundamental Rule 56 (j) in terms does not require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. A Government servant serving under the Union of India holds
his office at the pleasure of the President as provided in Article 310 of the Constitution. But this 'pleasure' doctrine is subject to the rules or law made under Article 309 as well as to the condition prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in A. K. Kripak and Others v. Union of India, (1969) 2 SCC 262 : AIR 1970 SC 150, 'the aim of rules of natural justice is to secure justice or to put it negatively to present 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.

'Now coming to the express words of Fundamental Rule 56 (j) it says that the appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the Government on the ground of mala fide. But that ground has failed. The High Court did not accept that plea. The same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned Rule 56 (j) is not intended for taking any
penal action against the Government servants. That rule merely embodies one of the facts of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

The Supreme Court contained to observe:

"It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment.

"In our opinion the High Court erred in thinking that the compulsory retirement involves civil consequences. Such a retirement does not take away any of the rights that have accrued to the Government servant because of his past service. It cannot be said that if the retiring age of all or a section of the Government servants is fixed at 50 years, the same would involve civil consequences. Under the existing system there is no uniform retirement age for all Government servants. The retirement age is fixed not merely on the basis of the interest of the Government servant but also depending on the requirements of the society.

"The High Court was not justified in seeking support for its conclusion from the decision of this Court in State of Orissa v. Dr. (Miss) Binapani Deli and others, (1967) 2 SCR 625 and A. K. Kraipak v. Union of India, (supra).

In State of Orissa v. Dr. (Miss) Binapani Deli, AIR 1967 SC 1269 : 1967 SCJ 339 ; 1997 SCD 551 : (1967) 25 SCA 393 : (1967) 2 SCWR 442 : (1967) 2 SCR 625 : (1967) 2 Lab LJ 266, Dr. Binapani Deli's date of birth was refixed by the Government without giving her proper opportunity to show that the enquiry officer's report was not correct. It is under those
circumstances this Court held that the order revising the date of birth was vitiated for failure to comply with the principles of natural justice. Therein the impugned order took away some of the existing rights of the petitioner.

"In A. K. Kralpak and others v. Union of India, (1969 2 SCC 262 : AIR 1970 SC 150, a committee consisting of Chief Conservator of Forests, Kashmir and others was appointed to recommend names of the officers from Kashmir Forest Service for being selected for the Indian Forest Service. The Chief Conservator of Forests, Kashmir, was one of the candidates for selection. Further it was established therein that some of the officers who competed with him had earlier challenged his seniority and consequently his right to be the Chief Conservator and that dispute was pending. Under those circumstances this Court held that there was contravention of the principles of natural justice.

"For the reasons mentioned above, we are unable to agree with the conclusion reached by the High Court that the impugned order is invalid. We accordingly allow this appeal, set aside the judgment and decree of the High Court and dismiss the writ petition. In the circumstances of the case we make no order as to costs."

The non-continuance of a ministerial servant after the age of superannuation cannot be regarded as either dismissal or removal etc. within the mischief of Article 311 (2) of the Constitution of India—AIR 1954 SC 574.

4. Rule as to age of retirement: Classification in fixing age of retirement: Validity

Constructing the provisions of Articles 14, 15 and 16 of the Constitution of India, it is clear that a Government servant is entitled to equality of treatment in respect of matters relating to employment under Article 16 (1) and that would include as pointed out by the Supreme Court in Rangachari’s case (AIR 1962 SC 36), the provisions as to salary, periodical increments, terms as to leave, as to gratuity as to pension and as to the age of superannuation. The person adversely affected is entitled to challenge an order on the ground of discrimination. But its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from other left out of the group and second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question.

In Ram Krishna Dlamia v. Justice Tendolkar, AIR 1958 SC 538, the following passage from Budhan Chowdhry v. State of Bihar, AIR 1955 SC 191, at pp. 544 was quoted:

"It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the
purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely:

(i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and

(ii) that the differentia must have a relation to the object sought to be achieved by the statute in question.

The classification may be founded on different basis, namely geographical, or according to objects or occupations or the like. What is necessary is that there must be nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decision of this Court that Article 14 condemns discrimination not only by a substantive law but also by law of procedure."

In Vairavelu v. Special Deputy Collector, AIR 1965 SC 1017 at 1027, it was observed:

"Under Article 14 the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. But this does not preclude the Legislature from making a reasonable classification for the purpose of legislation. It has been held in a series of decisions of this Court that the said classifications shall pass two tests, namely:

(i) the classification must be founded on an intelligible differentia which distinguishes persons and things that are grouped together from others left out of the group; and

(ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question."

In Ram Prasad v. State of Punjab, AIR 1966 SC 1607, it was contended that the Staff Rules contravened Article 14 of the Constitution. The contention was repelled and it was held:

"This Court has held in a series of decisions culminating in the judgment of this Court, Lachmandas v. State of Punjab, (1963) 2 SCR 333; AIR 1963 SC 222, that after the enactment of the States Reorganisation Act, 1956, different Acts in different parts of the same State could be sustained on the ground that the differentiation arises from geographical classification based on historical reasons. The contention raised by the learned counsel therefore fails."

Government's decision to retain some public servants in service after the age of retirement, if violative of Article 14.

In Bishun Narain Misra v. The State of Uttar Pradesh, AIR 1965 SC 1967; (1965) 2 SCJ 718; (1965) 2 SCA 95, retirement age was reduced from 58 years to 55 years by a notification dated 25-5-1961. A second notification issued on the same date required all the public
servants who had attained the age of 55 years to retire on December 31, 1961 except those who had attained the age of 58 years between May 25 and December 31, 1961. It was urged that if the Government decided to retain the services of some public servants after the age of retirement it must retain every public servant for the same length of time. The Court repelled the contention and held that the retention of public servants after the period of retirement depended upon their efficiency and the exigencies of public service and that the second notification of May 25, 1961 on which reliance was placed to prove discrimination was really not discriminatory, for it had treated all public servants alike and fixed December 31, 1961 as the date of retirement of those who had completed 55 years but not 58 years up to December 31, 1961. The challenge, therefore, to the two notifications on the basis of Article 14 of the Constitution of India must fail.

(See Chapter "Special Service")

5. Rules for retirement: Public interest: Validity

The question whether or not the compulsory retirement of a particular officer is in the public interest before reaching 58 the normal age of superannuation but after he has attained the age of 55 years and also after he has completed 30 years of qualifying service is not justifiable. That is a matter for the Government to decide. This view is founded on the position that under the rules, retirement can validly take place at two points of time: one at the stage when the officer has attained the age of superannuation according to the service conditions applicable to members of this service and the other at an earlier point of time prior to his attaining the normal age of superannuation. No doubt the second type of retirement is compulsory or premature retirement and may be forced on him in the public interest, but in order that this type of retirement may not operate as a punishment so as to attract the provisions of Article 311, two conditions must be fulfilled, namely that the officer should have attained an age at which he can hope to get the benefits of pension after a reasonably long span of service; and secondly that the period of qualifying service must be so reasonably fixed that premature retirement may not take place at too early a stage in his career. The validity and legality of any rule, providing for premature retirement between these two points of time, should be tested in the light of these conditions; and so long as the age of premature or compulsory retirement and the period of qualifying service for such retirement, fixed by the rule are reasonable, then the order of retirement passed under that rule after fulfilling those two essential conditions cannot be questioned merely because the retirement is stated to be in the public interest. This view finds support from a number of decisions of the Supreme Court.

In Shivacharan v. State of Mysore, AIR 1965 SC 280: (1967) 2 Lab' LJ 246, the validity of Note 1 to Rule 285 of the Mysore Civil Service Rules, 1958, was under challenge. That note provided that Government may, in special cases, require any Government servant to retire at any time after he has completed 25 years' qualifying service or on attaining 50 years of age where such retirement is considered necessary in the public interest, after giving three months' notice before he is so called upon to retire. While rejecting the contention that the said note was
void. Their Lordships observed that the only conditions to be fulfilled before Government could exercise their power to act under Rule 285 were: (i) that the Government servant concerned must have attained the age of 50 years, or (ii) that he must have completed 25 years of qualifying service. Once either of these two conditions was fulfilled then it was competent for Government to exercise their power to retire a Government servant prematurely after giving three months' notice as provided in the Note to Rule 285. Their Lordships further held that whether or not the retirement of the petitioners was in the public interest was a matter for the Government to consider. Their Lordships did not accept the petitioner's plea that the order of retirement passed in that case was arbitrary or illegal. Such a question, Their Lordships observed, may perhaps arise in a case where having fixed a proper age of superannuation, the rule compulsory retirement permits a Government servant to be retired at a very early stage of his career.

In N. V. Patta v. State of Mysore, AIR 1972 SC 2185 : 1972 Lab IC 942, the order of retirement was challenged on very similar ground as in Shivacharan's case and the only additional point urged by the petitioner was that as the order of retirement had civil consequences it was obligatory on Government to give him notice to show cause against the order proposed before it was made. In support of this, reliance was placed on State of Orissa v. Binapani Dei, (1967) 2 SCR 625 : AIR 1967 SC 1269:

There too the Government of Orissa had served the order compulsory retirement on the first respondent but the main ground of attack was that whereas according to Government records she was born on 10th April, 1910 and as such would have been due for superannuation on the 10th April, 1965, Government had made an enquiry as to her date of birth behind her back and asked her to show cause why a certain date should not be taken as the correct date of birth. The report of the enquiry officer was not disclosed to her and the first respondent was not given an opportunity to meet the evidence used against her. This was followed by Government refixing her date of birth and ordering compulsory retirement. It was observed by this Court:

"The State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim, he must be informed of the case of the State and the evidence in support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken."

With regard to the enquiry it was said that it was contrary to the basic concept of justice and cannot have any value. It was added that although the order was administrative in character it involved civil consequences and must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.

Mitter, J. after considering Binapani's case observed:

"It will be noticed at once that the facts of this case are not in pari materia with those of Binapani Dei's. Here there was
no dispute nor any claim by the appellant that he was asked to retire before he had attained the age of 50 years. All his challenge is directed to the formation of opinion by the Government that it was in the public interest to retire him. It is difficult to see how the appellant could have explained that it was contrary to public interest to retire him if his attack on the ground that the order was made arbitrarily or *mala fide* could not be be sustained. The counter-affidavit of the State definitely alleged that in forming the opinion Government had taken note of the adverse remarks in the appellant's confidential report.

"The appellant contends that if Government's action was motivated by the adverse remarks in the reports, he should have first been given notice thereof and in any event his representation against them should have been disposed of before any retirement order could have been passed on him.

"Our attention was drawn to G. S. R. 597 of the General Administration Secretariat notification of the State of Mysore dated 6th July, 1955. By the said notification the Governor of the State made a set of rules known as the Mysore Civil Services (Confidential Reports) Rules, 1965. According to Rule 3 thereof:

"In respect of every gazetted and non-gazetted officer an Annual Confidential Report shall be recorded assessing as correctly as possible such officer's physical, mental and moral suitability for his office and for promotion, his ability to apply intelligently the law and procedure prescribed to cases coming before him, his treatment of his subordinates and behaviour to his superiors and colleagues in other departments and his relations with the public'.

"The preparation and transmission of confidential reports are to be made in terms of Rule 5 which *inter alia* directs that a report was to be prepared with the greatest caution and no record or remarks shall be made lightly on the spur of the moment or based on prejudice. Under Rule 8 (1) all adverse remarks, whether through an ordinary or special report, shall be communicated to the officer concerned, unless the adverse remarks are of such a nature that the communication thereof is unlikely to result in the remedy of the defect or is considered inadvisable for any other reason. While communicating an adverse remark, the name of the officer recording the adverse remark shall not be communicated to the officer reported upon. Under Rule 9 no appeal lay against adverse remarks made in the annual confidential reports.

"Our attention was, however, drawn to a notification dated 6th February, 1970 whereby Rule 9 was altered so as to give an officer against whom adverse remarks were made a right to submit a representation on which a decision had to be taken expeditiously and communicated to him. At the
relevant time however the said amended rule was not in operation and consequently it was not open to the appellant to challenge the correctness of the adverse remarks in his confidential reports by way of appeal. As the confidential reports rule stood at the relevant time, the appellant could not have appealed against the adverse remarks and if the opinion of Government to retire him compulsorily was based primarily on the said report, he could only challenge the order if he was in a position to show that the remarks were arbitrary or mala fide.

"It is not necessary for us to examine the rules of natural justice in general but we may quote observations from a judgment of this Court in A. K. Kraipak v. Union of India, (1970) 1 SCR 457 at p. 469 : AIR 1970 SC 150, to show that the particular circumstances of a case, considered in the background of the law applicable, must be determinative on the point. There the Court said:

'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 frame-work of the law under which the enquiry is held and the condition 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.'

"In Union of India v. J. N. Sinha, (1971) 1 SCR 791 : AIR 1971 SC 40, the Court was concerned directly with the principles of natural justice in similar circumstances. There the order of retirement was based on Fundamental Rule 56(i) reading:

'Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice.'

There this Court observed:

'The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the Government on the ground of mala fides. But that
ground has failed......The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was arbitrary one. One of the conditions of the 1st respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned Rule 56(i) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facts of the pleasure doctrine embodies in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rules. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer ... While a minimum service is guaranteed to Government servant, the Government is given power to energise its machinery retiring those who in its opinion should not be there in public interest.'

"The Court further noted that a compulsory retirement was bound to have some adverse effect on the Government servant but such rule of retirement could only be acted upon after the officer had attained the prescribed age and further a compulsorily retired Government servant did not lose any of the benefits earned by him till the date of his retirement.

"All the above observations apply to the facts of the appellant's case. But the appellant seeks to distinguish that case because of the use of the expression 'absolute rights' in F. R. 56(i), Rule 285 not being so emphatically worked. But that in our opinion makes no difference. Both rules give the Government the same or similar right: so long as the right is not qualified, it must be held to be absolute and no distinction can be made between Rule 285 and F. R. 56(i) on that ground.

"The last contention of the appellant that in the normal course of things he would have been superannuated at the age of 55 and would have reached the top position in the department the deprivation whereof was a civil consequence of the order, does not bear scrutiny. If the confidential reports could be acted upon, his promotion could be withheld even if he was not made to retire compulsorily. If on the basis of the confidential reports he is asked to retire in compliance with that rule, he cannot complain because of loss of position which he might have attained if there were no adverse remarks against him."
6. **Fundamental Rule 56 (j) : Validity : Adverse entries in Confidential report : Whether an opportunity to be heard to be given**

In **R. L. Butail v. Union of India**, (1970) 2 SCC 876 : 1970 SLR 926, the appellant, an electrical engineer, began his career in the Simla Electricity Supply Undertaking and worked there from 1934 to 1949. In 1949, he was appointed as a Project Officer in the Central Electricity Commission, now designated the Central Water and Power Commission (Power Wing). He was confirmed in that post in 1950 and later on was promoted to the post of a Director, in which post he was working since 1955. He was confirmed in that post by an order, dated April 15, 1963, with retrospective effect from August 5, 1960.

By a communication, dated September 16, 1965, he was informed of an adverse entry in the annual confidential report for the year 1964. The entry reads as follows:

"""""A 'Problem Director' in that it falls to the inevitable lot of some member to have him under his charge and manage as far as practicable."""

"""""I agree with the above even though the officer is intelligently and capable of good work if he wishes to apply himself wholeheartedly."

By another communication, dated July 7, 1966, the appellant was informed that an adverse entry had been made in his confidential report also for the year 1965. That entry reads as follows:

""""His work during the year was below the average, considering his senior position in the Directors' Cadre. Shri Butail can do good work if he like(s) to do so."

On receiving these communications the appellant made representations in which he asked for specific instances on which adverse opinions about him had been recorded. These representations were, however, rejected. In the meantime, the question of filling in the post of Director (Selection Garde)/Deputy Chief Engineer arose. According to the appellant, his posts as also certain other higher posts including that of a member were promotion posts. Being the only permanent Director amongst the candidates, he was the seniormost of them all and claimed that he was for that reason entitled to be promoted. Both in 1964 and 1965, however, he was overlooked by the Departmental Promotion Committee and the Union Public Service Commission.

On May 12, 1967, he was served with an order compulsorily retiring him from service with effect from August 15, 1967, on completion of the age of 55 years. The order was made under Rule 56 (j) of the Fundamental Rules made under Article 309 of the Constitution.

The appellant filed three writ petitions Nos. 608, 507/66 and 1550/67 in the High Court of Punjab challenging the validity of the said entries and the said order of compulsory retirement and praying that the said two entries should be expunged and proper entries made, that the orders declaring him unfit for promotion and the said order of compulsory
retirement should be quashed. The High Court dismissed all the writ petitions. Hence these appeals.

The appellant contended (1) that the said two confidential reports were contrary to the rules inasmuch as they did not set out specific instances justifying them; (2) that they were placed before the Departmental Promotion Committee as also the Public Service Commission before they were communicated to him, and therefore, before he could make representations against them, that the consequence was that the said two bodies had before them the said reports only and were not aware of his objections to them; (3) that the refusal of the Departmental Promotion Committee to recommend him for the higher posts and the Public Service Commission to select him, based on such invalid reports, was also invalid; (4) that making an adverse entry which resulted in withholding promotion to him amounted to a penalty; therefore, an adverse entry which has such a result would be Government by Article 311 and could not be made unless before making it the concerned Government servant was given a reasonable opportunity of being heard; (5) that, in any event, making such an entry without first holding a departmental inquiry and hearing such a Government servant was contrary to natural justice; (6) that his work as a Director was satisfactory, that the said entries were contrary to facts and that no reasonable person would have arrived at such adverse conclusions as recorded in the entries; (7) that the said entries were made mala fide; and (8) that the higher posts to which he was eligible were promotion and not selection posts at the relevant time, that they were made selection posts only in November, 1965 and therefore, being the only permanent Director amongst all the rest of the Directors, he was entitled by his seniority to the higher post in preference to others. Even assuming that those posts were at the relevant time selection posts, he being a permanent Director, his case could not be referred to the Public Service Commission.

Regarding the order compulsorily retiring him, the contention was that Fundamental Rule 56 (j) was invalid, that in any event the order was not made in public interest as his work as a Director was satisfactory and was therefore contrary to the rule and also Articles 14 and 16 of the Constitution.

The question raised in regard to the impugned confidential entries was thus three-fold. Firstly, whether the reporting authority was required to give specific instances to enable the appellant to make an adequate representation. Secondly, whether the reporting officer was bound to hear the appellant before deciding to make the entry. And thirdly, whether such an entry amounts to censure, one of the penalties provided by Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. That rule enumerates several penalties which can be imposed on a Government servant and amongst minor penalties there set out are (i) censure, and (ii) withholding a promotion. Compulsory retirement is under the rule one of the major penalties.

While considering the above question the Supreme Court observed:

"In considering this question we may at the very outset notice that the rules regarding preparation and maintenance of

S.L.I.-60"
confidential reports are by way of departmental instructions and are neither statutory rules nor rules made under Article 309. Prior to 1961 these instructions were contained in an office order, dated July 28, 1955, issued by the Central Water and Power Commission (Water Wing). We do not know whether they also applied to the Power Wing. But for the present we will assume that they applied to the Power Wing. Rule 2 of these rules sets out the object of maintaining confidential reports, viz., to ensure that promotions were made with the utmost fairness to the officers on the one hand and with due regard to the interest of the public service on the other. The rules, therefore, enjoin upon officers at each level to keep a proper watch over the work and conduct of those below them and provide training and guidance to such officers whenever necessary. For this purpose a continuous record of service in the form of confidential reports of all the officers working in the Commission was necessary. Rules 3 and 7 indicate that was required was a general assessment of work for the whole of the year, the conduct of the officer concerned, his efficiency, ability, initiative or lack of it, etc. and not a judgment with reference to any specific incident. Rule 7 in express terms provides that an adverse entry relating to a specific incident should not ordinarily find place in a character roll, unless, in the course of departmental proceedings a specific punishment such as censure has been awarded on the basis of such an incident. Where, however, a reporting officer feels that though the matter is not important enough to call for departmental proceedings, it is important enough to be mentioned specifically in the confidential report, he should, before making such an entry, satisfy himself that his own conclusion has been arrived at only after a reasonable opportunity has been given to the officer reported to present his case relating to the incident. The rules also provides that while communicating adverse remarks to the officer concerned the substance of such remarks and not their actual wordings need be conveyed.

"On March 3, 1961, an office order was issued by the Commission which superseded all instructions issued previously on the subject of maintenance of confidential reports. This order applied to all officers of the Commission, gazetted and non-gazetted, and also to its subordinate offices. The order once again recites the importance of preparing and maintaining confidential reports. Rule 4 requires that such a report should contain an appreciation of the general qualities of the Government servant such as integrity, intelligence, keenness, industry, tact, attitude towards his superiors and subordinates, relations with fellow employees, work-attitudes, etc. and also 'a summing-up' in general terms of the Government servant's good and bad qualities and a categorisation or rating such as 'Outstanding', 'Very good', 'Good', 'Fair', or 'Poor'. Such a categorisation is, however, not necessary in the case of officers of or above the rank of Superintending Engineer. Rule 10 expressly provides that the reporting
authority is not required to give any specific instances of his good or bad work or conduct upon which the opinion is based. Rule 28 provides that while communicating an adverse remark to the concerned Government servant the substance of such report and not its actual wording need be conveyed. That is because the primary object of such communication is, firstly, that the concerned Government servant may remedy his defects, and secondly, that it should serve as a timely warning to the Government servant of his defects which might otherwise deprive him of chances of promotion in future. Rule 32 entitles to a Government servant to make a representation. Such representation would be examined by an officer superior in rank to the reviewing officer. That officer would either reject the representation or alter the remark where he thinks necessary and in the event of his finding that the remark is actuated by malice or is incorrect or unfounded, he would expunge it. Rule 34 provides that adverse entries relating to any specific incident will not ordinarily find place in the confidential record. But, there a warning is issued as a result of any specific incident, a copy thereof will ordinarily be kept in the personal file of the Government servant concerned. In that case he has to make a specific order to that effect. But before making such an order he must give to the concerned Government servant a reasonable opportunity to present his case relating to the incident. In case departmental proceedings are instituted as a result of such an incident and a formal punishment, such as censure, is awarded, a copy of the order of such punishment should invariably be placed in the confidential record of the Government servant.

“These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a Government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation, etc. arise. They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the Government servant. In such a case the officer making the order has to give a reasonable opportunity to the Government servant to present his case. The contention, therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of that omission the appellant could not make an adequate representation and that therefore the confidential reports are vitiated.

“Further, the rules do not provide for nor require an opportunity to be heard before any adverse entry is made. The contention that an enquiry would be necessary before an adverse entry is made suffers from a misapprehension that such an entry
amounts to the penalty of censure set out in Rule 11 of the Central Civil Services Classification, Control and Appeal Rules. The entry is made under the office order of 1961 set out above by way of an annual assessment of the work done by the Government servant and not by way of a penalty under the said Central Civil Services Rules. True it is that such remarks would be taken into consideration when a question such as that of promotion arises and when comparative merits of persons eligible for promotion are considered. But then, whenever a Government servant is aggrieved by an adverse entry he has an opportunity of making a representation. Such a representation would be considered by a higher authority, who, if satisfied, would either amend, correct or even expunge a wrong entry, so that it is not as if an aggrieved Government servant is without remedy. Making of an adverse entry is thus not equivalent to imposition of a penalty which would necessitate an enquiry or the giving of a reasonable opportunity of being heard to the concerned Government servant. This part of the appellant's grievance, therefore, has to be rejected."

As regards allegation of *mala fides*, the Court held:

"In Writ Petition 1550 of 1967 relating to the order of compulsory retirement the appellant had stated that in order that this allegation may be properly appreciated he would set out in one consolidated statement, Ex. G to that petition, all the incidents on which herelied upon to prove his case of *mala fides*. The allegations collected in that exhibit briefly stated are as follows: (i) that he was declared unfit for promotion to favour Aswath in spite of a warning having been given to him for final irregularities, that he said Aswath resigned and left for the U.S. A. as soon as the appellant took resort to the Court and that some higher authorities were also involved in those irregularities; (2) that though the Promotion Committee met in 1963 no promotions were recommenced; that this was 'presumably' done because Aswath could not then be promoted on account of the said warning; (3) that there was no adverse confidential report against the appellant for 1963; therefore, when the Promotion Committee met in 1964, his grading could not be reduced. Yet, he was superseded, inspite of his being the only permanent Director, by three officers who had not been confirmed as Directors. 'Presumably' he was declared unfit for promotion as the said Aswath did not get a grading higher than 'good'; that the post of Member was filled in by direct recruitment and not by promotion 'presumably' because the Promotion Committee was prejudiced against him as he had taken recourse to the Court and desired that he should be superseded by Aswath; (5) that the appellant was desirous of ascertaining whether those who made and confirmed adverse entries against him were also involved in the said alleged financial irregularities and whether they sat on the Promotion Committee which
declared him unfit for promotion; (6) that as he was superceded by three officers who were not confirmed as Directors he applied for the reasons for withholding promotion from him. Instead of furnishing those reasons the appellant was given threats and a transfer order which had the effect of his having to work under Aswath, the said two adverse reports and finally the order of compulsory retirement; (7) that though he called for the files relating to the said transfer orders to ascertain if he had been shown responsible for the failures of the reporting officers, V. Venugopalan, their production was refused on the plea of privilege; (8) that in 1958, the appellant complained against the Administrative Officer, one Dhawan, and demanded a disciplinary enquiry against him, that no action was taken against that officer and the appellant 'feared' that some grave irregularities were made in that case 'and the same are being used to prejudice the authorities against him.' He called for the connected file but its production was refused on the ground of privilege; (9) that in the matter of Dhawan, the appellant's personal assistant, one Nidhan Singh, was asked to disclose the evidence which the appellant had collected against Dhawan, that Nidhan Singh was victimised for his refusal to do so, and therefore, successfully filed two writ petitions, that while one of them was pending, one K. P. S. Nair and the said Venugopalan asked the appellant to file false affidavits which the appellant refused; (10) that the work of the appellant in each of the directorate where he worked was satisfactory though the volume of work was increased and the minimum essential staff was not made available to him, that though there were no causes for complaint against him, the appellant was served with the order compulsorily retiring him; (11) that the adverse confidential report for 1964 was put up before the Promotion Committee months before it was communicated to him resulting in withholding of his promotion; (12) that under the regulations made under Article 320 of the Constitution the appellant's case for promotion had not to be placed either before the Promotion Committee or the Public Service Commission. The President's order declaring the superior posts for which the appellant was eligible as selection posts was made months after the selection by those bodies. The said posts not being selection posts then, if the appellant was to be denied promotion a departmental enquiry was necessary under Rule 16 of the Central Civil Services Rules, 1965; and (13) that while the present writ petitions, were still pending, he was asked to vacate the premises occupied by him and the allotment thereof in his favour was cancelled.

"In the counter-affidavit filed by the Under-Secretary to the Ministry of Irrigation and Power it is denied that Aswath was promoted to the post of the Member, the respondent's cas: being that the post was a selection post and Aswath was appointed in that post on the basis of an all-India selection by the Union Public Service Commission. The selection was
made on merits with due regard to seniority and not seniority alone, and the appellant was not appointed to that post because the Commission did not find him fit enough for that post. The counter-affidavit denied that Aswath had committed any financial irregularities or that he had resigned or left India because of any such alleged irregularities. He resigned and went to U. S. A. to take up a more remunerative post. Barring a bare allegation, no materials are brought on record by the appellant to prove the alleged irregularities by Aswath or his having resigned and left this country on account of any such alleged irregularities or of any action having been taken against him. There is also no material on record to justify the allegation that 'some higher authorities' were also involved in those alleged irregularities. Allegations 2, 3 and 4 are merely conjectures on the appellant's part and are not based on facts. There is no material on record to show that Aswath was given any warning or that the Promotion Committee did not recommend any promotions in 1963 because, in consequence of such an alleged warning, Aswath could not be promoted in that year. The counter-affidavit concedes that there was no adverse confidential report against the appellant for the year 1963. It also concedes that amongst the Directors the appellant was the only confirmed Director. The respondent's case, however, was that promotions to the higher posts, such as that of the Director (Selection Grade), Deputy Chief Engineer, Member, etc., were made on merits with due regard to seniority and not seniority alone, as those higher posts were selection posts. Appointments to those posts were made on the basis of recommendations by the Promotion Committee, who made such recommendations after considering the comparative merits of persons who were eligible. The fact that the appellant was senior to the rest of the Directors did not, therefore, mean that he had for that reason alone to be recommended. The allegation that the Promotion Committee was prejudiced against him because he had taken resort to the Court cannot be seriously taken. There is no averment as to who amongst the members of that Committee were prejudiced against him as alleged, or whether and how they were affected by his having gone to the Court. Allegation (5) is obviously irrelevant on the question of *mala fides* and the demand made there was actuated by a desire to have a fishing inquiry into the records. There is nothing on record which would cast any doubt that the members of the Promotion Committee did not make their recommendations on the basis of comparative merits of the candidates before them, whose records of service were before the Committee. As regards the allegations about the transfer orders, the respondents' reply was that they were made according to the administrative exigencies. There is no evidence on record to show that they were actuated by any malice or any such other motive. It may be that the appellant might have felt falling to have to work under Aswath after Aswath had been appointed to the higher post. It is possible to take the view that such a
position should, if possible, have been avoided. But the fact that the appellant would have to work under Aswath by itself cannot necessarily mean that that particular transfer order was made mala fide. Allegation (7) is again sheer conjecture. Further, it is founded on an assumption that there were failures on the part of the said Venugopalan and that an attempt was made to shift those failures on to the appellant. Regarding the case of Dhawan, it was conceded that in 1958 the appellant had asked for a disciplinary inquiry against that officer. No action, however, was taken against him presumably because no case was made out justifying such an enquiry. The allegation that the appellant 'feared that some grave irregularities have been made in this case' (i.e., in the matter of Dhawan) and that the same were new being used against him is again a matter of speculation on appellant's part and is, therefore, no evidence on which the question of mala fides can be decided. Allegation (9) was denied by K. P. S. Nair and Venugopalan in their respective affidavits. Beyond the assertion by the appellant and the denial by Nair and Venugopalan there is no independent material on which one can judge the truth or otherwise of the allegation. In the proceedings referred to there, Dhawan had filed an affidavit denying that Nidhan Singh was asked to disclose the evidence collected by the appellant against him or that Nidhan Singh for his refusal to do so was victimised. There is no material to show that Dhawan's said affidavit was disbelieved in those proceedings. As regards allegation (10), the appellant's own estimate of his work cannot be a basis for any decision. According to the counter-affidavit, the staffing of each directorate in the Commission depended on the available staff and the exigencies of work in each department. Even assuming that the appellant was not given an adequate staff, it does not follow that that was done with any mala fide object. Allegation (11) has already been considered, and therefore, we need not repeat what has been earlier stated. As regards allegation (12), we have already referred to the letter, dated March 15, 1952, stating that the posts to which the appellant was aspiring had been declared selection posts by the President. There is nothing on record to show that the contents of that letter were not correct or that the President had not validly made a declaration. If those posts were thereupon made selection posts and the selections for them were to be made on the basis of an all-India selection, it is difficult to understand the appellant's case that because he was a confirmed Director, his case need not have to go before the Promotion Committee and the Public Service Commission. In any event, consideration of his case, as also the cases of others by the Promotion Committee has no relevance so far as the case of mala fides is concerned. Further, there is nothing to show that the reporting officer and the reviewing authority, who were responsible for the confidential reports relating to the appellant, were members of the Promotion Committee or were in any event responsible for the appellant not having been recommended. The last
allegation that the demand from him of the premises allotted to him was made because of anumus against him has no relevance to the case of mala fides, as that demand must have been made in the usual course after the order of compulsory retirement was passed. Obviously, he could not be allowed to retain possession of those premises once he was made to retire from service.

"As earlier stated, some of the allegations as to mala fides are matters of conjectures and speculation and some are vague in the sense that they do not specify who the particular officers were who made five adverse entries against him, as during the years 1955 to 1965 there were various officers who as part of their duty had to make assessment of the appellant's work and record such assessment in his confidential reports. Reading the material on record one cannot help forming an impression that the appellant had entertained a high estimate of the work done by him, was piqued by his not having been recommended and selected for the higher posts to which he believed he had become entitled and began since then to nurse an obsessed feeling of being prosecuted by all who were above him. In view of the reasons aforesaid, we are of the view that he has not been able to make out a case of mala fides in spite of his long and detailed argument before us.

"As stated earlier, W. P. of 1550 of 1967 challenged the validity of the order by which the appellant was compulsorily retired from service with effect from August 13, 1967, when he completed the age of 55 years. The order was admittedly passed under Rule 56 (j) of the Fundamental Rules, as amended by Fundamental (Sixth Amendment) Rules, 1965. Clause (a) of that rule provides that, except as otherwise provided in the rule, every Government servant shall retire on the day he attains the age of 58 years. Clause (d), however, authorises the Government to grant extension of service up to the age of 60 years, provided such extension in public interest and the grounds therefor are recorded in writing.

"The Office Memorandum, dated July 10, 1966, issued by the Ministry of Home Affairs provides (1) that six months before a Government servant attains the age of 55 years, his case should be reviewed and a decision taken whether or not his retention in service beyond the age of 55 years is in public interest and (2) that once a decision is taken to retain him beyond the age of 55 years, such Government servant would continue in service automatically till he attains the age of compulsory retirement, i.e., 58 years of age. It further provides that if the appropriate authority considers that retention of a Government servant beyond the age of 55 years is not in public interest, such authority must take necessary action to serve three months' notice in terms of clause (j) of F. R. 56. That the requisite notice in terms of clause (j) of F. R. 56 was served on the appellant is not in dispute. In Union of India v. Col. J. N. Singha, (1970) 2 SCC 458, this Court stated that F. R. 56 (j) in express terms confers on the appropriate
authority an absolute right to retire a Government servant on his attaining the age of 55 years if such authority is of the opinion that it is in public interest so to do. The decision further states:

‘If that authority bona fide forms that opinion the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision....’

“The affidavit in reply by the respondents, dated 6th February, 1968, in clear terms avers that before passing the impugned order the appropriate authority, in accordance with the said Office Memorandum of the Ministry of Home Affairs, reviewed the case of the appellant and come to the conclusion that it was in public interest that he should be compulsorily retired on his attaining 55 years of age. The affidavit also avers that the appropriate authority had ‘carefully considered all relevant factors relating to the case of the petitioner (the appellant) and came to the definite opinion that it was not in the public interest to retain the petitioner in service beyond the date on which he attained the age of 55 years’. In their reply —affidavit, dated 10th July, 1967, in W. P. 1550 of 1967— it is further stated that before the said decision was reached, the appellant’s entire service record was considered including his confidential reports, that where such reports were adverse they had been earlier communicated to him from time to time, that the appellant had made representations against them to the competent authority and even personal interviews before superior officers had been granted to him to vindicate his point of view. It was after all this had been done and the confidential reports had remained unaltered that the appropriate authority considered his entire record of service and then reached the conclusion that F. R. 56 (j), should be resorted to. It may well be that in spite of the work of the appellant being satisfactory, as he claimed it was, there may have been other relevant factors, such as the history of the appellant’s entire service and confidential reports throughout the period of his service, upon which the appropriate authority may still decide to order appellant’s retirement under F. R. 56 (j).

Further, there is nothing to show that the impugned order was not in public interest. As aforesaid, Col. J. N. Sinha’s case (supra) clearly lays down that the question as to the correctness of such a decision by the appropriate authority, provided it is bona fide, would not be gone into by this Court. We have already negatived the plea of mala fides raised by the appellant. Consequently, a plea of lack of bona fides can hardly be entertained. Likewise, the plea that the appropriate authority had not applied its mind must also fail in view of the clear averments.
made in that regard in the affidavits cited earlier, no reason having been adequately shown to discard those statements as untrue or otherwise unbelievable. That being the position, we are constrained to come to the conclusion that the appellant has failed to make out his case in any one of his three writ petitions.”

7. Right of Government to continue the employee in service pending enquiry : Rule : Validity of.

In S. Pratap Singh v. State of Punjab, AIR 1964 SC 72, the question was whether the State was competent to frame Rules which entitled the Government to extend the the services of a Government servant after he had reached the age of compulsory retirement and expressed his willingness to retire, for the purpose of taking disciplinary action against the servant. In this case the servant had obtained leave preparatory to retirement but subsequently orders were passed by the Government, (1) revoking the leave he had originally been granted and recalling him to duty, (2) simultaneously placing him under suspension pending the result of an enquiry into certain charges of misconduct, and (3) ordering a departmental inquiry against him. The legality of these orders were challenged by the appellant in the petition that he filed in the High Court.

The rule mainly involved in the case was Rule 3.26 (d) of the Punjab Civil Service Rules, 1959. The rule is reproduced below:

Rule 3.26 (d)—“A Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge is concluded and a final order is passed thereon.”

Rule 3.26 (d) simply provides that the service which the Government servant took up voluntarily and on conditions as be laid down by the relevant rules would continue in certain circumstances even though the Government servant has attained the age of superannuation.

The Supreme Court considered the above rule and held that the rule did not infringe the fundamental rights of the Government servant as a citizen of India under Articles 19 and 23 of the Indian Constitution. As regards infringement of Article 19 (1) (f) and (g), the Court said that any restriction the rule imposed on any alleged fundamental right under clauses (f) and (g) of Article 19 was a reasonable restriction in the interest of the general public. The appellant also contended that Article 23 of the Indian Constitution was violated but the Supreme Court repelled the contention and held that the services to be rendered by the Government servant subsequent to such an age, in view of Rule 3.26 (d), was in no sense a service which could be equated with the expression “begar” or “forced labour” in Article 23. The Court pointed out that the Government servant was not forced to do any work, that he remained under suspension and did not work, and that even if it be assumed that the retention in service of the Government servant, in view of the provisions of Rule 3.26 (d), could come within the expression “forced labour” this rule would be valid in view of Article 23(2) which provided that nothing in that Article shall prevent the State from imposing compulsory service for public purposes. The
Court further pointed out that such retention would be for a public purpose as it was in the larger interests of the efficiency of the services that a Government servant should remain within the control of the Government so long as the departmental enquiry against him on a charge of misconduct was not concluded and final orders were not passed.

8. Rules fixing no minimum service period for retirement: Validity

In Moti Ram Deka v. N. E. Frontier Railway, AIR 1964 SC 600, the Supreme Court held that if any rule permitted the appropriate authority to retire compulsorily a civil servant without imposing a limitation in that behalf that such civil servant should have put in a minimum period of service, that rule would be invalid and the so-called retirement ordered under the said rule would amount to removal of the civil servant within the meaning of Article 311(2).

In Ram Prasad v. State of Punjab, AIR 1966 SC 1607, Rule 27 of the Staff Rules was on the anvil. The Supreme Court quoted the following passage from Moti Ram Deka's case and held that the Rule did not violate the Constitutional guarantee of Article 311 of the Constitution:

"The next decision in the same volume is the State of Bombay v. Saubhagchand M. Doshi, 1958 SCR 571 : AIR 1957 SC 852. This was a case of compulsory retirement under Rule 165 A of the Bombay Civil Services Rules as amended by the Saurashtra Government. In so far as this case dealt with the compulsory retirement of a civil servant, it is unnecessary to consider the rule in question or the facts relating to the compulsory retirement of the civil servant. It is of interest to note that in dealing with the question as to whether compulsory retirement amounted to removal or not, the tests which were applied were in regard to the loss of benefit already accrued and stigma attached to the civil servant. It is, however, significant that in considering the objection based on the contravention of Article 311 (2), Venkatarama Aiyar, J., took the precaution of adding that 'question of the said character could arise only when the rules fix both an age of superannuation and an age for compulsory retirement and the services of a civil servant are terminated between these two points of time. But where there is no rule fixing the age of compulsory retirement, or if there is one and the servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Article 311(2). It would be noticed that the rule providing for compulsory retirement was upheld on the ground that such compulsory retirement does not amount to removal under Article 311(2), because it was another mode of retirement and it could be enforced only between the period of age of superannuation prescribed and after the minimum period of service indicated in the rule had been put in. If, however, no such minimum period is prescribed by the rule of compulsory retirement, that according to the judgment, would violate Article 311(2) and though the termination of servant's services may be described
as compulsory retirement, it would amount to dismissal or removal within the meaning of Article 311(2). With respect, we think that this statement correctly represents the true position in law."

The matter again came up for consideration before the Supreme Court in T. S. Makand v. State of Gujrat, (1969) 2 SCC 120 : 1969 SLR 572. In that case the appellant had joined the service of the erstwhile State of Junagadh on August 1, 1934. The State merged into the State of Saurashtra on January 20, 1949. The appellant continued to remain in the service of that State having been confirmed as an Executive Engineer on September 24, 1956. On the merger of Saurashtra in the new bilingual State of Bombay on November 1, 1956, the appellant was absorbed in the service of the said State. On the bifurcation of the State of Bombay on May 1, 1960, he was assigned to the State of Gujrat and was absorbed as a permanent Executive Engineer there. On October 12, 1961, the State of Gujrat made in order retiring the appellant from the service with effect from January 12, 1962. On that date he had not attained the age of 55 years but he was about 53 years old. This order was made in exercise with effect from January 12, 1962. On that date he had not attained the age of 55 years but he was about 53 years old. This order was made in exercise of the powers conferred by Rule 161 of the Bombay Civil Service Rules, 1959. The order of retirement was challenged by the appellant by means of a writ petition which was dismissed.

When the appellant was in the service of the erstwhile State of Junagadh his conditions of service were governed by the Junagadh State Pension and Parwashi Rules which had been made by the ruler of the State who exercised sovereign legislative powers. According to those rules the age of superannuation was 60 years. Before the inclusion of the Junagadh State in the State of Saurashtra the Rajpranukh had promulgated an Ordinance called the Saurashtra State Regulation of Government Ordinance, 1948. By section 4 of that Ordinance all the laws in force in the covenating States prior to their integration were continued in force in the State of Saurashtra until repealed or amended under section 5. Notwithstanding this the Saurashtra Government adopted and applied the Bombay Civil Service Rules which were then in force in the State of Bombay by an order dated September 23, 1948. The Supreme Court in Bholanath J Thakur v. State of Saurashtra, AIR 1954 SC 680, held that the rules as regards the age of superannuation which prevailed in the covenating State which in that case was the State of Wadhwan continued to govern those Government servants who had come from that State and had been absorbed in the services of the State of Saurashtra. In view of that decision the State of Saurashtra made the Saurashtra Covenating State Servants (Superannuation Age) Rules, 1955, hereinafter called the "Saurashtra Rules", in exercise of the power conferred by Article 309 of the Constitution. Rule 3 (i) provided:

"A Government servant shall, unless for special reasons otherwise directed by Government, retire from service on his completing 55 years of age."

After the integration of the Saurashtra State into the State of Bombay a resolution was passed by the Government on January 7,
1957 applying the old Bombay Civil Service Rules to Saurashtra area. On July 1, 1939, the Bombay Civil Service Rules, 1959, herein-after called the "Bomby Rules" were promulgated under Article 309 of the Constitution. Clause (c) (2) (ii) (1) of Rule 161 is as follows:

"Except as otherwise provided in this sub-clause, Government servants in the Bombay Service of Engineers, Class I, must retire on reaching the age of 55 years, and may be required by the Government to retire on reaching the age of 50 years, if they have attained the rank of Superintendent Engineer."

It was under this rule that the order retiring the appellant was made.

In the High Court the writ petition filed by the appellant was heard and disposed of with two other similar petitions in which identical questions had been raised. A number of points were raised in the High Court but it was considered unnecessary by the Supreme Court to refer to them because on view of the Supreme Court the questions on which the appeal could be disposed of were only two: (1) whether the appellant was governed by the Saurashtra Rules or the Bombay Rules, and (2) even if the Saurashtra Rules were applicable could the retirement of the appellant be ordered before he had attained the age of 55 years. The High Court examined the provisions of section 115 (7) of the States Reorganisation Act, 1956. It is provided thereby that nothing in the section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State. The proviso lays down that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) of section 115 shall not be varied to his disadvantage except with the previous approval of the Central Government. The case of the appellant fell within the proviso and it had, therefore, to be determined whether the conditions of service applicable to the appellant immediately before the appointed day which admittedly were contained in the Saurashtra Rules had been varied to his disadvantage, and if so, whether the approval of the Central Government had been obtained. It was conceded before the High Court by the Advocate General, who appeared for the State, that no previous approval of the Central Government had been obtained to vary the conditions of service of those public servants who were serving in the State of Saurashtra until November 1, 1956. The High Court in this situation proceeded to decide whether by the application of Rule 161 of the Bombay Rules the conditions of service of the appellant contained in the Saurashtra Rules had been varied to his disadvantage. It was argued on behalf of the appellant that the expression "unless for special reasons otherwise directed by Government" in Rule 3 (i) of the Saurashtra Rules provided for extension of the age of superannuation beyond 55 years and not for reduction thereof. The Advocate General had argued that what was meant by the aforesaid words was that Government could, for special reasons, retire a Government servant before he had attained the age of 55 years which was the normal superannuation age. If that was so Rule 161(c) (2) (ii) (1)
of the Bombay Rules could not be regarded as having varied the conditions of service contained in the Saurashtra Rules to the disadvantage of the Government servants. The High Court was of the view that while framing the Saurashtra Rules the draftsmen who must have been well aware of the then Bombay Civil Service Rules which were in the same terms as Rule 161 of the Bombay Rules could not have framed the clause in such manner as to introduce an element of discrimination between Executive Engineers who had been absorbed from a Covenanting State and those who had been appointed or recruited directly by the State Government. In the opinion of the High Court even under the Saurashtra Rules retirement could be ordered before a person had attained the age of 55 years. It was, therefore, held that the conditions in Rule 161 (c) (2) (ii) of the Bombay Rules had not been shown to be less advantageous or disadvantageous to the appellant than the conditions in Rule 3(i) of the Saurashtra Rules by which the appellant was governed until November 1, 1956. In this manner the proviso to section 115(7) of the States Reorganisation Act, 1956 did not stand in the way of the applicability of the Bombay Rules.

The Supreme Court did not concern with the view of the High Court and laid down:

"Rule 3(i) of the Saurashtra Rules, if construed or interpreted in the manner in which it has been done by the High Court, would bring it into direct conflict with the law laid down by this Court in Motil Ram Deka, etc. v. General Manegar, N. E. F. Railways Maligaon, Pandu, etc., (1964) 5 SCR 683, which is a judgment of a Bench of seven judges of the Court. One of the matters which came up for consideration without fixing the minimum period of service after which the rule could be invoked. According to the observations of Venkatarama Ayyar, J., in the State of Bombay v. Subhagchand M Doshi, 1958 SCR 571, the application of such a rule would be tantamount to dismissal or removal under Article 311(2) of the Constitution. There were certain other decisions of this Court which were relevant on this point, viz., P. Balakotaiab v. The Union of India and others, 1958 SCR 1052 and Dalip Singh v. The State of Punjab, (1961) 1 SCR 88. All these decisions were considered in Motil Ram Deka's case (Supra) and the true legal position was stated in the majority judgment at page 726 thus:

".....We think that if any Rule permits the appropriate authority to retire compulsorily a civil servant without imposing a limitation in that behalf that such civil servant should have put in a minimum period of service, that Rule would be invalid and the so-called retirement ordered under the said Rule would amount to removal of the civil servant within the meaning of Article 311 (2)."

"In Gurdev Singh Sidhu v. State of Punjab and another, (1964) 7 SCR 587, it was pointed out that the only two
exceptions to the protection afforded by Article 311(2) were,—
(1) where a permanent public servant was asked to retire on the ground that he had reached the age of superannuation which was reasonably fixed; (2) that he was compulsorily retired under the Rules which prescribed the normal age of superannuation and provided a reasonably long period of qualified service after which alone compulsory retirement could be valid. The basis on which this view has proceeded is that for efficient administration it is necessary that public servants should enjoy a sense of security of tenure and that the termination of service of a public servant under a rule which does not lay down a reasonably long period of qualified service is in substance removal under Article 311(2). The principle is that the rule relating to compulsory retirement of a Government servant must not only contain the outside limit of superannuation but there must also be a provision for a reasonably long period of qualified service which must be indicated with sufficient clarity. To give an example, if 55 years have been specified as the age of superannuation and if it is sought to retire the servant even before that period it should be provided in the rule that he could be retired after he has attained the age of 50 years or he has put in service for a period of 25 years.

"Now Rule 3 (i) of the Saurashtra Rules will have to be declared invalid if the expression 'unless for special reasons otherwise directed by Government' is so construed as to give a power to order compulsory retirement even before attaining the age of 55 years. It is well-known that a law or a statutory rule should be so interpreted as to make it valid and not invalid. If this expression is confined to what was argued before the High Court, namely, that it gives power to the Government to allow a Government servant to remain in service even beyond the age of 55 years for special reasons the rule will not be rendered invalid and its validity will not be put in jeopardy. So construed it is apparent that the appellant could not have been retired compulsorily under the Saurashtra Rules before he had attained the age of 55 years. By applying the Bombay Rule his conditions of service were varied to his disadvantage because he could then be compulsorily retired as soon as he attained the age of 50 years. As the previous approval of the Central Government was not obtained in accordance with the proviso to section 115(7) of the States Reorganisation Act, 1956, the Bombay Rule could not be made applicable to the appellant.

"Counsel for the State pressed us to look into certain documents for the purpose of finding out whether prior approval of the Central Government was obtained in the matter of varying the conditions of service of the appellant by applying the Bombay Rules. But none of these documents were referred to before the High Court and in the presence of a clear concession by the learned Advocate General we see no justification for acceding to such a request."
9. Permission to retire: Government servant can change his mind subsequently

It is well-settled by a decision of the Supreme Court in Jai Ram v. Union of India, AIR 1954 SC 584, that it is open to a servant who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained. The relevant observations in that case are contained in para 7 of the judgment and they are as follows:

"It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so long as he continues in service and not after he has been terminated."

10. Retirement due to change of age of superannuation

Article 311 of the Indian Constitution does not apply where a servant is retired due to a change of the age of superannuation. This is the view taken by the Supreme Court in Bishun Narain v. State of U. P., AIR 1965 SC 1567 : (1965) 2 SCA 95 : (1965) 2 SCJ 718 : (1966) 1 Lab LJ 45, where it was held:

"We have not been shown any provision which takes away the power of the Government to increase or reduce the age of superannuation."

In that case it was held that there was no provision to prevent the Government from taking away the power of the Government to increase or reduce the age of superannuation and such termination of service because of the reduction of age of superannuation could not be said to amount to removal within the meaning of Article 311. As to challenging the rule on the ground of discrimination it was held that the rule treated alike those who were between the age of 55 years. Those who were retired on December 31, 1961 were in different ages but that was so because their services were retained for different periods beyond the age of 55 years. Wanchoo J., speaking for the Court said:

"It cannot be urged that if Government decides to retain the service of some public servants after the age of retirement it must retain every public servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency and the exigencies of public service."

In State of Assam and others v. Premdhar Baruah and others, (1970) 2 SCC 211, on March 21, 1963, the Assam Government issued a memorandum which was contained in 7 paragraphs. In paragraph 1 of the memorandum it stated that it was decided that the age of compulsory retirement of State Government servants should be 58 years. In paragraph 2 of the memorandum it was stated that
the decision would apply to all Government servants who would retire on or after December 1, 1962. Government servants who were on leave preparatory to retirement on December 1, 1962, would also be entitled to this benefit but Government servants who were on refused leave from a date prior to December 1, 1962, would not be entitled to the benefit nor would the benefit apply in case of Government servants who reached the age of superannuation on a date prior to December 1, 1962, having been allowed extension of service. In paragraph 3 of the memorandum it was stated that no Government servant would be entitled to the benefit of the increased age of compulsory retirement unless he had been permitted to continue in service after the age of 55 years after the appointing authority was satisfied that he was efficient had physically fit for Government service. In paragraph 4 of the memorandum it was stated:

"Notwithstanding anything contained in the foregoing paragraphs, the appointing authority may require a Government servant to retire after he attained the age of 55 years on three months' notice without assigning any reason".

The respondent Premadhar Baruah was born on January 1, 1963. He was appointed as a typist in the employment of the Government on August 18, 1941. On May 6, 1946 he was confirmed as an Assistant Auditor. On April 1, 1950, he was confirmed as Auditor Local Accounts. Under Fundamental Rule 56 (a) his date of retirement would be January 1, 1968 on attaining the age of 55 years. On December 21, 1967, there was an order asking respondent Premadhar Baruah to continue till further orders.

On April 2, 1968, the Government issued another memorandum which was contained in three paragraphs. In the first paragraph it was stated that the Government had decided that the age of compulsory retirement of State Government servants should be 55 years as laid down in Fundamental Rule 56 (a) discontinuing the benefit of raising the age of superannuation to 58 years as laid down in the office memorandum, dated March 21, 1963. In the third paragraph it was said that this decision would apply to all Government servants who would retire on or after September 30, 1968 and Government servants who were already on extension beyond 55 years of age should be served with a three months' notice without assigning any reason as envisaged in the Government Order, dated March 21, 1963 to retire on September 30, 1968:

"In pursuance of office memorandum No. AAP-217/62/15, dated 21-3-1963, read with O. M. No. AAP-126/67/64, dated 2-4-1968, you are hereby requested to take notice that you shall not be retained in service beyond 30-9-1968.

This may be treated as a notice under Para 4 of O. M. No. AAP-217/62/15, dated 21-3-1963."

On these allegations the respondent asked for orders as to why the notice, dated May 7, 1968 terminating the respondent's services on September 30, 1968 should not be quashed.

S.L.I.—62
The respondent raised three contentions before the High Court. First, that under Paragraph 4 of the memorandum, dated March 21, 1963, three months' notice could be given only before an employee reached the age of 55 years and not thereafter. Secondly, that the compulsory retirement permitted by the fourth paragraph of the memorandum of March 21, 1963, amounted to removal contravening the provisions of Article 311 of the Constitution. Thirdly, compulsory retirement under the said fourth paragraph of the memorandum of 1963 by giving three months' notice without assigning any reason is violative of Article 14 of the Constitution. The High Court by majority decision upheld only the third contention of the respondent that an unfettered power was given to the appointing authority to retire Government servants after attaining the age of 55 years by giving three months' notice terminating their services.

It is necessary to keep in the forefront Fundamental Rule 56 (a) which is as follows:

"F. R. 56 (a)—The date of compulsory retirement of a Government servant is the date on which he attains the age of 55 years. He may be retained in service after this age with the sanction of the State Government on public grounds which must be recorded in writing, and proposals for the retention of a Government servant in service after this age should not be made except in very special circumstances."

The first question before the Supreme Court was whether the respondents can found any right on the order of March 21, 1963. Counsel for the respondent contended that the order, dated March 21, 1963, was acted upon in relation to the respondent and he had been given an extension up to the age of 58 years and therefore he could not be asked to retire before that age. The order, dated March 21, 1963 was an executive instruction. That order of March 21, 1963 has to be read not only in the light of the order, dated April 2, 1968, but also in relation to F. R. 56 (a). The memorandum of April 2, 1968 definitely stated that the benefit of raising the age of superannuation to 58 years as laid down in the office memorandum, dated March 21, 1963, had been decided to be discontinued by the memorandum, dated April 2, 1968. The Supreme Court observed:

"Under F. R. 56 (a) a Government servant may be retained in service after the age of 55 years and such retention shall not be made except in special circumstances. It, therefore, follows that even according to F. R. 56 (a) no legal right can be said to exist in relation to any Government servant to continue in service after the age of 55 years. It is a discretion which the Government will exercise in some cases. F. R. 56 (a) is in two parts. The first part is that the date of compulsory retirement of a Government servant is the date on which he attains the age of 55 years. The second part is that the retention of the Government servant in service after attaining the age of 55 years should not be made except in special circumstances. Such a rule cannot
be said to found any right in any employee to continue in service after the age of 55 years.

"The order, dated March 21, 1963, and the order, dated April 2, 1968, are both executive instructions and they are not rules under Article 309 of the Constitution.

"In the present appeals, the High Court by its majority decision held that Paragraph 4 of the memorandum of March 21, 1963, offended Article 14 of the Constitution because a person who was physically fit and efficient was allowed to continue in service till he was 58 years of age whereas any other person who would satisfy the conditions of physical fitness and efficiency could be asked to retire on three months' notice. It has to be appreciated first that a Government servant has no right to continue in service beyond the age of superannuation. A Government servant is retained beyond the age of superannuation when the Government in the exigencies of public service or on public grounds exercises its discretion to retain a Government servant in service after the age of superannuation. The scope for the exercise of this discretion is embodied in F.R. 56 (a) as well as in Paragraph 4 of March 21, 1963 memorandum which was challenged in the High Court to be an infraction of Article 14.

"In the present case after March 31, 1963 memorandum was superseded and abrogated by April 2, 1968 memorandum the respondents could not draw any sustenance from March 21, 1963 memorandum. April 2, 1968 memorandum reduced the age of superannuation and withdraw the benefits which had been conferred by March 21, 1963 memorandum. This was again done in the interest of the Government servants to prevent unemployment as a result of increase of age of superannuation. This Court in Bisun Narain Mishra's case (supra) in dealing with a notification directing all those who were between the age of 55 and 58 and had been retained in service could be retired on December 31, 1961, said that the rule treated alike and those who were between the age of 55 and 58 years. In the present appeals, the 1963 notification treated all Government servants alike, namely, that they could be retained beyond the age of superannuation, but such retention depended upon the exigencies of the public service and the consideration of physical fitness and efficiency. Therefore it could not be said that the memorandum of 1963 infringed Article 14.

"The High Court fell into the error of overlooking that March 21, 1963 memorandum no longer occupied the field after the supersession of that memorandum by the memorandum, dated April 2, 1968. Furthermore, if the order, dated March 21, 1963, was found to be bad, the entire order was to be struck down for the obvious reason that if the instrument was within the vice of Article 14 of the Constitution, the entire notification would perish."
We are of opinion that the High Court was in error in overlooking paragraph 4 of the memorandum, dated March 21, 1963. Paragraph 4 was as follows:

'Notwithstanding anything contained in the foregoing paragraphs the appointing authority may require a Government servant to retire after he attained the age of 55 years on three months' notice without assigning any reason.'

'As we have already indicated under paragraph 4 of the memorandum flowed from F.R. 56 (a), the Government could retain a Government servant beyond the age of superannuation. The Government has also the discretion to withdraw such retention in service because the retention does not confer any right on the Government servant.'

11. Compulsory retirement and reduction of pension

In Narasimhachar v. State of Mysore, AIR 1960 SC 247 : (1960) 1 SCR 981 : 1960 SCJ 516 : (1961) 1 Lab LJ 798, the proceedings began in April, 1953 with the intention of taking disciplinary action against the appellant and he was served with a charge-sheet which was followed by an enquiry. But the period taken by the enquiry which followed was so long that the appellant attained the age of 55 years some time in December, 1954. Consequently the Government seems to have decided when it gave notice to the appellant on 30th December, 1954, to retire him instead of taking any other action against him. That is how Articles 294 to 297 of the Regulation which deal with retirement became relevant in this case. The contention of the appellant before the High Court was that under the Articles he was entitled to continue in service even after attaining the age of 55 years and the Government had no right to order his retirement on attaining that age and that the option whether a public servant will retire at the age of 55 years or not rested with him.

The Court held that the option to continue such a servant in service vested with the Government and not with the servant concerned as contented.

The next point which was contented was that adjustment of 50% of his pension towards amount due from the servant concerned without giving an opportunity as contemplated by Article 311 of the Constitution was illegal. The Court did not agree with the contention and observed:

'It is enough to say that this contention is also baseless. Article 311 (2) does not deal with the question of pension at all; it deals with three situations, namely, (i) dismissal, (ii) removal, and (iii) reduction in rank. All that we need say is that reduction in rank applies to a case of public servant who is expected to serve after reduction. It has nothing to do with reduction of pension, which is specifically provided for in Article 302 of the Regulations. That Article says that if the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a note under this Article, which says that the
full pension under the Regulations is not to be given as a matter of course but rather to be treated as a matter of distinction. It was under this Article that the Government acted when it reduced the pension to two-thirds. Reduction in pension being a matter of discretion with the Government, it cannot, therefore, be said that it committed any breach of the Regulations in reducing the pension of the appellant."

12. Order of compulsory retirement after enquiry: No reason for agreeing with findings of Enquiry Tribunal: Effect

Where an order of compulsory retirement was passed by way of punishment after an enquiry into the charges against the employee has been concluded and after consulting the Public Service Commission, it was held that there was no duty cast upon the Government where it agreed with the findings of the Enquiry tribunal to give reasons for so agreeing. Such a duty, it was further held, could lay where it differed from the findings of the Tribunal—State of Madras v. Srinivasan, AIR 1966 SC 1827.

13. Temporary appointment: Continuance of person after superannuation without approval of Government, if proper

In H. Lyngdoh and others v. Cromlyn Lyngdoh Judge, (1971) 1 SCC 754; 1971 SCR 330, the respondent who was an Additional District Judge in the senior grade of the Assam Judicial Service was appointed with effect from January 7, 1954, temporarily as a Judge of the District Council without the approval of the Governor. The Governor, however, appointed him also as an Additional District Judge, Lower Assam District, for the purpose of disposal of Civil and Criminal matters under the respective Codes. On February 16, 1957, the respondent attained the age of superannuation which was on his completion of 55 years. It, however, transferred that notwithstanding his having reached the age of superannuation the District Council continued him in service and by its order, dated April 22, 1965, placed him in the regular scale of Rs. 1,200—60—EB—60—1,500 with effect from April 1, 1965. Thereafter on July 30, 1955, the Executive Committee of the District Council served notice upon him that his services along with the services of others mentioned in the order were terminated from August 31, 1966. It is this impugned order that was challenged in a writ petition which the respondents filed in the High Court.

When the matter came before the Supreme Court, it was held:

"In our view a perusal of the order of appointment would show that it was issued by the Chief Executive Member, District Council and it specifically states that the appointment is temporary. Immediately after the respondent had reached the age of superannuation the High Court wrote to the Chief Executive Member, on March 5, 1957, enquiring whether the respondent has been given an extension. In reply it was informed on March 25, 1957,
that he was appointed on February 10, 1954, as Judge of the District Council Courts on a temporary basis; and he will as such continue to perform his duties till further orders made by the Council’. The initial temporary appointment, as will be seen from the order of February 10, 1954, was on the scale of pay Rs. 750—30 - 960—1,000, but later he was placed in a regular scale of Rs. 1,200 to Rs. 1,500 as already advertised to. It is this order that is being urged as having given the respondent a permanent post, because, as the learned advocate submits, a permanent employee is one who is appointed to a permanent post which is defined under Assam Fundamental Rule 9 (22) as a post ‘carrying a definite scale of pay sanctioned without limit of time’. As we have already noticed the respondent’s appointment was temporary and was continuing as such. Merely placing him in a scale of pay which is different to the one in which he was temporarily appointed does not make him a permanent employee. To become permanent he must be confirmed, but that question can never arise because under those very Fundamental Rules which it is not denied apply to him in the absence of any rules made by the District Council the date of his compulsory retirement according to Fundamental Rule 56 is the date on which he attains the age of 55 years, and if he is retained after this date it can only be done with the sanction of the Government which admittedly in his case has not been given. Even if the validity of his appointment by the District Council without the sanction of the Governor which was a necessary condition for valid appointment is overlooked he cannot complain that his termination by the very Council is without the Governor’s sanction. We can find no justification for his continuance nor has any rule or regulation Fundamental otherwise shown to us to continue him in service without the sanction under the some valid rule. The argument that the Governor had invested the respondents with powers for the Schedule Districts and Lower Assam is equally unhelpful because this was also admittedly done in 1954 long prior to his attaining the age of superannuation when without a valid extension of the service he could not continue in service after that date. Viewed from any angle the respondent’s plea is untenable, as such the appeal is allowed and the writ petition dismissed, but in the circumstances without costs.”

In Jai Ram v. Union of India, AIR 1954 SC 584, the plaintiff who was a clerk in the Central Research Institute at Kasauli was to complete 55 years on 26-11-1946. Under Rule 56(b)(i) of Chapter IX of the Fundamental Rules, which regulate the civil services, a ministerial servant may be required to retire at the age of 55 but should ordinarily be retained in service if he continues efficient, till the age of 60 years. In 1945 he himself was anxious to retire from service and on the 7th of May, 1945, he wrote a letter to the Director of the Institute to the following effect:
"Sir,

Having completed 33 years’ service on the 6th instant, I beg permission to retire and shall feel grateful if allowed to have the leave admissible."

This permission was not granted by the Director of the Institute on the ground that the plaintiff could not be spared at that time. The plaintiff renewed his prayer by another letter dated the 30th May, 1945. In that letter it was stated that owing to the untimely death of his brother, his family circumstances did not permit him to serve the institute any longer. He, therefore, prayed for leave preparatory to retirement—four months on average pay and the rest on half average pay from 1st of June, 1945, or the date of his availing the leave to the date of superannuation which was specifically stated to be the 26th of November, 1946.

All that he wanted was that he might be granted leave preparatory to retirement from 1st of June, 1945 or as early as possible after that. This time also the plaintiff’s prayer was refused and the Head of the Institute endorsed a note on his application that he could not be spared.

A third application was presented by the plaintiff on the 18th of September, 1945 praying for reconsideration of his petition and urging one additional ground in support of the same, namely, that the war was already at an end. This application too shared the fate of its predecessors and the Director of the Institute did not agree to his retirement.

After this the plaintiff kept silent for nearly 8 months and on 28th May, 1946 he made his fourth application which, met with a favourable response. In this application also it was stated that the plaintiff would attain the age of 55 years on the 27th of November, 1946 and he prayed, therefore, that the full amount of preparatory leave, as was admittable to him under the rules, might be granted to him. The Director of the Institute sanctioned the leave and the question as to how much leave and of what kind would be available to him was left to the decision of the Accountant-General, Central Revenues.

On the 11th of July, 1946 the Accountant-General communicated his order to the Director of the Institute and his decision was that the plaintiff was entitled to leave preparatory to retirement on average pay for six months from 1st June, 1946 to 30th November, 1946 and on half average pay for five months and twenty-five days thereafter, the period ending on 25th of May, 1947.

Just 10 days before this period of leave was due to expire, the plaintiff on the 16th of May, 1947 sent an application to the Director of the Institute stating that he had not retired and asked for permission to resume his duties immediately. The Director informed him in reply that he could not be permitted to resume his duties, as he had already retired, having voluntarily proceeded on leave preparatory to retirement.

The plaintiff continued to make representations but ultimately the matter was concluded so far as the Government of India was concerned by a letter dated the 28th of April, 1948 in which it was stated that the plaintiff having availed himself of the full leave preparatory to retirement due to him and having actually retired from service of his own volition, the question of his having any right to
return to duty and to continue service till the age of 60 years did not at all arise. It was in consequence of this letter that the present suit was filed by the plaintiff on the 5th of July, 1949.

The legality of the Government communication mentioned above was attacked in the plaint substantially on a two-fold ground. The first ground alleged was that under Rule 56 (b) (i), Chapter IX of the Fundamental Rules, the age of retirement was not 55 but 60 years. The rule no doubt gave the Government a right to retire a ministerial servant at the age of 55, but that could be done only on the ground of his inefficiency. Consequently, before a servant coming within that category was required to retire at 55, it was incumbent upon the Government to give him an opportunity to say what he had to say against his premature retirement in accordance with the provision of section 240 (3) of the Government of India Act, 1935 and unless this was done, the order terminating his service could not be held to be valid.

The other contention was that although the plaintiff on his own application obtained leave preparatory to retirement, yet there was nothing in the rules which prevented him from changing his mind at any subsequent time and expressing a desire to continue in service provided he indicated this intention before the period of his leave expired.

The trial Court negatived both these contentions and dismissed the plaintiff's suit. In the opinion of the Subordinate Judge it was discretionary with the Government under Fundamental Rule 56 (b) (i) either to require a ministerial servant to retire at 55 or to allow him to continue in service till 60 and there was no breach of statutory obligation in this case by reason of the fact that the plaintiff was made to retire before the age of 60.

On the other point the Subordinate Judge held that there was no statutory rule under which a Government servant could claim to resume his previous duties as a matter of right by merely choosing to return before the expiry of the period of his leave. This could be done only with the permission of the superior authority which was absent in the present case.

This decision of the trial Court was affirmed on appeal by the District Judge at Ambala. The plaintiff thereupon took a second appeal to the High Court of Punjab and the appeal was heard by Falshaw, J. sitting singly. The learned Judge allowed the appeal, upholding both the contentions raised by the plaintiff and decreed the suit.

Against this decision there was a further appeal to a Bench of the same High Court under clause 10 of the Letters Patent and the Letters Patent Bench reversed the judgment of the single Judge and dismissed the plaintiff's suit. The plaintiff then came up before the Supreme Court and in the appellant reiterated both the contentions that were pressed in the Court below.

The Supreme Court observed:

"As regards the first point, Mr. Umrigar lays stress mainly upon Rules 56 (b) (i) of Chapter IX of the Fundamental Rules which is worded as follows:

'A ministerial servant who is not governed by sub-clause (ii) may be required to retire at the age of 55 years, but should
ordinarily be retained in service, if he continues efficient, up to the age of 60 years. He must not be retained after that age except in very special circumstances, which must be recorded in writing, and with the sanction of the local Government.

"We think that it is a possible view to take upon the language of this rule that a ministerial servant coming within its purview has normally the right to be retained in service till he reaches the age of 60. This is conditional undoubtedly upon his continuing to be efficient. We may assume therefore, for purposes of this case that the plaintiff had the right to continue in service till 60 and could not be retired before that except on the ground of inefficiency. But that by itself affords no solution of the question that requires consideration in the present case.

"Here the plaintiff was not compelled or required to retire by anybody. If the Government requires him to retire in terms of the Fundamental Rule 56 (b) (i), it might be argued that he should have been given an opportunity to show that he was still efficient and able to discharge his duties and consequently could not be retired at that age. But here the situation was entirely of the plaintiff's own seeking and his own creation.

"Ever since May 1945 when he had not even completed his 54th year, the plaintiff began making importunate requests to his official superior to allow him to retire from service. It will be noticed that in his first application he mentioned the fact of his having completed 33 years of service as a ground for obtaining the permission prayed for. There is, in fact, a rule in the Civil Service Regulations under which a retiring pension is granted to an officer, who is permitted to retire after completing service for 30 years. It is not clear whether this rule which relates to superior service was at all applicable to the plaintiff. But it is a fact that in his applications for leave preparatory to retirement he laid great stress on two facts, one of which was the length of his service and the other that he was to reach the age superannuation in November, 1946.

"Ultimately when his application was granted, the leave, which was allowed to him, was on the basis of his retiring from service on the 27th November, 1946. He was given post-retirement leave for a period of about six months from that date in terms of Rule 86, Chapter X of the Fundamental Rules on the ground that he had previously applied for leave which was at his credit but it was refused on the ground of retirements of public service. The plaintiff could not have got this period of leave except on the footing that his service ended on the 27th November, 1946. Rule 56 (b) (i), which speaks of a ministerial servant being 'ordinarily' retained in service till 60, does not,
in our opinion, contemplate a case of this description and does not preclude a ministerial servant from waiving, by express agreement, a right to which he might otherwise have been entitled under this rule.

"When a servant has attained the age of 55 years and for some reason or other himself confesses his inability to continue in service any longer and seeks permission for retirement, we consider it to be a useless formality to ask him to show cause as to why his service should not be terminated. Section 240 (3) of the Government of India Act, 1935 could not have any possible application in such circumstances. The first contention to the appellant must, therefore, in our opinion fail".

It is clear from Article 294 (a) of Mysore Services Regulations that the age of retirement fixed in the Regulation is 55 years and it is the option of Government to allow a public servant to continue in service thereafter if it considers him efficient. Article 296 of the Regulation requires the Heads of Departments to send to Government on or before 1st of September in each year a list of non-gazetted servants who will attain the age of 55 years during the coming year and also to those who have been given extension of service by them. This further endorses what is clear in Article 294 (a) that the age of retirement is 55 years. Article 297 of the Regulation lays down that a Government servant in superior service who has attained the age of 55 years may, at his option, retire from the service on a superannuation pension. This does not mean that the option is with the public servant whether he retires at that age or not, Article 297 is complementary to Article 294 (2) which gives Government the power of keeping Government servants in service beyond the age of 55 years. Article 297 allows the Government servant, if the Government wants to keep him in service after 55, to opt for retirement. It does not mean that it is entirely at the option of the Government servant to continue in service beyond the age of 55 years and the Government cannot retire him at that age if he does not exercise the option. Therefore, it was open to Government to retire a Government servant at the age of 55 years if it thought that the person was not efficient to be kept in service—M. Narsimhchar v. The State of Mysore, AIR 1960 SC 247 : 1960 SCJ 516 : (1960) 1 SCR 981 : (1960) 1 Lab LJ 798.

13. Dispute regarding date of birth

In State of Orissa v. Dr. (Miss.) Binapani Dei, AIR 1967 SC 1269 : (1967) SCJ 339 : 1967 SCD 551 : (1967) 25 SCA 393 : (1967) 2 SCWR 442, Dr. (Miss.) Binapani Dei, at the time of her appointment by the Orissa Government, declared that her date of birth was April 10, 1910. She claimed that her claim was supported by documentary evidence tendered by her father which was verified and accepted and the birth date was recorded in the Civil List and in the History of Service of Gazetted Officers of the Government of Orissa maintained by the Accountant General of the State. In the normal course she would have been due for superannuation on April 10, 1965. After completing the age of 55 years. But in consequence of a notification of the State of Orissa, dated May 21, 1963, the age of superannuation
was raised from 55 to 58 years in respect of all Government servants who were to retire after December 1, 1962.

Some anonymous letters were addressed to the Accountant-General that Dr. Binapani Dei had mis-stated her age when she was admitted to service of the State. After an enquiry she was required to show cause why her date of birth should not be accepted as April 4, 1907. She submitted that her date of birth was correctly recorded and that certain school record relied upon by the State "was erased, altered or overwritten". By letter, dated June 27, 1963, the Government of Orissa determined the date of birth of the first respondent as April 16, 1907, and declared that she should be deemed to have retired on April 16, 1962, subject, however, to extension of service granted from April 16, 1962, till the afternoon of July 15, 1963. By this order Dr. Binapani, who should have on her case retired on April 10, 1968, was deemed to have retired on July, 1963.

Dr. Binapani Dei then applied to the High Court of Orissa for a Writ declaring that the order of retirement passed by the State Government was contrary to law and against the Constitution and principles of natural justice, and that in any event the order was passed maliciously by the Government to the prejudice of the first respondent, and for a Writ of mandamus or certiorari quashing the order passed on June 27, 1968. She claimed that the order made by the State amounted to an order of compulsory retirement contrary to the rules governing her service and was violative of the principles of natural justice, that the same was arbitrary and mala fide, that the order of retirement amounted to punishment involving consequences such as loss of pay, status and deprivation of service and since it was not made in consonance with Article 311 of the Constitution, the order was liable to be quashed as invalid.

The High Court held that the order declaring the first respondent to be superannuated on April 16, 1962 on the footing that her date of birth was April 16, 1907, amounted to compulsory retirement before she attained the age of superannuation and was contrary to the rules governing her service conditions and amounted to removal within the meaning of Article 311 of the Constitution, and since, she was not given a reasonable opportunity of showing cause against the action proposed to be taken in regard to her the order was invalid. The High Court did not express any opinion on the plea of mala fides as it raised questions of fact which could not in the view of the Court appropriately be determined in a petition under Article 226 of the Constitution.

When the case came before the Supreme Court, counsel for the State raised two contentions in support of this appeal—

(1) that the petition raised disputed questions of fact and the High Court should not have decided those questions in a Writ petition; and

(2) that the order re-fixing the age was an administrative order and the High Court had no power to sit in appeal over the decision of the State authorities re-fixing the age.
The Supreme Court held that the contentions were without substance and it was observed:

"It was the case of the first respondent in her petition before the High Court that the State had arbitrarily fixed her date of birth as April 16, 1907, and on that basis had declared her superannuated before she attained the age of 58 years. On behalf of the State it was denied that the true date of birth of the first respondent was April 10, 1910, and that the authorities of the State had arbitrarily and maliciously chosen to re-fix her date of birth. Under Article 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Article 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of the discretion and not of jurisdiction of the Court. In the present case the question in dispute was about the regularity of the enquiry and the High Court was apparently of the view that the question whether the State acted arbitrarily did not raise any question of investigation into complicated issues of fact. No interference with the exercise of the discretion of the High Court is, therefore, called for.

"It is common ground between the parties that no enquiry in accordance with the provisions of Article 311 was made by the State Government. It was the plea of the State in the High Court that Article 311 has no application to the case of the first respondent, because she has not been dismissed or removed from service. The State contended that the true date of birth of the first respondent was April 16, 1907, and she had been properly declared superannuated in consonance with the finding arrived at in an enquiry held for that purpose by the State.

"The date of birth disclosed by the first respondent at the time when she entered in service was accepted by the State. She claims that a statement was made by her father on that occasion relying on which the date of her birth was determined and entered in the service register and thereafter the State sought arbitrarily to re-fix the date of her birth. In considering that plea the relevant Service Rules regarding superannuation may be noticed in the first instance. Rule 13 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962, sets out the penalties which may be imposed "for good and sufficient reasons" on a Government servant and the seventh penalty is "compulsory retirement." But the Explanations to the rule states that "compulsory retirement" of a Government servant in accordance with the provisions relating to his superannuation or retirement is not a penalty within the meaning of the rule. Rule 4599-B of the Civil Service Regulations provides that officers,
other than ministerial, who have attained the age of 55 years, should ordinarily be required to retire on completion of that age. By notification, dated May 21, 1963, the age of superannuation was fixed at 58 in respect of all public servants who were to retire after December 1, 1962.

"The first respondent held office in the Medical Department of the Orissa Government. She, as holder of that office, had a right to continue in service according to the rules framed under Article 309 and she could not be removed from office before superannuation except "for good and sufficient reasons". The State was undoubtedly not precluded, merely because of the acceptance or the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient rounds for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case, he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against the exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed—it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity.

"That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

"The State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim he must be informed of the case of the State and the evidence in support thereof and he must have
a fair opportunity of meeting that case before a decision adverse to him is taken.

In this background the facts of the case may be reviewed. In 1957 anonymous letters were received by the Director of Health Services that the first respondent had misstated her age, but no steps were taken immediately to hold an enquiry. In 1961 some investigation was undertaken through the Vigilance Department. The Secretary of the Government in the Health Department on August 23, 1961 informed the first respondent that the Government of Orissa had information that when she was admitted into Class X in the Ravenshaw Girls' School, her date of birth was 15 years, and when she was admitted into the First Year Class on July 9, 1924 her age was 17 years and 2 months, and she was required to show cause why May 9, 1907, should not be accepted as her date of birth on the basis of the entry in the Admission Register of the First Year Class. The first respondent submitted her explanation stating that she did not recollect if she had ever attended the Ravenshaw Girls' School. After some correspondence the Admission Register was examined by the first respondent in the presence of the Director of Health Services and the officers of the Vigilance Department, and thereafter on March 19, 1962, she wrote a letter pointing out the irregularities in the entries relating to age in Ravenshaw Girls' School Admission Register. The Additional Director of Family Planning, Dr. S. Mitra was then asked to make a report. In his report Dr. S. Mitra largely relied upon a letter written by the Principle, Lady Hardinge Medical Collage, Delhi, that the birth date of the first respondent was April 4, 1908. In the course of the enquiry before Dr. S. Mitra the letter was shown to the first respondent but she declined "to make any comments thereon." Thereafter on September 28, 1962 there was a notice from the Secretary in the Department of Health, stating that according to the School Admission Register her date of birth was August 22, 1906, and according to the First Year Class Admission Register it was April 4, 1908, and it was intended to treat the latter date as the date of her birth, and the first respondent was called upon to show cause why that date should not be accepted. The report which Dr. S. Mitra had submitted to the State was not disclosed to the first respondent. It may be recalled that there were four different dates before the State authorities, (1) the entry in the Ravenshaw Girls' School Admission Register showing the date of birth as August 22, 1906, (3), the report of Principal, Lady Hardinge Medical College, Delhi, showing the date of birth as April 4, 1908, as recorded in the Medical College Admission Register; and (4) the first respondent's statement supported by her father's statement at the time when she joined the service in 1938 giving her date of birth as April 10, 1910. If an enquiry was intended to be made, the State authorities should have placed all the materials before the first respondent and called upon her to explain the discrepancies and to give her explanation in respect of
those discrepancies and to tender evidence about her date of birth.

"It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of the Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907 should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State".

In State of Assam and another v. Daksha Prasad Deka and others, 1971 SLR 14, under Rule 56 (a) of the Fundamental Rules the respondent was liable to be compulsorily retired on the date on which he attained the age of 55 years. The Court held that the date of compulsory retirement under Fundamental Rules, 56(a) must be determined on the basis of the service record, and not which the respondent claimed to be his date of birth unless the service record was first corrected consistently with the appropriate procedure. It was further held that a public servant might dispute the date of birth as entered in the service record and might apply for correction of record, but until the record was corrected, he could not claim that he had been deprived of the guarantee under Article 311(2) of the Constitution of India being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the Service Record. The Court also observed that it was true that the State authorities did not give to the respondent an opportunity to support his case and to show that the service record was erroneous, but in view of subsidiary Rule 8.—Note which governed the employment of the respondent an application for correction of the service record could not be entertained if it was made within three years before the date of actual superannuation.

14. Order extending service unilaterally, if valid.

In State of Assam v. Padma Ram Borah, AIR 1965 SC 473, a Government servant who was to retire on 1.1.1961 was put under suspension on 22-12-1960. The orders dated 6.1.1961 and 5.5.1961 modified the earlier order of December 22, 1960 inasmuch as it fixed a period of three months from January 1, 1961 or till the disposal of the departmental proceedings whichever is earlier, for retaining the respondent in service. Thus the effect of the order of January 6, 1961 was that the service of the respondent would come to an end on 31st March, 1961 unless the departmental proceedings whichever is earlier, for retaining the respondent in service. Thus the effect of the order of January 6, 1961 therefore was that the service
of the respondent came to an end on March 31, 1961. This was so, not because the retirement was automatic but because the State Government had itself fixed the date upto which the service of the respondent would be retained. The State Government made no further order before March 31, 1961, but a month or so after having passed an order on May 9, 1961, extending the Service of the respondent for a further period of three months from April 1, 1961. The State Government had no jurisdiction to pass such an order on May 9, 1961. According to the earlier order of the State Government itself, the service of the respondent had come to an end on March 31, 1961. The State Government could not by unilateral action create a fresh contract of service to take effect from April 1, 1961. If the State Government wished to continue the service of the respondent for a further period of the State Government should have issued a notification before March 31, 1961. The respondent had ceased to be in service on March 31, 1961 by the very order of the State Government. An order of retention in service passed more than a month, thereafter was a mere nullity and cannot be sustained.
CHAPTER XIII

REDUCTION AND REVERSION

SYNOPSIS

1. Reduction in rank: Meaning and Scope.
2. Reversion of persons working in officiating capacities.
3. Reduction in rank when a punishment.
4. Reduction due to integration of States.
4-a. Losing some places in seniority list, if amounts to reduction.
4-b Confirmation of officiating tahsildars—Pepsu States merged with Punjab—cancellation of order of confirmation deconfirming concerned tahsildars, whether amounts to reduction in rank.
4-c. Reversion of persons promoted earlier on ad hoc and out of seniority basis—Subsequent reversion on account of return of senior incumbents from deputation.
5. Reduction of pension, if amounts to reduction in rank.
6. Reversion from temporary or officiating post.
6-a. Transfer from one post to another carrying the same scale of pay does not amount to reduction in rank.
7. Reversion when punishment.
8. Government's order of repatriation to parent department, if reversion.

1. Reduction in rank: Meaning and Scope

The expression in "reduction in rank" has not been defined in the Constitution nor in the statutory rules, but there can be little doubt that it means a transfer, without the consent of the incumbent, from a higher position to a lower position at a lower rate of salary. An order of reduction in rank is in substance and effect a consolidated order consisting of two parts—an order removing the incumbent from the position formerly held by him, and an order appointing him to a position of less dignity in the same service. Reduction means demotion, that is, putting an employee in a lower grade or post or on a lower scale of pay. It may even include a case where an employee is reduced to a lower stage of pay in the same scale.

The expression reduction in rank in Article 311 (2) of the Constitution of India has to be construed according to the well-established meaning it has acquired as in the case of two other expressions, namely, "dismissal" and "removal", in that Article, under the various Services Rules and the provisions in that regard in the Constitution Acts of 1915 and 1935. The expression "reduction in rank" in the Article, therefore, means reduction from a higher to a lower rank or post when imposed as a penalty. Therefore an order forfeiting past service which has earned a Government servant increments in the post or rank he

S.L.I.—64
holds, whosoever advers it is to him, affecting his seniority within the rank to which he belongs or his future chances of promotion, does not attract Article 311(2) of the Constitution of India. His remedy, therefore, is confined to the rules of service governing his post, State of Punjab v. Shri Kishan Das, 1971, SLR 174.

"Rank" in Article 311(2) has reference to a person's classification and not to a particular place in the same cadre in the hierarchy of the service to which he belongs. Hence, in the context of the judicial service of West Bengal, "Reduction in rank" would imply that a person who is already holding the post of a subordinate Judge has been reduced to the position of a Munsif, the rank of a subordinate Judge being higher than that of a Munsif. But subordinate Judges in the same rank though they have to be listed in order of seniority in the civil list. Therefore losing some place in the seniority list in the same cadre, namely, of subordinate Judges does not amount to reduction in rank within the meaning of Article 311(2), High Court, Calcutta v. Amal Kumar Roy, AIR 1962 SC 1704.

Referring to the decision in High Court, Calcutta v. Amal Kumar Roy, AIR 1962 SC 1704, the Court in Shitla Sahay v. N. E. Railway, Gorakhpur, AIR 1966 SC 1197, said:

"This decision has established the following principles, viz., the expression 'rank' in Article 311(2) has reference to a person's classification and his particular place in the same cadre in the hierarchy of the service to which he belongs and, therefore, losing some place in the seniority list is not tantamount to reduction in rank within the meaning of Article 311 (2) of the Constitution."

The constitutional provision protecting a Government servant from reduction in rank without hearing is intended to refer only to a person who is occupying a higher post in a substantive capacity, for he alone has a legal right to occupy the post.

A person who is occupying a higher post in an officiating capacity has no such right and can be deprived of his post by a competent superior officer without charges or hearing.

The Supreme Court in the well-known Dhingra's case, AIR 1958 SC 36, have made some important observations on the subject under debate which would appear to support the above view. In particular, I would quote the following passage in the judgment of the Supreme Court:

"A reduction in rank likewise may be by way of punishment, or it may be an innocuous thing of the Government servant, has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under
the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. Tha real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of the employment or under the rules, in truth and reality the Government had terminated the employment as and by way of penalty. The use of the expression ‘terminate’ or ‘discharge’ is not conclusive. In spite of the use of such innocuous expression, the Court has to apply the two tests mentioned above, namely: (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank, and if the requirements of the rules and Article 311, which give protection to the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.

In State of Bombay v. F. A. Abraham, AIR 1962 SC 795 : 1962 SCA 168 : 64 Bom LR 575, the Supreme Court observed:

“A person officiating in a post has no right to hold it for all times. He may have been given the officiating post because the permanent incumbent was not available, having gone on leave or being away for some other reasons. When the permanent incumbent comes back, the person officiating is naturally reverted to his original post. This is no reduction in rank for it was the very term on which he has been given the officiating post. Again, sometimes a person is given an officiating post to test his suitability to be made permanent in it later. Here again, it is an implied term of the officiating employment that if he is found unsuitable, he would have to go back. If, therefore, the appropriate authorities find him unsuitable for the higher rank, the action taken is in accordance with the terms on which the officiating post had been given. It is in no way a punishment and is not, therefore, a reduction in rank. It has been held in Parshottam Lal Dhirgra v. Union of India, 1958, SCR 828 at p. 842, that—

“It is, therefore, quite clear that appointment to a permanent post in a Government service, either on probation or on an
officiating basis is, from the very nature of such employment, itself of a very transitory character and in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time.”

In Madhav Laxman Vaikunthe v. State of Mysore, AIR 1962 SC 8 : (1962) 1 SCR 886 : (1962) 1 SCJ 134, the appellant was holding the rank of a mamladadar in the first grade and was officiating as a District Deputy Collector. He was reverted to his substantive rank as a result of an adverse finding against him in a departmental enquiry for misconduct. His representations to the Government could not yeild any result. The Government subsequently by a notification promoted the appellant but the order of reversion remained effective which effected his place in the selection grade. After his retirement from service on superannuation, the appellant filed his suit for declaration that the order of reversion was void and also claimed arrears of salary etc. The question for decision was whether the appellant could be said to have been reduced in rank within the meaning of Section 240 (3) of the Government of India Act, 1935. The Court held:

“...... it is clear that as a result of the order ...... the appellant lost his seniority as a mamladadar, which was his substantive post. That being so, it was not a simple case of reversion with no evil consequences; it had such consequences as would come within the test of punishment as laid down in Dhingra’s case ...... If the reversion had not been for a period of three years, it could not be said that the appellant had been punished within the meaning of the rule laid down in Dhingra’s case......It cannot be asserted that his reversion to a substantive post for a period of three years was not by way of punishment. From the facts of this case it is clear that the appellant was on the upward move in the cadre of his service and but for the aberration in his progress to a higher post he would have, in ordinary course, been promoted as he actually was sometime later when the authorities realised, perhaps that he had not been justly treated, as is clear from the order of the Government, dated March 26, 1961, promoting him in the higher rank with effect from August 1, 1950. But that belated justice meted out to him by the Government did not completely undo the mischief of the order of reversion impugned in this case. It is clear to us, therefore, that as a result of the order of reversion aforesaid, the appellant had punished and that the order of the Government punishing him was not wholly regular. It has been found that the requirements of Section 240(3) of the Government of India
Act, 1935, corresponding to Article 311 (2) of the Constitution, had not been fully complied with. His reversion in rank, therefore, was in violation of the constitutional guarantee . . . .”

In High Court, Calcutta v. Amal Kumar Roy and others. AIR 1962 SC 1709 : (1963) 1 SCR 437 : (1962) 2 SCA 546 : 1962 Ker LR 114, the plaintiff who was functioning as an Additional District and Sessions Judge, was on the date of the suit filed on September 4, 1958, a member of the West Bengal Civil Service (Judicial). He joined the service on April 1, 1937 as a Munsif, and was duly confirmed on April 1, 1939. In the West Bengal Civil-list, corrected upto January 1, 1954, his name appeared against serial No. 53, in the list of Munsiffs. Just above him in serial No. 52 was Sri Bibhutosh Banerjee, and the name of Sri Jagadindranath Hore appeared against serial No. 54. In course of time all Munsiffs down to serial No. 52 Sri Bibhutosh Banerjee in the Civil List aforesaid were appointed to the post of Subordinate Judges, according to their seniority indicated in that list. In February, 1955, the plaintiff was at the head of the list of Munsiffs. In April, 1955, the plaintiff noticed that the second respondent aforesaid had been appointed a Subordinate Judge, although he had not received any order of appointment as a Subordinate Judge. On representation being made by the plaintiff to the High Court, he was informed by the Registrar of the Court that the Court decided to consider his case again in December, 1955. In the meantime several other Munsiffs, whose names appeared below that of the plaintiff in the Civil List, were appointed as Subordinate Judges one after another.

His representations to the Government were of no avail. Eventually the plaintiff filed his suit for a declaration that he occupied the same position with some privileges and benefits, as if he had been appointed as a Subordinate Judge immediately before the second respondent and that his name be inserted in the West Bengal Civil List and in any other relevant gradation list maintained as a Subordinate Judge immediately below that of Sri Bibhutosh Banerjee and immediately above that of Sri Jagadendra Nath Hore. The plaintiff also claimed arrears of salary etc. The lower Court decreed the suit and a special leave was granted to present the appeal direct to the Supreme Court, the Judges of the Calcutta High Court being the opposite parties.

At the close of his argument, the counsel for the appellant contented that the suit was not maintainable because the controversies raised were not justiciable. The Court held that the answer to this question must depend upon the answers to the following questions:

(1) whether the plaintiff had a right to promotion, which right had been withheld from him, thus giving him a cause of action?

(2) was the plaintiff subjected to a penalty, without taking the necessary proceedings, as contemplated by Article 311 (2) of the Constitution or Service Rules?

(3) was there any breach of procedure, laid down by law, in determining the plaintiff’s right, if any?
(4) was the action of the High Court postponing by a year the consideration of the plaintiff's promotion as a Subordinate Judge without jurisdiction?

(5) was there any delegation of powers under Article 235 of the Constitution to the English Committee as contented by the plaintiff-respondent?

(6) was there any breach of the provisions of Article 320 (3) (e) of the Constitution?

(7) was the plaintiff reduced in rank "within the meaning of Article 311 of the Constitution?"

On the above questions the Court held:

"One thing is clear with reference to Article 235, read with the Service Rules, that there is no right of promotion which the plaintiff could have claimed to enforce by action in a court. Rule 49 on which reliance was placed by the plaintiff to make out his right to be considered from promotion as a Subordinate Judge is, in the first instance, not a right but only a safeguard to a public servant that punishment by way of withholding of promotion shall not be imposed upon him unless he has been given an adequate opportunity of showing cause against the action proposed to be taken. It is also clear that Rule 49 comes into play only when proceedings are taken by way of disciplinary action against a public servant. In such disciplinary proceedings, the Government servant proceeded against has a right to insist upon the procedure being strictly followed. But in this case there was no such disciplinary proceedings against the plaintiff and, therefore Rule 49 is wholly out of the way. If Rule 49 is not available to the plaintiff, Rule 55-A was not equally available to him, even assuming that the rule applied to the case of a member of a State Judicial Service. It follows from what has been said that there was no question of a penalty being imposed upon the plaintiff. That being so, there could not be any breach of the procedure laid down by the rules for proceeding against a Government servant like the plaintiff."

2. Revision of persons working in officiating capacities

It is well-established that a Government servant who is officiating in a post has no right to hold it for all time and the Government servant who is given an officiating post holds it on the implied term that he will have to be reverted if his work was found unsuitable. In a case of this description a reversion on the ground unsuitability is an action in accordance with the terms on which the officiating post is held and not a reduction in rank by way of punishment to which Article 311 (2) of the Constitution could be attracted. It is of course well-settled that temporary Government servants are also entitled to the protection of Article 311 (2) of the Constitution in
the same manner as permanent Government servant if the Government takes action against them meeting out one of the three punishments, namely, dismissal, removal or reduction in rank. But the protection is only available where the dismissal, removal or reduction is sought to be inflicted by way of punishment and not otherwise. As pointed out in Parshottam Lal Dingra’s case, the two tests applicable in matter of this description are whether (1) the Government servant has a right to the post or the rank, or (2) whether he has been visited with evil consequences; and if either of the two test is satisfied it must be held that Government servant had been punished. Further even though misconduct, negligence, inefficiency or other disqualifications may be the motive or the inducing factor which influences the Government to take action under the express or implied terms of the contract or employment or under the statutory rules, nevertheless, if a right exists under the contract or the rules to terminate the service the motive operating on the mind of the Government is wholly irrelevant.

The test for attracting Article 311 (2) of the Constitution in such a case is whether the misconduct of negligence is a mere motive for the order or whether it is the very foundation for the order of the termination of service of the temporary employee. In the present case, however, the order of reversion does not contain any express words of stigma attributed to the conduct of the respondent and therefore, it cannot be held that the order of reversion was made by way of punishment and the provisions of Article 311 (2) were consequently attracted—Union of India v. R. S. Dhaba, 1969 LR 442 : (1969) 3 SCC 603 : (1969) 1 SCWR 92. .

The mere reversion of a Government servant from an officiating post to his substantive post notwithstanding that his juniors are retained in higher post does not amount to reduction in rank and provisions of Article 311 (2) are not attracted—Divisional Personnel Officer, Southern Railway v. S. Raghavendrachari, (1966) 3 SCR 106 : AIR 1966 SC 1529. It cannot be contented that as a person junior to the respondent was retained in the officiating higher post, he had lost his seniority. The respondent’s rank in the substantive post i.e. in the lower grade was not in any way affected by this. In the substantive grade, the respondent retained his rank. It may also be added that he was visited with no penal consequences. It is no doubt true that it is not the form but the substance that matters but once it is accepted that the respondent has no right to the post to which he was provisionally promoted. There can be no doubt that his revision does not amount to reduction in rank—Ibid.

Please also refer to previous topic for details—Parshottam Lal Dingra v. Union of India, AIR 1958 SC 36 ; State of Bombay v. F. A. Abraham, AIR 1962 SC 795.

3. Reduction in rank when a punishment

A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privilege of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact
that the servant has no title to the post or the rank and the Government has, by contract express or implied or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post of rank cannot, in any circumstances, be a punishment.

The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus, if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of expression ‘terminate’ or discharge’ is not conclusive. In spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to.

If the case satisfies either of the two tests, then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to Government servants, have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant—P. L. Dhingra v. Union of India, AIR 1958 SC 36 : 1958 SCR 828 : 1958 SCJ 217 : 1958 SCA 37 : 1958 All LJ 372 ; ILR 1958 Punj 611.

4. Reduction due to integration of States

In Rajni Amar Singh v. State of Rajasthan, AIR 1958 SC 228 : 1958 SCR 1013 : 1958 SCJ 420, the appellant before the integration of States held the post of a District and Sessions Judge in the former Bikaner State. During the transitory period, before final re-organisation was brought into force he was posted as District and Sessions Judge. When the final integration was completed and the twenty eight Courts of District and Sessions Judges reduced to fifteen, the appellant was posted as Civil and Additional Sessions Judge on an ad hoc basis with the same pay and benefits which he was enjoying as District and Sessions Judge. The appellant made a representation to the Government of Rajasthan against his posting as an adhoc Civil and Additional Sessions Judge. When the representation yeilded no result, he filed a Writ petition before the High Court wherein he stated:

“He was given to understand that these ad hoc postings were without prejudice to the claims of the Government servants for a suitable position in the integrated set-up on permanent basis”.


This allegation was admitted by the Opposite-party.

Later, he was appointed substantively as Civil Judge on 23-4-1951, He was placed in Group 'C' (Civil Judges and Munsiffs) and placed at No. 18 in the list of junior posts. His pay and emoluments were as before and he retained the same grading, namely, Rs. 500—40—700.

The Supreme Court referred to the case of State of Madras v. K. M. Rajagopalan, (1955) 2 SCR 541 : AIR 1955 SC 817, which followed the decisions of the Privy Council and the House of Lords in Reilly v. The King, 1934 AC 176 and Norkers v. Do ncaster, Amalgamated Collieries, 1940 AC 1014, and pointed that the service of the appellant under the former Bikaner State came to an automatic end when the State ceased to exist after integration. His old contract terminated and that he continued his service on the basis of fresh contracts. As such, the Court held, there was no reduction in his rank.

4 (a). Losing some places in seniority list, if amounts to reduction in rank

In High Court, Calcutta v. Amal Kumar Roy, AIR 1962 SC 1704 : (1962) 2 SCA 646 : (1963) 1 SCR 437 : 1962 Ker LR 114, the Court held:

"The expression 'rank' in Article 311 (2) has reference to a person's classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs.

'In the context of the Judicial Service of West Bengal, 'reduction in rank' would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsiff, the rank of a Subordinate Judge being higher than that of a Munsiff. But Subordinate Judges in the same cadre hold the same rank, though they have to be listed in order of seniority in the Civil List. Therefore, losing some places in the seniority list is not tantamount to reduction in rank. Hence, it must be held that the provisions of Article 311 (2) of the Constitution are not attracted to this case."

4 (b). Confirmation of officiating Tehsildars—Pepsu merged with Punjab Cancellation of order of confirmation deconfirming concerned Tehsildars, whether amounts to reduction in rank.

Rule 7 (2) of the Punjab Tehsildari Rules provides that when a substantive vacancy occurs or is about to occur in the post of Tehsildar it shall be filled from among the classes mentioned in rule 6 (a), in such proportion or rotation as the Government shall by general or special order direct. This rule thus empowers the Financial Commissioner to make an appointment of a person to the post of Tehsildar only when a substantive vacancy occurs or is about to occur in the post of Tehsildar. Therefore, before advantage could be taken of that rule, there had to be an actual or an anticipated vacancy. Moreover, there is no rule which empowers the Financial Commissioner to create a post of Tehsildar. As there was neither a substantive vacancy nor an anticipated vacancy in the cadre of permanent Tehsildars on October 23, 1956, the
date on which the officiating Tehsildars concerned were confirmed and that super-numerary posts for them were created the next day, only one conclusion must follow and that is the order of the Financial Commissioner had no legal foundation, there being no vacancies in which the confirmation took place. The order of the Financial Commissioner dated October 23, 1956 confirming the respondents as permanent Tehsildars must, therefore, be held to be wholly void.

Where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status. No doubt the Government has used the expression "de-confirming" in its notification which may be susceptible of the meaning that it purported to an act which was, therefore, valid. The expression, however, must be interpreted in the light of actual facts which led up to the notification. These facts clearly show that the so-called confirmation by the Financial Commissioner Pepsi, was not confirmation at all and was thus invalid. In view of this the notification "de-confirming" the Tehsildars concerned could be interpreted to mean that the Government did not accept the validity of the confirmation of the persons who were confirmed as Tehsildars by the Financial Commissioner, Pepsi. Therefore, even though upon their allocation to the State of Punjab, they were shown as confirmed Tehsildars, they could not in law be regarded as holding that status. Legally their status was that of officiating Tehsildars. The notification, in question, in effect recognises only this as their status and cannot be said to have the effect of reducing them in rank by reason merely of correcting an earlier error. Article 311 (2) does not, therefore, come into the picture at all. The Punjab Government was competent to rectify a mistake made by the Government of Pepsi or the Financial Commissioner of Pepsi as sub-section (2) of section 116 of States Re-organisation Act, 1956, provides that nothing in the section shall be deemed to prevent a competent authority after the appointed day from passing in relation to any such person any order affecting his continuance in such post or office. The provision is thus wide enough to empower the successor Government, which would be the competent authority under the Act, to make the kind of notification concerned in this case—The State of Punjab v. Jagdip Singh and others, AIR 1964 SC 521 : 1964 SCD 500.

4 (c). Reversion of persons promoted earlier on ad-hoc and out of seniority basis Subsequent reversion on account of return of senior incumbents from deputation—Whether Rule 2 (c) of Mysore Seniority Rules, 1956 applies to reversion cases

Rule 2 (c) of the Mysore Seniority Rules provides for seniority between persons officiating in a higher rank when they are officiating as such it is not an express rule as to the manner in which reversions should be made where reversions are necessary on account of exigencies of service. The rule, therefore, cannot be held as expressly providing for the principle of "last come first go" with which one is familiar in industrial law. Strictly speaking therefore, the petitioners cannot claim that rule (2)(c) has been violated by their reversion for it does not provide
for reversion and only provides for the seniority of officers who are officiating in a higher grade. Even so, it may be conceded that when reversion takes place on account of exigencies of public service, the usual principle is that the juniormost persons among those officiating in clear or long term vacancies are generally reverted to make room for the senior officers coming back from deputation from leave etc. Further ordinarily as promotion on officiating basis is generally according to seniority, subject to fitness for promotion, the juniormost person reverted is usually the person promoted last. This state of affairs prevails ordinarily unless there are extraordinary circumstances as in the present case. As the new State of Mysore was formed of the territories of the old State of Mysore and the territories of four other States, the officers from other States as well as from the old State of Mysore became officers of the new State and the question of their integration had to be decided in accordance with section 115 of the States Re-organisation Act, 1956. The matter had to take time and therefore, in the interest of administration ad hoc promotions continued to be made by the new State of Mysore after November 1, 1956. It was because of these special circumstances that the petitioners and those like them who were really junior to other Sub-Inspectors in the eligibility lists came to be promoted earlier because there was no provisional list available or in actual force when the promotions were made ad hoc and out of seniority. It was only when the provisional list was made, that inter se seniority of officers coming from various States became prima facie known. Therefore, when reversions had to be made on account of exigencies of service in accordance with the provisional list it was bound to happen, in view of the earlier ad hoc promotions, that some officiating Inspectors who had been promoted earlier had to be reverted in preference to others who had been promoted later in these circumstances. The petitioners, therefore, cannot rely on rule 2 (c) in the peculiar circumstances prevailing in the State after the re-organisation because promotions were made ad hoc without regard to inter se seniority of officers from different States. Therefore, the charge of discrimination based on the violation of rule 2 (c) cannot, in the special circumstances of this case be sustained for it is not disputed that the petitioners were the juniormost according to the provisional list when the orders of reversion were made—G. S. Ramaswamy v. The Inspector-General of Police, Mysore State, AIR 1966 SC 175 : (1964) 6 SCR 279 : (1965) 10 Fac. LR 65.

5. Reduction of pension, if amounts to reduction in rank

In Narasimhachar v. State of Mysore, AIR 1960 SC 247, the question that arose for consideration was whether reduction of pensions amounted to a reduction in rank. The Court observed as follows:

"It is enough to say that this contention is also baseless. Article 311(2) does not deal with the question of pension at all; it deals with three situations, namely, (i) dismissal, (ii) removal, and (iii) reduction in rank. The appellant says that the reduction in pension is equivalent to reduction in rank. All that we need say is that reduction in rank applies to a case of a public servant who is expected to serve after the reduction. It has nothing to do with reduction of pension which is specifically provided for in Article 302 of the Regulations. That Article says that if the service has
not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a note under this Article, which says that the full pension admissible under the Regulations is not to be given as a matter of course but rather to be treated as a matter of distinction. It was under this Article that the Government acted when it reduced the pension to two-thirds. Reduction in pension being a matter of discretion with the Government; it cannot, therefore, be said that it committed any breach of the Regulations in reducing the pension of the appellant."

6. **Reversion from temporary or officiating post**

A person officiating in a post has no right to hold it for all times. He may have been given the officiating post because the permanent incumbent was not available, having gone on leave or being away for some other reasons. When the permanent incumbent comes back, the person officiating is naturally reverted to his original post. This is no reduction in rank for it was the very term on which he had been given the officiating post. Again sometimes a person is given an officiating post to test his suitability to be made permanent in it later. Here again, it is an implied term of the officiating employment that if he is found unsuitable, he would have to go back. If therefore, the appropriate authorities find him unsuitable for the higher rank, the action taken is in accordance with the terms on which the officiating post had been given. It is in no way a punishment and is not, therefore, a reduction in rank. It has been held in Parshottam Lal Dhingra v. Union of India, 1958 SCR 828 p. 842, that:

> It is, therefore, quite clear that appointment to a permanent post in a Government service, either on probation or on an officiating basis, is, from the very nature of such employment, itself of a very transitory character and in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time."—**State of Bombay v. F. A. Abraham**, AIR 1962 SC 792 : 1962 SCA 168 : 64 Bom LR 575.


> "Reversion from a temporary post held by person does not per se amount to reduction in rank because the temporary post held by him is not his substantive rank. For the purposes of this appeal it is unnecessary to decide in what circumstances a reversion would be regarded as a reduction in rank as the appellant has not established as a fact that the order of reversion passed against him was by way of penalty. The order of reversion, therefore, did not contravene the provisions of Article 311 and was a valid order."
The point again came up for discussion before the Supreme Court in P. C. Wadhwa v. Union of India, AIR 1964 SC 423 : (1964) Lab LJ 395. In that case an officiating Superintendent of Police whose substantive rank was that of an Assistant Superintendent of Police was reverted for unsatisfactory conduct. Although he was served with a charge-sheet, no details of the unsatisfactory conduct were specified and the person who was reverted was not asked for an explanation. The Supreme Court was of the view that the reversion which imperilled future chances of promotions entailed penal consequences, and, on the basis of the elucidation made in Dhindra’s case, (1958) LLJ 544, that there was an undoubted reduction in rank even in the case of a person who was holding an officiating post. If the reversion involved a stigma, the order of reversion made without adherence to the provisions of Article 311 of the Constitution was quashed. The following passages from the judgment are quoted for reference:

"The extracts quoted above show that the appellant was really reverted by way of punishment. The departmental proceedings were instituted against him on 18th July, 1958. On 9th October, 1958, it was noted that as the regular enquiry into the conduct of the appellant might take a long time, it was advisable to shift him from Ferozepur. The reversion order was thereafter passed and the ground suggested for reversion was unsatisfactory conduct. No details of the unsatisfactory conduct were specified and the appellant was not asked for any explanation. In his Writ petition the appellant stated that he has had a brilliant academic career and that no bad or adverse remarks were ever communicated to him; he further stated that he was recommended for the award of the Indian Police Medal for gallantry; only a month before the order of reversion he was given an increment of pay. The appellant’s suggestion is that if his work was unsatisfactory, his increment would have been withheld. On all these grounds the contention of the appellant is that he has really been reverted by way of punishment though the order of reversion is expressed in innocuous terms.

"We are inclined to agree with this contention of the appellant. It should be made clear, however, that when a person is reverted to his substantive rank, the question of penal consequences in the matter of forfeiture of pay or loss of seniority must be considered in the context of his substantive rank and not with reference to his officiating rank from which he is reverted, for every reversion must necessarily mean that the pay will be reduced to the pay of the substantive rank. In the case before us the appellant has not merely suffered a loss of pay which was inevitable on reduction of rank, but he has also suffered the loss of seniority as also postponement of future chances of promotion to the senior scale. A matter of this kind has to be looked at from the point of view of substance rather than of form. It is indeed true, as was pointed out in Parshottam Lal Dhindra’s case, 1958 SCR 828 : AIR 1958 SC 36, that the motive operating on the mind of the Government may be irrelevant; but it must also be remembered that in a case
where Government has by contract or under the rules the right to reduce an officer in rank, Government may nevertheless choose to punish the officer by such reduction. Therefore, what is to be considered in a case of his nature is the effect of all the relevant factors present therein. If, on a consideration of those factors, the conclusion is that the reduction is by way of punishment involving penal consequences to the officer, even though the Government has a right to pass the order of reduction, the provisions of Article 311 of the Constitution are attracted and the officer must be given a reasonable opportunity of showing cause against the action proposed to be taken against him. Our conclusion is that in the present case the appellant was reverted by way of punishment, but he was given no opportunity of showing cause against the action proposed to be taken against him. Therefore, the order of reversion, dated 3rd November, 1958, was in violation of the provisions of Article 311 of the Constitution.

In Naresh Chandra Saha v. Union Territory of Tripura and others, (1969) 3 SCC 22, the appellant was appointed as Sub Treasury Officer from April 1, 1950. On May 10, 1954, he was appointed officiating Sub-Divisional Officer with effect from September 10, 1953. He was reverted to the post of sub-treasury officer with effect from May 6, 1954, and suspended with effect from July 3, 1958, by order of the Chief Commissioner which was set aside by the Court. The Chief Commissioner by order, dated November 7, 1960, reinstated him to the post of the Superintendent of Surveys and reverted him to his substantive post of Sub Treasury Officer with retrospective effect from June 7, 1957. The appellant challenged the validity of the order of reversion. The High Court dismissed the petition. On appeal to the Supreme Court, it was held by Shah J.:

"Counsel for the appellant relied upon the observations made by S. R. Das, C. J., in Parschottam Lal Dhirngra v. Union of India, 1958 SCR 828, 836:

'But the mere fact that the servant has no title to the post or the rank and the Government has by contract, express or implied or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty.'
"These observations, in our judgment, do not assist the appellant. The order reverting the appellant from June 7, 1957, to his substantive post does not entail forfeiture of his pay or allowances or loss of seniority in his substantive rank or stoppage or postponement of his future chances of promotion.

"Counsel for the appellant urged that whenever a person is reinstated as from the date on which his services were terminated he must be resorted to the same office which he was holding at the date of the termination of employment or suspension and must receive salary up to the date of reinstatement which that office carried. We find no warrant for the submission. If the appellant had not been suspended, it was open to the Chief Commissioner still to revert him to his substantive post. We see no reason for holding that the Chief Commissioner could not do so when he reinstated the appellant. There is no ground for thinking that the order was made maliciously. The reason for reversion was that since June 7, 1957, another officer was occupying the post of the Superintendent of Surveys. The post having been already filled, the appellant cannot claim that when he was reinstated he should have been paid emoluments attached to the office of Sub Divisional Officer on the footing that he continued to occupy that office he was holding in an officiating capacity."

[See also “Chapter IX—Topic “Officiating Persons”].

6 (a). **Transfer from one post to another carrying the same scale of pay does not amount to reduction in rank**

It is well-known that in Government service there may be senior posts, the holders of which are not declared as Head of Department, while persons holding comparatively junior posts may be declared as such. The rank in Government service does not depend on the mere circumstances that the Government servant in the discharge of his duties is given certain powers. In *K. Gopaul v. Union of India and others*, AIR 1967 SC 1864 : (1967) 3 SCR 627 : (1968) 1 SCWR 49 : (1968) 1 Lab LJ 584, the contention that, the fact that the post of Accomodation Controller to which the appellant had been transferred had been designated as the post of a Head of the Department involved reduction in rank was not accepted by the Supreme Court. In the case of the appellant the position was that on being transferred to the post of the Accomodation Controller, he was still to continue to draw pay in the same scale in which he was drawing his pay while working as Inspector-General of Registration. The appellant was thus not sent to a post carrying a lower scale of pay. The Supreme Court, therefore, held that there was no force at all in the plea that the posting of the appellant as Accomodation Controller when he was holding the post of Inspector-General of Registration amounted to reduction in rank.

7. **Reversion when punishment**

In Madhav v. State of Mysore, AIR 1962 SC 8 : (1962) 1 SCR 886 : (1962) 1 SCJ 134 : 64 Bom LR 396, the petitioner was not considered fit to be promoted to the Indian Police Service but was reverted to his substantive post as a result of an adverse finding against him in a departmental enquiry for misconduct. The question that arose for consideration in this case was whether the petitioner could be said to have been reduced in rank within the meaning of Section 240 (3) of the Government of India Act, 1935. The Court observed:

"In every case of reversion from an officiating higher post to his substantive post, the civil servant concerned is deprived of the emoluments of the higher post. But that cannot, by itself, be a ground for holding that the second test in Dhirgra's case, 1958 SCR 828 : AIR 1958 SC 36, namely, whether he has been visited with evil consequences can be said to have been satisfied. Hence, mere deprivation of higher emoluments as a consequence of reversion cannot amount to the 'evil consequence' referred to in the second test in Dhirgra's case, they must mean something more than mere deprivation of higher emoluments. That being so, they include, for example, forfeiture of substantive pay, loss of seniority, etc. Applying the test to the present case, it cannot be said that simply because the appellant did not get a Deputy Collector's salary for three years, he was visited with evil consequences of the type contemplated in Dhirgra's case, 1958 SCR 828. Even if he had been reverted in the ordinary course of the exigencies of the service, the same consequences would have ensured. If the loss of the emoluments attaching to the higher rank in which he was officiating was the only consequence of his reversion as a result of the enquiry against him, the appellant would have no cause of action. But it is clear that as a result of the order, dated August 11, 1948 (Ex. 35) the appellant lost his seniority as a mamlatdar, which was his substantive post. That being so, it was not a simple case of reversion with no evil consequence; it had such consequence as would come within the test of punishment as laid down in Dhirgra's case, 1958 SCR 828. If the reversion had not been for a period of three years, it could not be said that the appellant had been punished within the meaning of the rule laid down in Dhirgra's case. It cannot be asserted that his reversion to a substantive post for a period of three years was not by way of punishment. From the facts of this case it is clear that the appellant was on the upward move in the cadre of his service and but for this aberration in his progress to a higher post, he would have, in the ordinary course, been promoted as he actually was some time later when the authorities realised perhaps he had not been justly treated, as is clear from the order of Government, dated March 26, 1951, promoting him to the higher rank with effect from August 1, 1950. But that belated justice meted out to him by the Government did not completely undo the mischief of the order of reversion impugned in this case. It is clear to us, therefore, that as a result of the order of reversion aforesaid, the appellant had been punished and that the
order of the Government punishing him was not wholly regular. It has been found that the requirements of section 240 (3) of the Government of India Act, 1935, corresponding to Article 311 (2) of the Constitution, had not been fully complied with. His reversion in rank, therefore, was in violation of the Constitutional guarantee.”

In Debesh Chandra Das v. Union of India, (1969) 2 SCC 158 : 1969 SLR 485, the appellant was a member of the Indian Civil Service. He qualified in 1933 and arrived in India in 1934 and was allotted to Assam. In 1940, he came to the Government of India and became in turn Under-Secretary and Deputy Secretary, Home Ministry. In 1947, he went back to Assam where he held the post of Development Commissioner and Chief Secretary. In 1951, he again came to the Government of India as Secretary, Public Service Commission. In 1955, he became Joint Secretary to the Government of India and continued to hold that post till 1961. From 1961 to 1964, he was Managing Director of Central Warehousing Corporation. On July 29, 1964, he was appointed Secretary, Department of Social Security, with effect from July 30, 1964 and until further orders. On March 6, 1965, the Appointments Committee of the Cabinet approved the proposal to continue him as Secretary, Department of Social Security. He continued in that Department, which is now re-named as the Department of Social Welfare. On June 20, 1966, he received a letter from the Cabinet Secretary which was to the following effect:

“My dear Debesh:

For some time, the Government has been examining the question of building up a higher level of administrative efficiency. This is much more important in the context of the recent developments in the country. The future is also likely to be full of problems. In this connection, the Government examined the names of those who are at present occupying top-level administrative posts with a view to ascertaining whether they were fully capable of meeting the new challenges or whether they should make room for younger people. As a result of this examination, it has been decided that you should be asked either to revert to your parent State or to proceed on leave preparatory to retirement or to accept some post lower than that of Secretary of Government. I would be glad if you would please let me know immediately as to what you propose to do so that further action in the matter may be taken.

Yours sincerely,

(Sd.) DHARMA VIRA”.

He asked for interview with the Cabinet Secretary and the Prime Minister and represented his case but nothing seems to have come of it. On September 7, 1966, he received a second letter from the Cabinet Secretary which said inter alia, as follows:

“... I am now directed to inform you that after considering your oral and written representations in the matter Government has decided that your services may be placed at the

S.L.I.—66
disposal of your parent State Assam. In case, however, you like to proceed on leave preparatory to retirement, will you please let me know?........... . . ."

The appellant treated these orders as reduction in his rank and filed a writ petition in the High Court of Calcutta on September 19, 1966. According to him the order amounted to a reduction in rank since the pay of a Secretary to the Government of India (I. C. S.) is Rs. 4,000/- and the highest pay in Assam (I. C. S.) is Rs. 3,500/-. There being no equal post in the Government of Assam, his reversion to the Assam Service meant a reduction not only in his emoluments but also in his rank. He also contended that he held a 5 years' tenure post and the tenure was to end on July 29, 1969, but was wrongly terminated before the expiry of five years. He also alleged that there was a stigma attached to his reversion as was clear from the three alternatives which the letter of the Cabinet Secretary gave him. The highest post in the Government of Assam being equivalent to the Joint Secretary of Government of India, his reversion to the highest post, i.e., Chief Secretary to the Government of Assam, amounted to a reduction in rank. He contended, if this was the case, the procedure under Article 311 (2) of the Constitution ought to have been followed and without following that procedure the order was not sustainable.

When the appellant filed the writ petition he was appointed as a Special Secretary on October 15, 1966, but under one of his juniors. The appellant was next only to the Cabinet Secretary in the matter of seniority. He also received a letter from the Government of India, dated October 20, 1966, in which it was said that Government was considering giving him a post equal to that of a Secretary. The writ petition was dismissed by Justice A. N. Ray on May 19, 1967. The following day the appellant was again re-posted to Assam but he filed an appeal and obtained a stay. On March 21, 1968, he was appointed Secretary in the Department of Statistics in the Central Government. The appeal was heard by Justice P. B. Mukharji and Justice A. N. Sen who differed, the former was in favour of dismissing the appeal while the latter was in favour of allowing it. The appeal was then laid before Sankar Prasad Mitra, J., who agreed with Justice Mukharji and the appeal was dismissed on September 18, 1968. On September 20, 1968, the appellant was re-posted to Assam. He, however, filed an appeal before the Supreme Court.

It was contended that the reversion of the appellant to the Assam Service amounts to a reduction in rank. This was on the ground that he held a higher post in the Government of India and there was no post equal to it under the Assam Government. The post of the Chief Secretary in the Assam Government was equal to the post of a Joint Secretary in the Government of India and his reversion therefore indirectly mean a reduction in his rank and also in his emoluments because the highest post in Assam did not carry a salary equal to that of a Secretary in the Government of India. He also contended that under Article 311 (2) an enquiry had to be made and he had to be given a chance of explaining his case if the reduction in rank amounted to a penalty. He contended that the letters of the Cabinet Secretary spoke for themselves and clearly showed that he was being offered a
lower post even in the Government of India if he was to continue here denoting thereby a desire to reduce him in rank. The letters also spoke of his unsatisfactory work and, therefore, cast a stigma on him and therefore his reversion must be treated as a penalty and if the procedure laid down under Article 311 (2) was not followed, the order of the Government of India could not be sustained.

The Government of India contended that he was on deputation and the deputation could be terminated at any time; that his orders of appointment clearly showed that the appointments were “until further orders” and that he had no right to continue in the Government of India if his services were not required and that his reversion to his parent State did not amount either to any reduction in rank or a penalty, and, therefore, the order was quite legal.

Hidayat Ullah, C. J., who delivered the judgment of the Court, observed:

“The position that emerges is that the cadres for the Indian Administrative Services are to be found in the State only. There is no cadre in the Government of India. A few of these persons are, however, intended to serve at the Centre. When they do so they enjoy better emoluments and status. They rank higher in the service and even in the Warrant of Precedence of the President. In the States they cannot get the same salary in any post as Secretaries are entitled to in the Centre. The appointments to the Centre are not in any sense a deputation. They mean promotion to a higher post. The only safeguard is that many of the posts at the Centre are tenured posts. Those of Secretaries and equivalent posts are for five years and for lower posts the duration of tenure if four years.

“Now Das held one of the tenure posts. His tenure ordinarily was five years in the post. He got his Secretaryship on July 30, 1964, and was expected to continue in that post for five years, that is, till 29th July, 1969. The short question in this case is whether his reversion to the Assam State before the expiry of the period of his tenure to a post carrying a smaller salary amounts to reduction in rank and involves a stigma upon him.

“Reversion to a lower post does not per se amount to a stigma. But we have here evidence that the reversion is accompanied by a stigma. In the first letter issued to him on June 20, 1969 by Mr. Dharma Vira (Cabinet Secretary) it was said that Government was considering whether the persons at top level administrative posts were capable of meeting the new challenges or must make room for younger men. The letter goes on to say that he may choose one of three alternatives: accept a lower post at the Centre, go back to a post carrying lower salary in Assam or take leave preparatory to retirement. The offer of a lower post in Delhi is a clear pointer to the fact of his demotion. It clearly
tells him that his reversion is not due to any exigency of service but because he is found wanting. The three alternatives speak volumes. This was not a case of reverting him to Assam at the end of a deputation or tenure. He can be retained in the Central Services provided he accepts a lower post, and the final alternative that may retire clearly shows that the Government is bent upon removing him from his present post. In the next letter this fact is recognized because on September 7, 1966, he is offered only two alternatives. The alternative of a lower post is advisedly dropped because it discloses too clearly a stigma. If any doubt remained it is cleared by the affidavit which is now filed. Paragraphs 7 and 10 of the affidavit read as follows:

'7. With reference to the allegations made in Paragraphs 13 to 23 of the said application, I make no admission in respect thereof except what appears from relevant records. I further say that the performance of the petitioner did not come to the standard expected of a Secretary to the Government of India.'

'10. The allegations made in Paragraph 26 of the said application are correct. I further say that the said representation was rejected by the Prime Minister in view of the standard of performance of the petitioner.'

"Now it has been ruled again and again in this Court that reduction in rank accompanied by a stigma must follow the procedure of Article 311 (2) of the Constitution. It is manifest that if this was a reduction in rank, it was accompanied by a stigma. We are satisfied that there was a stigma attaching to the reversion and that it was not a pure accident of service.

"It remains to see whether there was a reduction in rank. There is no definition of reduction in rank in the Constitution. But we get some assistance from Rule 3 of the All-India Services (Discipline and Appeal) Rules, which provides:

'3. Penalties.—The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a member of the Service, namely:

* * * *

(iii) reduction in rank including reduction to a lower post or time-scale, or to a lower stage in a time-scale;

* * * *'

"We have shown above that he was holding a tenure post. Nothing turns upon the words of the notification ‘until further orders’ because all appointments to tenure posts have the same kind of order. By an amendment of Fundamental Rule 9 (30) in 1967, a form was prescribed and that form
was used in his case. These notifications also do not indicate that this was a deputation which could be terminated at any time. The notifications were brought to our notice during the argument which bear out this fact and none to the contrary was shown. Das thus held a tenure post which was to last till July 29, 1969. A few months alone remained and he was not so desperately required in Assam that he could not continue here for the full duration. The fact that it was found necessary to break into his tenure period close to its end must be read in conjunction with the three alternatives and they clearly demonstrate that the intention was to reduce him in rank by sheer pressure of denying him a Secretaryship. No Secretary, we were told has so far been sent back in this manner and this emphasises the element of penalty. His retention in Government of India on a lower post thus was a reduction in rank.

"Finally we have to consider whether his reversion to Assam means a reduction in rank. It has been noticed above that no State Service (the highest being Chief Secretary's) carries the emoluments which Das was drawing as a Secretary for years. His reversion would have meant a big drop in his emoluments. Das was prepared to go to Assam provided he got his salary of Rs. 4,030/- per month but it was stated before us that was not possible. Das was prepared to serve at the Centre in any capacity which brought him the same salary. This too was said to be not possible. This case was adjourned several times to enable Government to consider the proposal but ultimately it was turned down. All that was said was that he could only be kept in a lower post. If this is not reduction in rank we do not see what else it is. To give him a Hobson's choice of choosing between reversion to a post carrying a lower salary or staying here on a lower salaried post, is to indirectly reduce him in rank.

"Therefore, we are satisfied that Das was being reduced in rank with a stigma upon his work without following the procedure laid down in Article 311 (2). We say nothing about a genuine case of accident of service in which a person drifted from a State has to go back for any reason not connected with his work or conduct. Cases must obviously arise when a person taken from the State may have to go back for reasons unconnected with his work or conduct. Those cases are different and we are not expressing any opinion about them. But this case is clearly one of reduction in rank with a distinct stigma upon the man. This requires action in accordance with Article 311 (2) of the Constitution and since none was taken, the order of reversion cannot be substituted. We quash it and order the retention of Das in a post comparable to the post of a Secretary in emoluments till such time as his present tenure lasts or there is an inquiry against him as contemplated by the Constitution."

proceedings was held, the order was in violation of the provisions of Article 311.

The mere form of the order reverting an officer to his substantive post even if he is appointed temporarily or in an officiating capacity to a superior post, is not decisive. If the order is made for a collateral purpose or if in making the order the officer is actuated by malice the order is liable to be set aside. Again if the order involves a penalty even if on the face of it the order does not bear any such impress, the officer prejudiced by the making of that order is entitled to prove that he has been denied the protection of the guarantee under Article 311 of the Constitution or the protection of the rules governing his appointment. An order of reversion made due to the exigencies of the service in consequence of which an officer who was temporarily appointed or appointed in an officiating vacancy may not be challenged. But the order passed maliciously or on collateral consideration or which involves penal consequences or which denied to the Civil Servant the guarantee of the Constitution or of the rules governing his employment, always open to challenge by appropriate authority—Jagdish Prasad Shastri v. The State of U. P. and others, 1970 SLR 938.

The direction that the appellant be reverted and his name be struck off the list of Panchayat Secretaries eligible for promotion to the post of Panchayat Inspector involved very serious consequences to the appellant. Before such an order could be made it was obligatory on the appropriate authority to give an opportunity to the appellant to explain his conduct which merited that punishment. Admittedly no such opportunity was given to the appellant. The order prima facie supported both the branches of the argument raised on behalf of the appellant that it involved penal consequences and that the order was not made due to the exigencies of service, but to punish the appellant, because the relation between the appellant and the Director of Panchayat Raj were strained. Refusal of the High Court to consider the letter of reversion after admitting it on the record is open to serious objection. The High Court has refused on the grounds which were not relevant to consider an important piece of evidence in support of the case of the appellant and that thereby denied the appellant a fair trial. The order of the High Court suffer from a serious infirmity—Ibid.

It cannot be said that so long as there are no express words of stigma attributed to the conduct of a Government Officer in the impugned order it cannot be held to have been made by way of punishment. The test is whether the misconduct or negligence is a mere motive for the order of reversion or whether it was the very foundation of the order. No such rigid principle has been laid down by the Supreme Court that one has to look only to the order and if it does not contain any imputation of misconduct or words attaching a stigma to the character or reputation of a Government Officer it must be held to have been made in the ordinary course of administrative routine and the Court is barred from looking at all the attendant circumstances to discover whether the order had been made by way of punishment. The form of the order is not conclusive of its nature and it might merely be a cloak of camouflage for an order founded on misconduct. It may be that the order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding out whether
junior scale of pay was promoted to officiate in a post in the senior scale of pay. He was, thereafter reverted to his substantive post while other cadres junior to him continued to officiate in posts in the senior scale of pay. It was held that it would only indicate that the action taken against the cadre officer so reverted was only by way of punishment and that he had not only been reduced in rank but his promotion to the senior scale had also been withheld.

In *Sukhbans Singh v. State of Punjab*, AIR 1962 SC 1711, the appellant concerned a Tehsildar who was recruited in the year 1936 and appointed as an Extra-Assistant Commissioner on probation in 1945. In 1952 he was reverted to the post of Tehsildar by an order duly served on him. This order was followed by a warning served on him on 18th September, 1953, and in this warning it was clearly stated that the officer was guilty of misconduct in several respects. It appears that the officer challenged the validity of the order reverting him to the post of a Tehsildar on the ground that it amounted to punishment, and he also alleged that it was the result of *mala fides*. The Supreme Court considered the relevant material adduced in the proceedings which showed that the record of the officer was extremely satisfactory and that the order reverting him showed that the Government was acting *mala fide*. Thus, the decision in this case was based mainly, if not solely, on the ground that the reversion of the officer was *mala fide*. It is true that in the course of the judgment, the Supreme Court has observed that having regard to the sequence of events which led to the reversion followed by the warning administered to the officer considered in the light of his outstanding record, the reversion could also be held to be a punishment; but the officer’s plea which proved effective was the plea of *mala fides* against the Government.

In the recent decision in *Appar Apar Singh v. The State of Punjab and others*, Civil Appeal No. 25 of 1967, decided on 3-12-1970 : (1970) 3 SCC 338, the question for consideration was whether an order reverting the appellant in that case from a post in Class I service in which he was officiating to his substantive post in Class II amounted to reduction in rank. The appellant was employed in the Punjab Education Service Class II. He was promoted to Class I on an officiating post as Principal of the Government College, Muktsar. He had trouble with the members of the staff. The appellant as Principal of the College in reading the annual report made certain aspersions against some members of the teaching staff. Thereafter, an enquiry was made pursuant to the demand of some of the parents of the students. Two Deputy Directors made an enquiry. At that enquiry the appellant was neither given copies of statements recorded nor was he allowed to cross-examine the witnesses. The State contended that it was a preliminary confidential enquiry into the affairs of the College and that the appellant had no right to continue in Class I appointment where he was only officiating. The High Court held that the order of reversion was not by way of punishment but only because the person reverted was not found suitable to hold the post and an enquiry was only to find out the state of affairs of the normal functioning of the College. This Court held that the enquiry by the Deputy Directors was to investigate allegations against the Principal and the Deputy Directors recommended exemplary punishment. Therefore, the order amounted to reduction in rank and as no enquiry regarding disciplinary
it was made by way of punishment or administrative routine. But the entirety of circumstances proceeding or attendant on impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or the very foundation of the order—


8. Government’s order of repatriation to parent department, if reversion

In **K. H. Pandis v. State of Maharashtra**, (1971) 1 SCC 790 : 1971 SLR 310, the appellant was sent on deputation to another department where he was promoted to a higher grade. The appellant married his daughter and he was alleged to have misused his official position. But on investigation he was found to be exonerated of all the charges. But before the report could be submitted, he was repatriated to his parent department on his original post.

The appellant contended that the resolution was in the nature of punishment by way of reduction in rank in violation of the provisions contained in Article 311 of the Constitution and made an application under Article 226 of the Constitution impeaching the order of reversion as an action of punishment taken on false reports without waiting for the investigation by the police to be complete.

The Single Judge of the Bombay High Court held that the order was an act of punishment and reduction in rank. The Division Bench of the Bombay High Court reversed that judgment and held that the appellant had no legal right to the post in the Department of Agriculture and Forests and therefore his reversion was not a punishment.

The Supreme Court observed:

“In determining whether the reduction is or is not by way of punishment it has to be found out if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances or promotion, or that in truth and reality the Government has passed the order as and by way of penalty.

“In applying these principles **Dhingra’s case**, (supra) laid down two tests; first whether the servant had right to the post or the rank, or, secondly, whether he has been visited with evil consequences of the kind mentioned in that decision.

“This Court in **Sukhhans Singh v. State of Punjab**, (1963) 1 SC 416 : AIR 1962 SC 1711 : 64 Punj LR 1008, in dealing with the question as to whether a probationer has any right to hold the post said that it would not be correct to say that a probationer has a right to the higher post in which he is officiating or a right to be confirmed, but a probationer could not be punished for misconduct without complying with the requirements of Article 311. The appellant in that case was recruited as Tahsildar in 1936. He was thereafter selected by the Public Service Commission and appointed as an Extra Assistant Commissioner on probation in 1945. On May, 20, 1952 he was
reverted to his substantive post of Tahsildar. He asked for the ground of revision. He was denied the same. This Court held on the facts that the Government wanted to punish him for what it thought was misconduct and therefore, reverted him. Thus, reversion by way of punishment without complying with the provisions of Article 311, cannot be sustained.

"The most pre-eminent features which accentuate the order of reversion to be in the nature of punishment in the present case are these. The appellant was faced with certain charges of receiving money and gifts at the time of the marriage of his daughter. The appellant denied the allegations. The Secretary to the Government virtually threatened to repatriate the appellant to his parent department. The Minister visited the office of the appellant. The Police conducted an enquiry. The appellant himself had asked for an enquiry. At the time of the passing of the order of reversion the appellant not only protested but also asked the Government to wait for the completion of the investigation. The Government did not accede to that request. Subsequently, the investigation indicated that the appellant was totally free from blame or taint.

"The entire service record of the appellant showed that the appellant was chosen to go on ‘deputation’ twice once in 1942 and again in 1957. From 1942 to 1955 he was in the Food Department and he was promoted from time to time. Between 1942 and 1955 the appellant rose from the post of Permit Officer to that of Rationing Officer at the salary of Rs. 530 p.m. In 1955 the post was abolished. The appellant was reverted to his parent department. In his parent department the appellant was also promoted to the post of Inspector and thereafter District Inspector in the grade of 220—10—300. In 1957, the appellant was again sent on ‘deputation’ to the Food Department. The appellant was chosen for his experience. Again, he received a promotion and increment in salary.

"It is true that the post which the appellant held was a temporary one, but the post continued for several years. The indications were that the post was practically of a quasi-permanent character. The appellant was reverted neither because the temporary post was abolished nor because he was found unsuitable to continue. The parent department of the appellant did not want him back.

"The order of reversion simpliciter will not amount to a reduction in rank of a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is
reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore, though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of 'accident of service' in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311, will be attracted.

"In the present case, the facts and circumstances to which reference has already been made, bring out in bold relief that the order of reversion was in the nature of punishment. The order was not in compliance with the provisions of the Constitution."
CHAPTER XIV

SUSPENSION

SYNOPSIS

1. Suspension: Meaning and scope.
2. Kinds of suspension.
4. Interim suspension can be passed even when no enquiry is pending.
5. Appointing authority can suspend.
6. Dismissal declared illegal, if suspension revived.
7. Suspension of Public Servant—Suspension declared invalid by Court—If Fundamental Rule applicable.
8. Disciplinary matter, if includes suspension.
9. No suspension by extending service unilaterally.
10. Suspension: Subsistence allowance, quantum of.
11. Government servant on leave preparatory to retirement, if can be suspended—Punjab Civil Service Rules, 1959.
12. No order of suspension can be passed during post-retirement leave.
13. Suspension order, when it takes effect.
14. Suspension and Disciplinary proceedings—Is intimation of disciplinary proceedings a condition precedent to suspension.
15. Whether mode of suspension is different in different service.

1. Suspension: Meaning and scope.

The word "suspension", according to Oxford Dictionary, means "action of debarring or state of being debarred, especially for a time, from a function or privilege; temporary deprivation of one's office or position; or "again" state of being temporarily kept from doing or deprived of something". The meaning of the word "suspend" has been given in the dictionary as "to debar, usually for a time, from the exercise of a function or enjoyment of a privilege, specially to deprive temporarily of one's office"; or again "to interdict". Any contract between master and servant is a material obligation which requires each party to perform its part of the contract. A contract can, however, be suspended temporarily and during its period of suspension the contracting parties are absolved of all or some of their obligations. There is nothing novel in a contract being suspended. It merely amounts to a postponement of the actual performance of the contract and in the case of a continuing contract like the contract of service between master and servant suspension means, that the relationship of master and servant remains in abeyance for a certain period. Suspension, however, need not be complete and it cannot be argued that whenever a contract of service is suspended, the servant is free to go and seek employment elsewhere and the master is free to withhold the wages due to the servant and to employ some other servant to do his work. Such suspension would be equivalent to a total termination of the contract and suspending a contract is certainly not the same thing as terminating or rescinding it; and if suspension is something less than termination, then it must follow that a connection, however tenuous, continues between the master and the servant.

An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The early effect of
the order of suspension is that though he continues to be a member of
the Government service he is not permitted to work, and further, during
the period of his suspension he is paid only some allowance generally
called "subsistence allowance" which is normally less than his salary
instead of the pay and allowance he would have been entitled to if he
had not been suspended.

The general law on the subject of suspension has been laid down by
the Supreme Court in three cases, namely, The Management of Hotel
Imperial, New Delhi v. Hotel Workers' Union (1960) I SCR 476 : AIR
These cases lay down that it is well-settled that under the ordinary law
of master and servant the power to suspend the servant without pay
could not be implied as a term in an ordinary contract of service between
the master and the servant but must arise either from an express term
in the contract itself or a statutory provision governing such contract.
It was further held that an order of interim suspension could be passed
against an employee while inquiry was pending into his conduct even
though there was no specific provision to that effect in his terms of
appointment or in the rules. But in such a case he would be entitled to
his remuneration for the period of his interim suspension if there is no
statute or rule existing under which it could be withheld.

The general principle therefore is that an employer can suspend
an employee pending an enquiry into his conduct and the only question
that can arise on such suspension will relate to the payment during
the period of such suspension. If there is no express term in the
contract relating to suspension and payment during such suspension or
if there is no statutory provision in any law or rule, the employee is
entitled to his full remuneration for the period of his interim suspension;
on the other hand, if there is a term in his respect in the contract or
there is a provision in the statute or the rules framed thereunder pro-
viding for the scale of payment during suspension, the payment would
be in accordance therewith. These general principles, apply with equal
force in a case where the Government is the employer and a public
servant is the employee with this modification that in view of the
peculiar structural hierarchy of Government, the employer in the case
of Government, must be held to be the authority which has the power
to appoint a public servant. On general principles, therefore, the
authority entitled to appoint a public servant would be entitled to
suspend him pending a departmental enquiry into his conduct or pend-
ing a criminal proceeding, which may eventually result in a depart-
mental enquiry against him. This general principle is illustrated by
the provision in section 16 of the General Clauses Act, No. X of 1897,
which lays down that where any Central Act or Regulation gives power
of appointment that includes the power to suspend or dismiss unless a
different intention appears. Though this provision does not directly
apply in the present case, it is in consonance with the general law of
master and servant. But what amount should be paid to the public
servant during such suspension will depend upon the provisions of the
statute or rule in that connection. If there is such a provision the
payment during suspension will be in accordance therewith. But if
there is no such provision, the public servant will be entitled to his full
emoluments during the period of suspension. This suspension must be
distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles, therefore, the Government, like any other employer, would have a right to suspend a public servant in one or two ways. It may suspend any public servant during departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment in the rules so permit. This will be suspension as penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Article 314 and this brings us to an invetigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise —R. P. Kapur v. Union of India, AIR 1964 SC 787.

A review of the general law of master and servant, the provisions of the Government of India Act, 1935, of the Appeal Rules and the Fundamental Rules, discloses that the position on August 13, 1947 with respect to members of the former Secretary of State's Services with respect to suspension whether as a punishment or otherwise was as follows. Members of the former Secretary of State's Services were liable to suspension either as an interim measure or as a punishment. Where suspension was as an interim measure and not as a punishment, it could be imposed either by the Secretary of State or the Secretary of State in Council as the appointing authority or by the Governor-General or the Governor, as the case may be, as the statutory authority. Suspension could also be imposed by the proper authority as a punishment under the Appeal Rules and such orders or suspension were subject to appeals as provided by the Appeal Rules. There was also provision for payment during suspension in the shape of subsistence allowance which was governed generally by Fundamental Rule 53 and in the case of members of the former Secretary of State's Services, Fundamental Rule 53 was subject to section 247 (3) of the Government of India Act, 1935. Therefore the contention that there could be no suspension except by way of punishment under Rule 49 of the Appeal Rules before 1947 is not correct. It is equally clear that where suspension before 1947 was an interim measure and not as a punishment under Rule 49, there was no question of any appeal from such an interim suspension pending a departmental enquiry or pending a criminal proceeding.

The position before the commencement of the Constitution was that members of the former Secretary of State's Services could be suspended either as an interim measure pending departmental enquiries or pending criminal proceeding or as a punishment. Where suspension was as an interim measure and not as a punishment such suspension could only be by the appointing authority which in the changed circumstances should be deemed to be the Government of India. Such interim suspension was not subject to any appeal. So far as suspension as a punishment was concerned, Rule 49 of the Appeal Rules applied and the authorities specified in these rules could pass an order of suspension as a punishment and that order would be subject to appeal provided in Rule 56 and other rules therein. As to the payment during the period or suspension that was governed by Fundamental Rule 53. It is thus position which was protected by Article 314 of the Constitution so far as suspension of members of the former Secretary of State's
Services was concerned whether as an interim measure or as a punishment—R. P. Kapur v. Union of India, AIR 1964 SC 787.

In Pratap Singh v. State of Punjab, AIR 1964 SC 72, the Supreme Court laid down as under:

"It is also urged that a Government servant on leave preparatory to retirement cannot be suspended as suspension means a person's ceasing to work on the post he holds and the public servant, on such leave holds no office or post and, therefore, he cannot be effectively suspended. Suspension of a Government servant, during the course of his service, simply means that no work is to be taken from him during the period of suspension. The Government servant does not work on a post during the period of his suspension. If he is actually discharging the duty of a certain office prior to suspension, the order of suspension would mean that he would cease to work on and discharge the duties of that post. If at that time he is not working on any post but is on leave, no question of his actually ceasing to work or giving up the discharge of duty arises, but that does not mean that the order of suspension would be ineffective. The Government servant, during suspension or on leave, holds a lien on his permanent post in view of Rule 313 unless his lien is suspended or is transferred under the appropriate rule and so has a title to hold that post when under suspension or on leave."

2. Kinds of suspension

Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspensions. Lastly, he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing his conditions of service at the same time keeping in force the master's obligations under the contract. In other words the master may ask his servant to retrain from rendering his service but he must fulfil his part of the contract—V. P. Gidroniya v. The State of M. P., (1970) 1 SCC 362.

In Mohammad Ghouse v. The State of Andhra, AIR 1957 SC 246; 1957 SCR 170 : 1957 SCJ 225 : 1957 SCC 180, a Judge of the Madras High Court sent his report on the enquiry into the charges against the appellant who was a subordinate Judicial Officer and expressed his opinion that he should be dismissed or removed from service. The High Court approved of it and passed an order on the 28th January, 1954, suspending him until further orders. The report was then sent
to the Government for action, and the Andhra Government issued a notice to the appellant on 12th August, 1954, to show cause why he should not be dismissed from service.

The contention of the petitioner was that he having been appointed by an order of the Governor the punishing authority was the Governor and the enquiry into his conduct could only be made by the Governor and not by the High Court. On a consideration of the relevant Rules and the different Articles of the Constitution the Court held the enquiry into the conduct of the applicant was within the competence of the High Court and the Government could pass orders of dismissals on the result of such enquiry, which cannot be treated as mere fact finding enquiry casting a duty upon the Government to institute a ‘departmental’ enquiry afresh. It was also held that it was the appropriate authority under Article 311 and that the order of the High Court passed on 28th January, 1954, was merely one of suspension pending final orders by the Government and such an order was neither one of dismissal nor of removal from service within Article 311. Under Rule 13 of the Madras Civil Services (Classification, Control and Appeal) Rules, that was the High Court that was constituted as the authority which may impose suspension pending enquiry into grave charges under Rule 17 (e) against the members of the State Judicial Service. The order in question was, therefore, held intra vires.

It was also laid down in the above decision that an order of suspension passed by the High Court upon a Subordinate Judicial Officer after an enquiry by itself and pending Government action against the officer did not attract Article 311 of the Constitution.

3. Power to suspend employee

The legal position as regards a master’s right to place his servants under suspension is now well-settled by the decisions of the Supreme Court. In The Management of Hotel Imperial, New Delhi and others v. Hotel Workers’ Union, (1961) 1 SCR 476 : AIR 1959 SC 1342, the question whether a master could suspend his servant during the pendency of an enquiry came up for consideration by the Supreme Court. Therein the Court observed that it was well-settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further observed therein that ordinarily in the absence of such a power either in express terms in the contract or under the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work he will have to pay the wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relationship of master and the servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

The same view was reiterated by the Supreme Court in T. Cajee v. U. Formanik Slem and another, AIR 1961 SC 276 : (1961) 1 SCR 759. The rule laid down in the above decisions was followed by the Supreme Court in R. P. Kapur v. Union of India, AIR 1964 SC 787. The law
on the subject was exhaustively reviewed in *Balvantray Ratilal Patel v. State of Maharashtra*. Therein the legal position was stated thus:

The general principle is that an employer can suspend an employee of his pending an enquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It is now well settled that the power to suspend, in the sense of a right to forbid an employee to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some statute would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is bound to pay. It is equally well-settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which, it could be withheld. The distinction between suspending the contract of a servant and suspending him from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this sense it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period. In other words the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey. The general principle, therefore, is that an employer can suspend an employee pending inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of suspension. If there is no express terms relating to payment during such suspension or if there is no provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment will be made in accordance therewith. This principle applied with equal force in a case where the Government is an employer and a public servant is an employee with this qualification that in view of the peculiar structural hierarchy of Government administration, the employer in the case of employment by Government must be held to be the authority which has the power to appoint the public servant concerned. It follows, therefore, that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct of pending a criminal proceeding which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the
provisions of the statute of statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension—V. P. Girdroniya v. The State of M. P., (1970) 1 SCC 362 : 1970 SCR 329.

4. Interim suspension can be passed even when no enquiry is pending

Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporary suspending the relationship of master and servant with the consequences that the servant is not bound to render service and the master is not bound to pay. It is equally well-settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which, it could be withheld. The distinction between suspending the contract of a service of a servant and suspending him from performing the duties of his office on the basis that the contract in subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period—V. P. Girdroniya v. State of M. P., 1970 WLN 11 (SC) : (1970) 1 SCC 363 : 1970 SCR 329.

In the Government of India v. Tarak Nath Ghosh, (1971) I SCC 734, the respondent, an officer of Indian Police Service, was suspended as serious allegations of corruption and mal practices were made against him and as the departmental preliminary enquiry indicated a prima facie case and disciplinary proceedings were contemplated against him. His suspension was deemed necessary to enable fuller enquiry being made for initiating the disciplinary proceedings. The respondents moved the High Court successfully for quashing of the order of suspension on the ground that it was without jurisdiction, since no departmental disciplinary proceedings had actually started. When the matter came before the Supreme Court, it was held:

"In our view it would not be proper to interpret the provisions of the All-India Services (Discipline and Appeal) Rules, 1955, by reference to the provisions of other rules even if they were made by or under the authority of the President of India. The All India Services (Discipline and Appeal) Rules, 1955, as they stood at the relevant time, were a self-contained code and we have to examine the provisions thereof to find out whether the order passed on the petitioner was justified. These rules were promulgated in exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951, by the Central Government after consultation with the Governments of the States concerned. They were applicable to members of the Indian

S.L.I.—68
Administrative Service and those of the Indian Police Service. Clause 3 of the Rules provided for penalties which might for good and sufficient reasons be imposed on a member of the service. Suspension is not a penalty covered by this clause.

"The crucial question in this case, is whether suspension of a member of the Service can only be ordered after definite charges have been communicated to him in terms of sub-clause (2) of Rule 5 or whether the Government is entitled to place an officer under suspension even before that stage has been reached after a preliminary investigation has been made into the conduct of the officer concerned following allegations of corrupt or malpractice levelled against him. To determine this it is necessary to find out the object of placing a Government officer under ‘suspension’ in terms of the said rule.

"‘Suspension’ according to the Oxford Dictionary means "the action of suspending or condition of being suspended; the action of debarring or state of being debarred, esp. for a time, from a function or privilege; temporary deprivation of one’s office or position.” A master can, subject to the contract of service, ask his servant not to render any service without assigning any reason but this would not be by way of punishment and the master would have to pay the servant his full wages of remuneration in such an eventuality. As Halsbury puts it:

‘Whether or not the master has power to suspend a servant during the duration of the contract of service depends upon the construction of the particular contract. In the absence of any express or implied term to the contrary, the master cannot punish a servant for alleged misconduct by suspending him from employment and stopping his wages for the period of the suspension’—(See Halsbury’s Laws of England, Third Edition, Vol. 25, Article 989, page 518)."

"Rule 7 of the Service Rules expressly provides for suspension of a member of the Service for the purpose of disciplinary proceedings. When serious allegations of misconduct are imputed against a member of a service normally it would not be desirable to allow him to continue in the post where he was functioning. If the disciplinary authority takes note of such allegations and is of opinion after some preliminary enquiries that the circumstances of the case justify further investigation to be made before definite charges can be framed. It would not be improper to remove the officer concerned from the sphere of his activity inasmuch as it may be necessary to find out facts from people working under him or look into papers which are in his custody and it would be embarrassing and inopportune both for the officer concerned as well as to those whose duty it was to make the enquiry to do so while
the officer was present at the spot. Such a situation can be avoided either by transferring the officer to some other place or by temporarily putting him out of action by making an order of suspension. Government may rightly take the view that an officer against whom serious imputations are made should not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings. Rule 7 is aimed at taking the latter course of conduct. Ordinarily when serious imputations are made against the conduct of an officer the disciplinary authority cannot immediately draw up the charges: it may be that the imputations are false or concocted or gross exaggerations of trivial irregularities. A considerable time may elapse between the receipt of imputations against an officer and a definite conclusion by a superior authority that the circumstances are such that definite charges can be levelled against the officer. Whether it is necessary or desirable to place the officer under suspension even before definite charges have been framed would depend upon the circumstances of the case and the view which is taken by the Government concerned.

"There would be nothing improper \textit{per se} if the rules were to provide for suspension even before definite charges of misconduct had been communicated to the officer concerned. The question is whether the language of Rule 7 is so correlated to that of Rule 5 as to lead us to hold that the word 'charges' in sub-clause (1) of Rule 7 must mean a definite charge as mentioned in sub-clause (2) of Rule 5. It may be that even in a case where definite charges have been raised against an officer he may satisfactorily explain the circumstances and the grounds alleged against him in his written statement. It is also possible that after the enquiry is conducted it is found that the charges are all baseless. In principle we can see no difference between the position of an officer against whom definite charges have been framed to which he is required to put in his written statement and a situation where on receipt of allegations of grave misconduct against him the Government is of opinion that it would not be proper to allow the officer concerned to function in the ordinary way. Merely because the order mentioned that disciplinary proceedings were contemplated against the respondent, as compared to Rule 7 which contains phrases like 'the initiation of disciplinary proceedings' and the 'starting of such proceedings' we cannot hold that the situation in the present case had not reached a stage which called for an order of suspension. In substance disciplinary proceedings can be said to be started against an officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Government that the \textit{prima facie} case has been made out against him for the framing of charges. When the order of suspension
itself shows that Government was of the view that such a *prima facie* case for departmental proceedings had been made out the fact that the order also mentions that such proceedings were contemplated makes no difference. Against the fact that in other rules of service an order of suspension may be made when 'disciplinary proceedings were contemplated' should not lead us to take the view that a member of an All-India Service should be dealt with differently. The reputation of an officer is equally valuable no matter whether he belongs to the All-India Service or to one of a humbler cadre. It is the exigency of the conditions of service which requires or calls for an order of suspension and there can be no difference in regard to this matter as between a member of an All-India Service and a member of a State Service or a Railway Service.”

In S. Govinda Menon v. The Union of India, (1967) 2 SCR 566: AIR 1967 SC 1274 : (1969) 1 SCJ 116, the appellant was a member of the Indian Administrative Service. He was the First Member of the Board of Revenue, Kerala State and was holding the post of Commissioner of Hindu Religious and Charitable Endowments. On the basis of certain complaints containing allegations of misconduct against the appellant in the discharge of his duties as Commissioner, the Kerala Government instituted certain preliminary enquiries and thereafter started disciplinary proceedings against him and also placed him under suspension under Rule 7 of the All-India Services (Discipline and Appeal) Rules. One of the grounds urged by the appellant was that the order of suspension which was, dated March 8, 1963, was not in compliance with Rule 7 inasmuch as definite charges were framed against him only on 8th June, 1963. On the basis of Rule 5(2) it was argued that the word “charges” which occurred in this rule and in Rule 7 should be given the same meaning and no order of suspension could be passed under Rule 7 before the charges in terms of Rule 5 (2) were framed against him. This was turned down by the Supreme Court observing (at p. 582):

“Rule 5(2) prescribes that the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges. The framing of the charge under Rule 5 (2) is necessary to enable the member of the Service to meet the case against him. The language of Rule 7 (1) is, however, different and that rule provides that the Government may place a member of the Service under suspension ‘having regard to the nature of the charge/charges and the circumstances in any case’ if the Government is satisfied that it is necessary to place him under suspension. In view of the difference of language in Rule 5 (2) and Rule 7 we are of the opinion that the word ‘charges in Rule 7 (1)’ should be given a wider meaning as denoting the accusation or imputation against the member of the service.”

5. Appointing authority can suspend

The authority entitled to appoint the public servant is entitled to suspend him pending departmental enquiry into his conduct or pending
a criminal proceeding, which may eventually result in a departmental enquiry against him—B. P. Patel v. State of Maharashtra, 1968 SLR 593 (SC).

6. Dismissal declared illegal—If suspension revived

The point came up before the Supreme Court in Khem Chand v. Union of India AIR 1963 SC 637 : (1963) 2 SCJ 312 : (1963) 1 Lab LJ 665. In that case the dismissal of Khem Chand was set aside by the Supreme Court by the judgment reported in AIR 1958 SC 300 and a decision was taken by the department to hold enquiry. The employee was suspended from the date of his original dismissal from service. During the pendency of the previous litigation, Khem Chand had instituted another suit claiming arrears of salary on the basis of the decree for declaration granted by the Lower Court. The suit remained stayed till the decision was passed by the Supreme Court in AIR 1958 SC 300. Before the suit for arrears could be disposed of, the defendants moved an application before the trial Court stating that the disciplinary authority had decided to hold a further enquiry on the allegations on which he had been originally dismissed and therefore Khem Chand should be deemed to have been placed under suspension from the date of the original order of dismissal.

The trial Court postponed the suit sine die, till the order of suspension is set aside by a competent tribunal or authority or is revoked under Rule 5 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. Against this decision Khem Chand filed a revision application, wherein Supreme Court observed:

"The provision in the rule that the Government servant shall be deemed to have been placed under suspension from the date of the original order of dismissal does not seem to affect the position that the order of dismissal previously passed was inoperative and that the appellant was a member of the service on the 25th May, 1953, when the first suit was instituted by the appellant. An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. There was a termination of the appellant's service when the order of dismissal was made on 17th December, 1951. When that order of dismissal was set aside the appellant's service revived and so long as another order of dismissal is not made or the service of the appellant is not terminated by some other means, the appellant continues to be a member of the service and the order of suspension in no way affects this position. The real effect of the order of suspension is that, though he continued to be a member of the Government service he was not permitted to work, and further, during the period of his suspension he was paid only some allowance—generally called 'subsistence allowance',—which is normally less than his salary—instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that the order of suspension affects a Government servant injuriously. There is no basis for thinking, however, that because of the
order of suspension he ceases to be a member of the service. The provision in Rule 12 (4) that, in certain circumstances, the Government servant shall be deemed to have been placed under suspension from the date of the original order of dismissal and shall continue to remain under suspension until further orders, does not in any way go against the declaration made by this Court. The contention that the impugned Rule contravenes Article 142 or 144 is, therefore, untenable."

The appellant’s contention that Rule 12 (4) contravened Article 19 (1) (b) of the Constitution was held untenable by the Supreme Court and it was observed:

"Equally untenable is the appellant’s next contention that the impugned rule contravenes the provisions of Article 19 (1) (f) of the Constitution. The argument is that as a result of this Court’s decree the appellant had a right to his arrears of pay and allowances. This right continued to be his property; and as the effect of the impugned rule is that he would not, for sometime at least, get those arrears it restricts his right. It may be conceded that the right to arrears of pay and allowances constituted property within the meaning of Article 19 (1) (f) of the Constitution and further that the effect of Rule 12 (4) is a substantial restriction of his right in respect of that property under Article 19 (1) (f). The question remains whether this restriction is a reasonable restriction in the interests of the general public. Nobody can seriously doubt the importance and necessity of proper disciplinary action being taken against Government servants for inefficiency, dishonesty and other suitable reasons. Such action is certainly against the interests of the Government servant concerned; but is absolutely necessary in the interest of the general public for serving whose interests the Government machinery exists and functions. Suspension of a Government servant, pending an enquiry, is a necessary part of the procedure for taking disciplinary action against him. It follows, therefore, that when the penalty of dismissal has been set aside but the disciplinary authority decides to hold a further enquiry on the same facts against him a fresh order of suspension till the enquiry can be completed, in accordance with law, is a reasonable step in the procedure. We have no hesitation in holding, therefore, that in so far as Rule 12 (4) restricts the appellant’s right under Article 19 (1) (f) of the Constitution, it is a reasonable restriction in the interests of the general public. Rule 12 (4) is, therefore, within the saving provisions of Article 19 (6), so that there is no contravention of the constitutional provisions."

The contention that there is a discrimination between a Government servant, the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a Court of law and another Government servant, a similar penalty on whom is set aside on appeal by the departmental disciplinary authority was held to have no force.
With reference to this contentment the Supreme Court made the following observations:

"Where a penalty of dismissal, removal or compulsory retirement imposed upon a Government servant is set aside by the departmental authority in appeal, it may or may not order further enquiry; just as where a similar penalty is set aside by a decision of a Court of law the disciplinary authority may or may not direct a further enquiry. Where the appellate authority after setting aside a penalty of dismissal, removal or compulsory retirement makes an order under Rule 30 (2) (ii) remitting the case to the authority which imposed the penalty, for further enquiry, Rule 12 (3) will come into operation and so the order of suspension, which in almost all cases is likely to be made where a disciplinary proceeding is contemplated or is pending shall be deemed to have continued in force on and from the date of the original order of dismissal and shall remain in force until further orders. There is, therefore, no difference worth the name between the effect of Rule 12 (4) on a Government servant the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a Court of law and a further enquiry is decided upon and the effect of Rule 12 (4) on another Government servant a similar penalty on whom is set aside in appeal or on review by the departmental authority and a further enquiry is decided upon. In both cases the Government servant will be deemed to be under suspension from the date of the original order of dismissal, except that where in a departmental enquiry a Government servant was not placed under suspension prior to the date when the penalty was imposed, this result will not follow, as Rule 12 (3), would not then have any operation. It is entirely unlikely, however, that ordinarily a Government servant will not be placed under suspension prior to the date of his dismissal. Rule 12 (1) provides that the appointing authority or any authority to which it is subordinate or any other authority empowered by the President in that behalf may place a Government servant under suspension; (a) where a disciplinary proceeding against him is contemplated or is pending, or (b) where a case against him in respect of any criminal offence is under investigation or trial. Mr. Sharma does not say that ordinarily any cases occur where a Government servant is initiated with a penalty of dismissal, removal or compulsory retirement, in a departmental proceeding, without there being a previous order of suspension under the provision of Rule 12 (1) and we do not think any such case ordinarily occurs. Consequently, the effect of Rule 12 (3) will be the same on a Government servant a penalty of dismissal, removal or compulsory retirement on whom is set aside, in appeal, by the departmental authority as the effect of Rule 12 (4) on a Government servant a similar penalty on whom is set aside by a decision of a Court of law. The contention that Rule 12 (4) contravenes Article 14 of the Constitution must, therefore, be rejected."
In Om Prakash Gupta v. State of U. P., AIR 1955 SC 600; 1955 SCA 832: (1955) 2 SCR 391, the Supreme Court held that if in a departmental proceeding the person proceeded against is dismissed and subsequently his dismissal is set aside the suspension would evidently terminate when the dismissal is set aside, because it was the departmental enquiry which ended in dismissal and the suspension ceased from that date.

7. Suspension of Public Servant—Dismissal declared invalid by Court—If Fundamental Rule 54 applicable

Rule 54 of the Uttar Pradesh Fundamental Rules, as amended in 1953, has no application to cases where the dismissal of a public servant is declared invalid by a Civil Court and he is reinstated. This rule undoubtedly enables the State Government to fix pay of a public servant whose dismissal is set aside in a departmental appeal. But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of the Civil Court was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the Civil Court is to declare that the appellant had been wrongly prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work—Devendra Pratap v. State of U. P., AIR 1962 SC 1334.

8. “Disciplinary matters” if include suspension

The words disciplinary matter in Article 314 must be given their widest meaning. The word included both kinds of suspension—Suspension as a punishment and suspension pending inquiry—R. P. Kapoor v. Union of India—AIR 1964 SC 787.

9. No suspension by extending service unilaterally

In State of Assam v. Padma Ram Borah, AIR 1965 SC 473, a Government servant who was to retire on 1-1-1961 was put under suspension on 22-12-1960. The order dated 6-1-1961 and 5-5-61 modified the earlier order of December 22, 1960 inasmuch as it fixed a period of three months from January 1, 1961 or till the disposal of the departmental proceedings whichever is earlier, for retaining the respondent in service. Thus the effect of the order of January 6, 1961 was that the service of the respondent would come to an end on 31st March, 1961 unless the departmental proceedings were disposed of at a date earlier than March 31, 1961. It was admitted that the departmental proceedings were not concluded before March 31, 1961. The clear effect of the order of January 6, 1961, therefore, was that the service of the respondent came to an end on March 31, 1961. This was so not because the retirement was automatic but because the State Government had itself fixed the date upon which the service of the respondent would be retained. The State Government made no further order before March 31, 1961 but a month or so after passed an order on May 9, 1961, extending the service of the respondent for a further period of three months from April 1, 1961. The State Government had no jurisdiction to pass such an order on May 9, 1961. According to the earlier order of the State Government itself, the service of the respondent had come to an end on March 31, 1961. The State Government could not by unilateral
action create a fresh contract of service to take effect from April 1, 1961. If the State Government wished to continue the service of the respondent for a further period the State Government should have issued a notification before March 31, 1961. The respondent had ceased to be in service on March 31, 1961 by the very order of the State Government. An order of retention in service passed more than a month, thereafter was a mere nullity and cannot be sustained.

10. Suspension: Subsistence allowance, quantum of

What amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension—B. P. Patel v. State of Maharashtra, 1968 SLR (SC) 593.

11. Government Servant on leave preparatory to retirement if can be suspended—Punjab Civil Services Rules, 1959

There is no force also in the contention that a Government servant on leave preparatory to retirement cannot be suspended, as suspension means a person ceasing to work on the post he holds and the public servant on such leave holds no office, or post and, therefore, he cannot be effectively suspended. Suspension of a Government servant during the course of his service simply means that no work is to be taken from him during the period of suspension. The Government servant does not work on a post during the period of his suspension. If he is actually discharging the duty of a certain office prior to suspension, the order of suspension would mean that he would cease to work and discharge the duties of that post. If at that time he is not working on any post but is on leave no question of his actually ceasing to work or giving up the discharge of duty arises, but that does not mean that the order of suspension would be ineffective. The Government servant during suspension or on leave holds a lien on his permanent post in view of rule 13.3 of the Punjab Civil Services Rules, 1959, unless his lien is suspended or is transferred under the appropriate rule and so has a right to hold that post when under suspension or on leave.

The contention that the order of revoking the leave must precede the order of suspension cannot be accepted. The order in which the two orders are issued does not affect in substance the validity of the two orders as long as the Governor had the power to suspend the delinquent office and revoke the leave. Orders may be issued in any sequence—S. Pratap Singh v. The State of Punjab, AIR 1964 SC 72.

12. No order of suspension can be passed during post-retirement leave

Courts of law are not bound by departmental interpretation of rules, but have to interpret these rules according to the language and other canons of interpretation. For audit purposes the Audit Department may treat an employee who is granted post-retirement privilege
leave as on extented service, but it is possible that a pure legal interpretation may lead to a different conclusion. The post-retirement leave can by no stretch of imagination be treated as extension in service. The services of the employee terminate on his retirement and his subsequent post-retirement leave would make absolutely no difference. It would further follow from it that since his service had ceased, no order of suspension or dismissal could be passed with regard to him because an order of suspension or dismissal could be passed only with regard to a person who was in actual service on the date when such order was passed—AIR 1934 SC 584.

13. Suspension order, when it takes effect

In State of Punjab v. Khemi Ram, (1970)2 FLR 138, a question arose as to whether an order of suspension passed against a Government servant takes effect when it is made or when it is actually served on and received by him. In that case the respondent was appointed as a Sub-Inspector, Co-operative Societies, in 1925 in the service of the State of Punjab. He was promoted to the post of Inspector and was confirmed thereon in 1939. In 1952, he was approved for promotion to the post of Assistant Registrar and officiated thereafter as such in short term vacancies from March to November, 1953. While he was serving as the Inspector, he applied for the post of Assistant Registrar in Himachal Pradesh, and on a reference by that Government, his services were lent to Himachal Pradesh Government for appointment as the Assistant Registrar. While he was so serving there, he was charge-sheeted on August 9, 1955 by the Registrar, Co-operative Societies, Punjab in connection with certain matters which occurred in 1950 while he was working under the Punjab Government. Those proceedings, however, were kept in abeyance as the police in the meantime started investigation in those matters.

In 1958, the Punjab Government decided to take disciplinary action against the respondent and informed the Himachal Pradesh Government of it on July 17, 1958. On July 16, 1958, however, the Himachal Pradesh Government had granted to the respondent 19 days leave preparatory to retirement, which was to take place on August 4, 1958. On being so informed, the Punjab Government by its telegram dated July 25, 1958 informed the Himachal Pradesh Government that it had no authority to grant such leave and requested that Government to cancel it and direct the respondent to revert to the Punjab Government immediately.

On July 31, 1959 the Punjab Government sent a telegram, to the respondent at his home address as the respondent had already left for his home town on leave being granted to him as aforesaid. The telegram informed him that he had been suspended from service with effect from August 2, 1958. On that very day, i.e., on July 31, 1958, the Punjab Government sent to him a charge-sheet at the address of the Registrar, Co-operative Societies, Himachal Pradesh, who re-directed it to the respondent's said home address. By its letter dated August 2, 1958, the Himachal Pradesh Government informed the respondent that his services were reverted to the Punjab Government and that the leave granted to him had been curtailed by two days, i.e., up to August 2, 1958, instead of August 4, 1958 as originally granted.
On August 25, 1958 the respondent sent a representation to the Registrar, Cooperative Societies, Punjab in which he contended that he had already retired from service on August 4, 1958 and that the order of suspension which he received after that date and the order for holding the enquiry against him were both invalid. On October 6, 1958 the Punjab Government replied to him rejecting his aforesaid contents and informed him that if he did not attend the said enquiry, the same would be held *ex parte*. The respondent attended the said enquiry, but under protest. On the completion of the enquiry, the officer holding it made his report and sent it to the Punjab Government. On August 14, 1959 that Government sent him a notice to show cause why the penalty of dismissal should not be awarded against him. The respondent sent his reply to the said notice. By its order dated May 28, 1960 the Punjab Government ordered the respondent's dismissal.

Thereupon, the respondent filed a writ petition in the High Court of Punjab challenging the order of dismissal contending: (a) that the said enquiry was illegal as by the time it was started he had already retired from service, and (b) that the order of suspension which was sought to be served on him by the said telegram, dated July 31, 1958, was received by him after his retirement on August 4, 1958, and therefore, it could not have the effect of refusal to permit him to retire.

The writ petition was in the first instance, heard by a Single Judge. He noted that it was not denied before him that the respondent on being granted leave had proceeded to his home village, that he was there when the Himachal Pradesh Government issued the notification dated August 2, 1958 curtailing his leave up to that date and that a copy of that notification with the endorsement calling upon him to report to the Punjab Government for duty on August 4, 1958 was sent to the respondent on August 6, 1958. He also noted that the telegram dated July 31, 1958 informing the respondent of his suspension with effect from August 2, 1958 did not reach him till about the middle of August 1958. On these two facts it was contended by the respondent that he had already retired from service when the order reverting his service to the the Punjab Government was passed, and that therefore, the subsequent proceedings starting with the order of suspension and ending with his dismissal were void.

This contention was raised on the strength of Rule 3.26 (d) of the Punjab Civil Services Rules 1959, as it then stood. That rule provided that a Government servant under suspension on a charge of misconduct shall not be permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge was completed and a final order was passed thereon. The argument was that as the respondent was not served with the said order of suspension on or before August 4, 1958 and as he had retired on that day and was, therefore, no longer in service, the said enquiry and the said order of dismissal were in breach of Rule 3.26 (d) and were illegal. The Single Judge accepted the contention and allowed the writ petition with the following observations:

"It is indubitably correct that action for dismissal against a Government servant can be taken during the tenure of the services. It is not denied that the petitioner was due to retire on the afternoon of August 4, 1958. It has not been challenged that the petitioner had gone to his village in Kulu Tehsil
after the leave preparatory to retirement was granted to him. The petitioner was entitled to treat himself as on leave preparatory to retirement till he received information to the contrary. No order has been proved to have been served on him before August 4, 1958 intimating the petitioner that he had been reverted to the Punjab State or that he had been suspended. It must, therefore, be held in the circumstances that the petitioner had actually retired from service and he cannot be bound by any subsequent proceedings."

On the State Government filing a Letter Patent appeal against the said order, a Division Bench of that High Court followed its earlier judgment in Dr. Pratap Singh v. State of Punjab, ILR (1962) 15 (2) Punj 642, which had held that an order passed under Rule 3.26 (d) took effect from the day it was served on the concerned Government servant, and upheld the order of the Single Judge in the following terms:

"In the present case the fact remains that the respondent was not in a position to know and could not possibly have submitted to or carried out the orders which had been made before August 4, 1958 and that also without any fault on his part, with the result that the decision of the learned Single Judge must be upheld."

In this view, the Division Bench dismissed the State's appeal.

The respondent had, besides the said contention, raised three more contentions summarised by the Division Bench in the penultimate paragraph of its judgment. These three contentions were left undecided in view of the Division Bench deciding the appeal on the first contention.

The question for determination before the Supreme Court was whether the said order of suspension admittedly made before the date of the respondent's retirement as required by the said Rule 3.26 (d) did not take effect by reason only that it was received by the respondent after the said date of retirement and whether he must, therefore, be held to have retired on August 4, 1958 rendering the enquiry and the ultimate order of dismissal invalid. Shelat J. observed:

"There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed therein. That such a course was adopted by the Punjab Government by passing the order of suspension on July 31, 1958 cannot be gainsaid. That fact is clearly demonstrated by the telegram (Ex. P. 1), which was in fact despatched to the respondent on July 31, 1958 by the Secretary, Co-operative Societies to the Punjab Government, informing the respondent that he was placed under suspension with effect from August 2, 1958."
As the telegram shows, it was sent to his home address at village Batahar, post office Haripur, as the respondent had already by that time proceeded on leave sanctioned by the Himachal Pradesh Administration Ex. R-1 is the memorandum, also dated July 31, 1958, which the Punjab Government passed the said order of suspension and further ordered not to permit the respondent to retire on August 4, 1958. That exhibit shows that a copy of that memorandum was forwarded to the respondent at his said address at village Batahar, post office Haripur. Lastly, there is annexure 'H' to the respondent's petition which consists of an express telegram dated August 2, 1958 and a letter of the same date in confirmation thereof informing the respondent that he was placed under suspension with effect from that date. Both the telegram and the letter in confirmation were despatched at the address given by the respondent, i.e., at his village Batahar, post office Haripur. These documents, therefore, clearly demonstrate that the order of suspension was passed on July 31, 1958, i.e. before the date of his retirement and had passed from the hands of the Punjab Government as a result of their having been transmitted to the respondent. The position, therefore, was not as if the order passed by the Punjab Government suspending the respondent from service remained with the Government or that it could have, therefore, changed its mind about it or modified it. Since the respondent had been granted leave and had in fact proceeded on such leave, this was also not a case where, despite the order of suspension, he could have transacted any act or passed any order in his capacity as the Assistant Registrar.

"But the contention was that this was not enough and the order of suspension did not take effect till it was received by the respondent, which as aforesaid, was sometime in the middle of August, 1958, long after the date of his retirement. In support of this contention certain authorities were cited before us which we must now examine to find out whether they lay down the proposition canvassed by counsel for the respondent.

"The first decision brought to our notice was in Raja Harish Chandra Rai Singh v. The Deputy Land Acquisition Officer, (1962) 1 SCR 676, where the question canvassed was as to what was the date of the award for purposes of section 18 of the Land acquisition Act, 1894, and where it was held that such an award of the Collector is not a decision but an offer of compensation on behalf of the Government to the owner and is not effective until it is communicated to him. The making of the award, it was said, did not consist merely in the physical act of writing the award or signing it or filing it in the office of the Collector. It also involved its communication to the owner either actually or constructively. No question, however, arose there whether an award can be said to have been communicated to the owner if it was despatched to him but was not actually
received by him. In Bachhittar Singh v. The State of Punjab, (1962) 3 Supp. SCR 733, a case of disciplinary action taken against a Government servant, it was said that an order would not be said to have come into effect until it was communicated, as until then it can be reconsidered and modified, and therefore, has till then a provisional character. That was a case where the Minister concerned had made a notice on a file and no order in terms of that note drawn up in the name of the Governor as required by Art. 166(1) of the Constitution or communicated to the concerned Government servant.

"As stated earlier, the High Court relied on its own judgment in S. Pratap Singh v. The State of Punjab, (1964) 4 SCR 733, and its observations at page 656 of the report. The decision came up before this Court in appeal and the decision therein of this Court is to be found in S. Pratap Singh v. The State Punjab, (1964) 4 SCR 733. The appellant there was a Civil Surgeon in the Punjab State Service. In 1956, he was posted to Jullundhar where he remained until he proceeded on leave preparatory to retirement sometime in December, 1960. His leave was sanctioned on December 18, 1960 and was notified in the Gazette on January 27, 1961. On June 3, 1961 the Governor passed an order of suspension with immediate effect and revoked his leave. He also passed an order under Rule 3.26(d) to the effect that as he was to retire on June 16, 1961 he should be retained in service beyond that date till the completion of the departmental enquiry against him. These orders actually reached the appellant on July 19, 1961, but were published in the Extraordinary Gazette on June 10, 1961. On the question whether the State Government could validly pass the afore-said orders, this Court held that under Rule 8.15 of the Punjab Civil Services Rules there was no restriction on the power of revocation of leave with respect to the time when it is to be exercised, that the date from which a Government servant is on leave preparatory to retirement cannot be treated as the date of his retirement from service and that an order of suspension of the Government servant during such leave is valid. Two of the learned Judges held at page 771 of the Report that an order of suspension of the appellant when he was on leave could be effective from the moment it was issued. They distinguished the decisions in Bachhittar Singh v. The State of Punjab (supra) and State of Punjab v. Sodhi Sukdeo Singh, (1961) 2 SCR 371, firstly, on the ground that the first case was one of dismissal and not of mere suspension, and secondly, that in neither case a final order had been passed. We may, however, mention that the other three learned Judges did not deal with this question, and therefore, neither expressed their dissent nor agreement. Indeed, Ayyangar, J., who spoke for them observed at page 737 of the Report that whereas they agreed with the main conclusion that the impugned orders were not beyond the Government's power they should not be
taken to have accepted the interpretation which Dayal, J., had for himself and Mudholkar, J., placed on several of the rules considered by them. In view of these observations it is difficult to say whether the majority agreed or not with the view taken by Dayal, J., that a Government's order becomes effective as soon as it is issued.

The last decision cited before us was that of State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313, where one of the questions canvassed was whether an order of dismissal can be said to be effective only from the date when it is made known or communicated to the concerned public servant. The facts of the case show that though the order of dismissal was passed on June 3, 1949 and a copy thereof was sent to other 6 persons noted thereunder, no copy was sent to the concerned public servant who came to know of it only on May 28, 1951 and that too only through another officer. On these facts, the Court held, rejecting the contention that the order became effective as soon as it was issued, that the mere passing of the order of dismissal would not make it effective unless it was published and communicated to the concerned officer.

The question then is whether communicating the order means its actual receipt by the concerned Government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word 'communicate' is to impart, confer or transit information. Cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams dated July 31, and August 2, 1958 were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958 after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August, 2, 1958 i.e. before August 4, 1958 when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually
received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'Communication' ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal may, perhaps, becomes necessary because of the consequences which the decision in The State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313, contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid.

"In this view, we must hold that the order of suspension was validly passed and was communicated to the respondent before August 4, 1958, and therefore, was effective as from July 31, 1958. Accordingly, we allow the State's appeal and set aside the judgment and order of the High Court. But as the High Court did not decide the aforesaid three questions raised on behalf of the respondent, we remand the case to the High Court with the direction to give its decision thereon in accordance with law."

14. Suspension and disciplinary proceedings—If initiation of disciplinary proceeding is condition precedent to suspensions

Rule 3 of the All-India Services (Discipline and Appeal) Rules, 1969 provides for suspension during disciplinary proceedings. Sub-rule (1) of this rule on its plain reading empowers the Government which initiates any disciplinary proceedings, on being satisfied, having regard to the nature of the charges and the circumstances, of the necessity or desirability of placing under suspension, the member of the service against whom such proceedings are started, to pass an order placing him under suspension or if he is serving under another Government to request that Government to suspend him. It does not suggest that suspension can be ordered merely when disciplinary proceedings are contemplated. The language used in sub-rules (4) to (7) also suggests that these rules do not authorise order of suspension of the delinquent member of the service merely because disciplinary proceedings against him are contemplated. Suspension under those sub-rules may be ordered only either after conviction [deeming provision under sub rule (4)] or when criminal proceedings are actually in progress [sub-rule (5)] or when after the penalty imposed on him having been set aside, the disciplinary authority
decides to hold further enquiry (deeming provision under sub-rule (6) clause (b) of sub-rule (7) similarly provides for continuation of order of suspension, if any other disciplinary proceedings is commenced against the delinquent member of the service, during the continuance of the earlier suspension—actual or deemed. The legislative scheme underlying rule 3 is thus clearly indicative of the intention of the rule making authority to restrict its operation only to those cases in which the Government concerned is possessed of sufficient material whether after preliminary investigation or otherwise and the disciplinary proceedings have in fact commenced and not merely when they are contemplated. An order of suspension before the actual initiation or commencement of disciplinary proceedings appears therefore to be clearly outside the ambit of Rule 3 and there is no cogent ground for straining the plain language of Rule 3 (1) so as to extend it to cases in which disciplinary proceedings are merely contemplated and not actually initiated or commenced. It is no doubt true that the Supreme Court in Government of India, Ministry of Home Affairs v. Tarak Nath Ghosh, AIR 1971 SC 823, expressed the view that under Rule 7 (1) of the All-India Services (Discipline and Appeal) Rules, 1955 [replaced in 1969 by Rule 3 (1)] the Government is entitled to place an officer under suspension even before definite charges are communicated to him when preliminary investigation has been made into his conduct following allegations of corrupt or malpractice levelled against him.

The Supreme Court in, Tarak Nath Ghosh’s case, (AIR 1971 SC 823) considered the dictionary meaning of the word “suspension” and what is said in Art. 389, Vol. 25 of Halsbury’s Laws of England 3rd Ed., at p. 589, namely, that in the absence of an express or implied term to the contrary the master cannot punish a servant for alleged misconduct by suspending him from employment and stopping his wages for the period of suspension. But this meaning was considered to be applicable only when suspension is resorted to by way of punishment. Rule 7 in that case, on the other hand, merely provided for suspension of a Government servant for the purpose of disciplinary proceedings and could, therefore, in the opinion of the Court, be involved when serious allegations of misconduct are imputed. In S. Govinda Menou’s case, (1967) 2 SCR 566; AIR 1967 SC 1274, the order of suspension was held also to be the order initiating the disciplinary proceedings. No question was raised in that case about the legality of the composite order both initiating disciplinary proceedings and suspending Govinda Menon. But the Court disagree with the view taken in, Tarak Nath Ghosh’s case, AIR 1971 SC 823; P. R. Nayak v. Union of India, AIR 1972 SC 554 at p. 560.

There is no gainsaying that there is no inherent power of suspension postulated by the Fundamental Rules or any other rule governing the appellants’ conditions of service. Except for Rule 3 of the All-India Service (Discipline and Appeal) Rules, 1969 no other rule nor any inherent power authorising the impugned order of suspension was relied upon in its support. Therefore, if Rule 3, which is the only rule on which the appellants’ suspension pending disciplinary proceedings can be founded, does not postulate an order of suspension before the initiation of disciplinary proceedings and the Government initiating such proceedings can only place under suspension the member of the service
against whom such proceedings are started, then, the impugned order of suspension which in clearest words merely states that disciplinary proceedings against the appellant are contemplated, without suggesting actual initiation or starting of disciplinary proceedings, must be held to be outside this rule. The impugned order of suspension is not like an order of suspension which without adversely affecting the rights and privileges of the suspended Government servant merely prohibits or restrains him from discharging his official duties of obligations. An order of that nature may perhaps be within the general inherent competence of an appointing authority when dealing with the Government servant. The impugned order made under Rule 3 of All-India Service (Discipline and Appeal) Rules, 1969 on the other hand seriously affects some of the appellants' rights and privileges vesting in him under his conditions of service. The precise words of Rule 3 are unambiguous and must be construed in their ordinary sense. The draftsman must be presumed to have used the clearest language to express the legislative intention, the meaning being plain courts cannot scan its wisdom or policy—P. R. Nayak v. Union of India, AIR 1972 SC 554 at pp. 562-63.

15. Whether mode of suspension is different in different services

Disciplinary proceedings can be said to be started against an officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Government that a prima facie case has been made out against him for the framing of charges. When the order of suspension itself shows that Government was of the view that such a prima facie case for departmental proceedings has been made out the fact that the order also mentions that such proceedings were contemplated makes no difference. Again the fact that in other rules of service an order of suspension, may be made when "disciplinary proceedings were contemplated" should not lead to take the view that a member of an All-India Service should be dealt with differently. The reputation of an officer is equally valuable no matter whether he belongs to the All-India Services or to one of the humble cadre. It is the exigency of the conditions of service which requires or calls for an order of suspension and there can be no difference in regard to this matter as between a member of an All-India Service and a member of a State Service or a Railway Service—P. R. Nayak v. Union of India, AIR 1972 SC 554 at p. 561.
CHAPTER XV

PROMOTIONS

SYNOPSIS

1. Promotion to selection posts—Legal action—Principles.
2. Promotion to selection posts—Rules not framed—Whether Government can issue administrative instructions on the point.
3. Junior-scale officer cannot claim right of officiating in a higher post merely because of his seniority.
4. Selection for recruitment by competitive examination—Discrimination.
5. Promotion once made, if liable to be upset on the revision of seniority—Whether order upsetting promotions violative of Article 16.
6. Deputation of Public servant to another department—Promotion in parent department during period of deputation—Right of Public servant on deputation.
7. Promotion on ad hoc basis or on the basis of provisional seniority list.
8. Power of High Court to issue writs in the matter of promotion.
10. Department promotees and direct recruit.
11. Directly recruited and promoted—If they form one class—No discrimination.

1. Promotion to selection posts—Legal action—Principles.

So far as the question of the suitability is concerned, the decision entirely rests with the Government. In other words the Government is the sole judge to decide as to who is the most suitable candidate for being appointed to a selection post. For discharging this responsibility it is open to the Government to seek the assistance of the Public Service Commission. Therefore, the High Court is not justified in calling for the records of the Public Service Commission and going through the notings for the records of the Public Service Commission and going through the notings made by various officers of the Commission as well as the correspondence that passed between the Commission and the Government. Where there is no complaint of mala fide on the part of the Government or the Commission, the interference of the High Court in the matter of selection made by the Government is not called for—Dr. Jai Narain Misra v. The State of Bihar and others, 1970 S.L.R. 923.

The appellant cannot challenge his non-promotion to a selection post on the ground of seniority alone. In R. L. Bhatia v. The Union of India and others, 1970 S.L.R. 926, where the post of a member of the Central Water and Power Commission was declared to be a selection post by the President, it was held that the fact of the appellant's being the senior-most amongst the Directors in the Department did not by itself entitle him to be appointed.

Under rule 11 of the Central Civil Services (Classification Control and Appeal) Rules, 1965, although withholding of promotion is one of the penalties which can be imposed on a Government servant, the explanation thereto expressly provides that non-promotion of Government servant after consideration of his case does not constitute a penalty. There is, therefore, no question of the department having to hold an enquiry and then only to decide not to promote the appellant to the
higher post. No question of breach of principles of natural justice arises in such a situation—R. L. Butail v. The Union of India and others, 1970 SLR 926.

It is manifest on a perusal of Rules 3 and 8 of the Indian Police Service (Pay) Rules, 1954, read with Part B of Schedule III that the three posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police are shown as selection posts and outside the junior and senior time-scales of pay mentioned in Rule 3. If these three posts are selection posts it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Gradation List. The circumstances that these posts are classed as “Selection Grade Posts” itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion of selection posts. The respondents are therefore, right in their contention that the ranking position in the Gradation List does not confer any right on the petitioner to be promoted to selection post and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available. If the State of Rajasthan had considered the case of the petitioner along with other eligible candidates before appointments to selection posts there would be no breach of the provisions of Articles 14 and 16 of the Constitution of India because everyone who was eligible in view of the conditions of service and was entitled to consideration was actually considered before promotions to those selection posts were actually made. It appears that the State Government has considered the case of the petitioner and taken into account the record, experience and merit of the petitioner at that time of the promotion of the officer who superseded him.—Sant Ram Sharma v. State of Rajasthan and others, AIR 1967 SC 1910 : (1967) 2 SCA 674.

It is difficult to see how Article 14 or Article 15 (1) can be pressed in the aid of the plaintiff whose case was considered along with that of the others and the High Court after a consideration of the relative fitness of the Munsifs placed a number of them on the panel for appointment as Subordinate Judges as and when vacancies occurred—Ibid

After coming into force of the Constitution of India High Court in the authority which has the power of promotion in respect of persons belonging to the State Judicial Service holding any post inferior to that of District Judge and that with reference to Article 235 of the Constitution of India read with the service rules there is no right of promotion which the plaintiffs (Munsif concerned) could have claimed to enforce by action in a court, Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, on which reliance was placed by the plaintiff to make out his right to be considered for promotion as a Subordinate Judge is, in the first instance, not a right but only a safeguard to a public servant that a punishment by way of withholding of promotion shall not be imposed upon him unless he has been given adequate opportunity of showing cause against the action proposed to be taken. It is also clear that Rule 49 comes into play only
when proceedings are taken by way of disciplinary action against a public servant. In such disciplinary proceedings the Government servant proceeded against has a right to insist upon the procedure being strictly followed. But, in this case, there was no such disciplinary proceeding against the plaintiff and therefore Rule 49 is completely cut of the way. If Rule 49 is not available to the plaintiff, Rule 55-A was equally not available to him, even assuming that the rule applied to the case of members of the State Judicial Service. It follows from what has been said that there was no question of a penalty being imposed upon the plaintiff. That being so, there could not be any breach of the procedure laid down by the rules for proceeding against a Government servant like the plaintiff—The High Court of Calcutta and another v. Amal Kumar Roy and others, (1963) 1 SCR 437 : AIR 1962 SC 1704 : 1962 SCA 646.

2. Promotions to selection post—Rules not framed—Whether Government can issue administrative instructions on the point

The argument that in the absence of any statutory rules governing promotion to selection grade post the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed, cannot be accepted as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion on junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotion of officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed—Sant Ram Sharma v. State of Rajasthan and others, AIR 1967 SC 1910 : (1967) 2 SCA 574.

3. Junior-scale officers if can claim right of officiating in a higher post merely by reason of his seniority

Under Explanation (4) to Rule 3 of the All-India Services (Discipline and Appeal) Rules, 1955, “the reversion to lower post of a member of the service who is officiating in a higher post or for administrative reasons (such as the return of the permanent incumbent from leave or deputation, availability of more suitable officer, and the like) does not amount to reduction in rank within the meaning of this rule”. The aforesaid Explanation (4) to Rule 3 shows clearly enough that a member of the Service cannot claim the right of officiating in higher post merely by reasons of his seniority and even when he is officiating in a higher post he may be reverted after a trail in that post or for administrative reasons and such reversion does not amount to reduction in rank within the meaning of Rule 3. The existence of such a rule negatives the claim of the appellant—Member of the Indian Police Service that he has the right to officiate in a post on the senior scale, and any reversion from the officiating post amounts to reduction in rank within the meaning of Article 311 of the Constitution of India. Further under Rule 3 of the Indian Police Service (Pay) Rules, 1954, there shall be two time scales
of pay, junior and senior and also a selection grade. The first proviso to the rule states that a member of the service holding a post in the senior time-scale, shall be entitled to draw the pay of the post in the selection grade. Here again the proviso talks of the “appointed to a post in the selection grade”. The words show by necessary implication that an officer may or may not be appointed to a post in selection grade. Exactly the same words occur in Rule 4 (2) of the Indian Police Service (Pay) Rules, 1954. If the words “the “appointed to a post” are to be interpreted in the same way, then the there is no escape from the position that there is no automatic right of appointment to a post on the senior time-scale—P. C. Wadhwa v. Union of India, AIR 1964 SC 421 : (1964) 1 Lab LJ 395.

A cadre officer in the junior scale of pay has the right of promotion to a post in the senior scale on the ground of seniority. This right is infringed if the junior cadre officer is promoted to fill a vacancy in the senior scale, while he continues to hold a post in the junior scale of pay. But he cannot claim the right to fill the vacancy if he is not suitable and no cadre officer junior to him is promoted to fill the vacancy. An officer in the junior scale of pay has no right to a senior as soon as he joins the service. He may be appointed to a senior post when he is found suitable having regard to his length of service, experience and performance. Rule 6-A (2) of the Indian Administrative Service Recruitment Rules, 1954 now makes explicit what was always implicit in Rule 9 of Indian Administrative Service Cadre Rules, 1954, under Rule 9 (1) of those rules a senior cadre post may be filled by a non-cadre officer if there is no suitable officer available for filling the vacancy. Similar provision is to be found in paragraph 3 of the memorandum regarding constitution of the Indian Administrative Service and paragraph 5 of the Indian Civil Administrative Cadre Rules, 1950. The appointment of a non-cadre officer to a cadre post under Rule 9 (1) of Cadre Rules, 1954, is a temporary arrangement which may be terminated any time when the Government finds a cadre officer suitable for filling the vacancy. Until the cadre, officer is found suitable, a non-cadre, Officer may be appointed to fill the post in the senior scale of pay. The cadre officer has no right to fill the vacancy if he is not suitable. The filling of vacancy by a non-cadre officer under Rule 9 does not infringe any right of the cadre officer nor does it amount to a withholding of promotion or a penalty within the meaning of Rule 3 of the All-India Services (Discipline and Appeal) Rules, 1955—Anand Prakash Saksena, v. The Union of India and others, 1968 SLR 582.

4. Selection for recruitment by competitive examination—Discrimination

For selection at the competitive examination marks obtained at the viva voce test together with the marks obtained at the written examination are undoubtedly the sole test but for purpose of promotion the Public Service Commission had to take into account the assessment of suitability for promotion in the light of the general record of the candidates appearing from their records of the opinions expressed by the High Court under whom the candidates had served. What the Commission considered in recommending for promotion candidates who had applied for promotion was performance of the interview held in the year 1961 in the light of their general record and the opinion

The assumption made by the High Court that because persons who had obtained a smaller percentage of marks at the *viva voce* test in the year 1962 were selected out of the candidates who had applied for competitive examination and for promotion and the persons who had obtained a larger number of marks were omitted, the rules were infringed is not substantiated—*Ibid*.

Taking the case of sixteen candidates first, since most of these candidates had obtained fewer marks than some of the rejected candidates it is impossible to sustain their selection. It was wrong of the High Court to allow a compromise of this kind to be effected when it was patently obvious that three candidates had not attended the *viva voce* test at all and there was nothing before the High Court for comparing the remaining thirteen candidates with those who had failed in the selection. There were allegations of nepotism and it is found that most of these candidates do not rank as high as some of the rejected candidates. In such a case the Court should be slow to accept compromise unless it is made clear that what is being done does not prejudice any body else. To act otherwise opens the Court to the charge that it did something just as bad as what was complained against. The appointment of these sixteen candidates cannot be accepted and the petitioners are entitled to claim that their marks should be compared with those obtained by the others and the selection made on merit alone. For this purpose of course, the three candidates who were not called for the test would have to be called and marks given to them. Otherwise they cannot be considered at all.

With regard to the 24 candidates who were selected at the suggestion of the Government reliance is placed upon a footnote added to sub-rule (3) of Rule 4 of Mysore Public Service Commission (Functions) Rules, 1957. Under sub-rule (3) it is provided that the Public Service Commission shall consider all application received and when necessary interview such candidates as to fulfil the prescribed conditions and shall advise Government about those it considering most suitable for appointment. The footnote then reads;

“N. B.—Nothing contained herein shall preclude, the Commission from considering the case of any candidate possessing the prescribed qualifications brought to the notice of Government, even if such a candidate has not applied in response to the advertisement of the Commission”.

The footnote is not intended to bypass the selection based on merit. It is intended to cover a case of exceptional merit. These candidates had appeared in the *viva voce* test and some of them had obtained very poor marks indeed. It seems surprising that Government should have recommended as many as twenty-four names and the Commission should have approved of all those names without a single exception even though in its own judgment some of them did not rank
as high as others they had rejected such a dealing with public appoint-
ments is likely to create a feeling of distrust in the working of the Public
Service Commission which is intended to be fair and impartial and to
do its work free from any influence from any quarter. The appoint-
ment to these 24 candidates as well as that of the 16 candidates are
quashed. Their selection was not proper and must be set aside.—

5. Promotion once made, if liable to be upset on the revision
of seniority—Whether order upsetting promotion
violative of Article 16

Rule 3 of the rules for recruitment to the grade of Directors of
Postal Services in the Indian Postal Services, Class I. In the Posts and
Telegraphs Department, prescribes the method of recruitment and it is
as follows:

"Recruitment to posts in the grade shall be by selection from
among the senior Time-Scale of Indian Postal Service Class
I, one post being reserved for promotion of Presidency Post
Masters on the basis of selection."

This rule makes it clear that the appointment to the grade of
Director of Postal Services is made by selection and on the basis of
promotion in accordance with seniority. The presumption exists that
the promotion of petitioners who were appointed earlier than the re-
pondents Nos. 3 to 7 and respondents 5 to 7 in this case must have been
made in accordance with these instructions and rules so that the appoint-
ment of all these concerned parties as Directors was based on merit to
be taken into account at the time of selection and not on seniority in
the time-scale of Class I Service. Once a member of the Class I service
was selected for promotion to the grade of Director and given seniority
over another officer selected later, the seniority to determine as a result
of selection could not be made dependent on the seniority in the time-
scale. It is clear that, in these circumstances, even if there was justifica-
tion for revising the seniority inter se the petitioners and respondents
Nos. 3 to 7 in time-scale of Class I Service, that revision of seniority
could not in any way effect their order of seniority in the grade of
Directors to which they were promoted on the basis of selection in
accordance with the rules. It is therefore, clear that even if it be held
that the order of the Government revising the seniority of these officers
in the junior time-scale was valid, the order revising the seniority
in the grade of Directors of Postal Services is not valid and justified.
The seniority in the grade of Directors, Postal Services was not dependent
on the inter se seniority in the junior time-scale and any alteration in
the seniority in the latter could not form the basis for revising the
seniority in the former grade. It is thus clear that the revision of
seniority in the grade of Directors of Postal Services was not based on
any rule of appropriate principle in determination of seniority in that
grade and must, therefore, be held to be totally arbitrary. Such an
order, which affects the civil rights of the petitioners in respect of
further promotion must, therefore, be struck down as violating Article
16 of the Constitution of India.—S. K. Ghosh and another v. Union
of India and other s, AIR 1968 SC 1383 : 1968 Lab IC 1520.
6. **Deputation of public servant to another department—Promotion in parent department during period of deputation—Right of Public servant on deputation**

It cannot be said that on a proper construction of Rule 50 (b) of the Bombay Civil Service Rules that an officer who after serving on deputation in another department is reverted to his parent department is entitled to nothing more than the increment allowable in the time-scale applicable to the substantive appointment which he held at the time of the transfer. The rule speaks of the post if any he could have held if his lien had not been suspended. By the use of the plural it is clear that the rule contemplated the suspended lien being transferred from one post to another during the period of service in another department. If there was any ambiguity in what the rule meant it is wholly dispelled by the circular issued by Government in this connection, which ensures to the Officer on the deputation in another department that he shall be restored to the position he would have occupied in his parent department had he not been deputed. There is no ambiguity in the wording of this circular which gives proper effect to the provisions of Rule 50 (b).

There is no force in the contention that a Government servant though he had a right to increments in a time-scale applicable to the post that he held on the date of his transfer for deputation and on which he had a lien, had no legal right to be promoted to a higher post. It is the right only in so far as the promotion involved relates to a selection post. But where it is based on seniority-cum-merit, these considerations are not relevant. The service of an officer on deputation to another department is treated by the rule as equivalent to service in the parent department and it is this equation between the service of the two departments that forms the basis of Rule 50 (b) of the Bombay Civil Service Rules. So long, therefore, as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotion in that department it stands to reason that the satisfactory service, and the manner of its discharge in the post he actually fills should be deemed to be rendered in the parent department also so as to entitle him to promotions which are open on seniority-cum-merit basis. What is indicated here is precisely what is termed in official language the “next below rule” under which an officer on deputation is given a paper promotion and shown as holding a higher post in the parent department if the officer next below him there is being promoted—**The State of Mysore v. M. H. Bellary**, AIR 1965 SC 868 : (1964) 7 SCR 471 : (1964) 2 SCA 778 : (1965) 1 SCJ 311 : (1966) 1 Lab LJ 50.

Service of an officer on deputation to another department is treated as equivalent to service in parent department and it is this equation between the service in the two departments that forms the basis of Rule 53 (b) (i) of the Mysore Jail Service Cadre Recruitment Rules, 1960. So long as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills should be deemed to be rendered in the parent department. Also so as to entitle him to

S.L.I.—71
promotions which are open on seniority-cum-merit basis—State of Mysore and another v. P. N. Nanjundiah and another, 1969 SLR 346.

7. Promotion on Adhoc basis or on the basis of provisional seniority list

There is no force in the contention that till final integration of service was made, the State Government was not entitled to take into account the provisional list of Sub-Inspectors and could only proceed to give promotions and to make transfers region-wise according to the eligibility list of former States from which the territories came to the new State. Section 116 (2) of the States Re-organisation Act, 1956, makes it clear that after the appointed day the whole State will be treated as one unit and nothing would prevent the competent authority after the appointed day from passing in relation to any such officer allotted to the new State any order affecting his continuance in such post or office. There is nothing in law which prevents the State Government from proceeding according to the provisional list after such list was prepared, subject to the condition that if the provisional list is in any way altered when the final list is prepared the State Government would give effect to the final list—G. S. Ramaswamy and others v. Inspector General of Police, Mysore State, AIR 1966 SC 175 : (1964) 6 SCR 279 ; (1965) 10 Fac LR 65.

Rules 401 and 486, of the Hyderabad District Police Manual make it clear that the mere fact that a Sub-Inspector's name is put in the eligibility list does not give him any indefeasible right to promotion. Further the fact that he is actually promoted, temporarily or as officiating, does not give him any right to continuance even during the period of two years probation and he is liable to be reverted at any time even during these two years if his work is found unsatisfactory, it is only when the authority concerned has found that his work and conduct are satisfactory during the probation that he can be confirmed. The contention of the petitioners that they had any right under the eligibility list for promotion or that after they had actually been promoted, they had a right to continue in the post of Circle Inspector therefore, must be negative—G. S. Ramaswamy and others v. Inspector General of Police Mysore State, AIR 1966 SC 175 : (1964) 6 SCR 279 ; (1965) 10 Fac LR 65.

8. Power of High Court to issue writs in the matter of promotion

The promotion to the post of Senior Statistical Assistants is made from the cadre of Junior Statistical Assistants and Progress Assistants. Rule 4 (3) (b) of the Mysore State Civil Services General Recruitment Rules, 1957, requires such promotion to be made by selection on the basis of seniority-cum-merit, that is seniority-subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion. In the present case, in 1959, the seniority of Junior Statistical Assistants was governed by the seniority list published in January, 1958. As the respondents were Junior Statistical Assistants, while making selections for promotion to the posts of Senior Statistical Assistants in 1959 the State Government was under a duty to consider whether having regard to their seniority and fitness they could be promoted. But without considering their cases at all the State Government promoted Junior Statistical Assistants ranking below them in point of seniority. The promotions were irregularly made and they (the
respondents) were, therefore entitled to ask the Government to reconsider their case. In the circumstances the High Court could issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to their seniority they should have been promoted on the relevant dates when the officers junior to them were promoted. Instead of issuing such a writ, the High Court wrongly issued writs directing the State Government to promote them with retrospective effect. The High Court ought not to have issued such writs without giving the State Government an opportunity in the first instance to consider their fitness for promotion in 1959, as the promotion to the post of Senior Statistical Assistant was based on seniority-cum-merit. In spite of their seniority, officers junior to them could be promoted if they were unfit to discharge the duties of the post. The State Government would upon such consideration be under a duty to promote them as from 1959 if they were then fit to discharge the duties of the higher post and if it fails to perform its duty the Court could direct it to promote them as from 1959—State of Mysore and another v. Syed Mahmood and others, AIR 1968 SC 1113 : (1968) 2 SCJ 713.

The High Court should not issue writ directing the State Government to promote the aggrieved officer with retrospective effect. The correct procedure for the High Court is to issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to his seniority and fitness the officer concerned should have been promoted on the relevant date and so what consequential benefits should be allowed to him—State of Mysore and another v. P. N. Nanjudhia, 1969 SLR 346.

9. Absence of statutory rules regulating promotions to selection grade posts Government to issue administrative instructions

In Lalit Mohan Deb v. Union of India, AIR 1972 SC 995 at pp. 996, 998, the appellant belongs to the cadre of Assistant employed in Civil Secretariat, Tripura Administration, Agartala. The State of Tripura was integrated with the Union of India in 1949. In the years 1953 the Administrative set up in Tripura was re-organised and the re-organisation was given retrospective effect from 1st April, 1950. The Assistants in the Civil Secretariat were given the pay-scale of Rs. 80—4 160—5 180. The Second Pay Commission which was appointed by the Government of India later recommended the revision of pay-scales of Tripura employees so as to bring them, as far as possible at par with the scales prevalent in the State of West Bengal, Accordingly, the pay-scales of the Assistants in the Secretariat were revised.

By a later notification dated 4th February, 1964, the Government of India promulgated the Tripura Employees (Revision of Pay and Allowances) Rules of 1963, in exercise of the powers conferred by the proviso to Article 309 of the Constitution and this notification was given retrospective effect from 1st April, 1961.

In the meantime the Administration of Tripura held a test for the selection of Assistants to fill the 25% selection grade posts. The respondents 4 to 20 were some of the Assistants who were selected. The appellants have not challenged that selection but their grievance was that there should be only one class of Assistants with the same scale of pay because all the Assistants do the same type of work and secondly they should be given the revised scale of Rs. 225—10—325—15—400—instead of Rs. 150 5—195—E. B.—5—250. They contended that in so far as the rules of 1963 did not contain any guidance
for the selection of candidates for the said 25% of the posts, the executive authority was left to unguided and uncanalized power to select Assistants arbitrarily, and, hence, violated the protection given under Articles 14 and 16 of the Constitution. To enforce their rights the appellants filed a writ petition in the Court of the judicial Commissioner at Tripura, but the same was dismissed. The learned judicial Commissioner, however, has granted a certificate to appeal to the Supreme Court on the ground that a substantial question of law as to the interpretation of the Constitution was involved.

Held that it was true that there were no statutory rules regulating the selection of Assistants to the selection grade. But the absence of such rules was no bar to the Administration giving instructions regarding promotion to the higher grade as long as such instructions were not inconsistent with any rule on the subject. In the absence of statutory rules regulating promotions to selection grade posts the Government was competent to issue administrative instructions as long as those instructions were not inconsistent with the rules already framed—Lalit Mohan Deb v. Union of India, AIR 1972 SC 995 at pp 996—998; Sant Ram Sharma v. State of Rajasthan (1968) I SCR 111 : AIR 1967 SC 1910.

10. Departmental promotees and direct recruits

In Bachan Singh v. Union of India, AIR 1973 SC 441 at pp 442, 443, 444, 445, 446, the two appellants were promoted in the years 1958 and 1959 respectively to the Military Engineer Service Class I. The appellant No. I joined the Military Engineer service as a temporary Overseer on 1st May, 1942. He was promoted to the grade of Superintendent Grade I on 1st May, 1949. In the month of April, 1957 he was selected to be promoted to the grade of temporary Assistant Executive Engineer in Class I service and he was promoted in fact in the month of April, 1958.

Respondents Nos. 4 to 21, 107 to 122 and 124 to 126 were appointed to the said Class I Service after they had appeared at competitive examination while the rest were appointed by direct recruitment after having been interviewed by the Union Public Service Commission. All the respondents were appointed to the said Class I service in the years 1962, 1963 and 1964.

The first contention of the appellants was that the respondents who were directly appointed to Class I service by interview were not within the purview of recruitment to Class I service by competitive examination. The Military Engineer Service Class I (Recruitment, Promotion and Seniority), Rules which came into force on 1st April, 1951, speak in Rule 3 of recruitment to the Class I service; (a) by competitive examination in accordance with Part II of the Rules, and (b) by promotion in accordance with Part III of the Rules. The appellants contended that appointment to Class I Service by interview was not one of the method of recruitment contemplated in the rules, and therefore the respondents who were appointed by interview could not be said to be validly appointed in accordance with the rules.

The second contention of the appellants was that the respondents were recruited to Class I service by interview and competitive examination after the appellants had been promoted to Class I service and were therefore not to be confirmed in permanent posts before the appellants.
The only other contention on behalf of the appellants was that they were promoted to Class I service in the years 1958 and 1959 respectively and were thus senior to the respondents who were recruited to the service subsequently, and therefore the appellants should be confirmed in Class I service in priority to the respondents. The promotion of the appellants was to temporary posts in Class I service. The appellants were to be confirmed in permanent posts. The respondents who are appointed by competitive examination and by interview were also appointed to temporary posts. They were also to be confirmed in permanent posts after having served the period of probation in accordance with the rules. The recruitment to Class I service during the years 1951 to 1958 was on the quotas fixed by Rule 4 of the Class I. Rules on the ratio of 10% for departmental promotion and 93% for direct recruitment. Though rule 4 fixed the quotas on the ratio of 10%, for departmental promotion and 90% for direct recruitment the Union Government in consultation with the Union Public Service Commission relaxed the rules and revised as an interim measure the existing quota of 10% of departmental candidates for promotion to 50% in the years 1959 to 1963 inclusive. From 1964 to 1968 the quota fixed by rule 4 was followed again. Finally, in 1969 the rules were amended and the quota for departmental promotion was 25% and for direct recruitment at 75%.

Held that the appellants can have no grievance with regard to confirmation. The departmental promotees have been confirmed against permanent posts within their quota in order of seniority. Departmental promotees who have been confirmed upto the year 1970 had been promoted to Class I service before the appellants. On the other hand, direct recruits consisting of those recruited by competitive examination as well as by interview have been confirmed against permanent vacancies within their quota. As a matter of fact between the years 1959 and 1963 inclusive the quota fixed for departmental promotees was increased from 10 to 50 per cent and thereby the confirmation of departmental promotees and direct recruits was equally balanced.

The direct recruits who were appointed by interview fell within the class of direct recruits. The quota fixed for direct recruits was never infringed by absorbing direct recruits by interview beyond the quota. The confirmation of direct recruits and departmental promotees against permanent vacancies was in accordance with the quota fixed. By reason of relaxation of rules in regard to increase of quota for departmental promotees they gained advantage during the years 1959 to 1963 when because of the emergency direct recruits by interview were selected by the Union Public Service Commission.

II. Directly recruited and promotees If they form one class—No discrimination.

Both the directly recruited Manlatdars as well as the promotee Mamlatdars are designated as Mamlatdars. They have the same pay-scale. They discharge same functions. The post held by them are interchangeable. Therefore, they form one class and that being so it was not competent for the Government to discriminate between the directly recruited Mamlatdars and promotee Mamlatdars in the matter of their further promotion.—[S. M. Pandit v. State of Gujarat, AIR 1972 SC 252 at p. 253; see also Mervyn Continho v. Collector of Customs, Bombay, (1966) 3 SCR 600: AIR 1967 SC 52; Roshan Lal Tandon v. Union of India (1968) 1 SCR 183: AIR 1967 SC 1889,
CHAPTER XVI

SENIORITY AND MERIT

SYNOPSIS

1. Considering seniority in one cadre for another cadre—Legality.
2. Ignoring seniority for officiating in senior post.
3. Rules prescribing different methods for determining seniority of direct recruits and promotees.
4. Fixation of seniority on the basis of previous service—Rule 1 (f) (iii) and (iv) if violate Article 14 and 16.
5. Seniority Rules framed in 1949—If seniority liable to be changed after the Constitution came into force.
7. Selection post in the Indian Police Service—Promotion—Principles.
8. Selection post—State Government is sole judge for making appointment—High Court cannot interfere.
9. Selection post—Punjab Medical Service Class I (Recruitment and Conditions of Service) Rules, if prohibit direct appointment to selection grade.
10. Appointment of Directors’ Grade made on basis of selection—Seniority once fixed cannot be arbitrarily disturbed.
11. Seniority and Reversion—Rule 2 (c) Mysore Seniority Rules.
12. Competitive examination—Governments’ right of appointment of any candidate to any particular cadre irrespective of merit—Articles 14 and 16, constitute if violated.
13. Promotion in Grade based on seniority—cum-merit—fixation of seniority, contrary to rules—Relief.
15. How seniority is to be determined.
16. Promotion after the commencement of the Indian Administrative Service (Regulation of Seniority) Rules, 1954.

1. Considering seniority in one cadre for another cadre—Legality

In Mervyn Covindo v. Collector of Customs, Bombay, 1966 SCR 600 : AIR 1967 SC 52 : (1966) 2 SCA 169 : (1971) 1 SCJ 577 : 15 Fac. LR 226, the Supreme Court held that where recruitment to a cadre was from two sources, namely, direct recruits and promotees and rotational system was in force, seniority had to be fixed as provided in the explanation by alternately fixing a promotee and a direct recruit in the seniority list and that there was no violation of principles of equality of opportunity enshrined in Article 16 (1) by following the rotational system of fixing seniority in a cadre half of which consists of direct recruits and the other half of promotees.

In Nohira Ram v. Director General of Health Services, Government of India and another, AIR 1958 SC 113 : 1958 SCR 922 : 1958 SCJ 305. The Supreme Court laid down the law as under:

"There is therefore, no force in the contention that under the Civil Services (Classification, Control and Appeal) Rule, 1930 the Governor-General-in-Council was alone competent to constitute a cadre by declaring the sanctioned strength of the establishment of the Director General, Indian Medical Services and Fundamental Rule 127 lays down how the recovery
of the cost is to be made when an addition is made to a regular establishment for the benefit of private persons or bodies and as the post in which the appellant was permanently appointed in 1930 was not constituted in a separate cadre the post must be held to be an addition to the regular establishment of the Director General, Indian Medical Service and, therefore, an integral part of the same cadre. It is true that the additional post in which the appellant was made permanent was not constituted into a separate cadre; the obvious reason was that it was an additional post outside the regular cadre. None of the rules referred to prevents the appropriate authority from creating an additional post outside the regular cadre of a particular office, to which the post may be attached for purposes of administrative control. Fundamental Rule 127 does not decide the question if the post is part of the cadre or not; that depends on the appropriate authority. In the present case the appropriate authority. In the present case the appropriate authority had decided from the very beginning that the additional post which the appellant held was outside the regular establishment of the Director General, Indian Medical Service.

"The argument that as under the relevant rules members of the regular establishment alone could be sent on foreign service and as admittedly Government sanctioned the transfer of the appellant to foreign service with effect from April 10, 1931 the appellant must be held to be a member of the regular establishment of the Director General, Indian Medical Service, is fallacious. The rules relating to 'Foreign Service' are to be found in Section III, Chapter XII and the particular rule referred to are Fundamental Rules 111 and 113. Fundamental Rule 111 says that a transfer to foreign service is not admissible unless the Government servant transferred holds a lien on a permanent post; Fundamental Rule 113 says that a Government servant transferred to foreign service shall remain in the cadre or cadre in which he was included in a substantive or officiating capacity immediately before his transfer and may be given such substantive or officiating promotion in those cadres as the authority competent to order promotion may decide. In the present case the appellant held a lien on the additional post in which he was confirmed; therefore, his transfer to foreign service was admissible under Fundamental Rule 111. He did not, however, belong to a cadre immediately before his transfer and Fundamental Rule 113 had no application in his case.

"In view of the finding that the appellant was not a member of the regular establishment of the Director General, Indian Medical Service, he was not entitled to claim seniority in that office. It is true that the appellant obtained a decree from the learned Subordinate Judge; it was, however, a declaratory decree only, as the appellant did not press for the other reliefs as to increment, promotion etc. Even the declaratory decree was put in jeopardy as the Government
appealed from it. In these circumstances the appellant could not refuse to do the work given to him. He did not work from October, 13, 1952 and got no pay from November, 1952. The appellant has to thank himself for the predicament in which he was placed."

2. Ignoring seniority for officiating in senior post

Under the rules framed by the Central Board of Revenue promotion of Income Tax Officers, Grade I, Class I to the grade of Assistant Commissioners of Income Tax was to be made on the recommendation of a Committee called the Departmental Promotion Committee. Selection for promotion was to be made on merit, i.e., "giving greatest weightage to outstanding qualifications, record of work and ability rather than to mere seniority". The expression "officers whose promotion to the grade of Assistant Commissioners was deferred on the sole ground of their not having completed a specified minimum length of gazetted service" used in proviso (b) to rule (iii) refers to those Income Tax Officers who could not at a given meeting be considered for promotion, only because they did not satisfy the condition of minimum period of qualifying service for promotion. Between Income Tax Officers promoted at the same meeting, their seniority inter se will be reflected in the higher cadres where the senior officer was considered and not promoted, and the junior officer was promoted at that meeting, the order of promotion will govern seniority in the higher grades: where a senior officer is promoted and confirmed and at a later meeting a junior officer is promoted, the latter cannot claim to be placed above the senior officer in the higher cadre relying upon the circumstances that he could not be considered for promotion at the earlier meeting, because he had not to his credit the qualifying minimum service. The High Court was right in observing that the proviso was intended to neutralise the effect of the minimum service rule in determining seniority in the grade of Assistant Commissioners. Rule 111 is not intended, contrary to all notions of justice and fairplay, to confer upon an officer, who was junior in the list of Income Tax Officers and who could not be considered for promotion on an earlier occasion, a right to be placed in the list of Assistant Commissioners above an officer senior to him in the list of Income Tax Officers and who was promoted before him.—Union of India v. Vasant Jayaram Karnik and others, (1973) 2 SCWR 480.

3. Rules prescribing different methods for determining seniority of direct recruits and promotees

In Ganga Ram and others v. The Union of India, (1970) 1 SCC 377 : AIR 1970 SC 2178 : (1970) 2 SCJ 584, the petitioners were officiating clerks, Grade I, in the office of Deputy Chief Accounts Officer (Traffic Accounts Branch) Northern Railway. They were promoted from Grade II, after passing the departmental qualifying examination described as Appendix 2 examination. They claimed that their seniority should be determined as from the date of their appointment as officiating clerks Grade I and not on the basis of their position in the Gradation list of Clerks, Grade II. Their grievance was that they were appointed as officiating clerks, Grade I, after passing the Appendix 2 examination long before respondents but the respondents were shown
as senior to the petitioner; on the ground of their seniority in Grade II. The petitioners sought to support their claim by relying on Articles 14 and 16 of the Constitution. The seniority of the direct recruits to Grade I, the petitioners complained, was determined on the basis of their appointment, whereas the seniority of the petitioners, who were promotees from Grade II to officiate in Grade I, continued to be determined on the basis of their seniority in Grade II. It was emphasised that both the direct recruits and the promotees, like the petitioners, had to pass the Appendix 2 examination. But their seniority was determined by different methods. It was further complained that Grade I clerks who passed the qualifying Appendix 2 examination were not promoted immediately. They had to wait till a vacancy occurred and even at the time of filling the vacancy the senior-most clerk was selected for promotion without giving any preference to those who had qualified earlier in point of time. Again, when a permanent post fell vacant all the eligible clerks in Grade II were considered at par without giving any credit or preference to those who had already officiated as clerks, Grade I. A junior clerk, Grade II, qualifying earlier, according to the petitioners’ grievance, continued to remain junior for the purpose of promotion and confirmation in the permanent post in Grade I and a senior clerk, Grade II, qualifying later retained his seniority for this purpose. Similarly, in filling leave vacancies it was complained that if a clerk was appointed to officiate in short term leave vacancy, then on the return of the incumbent of the post, instead of reverting the clerk so appointed to officiate, the juniormost according to the gradation list in Grade II, officiating in Grade I, was reverted even though he may have qualified earlier than the former and may also have officiated for some time against a regular post in Grade I. The petitioner’s right of equality before the law and equality of opportunity in matters of public employment was stated thus to have been violated.

Due J. while delivering the judgment observed:

“The right of equality is guaranteed by Articles 14 to 16 of our Constitution. The petitioners rely on Articles 14 and 16 (1). Article 14 is an injunction to both the legislative and the executive organs of the State and other subordinate authorities not to deny to any person equality before the law or the equal protection of the laws. Article 16 is only an instance of the general rule of equality laid in Article 14. Sub-article (1) of Article 16 guarantees to every citizen equality of opportunity in matters of public employment thereby serving to give effect to the equality before the law guaranteed by Article 14. The equality of opportunity in the matter of services undoubtedly takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group. Mere production of inequality is not enough to attract the constitutional inhibition because every classification is likely in some degree to produce some inequality. The State is legitimately empowered to frame rules of classification for securing the requisite
standard of efficiency in services and the classification need not be scientifically perfect or logically complete. In applying the wide language of Articles 14 and 16 to concrete cases a doctrinaire approach should be avoided and the matter considered in a practical way, of course, without whittling down the equality clauses. The classification, in order to be outside the vice of inequality, must, however, be founded on an intelligible differentia which on rational grounds distinguishes persons grouped together from those left out. The differences which warrant a classification must be real and substantial and must bear a just and reasonable relation to the object sought to be achieved. If this test is satisfied then the classification cannot be hit by the vice of inequality. It is in the background of this broad principle that the petitioners’ grievance is to be considered.

"The relevant provisions in the Indian Railways Establishment Manual directly applicable to the petitioners’ case may now be seen. They are contained in Paras 48 and 49, Chapter I, Section B and Paras 16 and 20 (b) of Chapter II. As the petitioners also rely upon Paras 17 to 19 and 21 of Chapter II in support of the argument that Para 20 (b) is discriminatory it is desirable to reproduce all these paragraphs.

The classes included in this group and the normal channel of their promotion are as under:

Clerks, Grade II (Rs. 110 - 180)
Clerks, Grade I (Rs. 130 - 300)

Sub-Heads
(Rs. 210 - 380)

| Stock Verifiers
(Rs. 210 - 380) |

| Junior Accountants
(Rs. 270 - 435) |

| Jr. Inspectors of Station Accounts
(Rs. 270 - 435) |

| Sr. Accountant
(Rs. 435 - 575) |

| Sr. Inspectors of Station Accounts
(Rs. 435 - 575) |

Jr. Inspectors of Store Accounts
(Rs. 270 - 435)

Sr. Inspectors of Stores Accounts
(Rs. 435 - 575)

Recruitment.—Initially in the grade of Clerks, Grade II. Direct recruitment for 20% vacancies in the grade of Clerks, Grade I.

Qualifications—

(a) Age

(i) For Clerks, Grade II 18 - 21.

(ii) For Clerks, Grade I 18 - 25.

(b) Education

For Clerks, Grade II, Matriculation, till replaced by Higher Secondary. For Clerks, Grade I, University Degree, preference being given to persons with I and II Division Honours and Master’s Degree.
"Directly recruited Clerks, Grade I, will be on probation for one year and will be eligible for confirmation only after passing the prescribed departmental examination in Appendix 2. Necessary facilities will be given to them to enable them to acquire a working knowledge of the rules and procedure.

"49. Such of the Clerks, Grade II, as qualify in the departmental examination as prescribed in Appendix 2 or those who may have been permanently exempted from passing the said examination will be eligible for promotion as Clerks, Grade I, and Sub-Heads. They will be eligible for a minimum starting pay of Rs. 150 per month or will be granted four advance increments on promotion to Grade I after their pay has been fixed under the ordinary rules. Promotion to the grade of Sub-Heads will be by seniority-cum-suitability.

CHAPTER II

"17. Subject to what is stated in paragraphs 18 and 19 below, where the passing of a departmental examination or trade test has been prescribed as a condition precedent to the promotion to a particular non-selection post, the relative seniority of the railway servants passing the examination/test in their due turn and on the same date or different dates which are treated as one continuous examination, as the case may be, shall be determined with reference to their substantive or basic seniority.

"18. A railway servant who, for reasons beyond his control is unable to appear in the examination/test in his turn along with others, shall be given the examination/test immediately he is available and if he passes the same, he shall be entitled for promotion to the post as if he had passed the examination/test in his turn.

"19. **Seniority for promotion as Junior Accountants, Junior Inspectors of Station or Stores Accounts**—Seniority for promotion to the rank of junior accountant or junior inspector of Station or Stores Accounts should count entirely according to the date of passing the examination qualifying for promotion to those ranks. Candidates who pass the examination in a year are *ipso facto* senior to those who qualify in subsequent years irrespective of their relative seniority before passing the examination. In the case of staff of ex-Company Railways, who are exempted from passing the examination, the date on which they are declared fit for promotion to the rank of Accountant or Inspector should be considered as the date of their passing. On receipt of the result of the above examination each Railway administration should immediately hold a selection test of the candidates declared successful along with any eligible ex-Company or ex-State Railway Staff, who may be asked to appear before the Selection Board in accordance with the procedure laid down by the Railway Board from time to time. While the Selection Board will determine in the case
of the ex-Company or ex-State Railway Staff, their suitability for promotion as Accountant/Inspector before placing them on the penal no candidate who has qualified in the said examination will be declared ineligible for promotion as a junior Accountant/Inspector, the selection board only assigning a suitable place to each such candidate in order of merit. The staff placed on the panel in any year will rank senior to those empanelled in subsequent years.

"20. **Date of passing the departmental examination test to regulate seniority.**—(a) Except as provided for in subparagraph (b) below, seniority of two more railway servants, who pass the departmental examination/test on different dates, not treated as one continuous examination will be regulated entirely by the date of passing the examination or test.

(b) The seniority of Accounts Clerks, Grade I and Stock Verifiers is to be determined with reference to their substantive or basic seniority in Grade II irrespective of the dates they qualify for promotion as Clerks Grade I by passing the examination prescribed for the purpose.

"21. **Seniority on promotion to non-selection posts.**—Promotion to non-selection posts shall be on the basis of seniority-cum-suitability being judged by the authority competent to fill the post, by oral and/or written test or a departmental examination as considered necessary and the record of service. The only exception to this would be in cases where for administrative convenience, which should be recorded in writing, the competent authority considers it necessary to appoint a railway servant other than the senior-most suitable railway servant to officiate in a short term vacancy not exceeding two months as a rule and 4 months in any case. This will, however, not give the railway servant any advantage not otherwise due to him."

Appendix 2, in addition to the syllabus for the examination, provides:

"3. The examination will be conducted by the Head of each office, who will also decide the intervals at which it should be held.

"4. (a) Normally no railway servant will be permitted to take the examination more than three; but the Financial Adviser and Chief Accounts Officer may in deserving cases permit a candidate to take the examination for a fourth time, and, in very exceptional cases, the General Manager may permit a candidate to take the examination for the fifth and the last time.

(b) No Railway servant, who has less than six months' service in a Railway Accounts Office or who has not a reasonable chance of passing the examination will be allowed to appear in the examination prescribed in this Appendix.
In exceptional circumstances, the condition, regarding six months minimum service may be waived by the General Manager.

(c) Temporary railway servants may be permitted to sit for the examination but it should be clearly understood that the passing of this examination will not give them a claim for absorption in the permanent cadre.

(d) A candidate who fails in the examination but shows marked excellence by obtaining not less than 50% in any subject may be exempted from further examination in that subject in subsequent examination.

"It is quite clear that para 49 does not confer any right to immediate promotion on those Grade II Clerks who pass the qualifying Appendix 2 examination. The only benefit which accrues to them is that one hurdle is removed from their way and they become eligible for being considered for promotion to Grade I. This promotion is governed by the test of seniority-cum-suitability. All those who qualify for promotion are treated at par for this purpose and they are grouped together as constituting one class. The fact that one person has qualified earlier in point of time does not by itself clothe him with a preferential claim to promotion as against those who qualify later. This examination is considered to be a continuous examination and as is clear from Para 17 successes at this examination does not constitute the basis of seniority which continues to be dependent on the substantive or basic seniority in Grade II. The question which directly arises for determination is: does the procedure laid down in these instructions violate the petitioner's right as guaranteed by Articles 14 and 16? The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible for promotion in its different departments. In the present case the object which is sought to be achieved by the provisions reproduced earlier is the requisite efficiency in the Accounts Department of the Railway establishment. The departmental authority is the proper judge of its requirements. The direct recruits and the promotees like the petitioners, in our opinion, clearly constitute different classes and this classification is sustainable on intelligible differentia which has a reasonable connection with the object of efficiency sought to be achieved. Promotion to Grade I is guided by the consideration of seniority-cum-merit. It is therefore, difficult to find fault with the provision which places in one group all those Grade II Clerks who have qualified by passing the Appendix 2 examination. The fact that the promotees from Grade II who have officiated for sometime are not given the credit of this period when a permanent vacancy arises also does not attract the prohibition contained in Articles 14 and 16. It does not constitute any hostile discrimination and is neither arbitrary nor unreasonable. It applies uniformly to all members of Grade II Clerks who have qualified and become eligible. The onus in this
case is on the petitioners to establish discrimination by showing that the classification does not rest upon any just and reasonable basis. The difference emphasised on behalf of the petitioners is too tenuous to form the basis of serious argument. The challenge, therefore, fails.

"The decision in *Mervyn Coutindo v. Collector of Customs*, Bombay, (1966) 3 SCR 600, on which reliance has been placed on behalf of the petitioners dealt with a different problem though the principle of law laid down there seems to go against the petitioners’ submission...... It was expressly observed there that there is no inherent vice in the principle of fixing seniority by rotation in a case when a service is composed in fixed proportion of direct recruits and promotees. The distinction between direct recruits and promotees as two sources of recruitment being a recognised difference, not obnoxious to the equality clauses, the provisions which concern us cannot be struck down on the ratio of this decision."

4. Fixation of seniority on the basis of previous service—Rule 1 (f), (iii) and (iv) if violate Article, 14 and 16.

Rule 1 (f) (iii) and Rule (f) (iv) of the Income Tax Officers (Class I, Grade II) Service Recruitment Rules are based on a reasonable classification and do not offend the guarantee under Article 14 and 16 of the Constitution of India. According to Rule 1 (f) (iii) officers promoted in accordance with the recommendation of the Departmental Promotion Committee before the next meeting of the Promotion Committee shall be senior to all direct recruits appointed on the results of examinations held by the Union Public Service Commission during the calendar year in which the Departmental Promotion Committee met and the three previous years. The direct recruits joining Class I, Grade II service have to undergo a period of two years training and thereafter they become qualified for confirmation. A promotee having already undergone the very, same training during the period of probation of Class II, Grade III joins Class I, Grade II with three years period of assessment and working experience of Income Tax Department. Those who come to Class I, Grade II are officers who have shown outstanding ability as Income Tax Officers in Class II service. The net effect of Rule 1 (f) (iii), therefore, is that three years of outstanding work in Class II is equated to two years of probation in Class I Service and on consideration of this aspect of the matter the promotee is given seniority over a direct recruit completing the period of probation in the same years. In regard to Rule 1 (f) (iv) it deals with a special situation in which an officer initially appointed to Class II is given seniority in the same manner as a departmental promotee if subsequent to his passing the departmental examination in Class II he is appointed to Class I on the results of the combined competitive examination held by the Union Public Service Commission. In the present case such "deemed promotees were appointed in 1947 and were appointed in Class I, Grade II service in 1951. They have been shown senior to the appellant a direct recruit, who also joined Class I, Grade II service in 1951. The objection of the appellant is that while they qualified in the same competitive examination they had become senior to him because of the operation of the artificial rule by
which they are treated as "deemed promotees" otherwise they would have remained junior to him. But the argument in their favour is that they had been appointed to Class II, Grade II Service of 1947 and completed 5 years in 1952 and if the Departmental Committee met in 1953, as it actually did meet, and if it recommended their promotion to Class I, Grade II each of them would have become senior to the appellant by the operation of Clause (iii) of Rule 1 (f). There was also the further consideration that if Rule 1 (f) (iv) did not exist there was no incentive to a promotee of this type to it for the competitive examination. It should also be taken into account that if the service of the promotees in Class II, Grade III is entirely ignored and if they join Class I Grade II, Service as direct recruits they might well find themselves becoming junior to those who were left behind in Class II, Grade III service by operation of Rule 1 (f) (iii). Therefore, Rule 1 (f) (iii) and Rule 1 (iv) are based on reasonable classification.

Having fixed the quota in the letter dated October 18, 1951, under Rule 4 of the Income Tax Officers (Class I Grade II) Service Recruitment Rules it is not now open to the Government of India to say that it is not incumbent upon it to follow the quota for each year and it is open to it to alter the quota on account of the particular situation. Having fixed the quota in exercise of their power under rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to alter that quota according to the exigencies of the situation or to deviate from the quota in any particular year, at its own will and pleasure. The quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice it will be difficult to hold that the Seniority Rule 1 (f) (iii), and (iv), is not unreasonable and does not offend Article 16 of the Constitution. Therefore, the promotees from Class II, Grade III to Class I, Grade II Service in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards have been illegally appointed and the appellant is entitled to a writ of mandamus commanding the respondents 1 to 3 to adjust the seniority of appellant and other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after adjusting the recruitment for the period 1951 to 1956 and onwards in accordance with the quota rules prescribed in the letter of October 18, 1951. This order, however, will not affect such Class II officers who have been appointed permanently as Assistant Commissioners of Income Tax.—S. G. Jaisinghani v. Union of India and others, AIR 1967 SC 1427 : (1967) 2 SCJ 102.

5. Seniority Rules framed in 1949—If Seniority liable to be changed after the construction came into force

It is settled law that the Constitution of India has no retrospective operation. The petitioners cannot complain of the breach of Articles 14 and 16 of the Constitution in respect of acts done before the Constitution came into force. These facts in this case were (1) appointment of the respondents to Income-tax Officers Class I, Grade II Service, (2) Seniority list as existing on 1-1-1950, (3) the Seniority Rules of 1949 and 1950 in so far as they have effect up to January 26, 1950. The first Seniority list was prepared as on January 1, 1950 and even if the Seniority list was finally settled after the Constitution came into force, the rules to be applied were the Seniority Rules of 1949 and 1950. In
other words if the list had been finally settled on January 1, 1950, it is clear that no appeal could be made to Articles 14 and 16 of the Constitution. The fact that the list was prepared after the Constitution came into force would not enable the petitioners to appeal to Articles 14 and 16. The position is however, different, in so far as changes were made in the Seniority list as a result of change in the 1952, Seniority Rules. These changes were post-Constitution and if they are hit by Articles 14 and 16 of the Constitution the petitioners would have the right to complain of the breach of their fundamental rights under these Articles—Rabindra Nath Bose and others v. The Union of India and others, AIR 1970 SC 470: 1969 SCA 390: 1970 Lab IG 402: (1970) 2 SCR 697.

6 Selection Post—whether seniority relevant in making selection—Bihar and Orissa Agricultural Service Class I, Rules, 1935, if repealed by 1945 Rules

The post of Director of Agriculture is admittedly an ex-cadre post. The selection to that post is made solely on the basis of merit. Merely because the Government in its letter to the Commission used the word “promotion”, the High Court should not have treated the case as one of “promotion”. The word “promotion” used in the Government’s letter was in an appropriate word. Whether the Government really meant was selection of a person to be posted as the Director. The nature of the post cannot be changed by the Government using the word “promotion”. The post remains to be a selection post. The High Court was also not right in opening that the recommendation made by the Commissioner was not in accordance with the rules. The two rules referred to by the High Court are (1) Rules regulating the Bihar and Orissa Agricultural Service, Class I promulgated on April 11, 1935, and (2). The Rules regulating the recruitment to Bihar Agricultural Service, Class II, the General Provincial Service and Special posts outside these cadres promulgated on July 9, 1945. The High Court has come to the conclusion that 1935 Rules were by implication though not specifically repealed by the 1945 Rules, 1935 Rules make it clear both in its preamble as well as by the definition of the word “that service” that those rules do not apply to the appointment to the post of Director of Agriculture. From a reading of Rules 16 and 17 of the 1935 Rules, it is clear that the 1945 Rules did not come in the way of the Government making its selection. Now coming to the 1945 Rules, it is clear from its preamble that those rules apply only to (i) the Bihar Agricultural Service, Class I; (2) the Bihar Agricultural Service, Class II; and (3) the Central Provincial Service and special posts outside these cadres. It is clear from Rule 12 of the 1945 Rules that these rules do not apply in the matter of filling up the post of the Director of Agriculture. It is not possible to visualise that any service rule could have provides for the nomination of his successor by an officer who is about to be superannuated. Rule 16 of the 1935 Rules is not superseded by the 1945 Rules—Dr. Jai Narain Misra v. State of Bihar, 1970 SCG 1090: 1970 SLR 923.

7. Selection Post in the Indian Police Service—Promotion—Principles.

In Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910: (1967) 2 SCA 574, it was contended that the petitioner was
entitled as of right, to be promoted on the ground that his name stood first in the gradation list prepared under Rule 6 of the Indian Police Service (Regulation of Seniority) Rules, 1954. The Court repelled the contention and observed:

"The three posts of Inspector-General of Police, Additional Inspector-General of Police and Deputy Inspector-General of Police in Rajasthan State are selection posts and outside the junior or senior time-scales of pay. If these three posts are selection posts it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Gradation List. The circumstance that these posts are classed as 'Selection Grade Posts' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection post and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection post is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available."

8. Selection post—State Government is sole judge for making appointment—High Court cannot interfere

So far as the question of the suitability is concerned, the decision entirely rests with the Government. In other words the Government is the sole judge to decide as to who is the most suitable candidate for being appointed as Director of Agriculture. For discharging that responsibility it is open to the Government to seek the assistance of the Public Service Commission. Therefore, the High Court is not justified in calling for the records of the Public Service Commission and going through the notings made by various officers of the Commission as well as the correspondence that passed between the Commission and the Government. Where there is no complaint of mala fide on the part of the Government or the Commission the interference of the High Court in the matter of selection made by the Government is not called for—Dr. Jai Narain Misra v. The State of Bihar and others, 1970 SLR 923.

9. Selection post—Punjab Medical Service, Class I (Recruitment and Conditions of Service) Rules, if prohibit direct appointment to selection grade

Rule 9 (2) of the Punjab Medical Service, Class I (Recruitment and Conditions of Service) Rules does not contain any prohibition that only members of the service shall be eligible to promotion to a selection grade. The proviso to Rule 9 (2) contains a words of limitation and it is that no member of the service shall be entitled as
even initially to be senior to the petitioners in the Junior Time-scale of the Class I Service. It was further urged that, since the revision of seniority in the Junior Time-scale of Class I Service was justified and not arbitrary, the consequent revision of seniority in the grade of Directors of Postal Services was also valid.

The Court held:

"The principles for appointment to the posts of Directors of Postal Services were initially laid down by the Home Ministry’s Memorandum dated 24th May, 1948, to which we have already referred. As indicated earlier, it was laid down that appointments to Grade II of the Directors of Postal Services were to be made by promotion by selection of the best officers in the senior time-scale of the Indian Postal Services Class I, seniority being regarded only where other qualifications were practically equal from the very first stage, therefore, appointments to the posts of Directors of Postal Services were to be made on the basis of merit and not on the basis of seniority. Seniority was to be taken into account only if other qualifications were practically equal. It appears that, after the two grades of Directors of Postal Services were amalgamated, some fresh rules were promulgated. The relevant rules have been brought to our notice by placing before us extracts from Posts and Telegraphs Manual, Volume IV, 4th ed., in which paragraph 153 mentioned that the rules for recruitment to the grade of Directors of Postal Services in the Indian Postal Service Class I in the Posts and Telegraphs Department are given in Appendix 6-A. A copy of Appendix 6-A has also been placed before us. The Appendix bears the heading ‘Rules for recruitment to the grade of Directors of Postal Services in the Indian Postal Services, Class I in the Indian Posts and Telegraphs Department.’ Rule 2 in this Appendix lays down the scale of pay of the post in the grade which is admittedly Rs. 1300—1600. Rule 3 prescribes the method of recruitment and is as follows:

‘Recruitment to posts in the grade shall be selected from among the officers of the Senior Time-scale of the Indian Postal Service, Class I, one post being reserved for promotion of Presidency Postmasters, on the basis of selection.’

“This Rule also makes it clear that appointment to the grade of Directors of Postal Services is made by selection and not on the basis of promotion in accordance with seniority. The presumption exists that the promotion of the petitioners and respondents Nos. 3 to 7 to the grade of Directors must have been made in accordance with these instructions and rules, so that the appointment of all these concerned parties as Directors was based on merit to be taken into account at the time of selection and not on seniority in the time scale of Class I Service. Once a member of the Class I Service in the time-scale was selected for promotion to the grade of Director and given seniority over another officer selected later the seniority so determined as a result of selection
This decision of the Government was communicated to the Director-General, Posts and Telegraphs, by their letter dated 13th November, 1948, which also laid down the manner of recruitment to the services and the various sources from which recruitment was to be made. The normal rule laid down was that appointments to the junior time-scale were to be made by direct recruitment against 75 per cent of the vacancies and the remaining 25 per cent were to be filled by promotion by selection of the best officers in the Postal Superintendents Service Class II, seniority being regarded only when all other qualifications were practically equal. To this rule, however, an exception was laid down to the effect that all initial appointments to the time-scale cadres of the Indian Postal Service Class I consisting of 64 posts (23 in the senior scale and 41 in the junior scale) were to be made by promotion from amongst officers of Postal Superintendents' Service Class II by selection. Future recruitment was to be governed by the general rules cited above. Appointments to Grade II of the Directors of Postal Services were to be made by promotion by selection of the best officers in the senior time-scale of the Indian Postal Service, Class I, seniority being regarded only where other qualifications were practically equal. These promotions were to be made through a Departmental Promotion Committee consisting of the Director-General, Posts and Telegraphs, Senior Deputy Director-General, Posts and Telegraphs, and a member of the Federal Public Service Commission. Appointments to Grade I of Directors of Postal Services were to be made by promotion from Grade II of Directors in the order of seniority, provided the senior officer was considered fit for such promotion. The service under these rules as, in fact, constituted with effect from 15th September, 1948 and, even in cases where appointments were actually made later, they were made effective retrospectively from 15th September, 1948 for purposes of confirmation. The petitioners were still probationers in Postal Superintendents Service Class II on 15th September, 1948; and since only persons holding permanent posts in the cadre of Class II were to be considered for appointment to the Class I service, the petitioners were not considered at the initial stage. Both the petitioners completed their probation in Class II Service in the year 1949. According to the petitioners, petitioner No. 1 was promoted to Class I service on 2nd December, 1949, and petitioner No. 2 on 5th December, 1949. They were shown as officiating in this service. Subsequently, petitioner No. 1 was confirmed in the junior time-scale of Class I Service with effect from 11th May, 1951, while petitioner No. 2 was confirmed in the junior time-scale of Class I service with effect from 12th February, 1952. In the meantime, direct recruitment to Class I Service was also made on the basis of competitive examinations held in the years 1948 and 1949, and a number of direct recruits were selected for appointment to this Service. These direct recruits joined Class I Service as probationers on various dates falling between 16th March, 1950 and 22nd November, 1950. Thereafter, the question of fixing seniority inter se between the direct recruits and officers promoted from Class II Service came up for consideration of the Government. Government communicated their final decision through the letter dated 30th January, 1957. The letter indicated the considerations that led the Government to fix the seniority of the various officers and to the letter was annexed an Appendix giving the seniority of junior time-scale officers. In this list, the two petitioners were placed at Nos. 31 and 32,
while the five respondents were placed junior to them at Nos. 33, 36, 41, 42 and 44. In the letter, the Government specifically stated that in arriving at the decisions, the Government had given due consideration to all the representations submitted by officers on the subject and replies to these representations were not, therefore, being sent separately. The Government added that the seniority list along with a copy of the memorandum was to be given to all the officers concerned for their information and they were to be informed that any further representations against the principles on the basis of which the seniority list had been prepared, would not be entertained. At the time when this seniority was fixed, the principles, which, according to the petitioners, were applicable, were those laid down in the Ministry of Home Affairs' Office Memorandum dated 22nd June, 1949, paragraph 2 of which contained the decision that seniority in respect of persons employed in any particular grade should, as a general rule, be determined on the basis of the length of service in that grade, as well as service in an equivalent Grade, irrespective of whether the latter was under the Central or Provincial Government in India or Pakistan. The other of seniority laid down by the order dated 30th January, 1957 by the order dated 30th January, 1957 continued in force for a number of years.

The Ministry of Home Affairs subsequently issued an Office Memorandum on 22nd December, 1959, laying down general principles for determining seniority of various categories of persons employed in Central Services. This Memo referred to various earlier office Memoranda, including the one dated 22nd June, 1949 issued by the Home Ministry. Paragraph 3 of this Office Memorandum laid down that the instructions contained in those various office Memoranda were thereby cancelled, but made an exception in regard to determination of seniority of persons appointed to the various Central Services prior to the date of this Office Memorandum. The revised General Principles embodied in the Annexure to this Memorandum were not to apply with retrospective effect, but were to come into force with effect from the date of issue of these orders, unless a different date in respect of any particular service/grade from which these revised principles were to be adopted for purposes of determining seniority had already been or was to be thereafter agreed to by the Home Ministry. In para 2 of the Annexure it was again laid down that subject to the provision of para 3 below, persons appointed in a substantive or officiating capacity to a grade prior to the issue of these general principles were to retain the relative seniority already assigned to them or such seniority as might thereafter be assigned to them under the existing orders applicable to their cases and were to be en bloc senior to all others in that Grade. It was, thus, the case of the petitioners that this Office Memorandum of 22nd December, 1959 did not in any way affect their seniority which had already been determined under the decision of the Government dated 30th January, 1957. Subsequently, the petitioners as well as respondents Nos. 3 to 7 were promoted as Directors. The common case of both the parties was that by the time these promotions were made, the two grades of Directors of Postal Services were amalgamated into one single grade, and the promotions of the petitioners as well as respondents Nos. 3 to 7 were promoted as Directors after the petitioners, so that the petitioners were recognised as seniors in the grade of Directors also. These promotions, according to the petitioners, were made some time in the years 1961 and 1962.
Subsequently by an order dated 5th June, 1965, the Government suddenly revised the seniority of these various officers. The letter dated 5th June, 1965 mentioned the subject as "Revision of seniority in the erstwhile Junior Time-scale of the Indian Postal Service, Class I of direct recruits from the combined competitive examinations held in the years 1947, 1948 and 1949". As a result of this revision of seniority in the Junior Time-scale of the Indian Postal Service, Class I respondents Nos. 3 to 7 were shown as senior to the petitioners. The places allotted to respondents Nos. 3 to 7 were at Nos. 17, 22, 23 and 25, while the two petitioners were placed below them at Nos. 26 and 27. Later, another Order was issued on 17th January, 1966, revising the seniority in the grade of Directors of Postal Services, and, in that revision also, respondents No. 3 to 7 were placed as seniors at Nos. 14, 15, 17, 18 and 19, while the two petitioners were shown as junior to them at Nos. 20 and 21. The petitioners, consequently, filed a Writ petition under Article 32 of the Constitution challenging the revision of their seniority in the junior time-scale by the Order dated 5th June, 1965, as well as the revision of their seniority in the grade of Directors of Postal Services by the Order dated 17th January, 1966.

The principal ground, on which these orders were challenged by the petitioners, was that they had been made by the Government arbitrarily in exercise of their power to fix seniority and, by such arbitrary action, had adversely affected the rights of the petitioners vis-a-vis respondents Nos. 3 to 17 in violation of Article 16 of the Constitution. The point taken was that the seniority having once been fixed by the Order dated 30th January, 1937 in accordance with the rules then in force could not be arbitrarily disturbed by the Government particularly when the rules were never revised subsequently, nor were any fresh rules issued governing the seniority of these officers who had been appointed to the Junior Time-scale of Class I service prior to 30th January, 1957. The Counsel appearing for the petitioners formulated four different grounds for challenge of the Order dated 5th June, 1965, all leading to the contention that that order violated Article 16 of the Constitution, or was passed against the principles of natural justice. In addition, the order dated 17th January, 1966 was challenged on one more ground, viz, that, even if it be held that the re-fixation of seniority in the Junior Time-scale of Class I service was justified, the Order of the Government revising the seniority in the grade of Directors was in any case void and illegal. This point was urged on the basis that appointment to the Directors' grade was made on the basis selection and there could not be automatic revision of seniority in that grade consequent upon the revision of seniority in the time-scale of the service.

Most of the facts put forward by the petitioners were admitted by the respondents, but the inferences and conclusions drawn by the petitioners as well as the submission on their behalf in the Writ petition were challenged. The principal contention for resisting the petition was that the Order dated 30th January, 1937 fixing the seniority had been made by mistake as a result of the Government having ignored Supplementary Rule 2 (15), the effect of which was that for purposes of seniority the service of respondents Nos. 3 to 7 in Junior Time-scale Grade I was wrongly taken at commencing from the date of their confirmation in the service, while, correctly, it should have been from the date on which these respondents joined as probationers. It was urged that, on a correct interpretation of the Rules, respondents Nos. 3 to 7 should have been held,
of right to such promotion. To exclude appointment to selection grade would be to rob Rule 5 as well as Rule 9(2) and Rule 9(3) of their contents because Rule 5 speaks of appointment to the service either by promotion or by direct recruitment. Rule 9(2) speaks of eligibility of members of the service for promotion to the selection grade and Rule 9(3) speaks of the number of appointments in the selection grade not to exceed 25 per cent of appointments in the service. The service as defined in Rule 2(c) means the Punjab Civil Medical Service Class I. Selection grade is in the Punjab Civil Medical Service, Class I. That is not disputed. Therefore, Rule 5 which specifically speaks of appointment to the service by direct recruitment embraces Class I and selection grade which is a part and parcel of Class I. The word appointment in Rule 9(3) in regard to selection grade as not exceeding 25 per cent of the total number of appointments in the service contemplates both promotion and direct appointment in the service to the selection grade. The word "appointment" cannot mean only promotion. It means appointment both by promotion and by direct recruitment. That is why the word "appointment" is used in that sense in relation to selection grade and again in relation to the total number of appointments to the service. Direct appointment to selection grade is not only contemplated in the rules particularly Rules 5, 9(2) and 9(3) but is also the implicit idea inherent in the words "direct recruitment and direct appointment" in Rule 5 for purpose of attracting able and meritorious persons to the service including selection grade—Dr. Harkishan Singh v. State of Punjab and others, 1971 SLR 373.

10. Appointment of Director's Grade made on the basis of selection—Seniority once fixed cannot be arbitrarily disturbed

In S K. Ghosh and another v. Union of India and others, AIR 1963 SC 1385: 1963 Lab IC 1520, the petitioners appeared for the examination held in October, 1945 for recruitment to the Indian Audit and Accounts Service and other Allied Central Services. On the basis of the result of the examination both of them were selected for appointment to the Postal Superintendents Service Class II. One of the Petitioners joined a post in that service on probation with effect from 9th April, 1947, while the other petitioner joined as a probationer on 11th February, 1947. At the time, there was no Class I Service in the Postal Department. In Class II Service, to which these two petitioners were appointed, recruitment was made by a competitive examination to the extent of 50 per cent, while the remaining 50 per cent posts were filled by promotion from lower cadres of the Department.

On 24th May, 1948, the Government sanctioned the creation of Indian Postal Service Class I with four grades as follows :

(i) Directors of Postal Services, Grade I ;

(ii) Directors of Postal Services, Grade II ;

(iii) Senior Time-scale ; and

(iv) Junior Time-scale.
could not be made dependent on the seniority in the time scale. It is clear that, in these circumstances, even if there was justification for revising the seniority *inter se* of the petitioners and respondents Nos. 3 to 7 in the Time-scale of Class I Service that revision of seniority could not in any way affect their order of seniority in the grade of Directors to which they were promoted on the basis of selection in accordance with the rules. It is, therefore, clear that, even if it be held that the order of the Government dated 5th June, 1965 revising the seniority of these officers in the junior time-scale was valid, the Order dated 17th January, 1966, revising the seniority in the grade of Directors of Postal Services is not valid and justified. The seniority in the grade of Directors of Postal Services was put forward on behalf of any of the respondents. It is, thus, clear that the revision of seniority in the grade of Directors of Postal Services by the Order dated 17th January, 1966 was not based on any rule or appropriate principle applicable to determination of seniority in that grade, and must, therefore, be held to be totally arbitrary. Such an arbitrary order, which affects the civil rights of the petitioners in respect of future promotion must, therefore, be struck down as violating Article 16 of the Constitution. Once this Order dated 17th January, 1966 is quashed, the petitioners will no longer be affected in future by the revision of their seniority in the time scale of the service by the Order dated 5th June, 1965, and consequently we have refrained from going into the question of the validity of that order. The petitioners are not claiming any relief on the basis of the invalidity of the Order dated 5th June, 1965 which would have given to them any additional benefit over and above the relief which they can obtain on the order dated 17th January, 1966 being quashed.

"As a result, we allow this petition and quash the Order dated 17th January, 1966, revising the seniority of the petitioners and respondents Nos. 3 to 7 in the grade of Directors of Postal Services."

11. Seniority and Reversion—Rule 2 (c) Mysore Seniority Rules.

Rule 2 (c) of the Mysore Seniority Rules provides for seniority between persons officiating in a higher rank when they are officiating as such it is not an express rule as to the manner in which revisions should be made where reversions are necessary on account of exigencies of service. The rule, therefore, cannot be held as expressly providing for the principle of "last come first go" with which one is familiar in industrial law. Strictly speaking, therefore, the petitioner cannot claim that rule 2 (c) has been violated by their reversion for it does not provide for reversion and only provides for the seniority of officers who are officiating in a higher grade. Even so it may be conceded that when reversion takes place on account of exigencies of public service, the usual principle is that the junior-most persons among those officiating in clear or long-term vacancies are generally reverted to make room for the senior officers coming back from deputation or
from leave etc. Further ordinarily as promotion on officiating basis is generally according to seniority, subject to fitness for promotion, the junior-most person reverted is usually the person promoted last. This State of affair prevails ordinarily unless there are extraordinary circumstances as in the present case. As the new State of Mysore was formed of the territories of the old State of Mysore and the territories of four other States, the officers from other States as well as from the old State of Mysore became officers of the new State and the question of their integration had to be decided in accordance with section 115 of the State Re-organisation Act, 1956. The matter had to take time and, therefore, in the interest of administration ad hoc promotions continued to be made by the new State of Mysore after November 1, 1956. It was because of these special circumstances that the petitioners and those like them who were really junior to other Sub-Inspectors in the eligibility lists came to be promoted earlier because there was no provisional list available or in actual force when the promotions were made ad hoc and out of seniority. It was only when the provisional list was made, that inter se seniority of officers coming from various States became prima facie known. Therefore, when reversions had to be made on account of exigencies of service in accordance with the provisional list it was bound to happen, in view of the earlier ad hoc promotions, that some officiating Inspectors who had been promote earlier had to be reverted in preference to others who had been promoted later in these circumstances. The petitioners therefore, cannot rely on Rule 2 (c) in the peculiar circumstances prevailing in the State after the re-organisation, because promotions were made ad hoc without regard to inter se seniority of officers from different States. Therefore, the charge of discrimination based on the violation of Rule 2 (c) cannot in the special circumstances of this case be sustained for it is not disputed that the petitioners were the junior-most according to the provisional list when the orders of reversion were made - G. S. Ramaswamy v. The Inspector-General of Police, Mysore State, AIR 1966 SC 175 : (1964) 6 SCR 279 : (1965) 10 Fac LR 65.

12. Competitive examination—Government’s right of appointment of any candidate to any particular cadre irrespective of merit—Articles 14 and 16, Constitution, if violated

In State of Mysore v. Jayaram, AIR 1968 SC 346 : (1968) 1 SCR 349 : (1968) 2 SCJ 38 : 1968 SCD 148, the Supreme Court struck down the last para of Rule 9 (2) of the Mysore Recruitment of Gazetted Probationer’s Rule, 1959 which vested in the Government an arbitrary power to appoint to any particular cadre, any candidate whom it considered to be more suitable. In that case the Government appointed the first three and the fifth candidates in an approved list and ignored the fourth on the ground that he was not suitable. It was contended that the rule in question was violative of Articles 14 and 16 of the Constitution of India. The contention was upheld and the law laid down was under:

“The last para of the Mysore Recruitment of Gazetted Probationers Rules, 1959 gives the Government an arbitrary power of ignoring just claims of successful candidates for recruitment to offices under the State. It is violative of
Articles 14 and 16 of the Constitution of India and must be struck down. The above said rules make provision for the direct recruitment to several cadres in the State Service on the basis of the result of a competitive examination. The examination is held annually and is open to all eligible candidates. The result of the examination is announced and the list of the successful candidates in order of merit is published. The successful candidates are entitled to be appointed as probationers to Class I posts in the order of merit and thereafter to Class II posts in the order of merit. The candidates are required to indicate in their applications their reference for the cadres they wish to join. But the last part of Rule 9 (2) reserves to the Government the right of appointing and candidate whom it consider more suitable for such cadre. The rules are silent on the question as to how the Government is to find out the suitability of a candidate for a particular cadre. In the present case an open competitive examination was held for recruitment to the posts of Assistant Commissioners in the Mysore Administrative Service and Assistant Controllers in the Mysore State Accounts Service. Though both are Class I posts the post of Assistant Commissioner has better prospects. But for the last part of Rule 9 (2) the successful candidates would have the preferential claim for appointment as probationers to the posts of Assistant Commissioners in order of merit. If, therefore, a candidate as the respondent in this case, who indicated his preference for the post of Assistant Commissioner and who ranked fourth in order of merit was signed out and debarred from that post whereas the candidates ranking 1st, 2nd, 3rd and 5th were appointed as Assistant Commissioner it was because of the arbitrary power under the last part of Rule 9 (2) that Government could make this unjust discrimination. The principle of recruitment by open competition aims at ensuring equality of opportunity in the matter of employment and obtaining the service of the most meritorious candidates. Though Rule 9 (1) requires the appointment of successful candidates to Class I posts in the order of merit and thereafter to Class II posts in the order of merit, Rule 9 (1) is subject to Rule 9 (2) and under the cover of Rule 9 (2), Government can even arrogate to itself the power of assigning a Class I post to a less meritorious and Class II post to a mere meritorious candidate. In the result the following part of Rule 9 (2) of the Mysore Recruitment of Gazetted Probationer’s Rules, 1959, is struck down.


S.L I.—74
13. Promotion in grade based on seniority-cum-merit—Fixation of seniority contrary to rules—Relief

A public servant, place in the list of seniority in a cadre or grade where selection for promotion to the next higher grade is on the basis of seniority-cum-merit, “is entitled on the plea that the list is contrary to the rules governing seniority, to claim relief on the footing that he is denied equality of opportunity in matters relating to employment—Union of India v. Vasant Jayaram Karnik and others, 1970 SLR 813 814).

14. Seniority after transfer—Railway Fundamental Rules

The competent authority has the power to transfer a railway employee even though he holds a permanent post from one such post to another under Rule 2011 of the Railway Fundamental Rules and that once such an employee is transferred from one permanent post to another permanent post he is entitled to a lien in respect of that another post to which he is permanently posted as a result of the transfer. He will be entitled to hold substantively the permanent post to which he has been transferred bringing along with him the seniority which he had in the post from which he was transferred. If that were not so, the result of a transfer from one post to another would mean that a transferred employee would have to start de novo from a scratch and would consequently stand last in the department to which he is transferred. Further Rule 2011 provides that a railway servant shall not be transferred substantively to or appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds his lien and his lien has not been suspended under Rule 2008. Thus the only limitation to the power conferred on the competent authority to transfer a railway servant from one post to another is that such transfer cannot be to a post carrying less pay than the pay of the post on which the transferred employee had a lien—Paresh Chand Nindi v. Controller of Stores, North-East Frontier and others, 1971 SLR 68.

15. How seniority is to be determined

Where the appellant has referred to Rule 10 of the Punjab Clerical Services Rules of 1960 and contends that his seniority should be as determined from the date when the commenced his probation as against a person who started on probation later and that under Rule 11 of the said rule inter se seniority should be determined by the date of their respective appointments. It may, however, be mentione that these rules do not apply to the persons governed by section 11.5 of the States Reorganisation Act but only by those rules which immediately prior to the reorganisation governed them. In the instant case the Punjab Rules of 1933 will govern the appellant and Pepsu Rules of 1933 will govern Respondent 4. These rules are identical so that under Rule 8 and clause (d) of the proviso to these rules the seniority of the members of the service holding the same post shall be determined by the dates of their substantive appointment to such posts provided that if two or more members are subsequently appointed on the same date, in the case of members who are both or all recruited by promotion, seniority shall be determined according to seniority in the appointments from which the members are promoted. It is contended that
these rules are repealed but in so far as the services which are to be
governed by the provisions of the States Reorganisation Act their condi-
tions of service are subject to the directions of the Government of India
which determine their inter se seniority. Such directions had been
given by the Government of India more particularly those dated
the 18th April, 1965 contained in Annexure G. The relevant directions
contained in paragraphs (1) and (2) are as follow:

"In exercise of the powers conferred by section 17 of the
States Reorganisation Act, 1956 (Act 37 of 1956) the Central
Government hereby directs the Government of Punjab so
determine the seniority, pay and other matters concerning
the officers included in the Final Gradation Lists in accord-
ance with the principles set out b low:

(1) Promotions made before 27th February, 1961 on the basis
of the Provisional Gradation Lists shall not be disturbed:
Provided that the claims of officers for future promotion on
the basis of seniority determined in accordance with the
principles set out hereafter shall not be prejudiced.

(2) Promotions made after 27th February, 1961, on the basis
of the provisional gradation lists shall be reviewed to
the extent necessary to give effect to the claim of officers
who are senior in the Final Gradation Lists to the officers
who have been promoted.

Action as aforesaid may be taken without prejudice to the prin-
ciples of promotion on merit wherever applicable."

Pursuant to this the Government of Punjab by its order dated 9th
December, 1966 (Annexure ‘H’) granted to Respondent 3 the deemed date
of confirmation as Deputy Superintendent (Office) with effect from
1-3-1962 the date from which Shri Jaswant Singh officiating Deputy
Superintendent (Office) was confirmed in his appointment. We have
already discussed the position of the Appellant vis a-vis the seniority of
Jaswant Singh in the post of officiating Superintendent and the same
reasoning will apply equally to the position relating to his promotion to
the Deputy Superintendent and the same reasoning will apply equally to
the position relating to his promotion to the Deputy Superintendent’s post.
When confronted with this situation the Appellant takes his stand on
the 1960 Rules, which however, whatever be the merits of the contention
thereunder, cannot apply because they were not issued with the previous
approval of the Central Government under section 115 and only those
directions which the Central Government can give under section 117 read
with section 127 of the States Reorganisation Act will govern the inter se
seniority of the appellant and Respondent 4. The appellant says that in
Raghavendra Rao v. Deputy Commissioner, South Kanara, AIR
1963 SC 136, the Supreme Court had observed that the previous approval
will be presumed. This construction would be a misreading of the judg-
ment because in that case the Central Government had already in a
Memorandum addressed to all State Governments after examining the
various aspects agreed with the view of State Governments that it
would not be appropriate to provide any protection in the matter of
travelling allowance, discipline, control, classification, appeal, conduct
probation and departmental promotion in other words it means that
the State Governments might, if they so desire, change service rules as
indicated in the Memorandum, which would amount to previous approv-
al within the proviso to section 115 (7) to the making of the Mysore
General Services (Revenue Subordinate Branch) Recruitment Rules, 1959, so as to make them valid. The circumstances in which such a direction was given justified this Court from coming to the conclusion that previous approval was given to the making of the rules. In any case in a subsequent decision of the Supreme Court in Mohammad Bhakar v. Y. Krishna Reddy, 1970 Ser LR 768 (SC), it was explained that generally the remarks like that contained in Raghvendra Rao’s case were not meant to lay down the proposition contended for namely that the previous approval of the Central Government was not required for prescribing departmental examinations as qualifications for promotion. Any rule which affects the promotion of a person relates to his condition of service and therefore unless there be the approval of the Central Government in terms of proviso to sub-section (7) of section 115, a rule which lay down the passing of certain departmental examination as a condition for promotion of a person who was an allottee to the New State of Mysore would be in violation of sub-section (7) of section 115 of the States Reorganisation Act—Gurcharan Das v. State of Punjab, AIR 1972 SC 1640 at pp. 1645-46.

16. Promotion after the commencement of the Indian Administration Service (Regulation of Seniority) Rules, 1954

The scheme of the Indian Administrative Service (Regulation of Seniority) Rules, 1954 is that every officer shall be assigned a year of allotment in accordance with the provisions contained therein. The present appeals raise the question of the year of allotment of the promotoes who were promoted to the service, after the commencement of the Rules, in the years 1955 and 1956. Therefore, Rule 3 (3) (b) applies to the case of the promotoes vis-a-vis the direct recruits—Ram Prakash Khanna v. S. A. F. Abbas, AIR 1972 SC 2350 at p. 2353.

17. Seniority and merit—Rule regularising a particular appointment—Constitution of India, Article 309—Validity of

In R. N. Nanjundappa v. T. Thimmaiah, AIR 1972 SC 1767 at p. 1771, it was contended on behalf of the State that under Article 309 of the Constitution the State has power to make a rule regularising the appointment. Shelter was taken behind Article 142 of the Constitution and the power of the Government to appoint. No one can deny the power of the Government to appoint. If it were a case of direct appointment or if it were a case of appointment of a candidate by competitive examination or if it were a case of appointment by selection recourse to rule under Article 309 for regularisation would not be necessary. Assume that Rules under Article 309 could be made in respect of appointment of one man but there are two limitations Article 3:9 speaks of rules for appointment and general conditions of service. Regularisation of appointment by stating that notwithstanding by rules the appointment is regularised strikes at the root of the rules and if the effect of the regularisation is to nullify the operation and effectiveness of the rules the rule itself is open to criticism on the ground that it is in violation of current rules. Therefore the relevant rules at the material time as to promotion and appointment are infringed and the impeached rule cannot be permitted to stand to operate as a regularisation of appointment of one person in utter defiance of rules requiring consideration of seniority and merit in the case of promotion and consideration of appointment by selection or by competitive examination.
18. Whether a State Government has power to make a retrospective declaration about a post being equivalent to a senior post

The rulings of the Supreme Court hold that a promotee can obtain the advantage of officiation continuously in a senior post prior to the inclusion of the name in the Select List if the period of such officiation is approved by the Central Government in consultation with the Union Public Service Commission. The officiation in a senior post is one of the indispensable ingredients in the application of Rule 3 (3) (b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. A senior post as defined in the Regulation of Seniority Rules means a post included and specified under item 1 of the cadre of the State or any post declared equivalent thereto by the State Government concerned. It may be stated here that the definition of senior post underwent change in the year 1967 by notification No. 27/47/64 AIS(III)-A, dated 17th April, 1967 and the new definition of senior post came into effect on 22nd April, 1967. The important words in the relevant definition of the senior post are any post declared equivalent thereto by the State Government.

In Ram Prakash Khanna v. S. A. F. Abbas, AIR 1972 SC 2350, it appeared that the ad hoc list was prepared with the approval of the Union Public Service Commission on 28th December, 1954 and the select list was finally approved by the Union Public Service Commission on 26th December, 1955. The select list was the list prepared for appointment of the promotees by promotion to the Indian Administrative Service. Rule 3 (3) (b) of the Regulation of Seniority Rules, 1954, speaks of approval by the Central Government in consultation with the Union Public Service Commission of the period of officiating prior to the date of the inclusion of the names of the promotees in the select list. This approval as contemplated in Rule 3 (3) (b) is a specific approval and is directed to the particular matter mentioned therein as to whether there is approval of the period of officiation prior to the inclusion of the names in the select list. On the materials it is difficult to hold that the Central Government gave any approval in consultation with the Union Public Service Commission within the meaning of Rule 3 (3) (b) so as to enable the promotees the benefit of the period of officiation prior to the date of the inclusion of their names in the select list.

From the point direct recruits that it is not open to the State to make a retrospective declaration with regard to posts being made equivalent to of view of workability of the rule as well as the circumstances and the conditions of service it may not always be practicable to make such prospective declaration. It is only when the Government has found that it is necessary or desirable to declare such posts equivalent to senior posts that the Government will do so. That will be usually possible after the Government will have considered several factors, namely, finance, structure of the service, the personnel fit for undertaking the post. Normally, the promotees obtain promotion from the State Civil Service after long service. That is why Rule 3 (3) (b) of the Regulation of Seniority Rules is designed to arrive at a fair adjustment of the competing claims of the direct recruits and the promotees. To hold that a promotee could not get the benefit of officiation unless the
post was declared as equivalent to a senior cadre post before the promotee was appointed to officiate might defeat the policy of the Government. A promotee may be officiating continuously for a long period and his name may be included in select list after some time. Again, a person who officiates continuously for long time may thereafter be not included in the select list. Such a person might deprive a person who would otherwise be found suitable for appointment by promotion after similar officiation in a similar post. It is only when the State Government finds that it is desirable to declare the post equivalent to a senior post \textit{inter alia} by reason of the efficiency of the person which has entitled him to promotion that the consequential necessity arises for giving him that senior post by requisite declaration of a senior post. A retrospective declaration therefore is in the scheme of things practical as well as reasonable.

The basic idea of declaration of post as equivalent to a senior post is that it is treated as a post of equal rank and responsibility. Rule 3 (3) \((b)\) is designed to strike a balance between conflicting claims. When a promotee with the background of long continuous officiation gets promotion it is in the fitness of things that the period of such officiation is not lost to him. The necessary check is supplied by approval by the Central Government in consultation with the commission. There will be two sources charged with the responsibility of approval of the period of officiation prior to the inclusion of the name in the select list.

A retrospective declaration that a post is equivalent to a senior post really amounts to declaration of an existing fact. It is that the person who has officiated continuously for a long time is allowed the benefit of a senior post prior to the appointment by promotion of such officer to the cadre of the Indian Administrative Service. Ordinarily, under Cadre Rules a non-cadre officer cannot hold a cadre post excepting for short time of three months and if it is for a longer period not without approval by the Central Government. Therefore, there is no occasion for declaration by the State Government of a non-cadre post as equivalent to a cadre post. The question of declaration arises only for the purpose of giving the promotee the benefit of the period of officiation prior to promotion. The use of the word \textit{"deemed"} in Rule 3 (3) \((b)\) of the Regulation of Seniority Rules indicates that the Government has the power to make a retrospective declaration because it is only after promotion that there is any occasion to consider whether the period of officiation prior to promotion will be counted for purposes of seniority.

The harmonious construction of the definition of \textquote{\textit{senior post}} occurring in the 195+ cadre rules along with Rule 3 (3) \((b)\) of the Regulation of Seniority Rules is that the promotee will by a legal fiction obtain advantage of the period of officiation first by the declaration and second by the approval of the Central Government in consultation with the Union Public Service Commission. It is not the declaration but the approval which introduces the legal fiction.

There is an apprehension that retrospective declaration might cause mischief in the sense that it would enable a promotee to obtain seniority as against a direct recruit. The apprehension is unmerited because promotoes obtain promotion after long service and that is why the year of allotment of a promotee is below the juniormost among
direct recruits who continuously officiated in a senior post from a date earlier than the date of commencement of such officiation by the promotee. Again there may be a salutary reason to defend a retrospective declaration because a prospective declaration by the State Government may not be acceptable to the Central Government by not giving approval of the period of officiation prior to the date of inclusion of the names in the select list. There is no time limit fixed with regard to approval by the Central Government. Therefore, a retrospective declaration will be under the check of approval by the Central Government and such approval will always act as a safety valve against any abuse or mischief of retrospective declaration.

It is important to notice that the definition of senior post has undergone change in the year 1967. The amendment of the definition has brushed away the necessity of any declaration by the Government of a post being made equivalent to the senior cadre post. The same amendment which changed the definition of senior post also deleted the second proviso to Rule 3 (3) (6) of the Regulation of Seniority Rules. In place of the second proviso a new explanation has been added. The explanation states that in respect of a promotee the period of continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the select list, or from the date of his officiating appointment to such senior post whichever is later. The declaration of a post to be equivalent to a senior post and the approval of the Government of India in consultation with the Commission for allowing a promotee the benefit of the period of continuous officiation prior to the inclusion of his name in the select list are all obsolete now. One of the reasons for the changes may be that a prospective declaration might give rise to show of preference or favour to some chosen persons who might not turn out to be suitable person to fill that post. Again, the disadvantage of prospective declaration may be that the Government might be saddled with the problem of a declaration in anticipation and later finding out the absence of necessity of such a post or even of not finding a suitable person for occupying such a post. The soundness of a retrospective declaration rests on the consideration that not only will the promotee by that time have been tried and tested in that post but also his promotion would indicate the benefit of the period continuous officiation which earned promotion for him. To deny a retrospective declaration would in the case of promotion of persons from State Civil Service deprive them of the opportunity of enjoyment of the period of officiation.

Therefore the State Government could retrospectively declare a post to be equivalent to a senior post. The State Government has power to make such a retrospective declaration.

19. Promotees promoted during a particular period—Who should be relatively regarded as being senior to them

In Bishan Sarup Gupta v. Union of India, AIR 1972 SC 2627, the two direct recruits who were before the Court namely Jaisinghani and Joshi had entered the service during the period 1951 to 1956. Jaisinghani had entered service in 1951 and Joshi had joined service in 1953. Their complaint was that in 1962 and later they had not been considered for
promotion to the post of the Assistant Commissioner though they thought they were eligible. Their complaint further was that some of the promotees who could not have found a place in those years had found a place above them and hence their chances of consideration for higher promotion had been postponed. Therefore, it was sufficient for the purpose of giving relief to Jaisinghani, Joshi and other officers similarly placed to consider which of the promotees during the period of 1951 to 1956 should be relatively regarded as being senior to them and who could not be so regarded. That was also the reason why in the petitions before the Supreme Court only the promotees for the years 1951 to 1956 had been specifically made parties. It was not, therefore, necessary for the purpose of giving relief to Jaisinghani and Joshi and other direct recruits similarly placed to consider the position of the promotees of 1957 and later years vis-a-vis Jaisinghani and Joshi. It cannot be assumed that the Supreme Court made an order which went far beyond the requirements of the case for the purposes of giving relief to the petitioners—Jaisinghani and Joshi. On a comparison of the relative position of these petitioners with the validly promoted officers for those years it would have been possible to say at once whether in the year 1962 and the succeeding years when promotions opened to the post of the Assistant Commissioners, promotees outside the quota had been considered for promotion ignoring the seniority of the petitioners. Secondly having specifically noted that the quota rule of 66⅔% and 33⅓% was to be in operation only for 5 years in the first instance, that is to say up to 1956, it will be wrong to say that the Supreme Court could or would perpetuate the quota for the years after 1956. It was for the Government under rule 4 of the Income-tax Officers Class I, Grade II Service Recruitment Rules to determine the method or methods to be employed for the purposes of filling any particular vacancies and the number of candidates to be recruited by each method. It is wrong to assume that the Supreme Court would take upon itself to do what the Government is required to do under rule 4. Therefore, the mandamus was really confined to the period between 1951 to 1956. It is true that the mandamus has also used the expression and onwards but that expression does not mean for all years to come. The Supreme Court had contemplated the possibility of some excess promotions being made in the years 1951 to 1956 on the basis of figures submitted to it. If there were promotions in any year in excess of the quota, those promotions were merely invalid for that year but they were not invalid for all time. They could be regularised by being absorbed in the quota for the later years. That is the reason why the Supreme Court advisedly used the expression and onwards just to enable the Government to push down excess promotions to later years so that these promotions can be absorbed in the lawful quota for those years.

20. How seniority is determined in the electricity branch

In Haryana State Electricity Board v. State of Punjab, AIR 1972 SC 2516 at pp. 2520-22, the question of seniority between Pritam Singh and the Respondents had to be determined with reference to Rule 7-A which was applicable to them as they were substantively appointed to a post in the service after November 17, 1948. Rule 7-A deals with those who have been confirmed in a particular class and those who have not been confirmed. Clause firstly relates to those who have been confirmed in a particular class. The proviso appearing in that
clause makes it clear that where two or more members are confirmed on
the same date, they shall retain the order in which they stood with re-
spect to each other immediately prior to confirmation. Clause secondly
deals with members of the service who have not been confirmed. In the
present case we are not concerned with that clause and nothing more
need be said about it. The first main proviso to both the clauses cannot
be confined only to clause secondly, but it is also applicable to clause
firstly. The proviso explains what is meant by the words "retain the
order in which they stood with respect to each other immediately prior to
confirmation". In clear terms, it provides that whenever members of the
service as well as holders of subordinate posts in the electricity branch
are promoted their seniority in the same class has to take rank according
to the relative seniority in the class from which they were promoted.
In other words, if a member of the service from Class II is promoted
to Class I his seniority will be determined according to his position in
the seniority list of Class II. The only exception contained in the pro-
viso is that if anyone has been substantively promoted earlier than
another who is senior to him but has been passed over on the ground
of inefficiency, the member who has been promoted first shall take the
rank in the higher class above the other member who has been passed
over on the score of inefficiency. Sub rule (2) of Rule 7-A incorporates
the general principle that promotion to posts on a higher scale shall
be made on seniority-cum-merit basis by selection.

In order to find out how the authorities concerned have been
dealing with the question of seniority, we got a Chart prepared relating
to all the respondents containing the various relevant dates. It appears
therefrom that it was not the officiating date of appointment in
Class I of the officers by which seniority was shown in the final seniority
list but it was the date of their confirmation in Class II from which
they were promoted and which determined their seniority in Class I.
Starting with R. D. Gupta, Respondent No. 3, he was confirmed as
Assistant Engineer Class II on May 11, 1956 w. e. f. November 19, 1952.
Respondent No. 4, T. S. Virdi, was also confirmed on the same date
as well as Respondent No. 5 although both of them were confirmed
w. e. f. the 1st March, 1955. Gupta was promoted as officiating Assistant
Engineer Class I on August 13, 1953. Virdi on August 10, 1953
and Malik on August 9, 1953. In other words, Malik was given the
officiating appointment in Class I prior to both Virdi and Gupta.
Virdi was appointed in an officiating capacity prior to Gupta.
All these three respondents were confirmed w. e. f. September 1, 1956
as Assistant Engineers Class I. Gupta was shown in the seniority
list as senior to both Virdi and Malik. This could be so only if the
date of his confirmation in Class II was to be taken into consideration
and not the date of his appointment as officiating Assistant Engineer
Class I. Indeed, owing to that seniority, Gupta was confirmed as
Executive Engineer on June 13, 1961 w. e. f. February 7, 1958 whereas
Virdi and Malik were confirmed w. e. f. September 18, 1960 and
November 4, 1960 respectively as Executive Engineers. There are
many other instances in this Chart which appear to indicate that
it was the date of confirmation in Class II by which seniority was
determined and not the date of officiating appointment as Assistant
Engineer Class I. Shri S. V. Gupta very fairly and properly agreed

S.L.I. –75
that the interpretation of Rule 7-A which he was supporting on behalf of the appellant could not be supported consistently according to what had been done by the predecessors of the appellant as also appellant in certain cases.

There are still two hurdles which Pritam Singh has to cross before a proper writ and direction can be issued under Article 226 of the Constitution to give him the seniority according to his position in Class II leading to consequential promotions or demotions with regard to the respondents in the matter of their higher appointments which they are holding now. The first is the contention raised on behalf of the appellant that it was under the advice of the Public Service Commission that he was superseded by the respondents for promotion as officiating Assistant Engineer Class I and, therefore, according to the main proviso in Rule 7-A those members who were promoted earlier to the higher class were to retain their seniority over him. The High Court read this part of the proviso in a way which does not support that contention. According to the High Court it is only when a member or subordinate is promoted substantively earlier than another member of subordinate who is senior to him and who has been passed over on the score of inefficiency that a member of subordinate so promoted, shall take the rank in the higher class. All the respondents other than Pritam Singh were certainly promoted in an officiating capacity as Assistant Engineers Class I before Pritam Singh was promoted as such but they were not promoted in a substantive capacity. The proviso refers only to promotion in a substantive capacity which took place with effect from the same date of all the respondents including Pritam Singh, viz., September 1, 1956. The decision of the High Court appears to be correct on this point and we do not consider that the case of Pritam Singh was covered by the aforesaid part of the proviso. His being passed over for promotion in an officiating capacity, therefore, cannot be a hurdle to his taking seniority above the others when they were all confirmed on the same date and when he was admittedly senior to them in Class II.

Therefore, even though under the rules, Pritam Singh is entitled to be declared senior to the respondents, no direction or writ in the exercise of discretion should be so issued as to disturb the seniority of those respondents who were confirmed as Executive Engineers by orders made up to the end of April, 1964. As regards Respondents Nos. 15 and 16 the orders of their confirmation as Executive Engineers were either made on the same date as in respect of Pritam Singh or subsequent to him in 1968. Therefore, the only relief which can be given to him is that he will be treated as senior to them or any others who were similarly promoted and confirmed in the matter of further promotions and appointments.
INDEX

Abolition of post
termination of service due to, if Art. 311 applies, 433

Absence from duty
without leave—removal—order of removal followed by grant of leave—whether removal invalid, 438

Actionable wrong
what is, 7

"Administrative Tribunal"
defined under Sec. 3 of the Uttar Pradesh Disciplinary Proceeding (Summoning of Witnesses and Production of Documents) Act, 1953, 255

Admission of facts
under the Disciplinary Proceeding, 256

Age
determination of, of High Court Judges, 363
of the High Cour Judges, 363
of High Court Judges—question of deciding age—consultation with Chief Justice of India, nature of, 366
of High Court Judges—whether judge whose age is in dispute is entitled to personal hearing, 366

Age of retirement
Government’s decision to retain some public servants in service after, if violative of Art. 14, 466
rule as to, classification in fixing, validity of, 465

Age of superannuation
retirement due to change of, 488
whether pleasure extends to compelling servant to continue in service even after the, 101

All-India Service (Discipline and Appeal) Rules, 1955
if ultra vires Constitution, 144
if violate Art.3 14 of the Constitution, 138
Rule 3 of the, 524

Allegations
statement of accompanying the charge-sheet not supplied, effect of, 207
supplying of statement of, at the stage of second show-cause notice, if admissible, 207

Alteration
in Service Rules, 182

Andhra Pradesh Public Employment (Requirement as to Residence) Act, 1957
law as to residence for appointment in a particular part of State—Sec. 3 of the, 119

Andhra Pradesh Registration Subordinate Service Special Rules
Rule 5 of the, 162

Applicability
and scope of Art. 311 of the Constitution, 63
of Art. 311 : Compulsory retirement, when punishment, 450
of Art. 311 (2) of the Constitution, if motive is immaterial, 69
appointing authority, 317
if can suspend, 540
no dismissal or removal by an
authority subordinate to, 319

Appointments
and posts, reservation of, 109
and promotion of persons as
District Judges Order of
Governor, if illegal, 371
general, 107
if there was no reservation for,
made by promotion, 121
law as to residence for, in a
particular part of State—
Sec. 3, Andhra Pradesh Public
Employment (Requirement
as to Residence) Act, 1957,
119
of Director’s grade made on the
basis of selection—seniority
once fixed cannot arbitrarily
disturbed, 578
qualifications for, 107
reservation by Government of
right of, to any particular
Cadre irrespective of merit
position—Rule 9, Mysore Re-
cruitment of Gazetted Prob-
ationers Rules, 1959, if viola-
tive of Arts. 14 and 16, 120

Articles 14 and 16
if violates by Rule 12, Madhya
Pradesh Government Servants
(Temporary and Quasi Per-
manent Service) Rules, 1960,
444

Articles 146 and 229
provide for appointments and
conditions of service of offi-
cers attached to the Supreme
Court or the High Court, 383

Article 233, 371

Articles 233 to 237
Scope of, 367

Article 235, 371
deals with the control over sub-
ordinate courts, 376

Article 311
compulsory retirement when
punishment : applicability of,
450
if not limited to permanent
employees only, 321
if it extends to temporary em-
ployees also, 3.1
of the Constitution; who can
claim protection of, 321
Rules: 148 (3) and 149 (3), Rail-
way Establishment Code, if
violate, 395

Authority
who can dismiss or remove a
Government servant, 309

Bias
departmental enquiry, 265

Bihar and Orissa Subordinate
Services (Discipline and Ap-
peal) Rules, 1935
enquiry held under the Disci-
plinary Proceedings (Admi-
nistrative Tribunal) Rules,
1951 and not under the, 44

Bihar and Orissa Agricultural
Service Class I, Rules, 1935
selection post—whether seniori-
ity relevant in making selec-
tion—Rules if repealed by
1945 Rules, 576

Bihar Government Servants’
Conduct Rules, 1956

Rule 4-A of the, if violates Art.
19 (1) (a), (b) and (c) of the
Constitution, 148
Whether Rule 4-A of the, in-
fringed Art. 19 (1) (a), (b) and
(c) of the Constitution, 56
Bombay Civil Service Rules
Rule 165-A of the, validity of, 155

Bombay Civil Service Classification and Recruitment Rules
validity of, 157

Bonus

enforceable right of a servant, 166

Burden of proof

on whom lies to show discrimination, 27

Cadre

enforceable right of a servant, 176
reservation by Government of right of appointment to any particular, irrespective of merit position, 120

Central Services (Classification Control and Appeal) Rules, 1957

if Rule 12 (4) contravenes Arts. 142, 144, and 311 of the Constitution, 80
if Rule 12 (4) violates the provisions of Art. 19 (1) (f) of the Constitution, 59
if Rule 12 (4) ultra vires, 139

Central Civil Services (Conduct) Rules, 1955

question before the Supreme Court under Rule 4-A of the, 57
Rules 4-A and 4-B, validity of, 146
validity of Rule 4-A of the, 57

Central Civil Services (Temporary Service) Rules, 1949

Rule 5 of the, 441
Sec. 2 (b) defines "quasi permanent service", 351
Sec. 2 (c) defines "specified post", 351
Sec. 3 of the, 351
Sec 4 of the, 351
Sec. 6 of the, 351
Sec. 7 of the, 352
Sec. 8 of the, 352
Sec. 9 of the, 352
Sec. 10 of the, 352
superseded by the Central Civil Services (Temporary Service) Rules, 1965, 351
services terminated under, 34

Central Civil Services (Temporary Service) Rules, 1965

Central Civil Services (Temporary Service) Rules, 1949, superseded by the, 351

Charge

in personnel after examination of some witnesses, dismissal of employee based on report of Enquiry Committee after charge in personal, 218
must be specific in disciplinary proceedings, 205

Charge-sheet

First stage enquiry, 228
statement of allegations accompanying the, not supplied, effect of, 207

Chief Justice of India

High Court Judges—question of deciding age—consultation with, nature of, 366

Citizens

to get equality of opportunity in matters of employment, 32

Civil capacities

dismissal, removal or reduction in rank of persons employed in, under the Union or a State, 63
tenure of office of persons employed in, in India, 85
Class legislation

Article 14 of the Constitution, if forbids, 41

Classification

of servants, 7

Commission

powers of court etc., acting under, 255

Commissioners

powers of. 255
powers of, their protection—service of their process, 255

Communication

of punishment order, 296

Compulsory retirement

and reduction of pension, 492
dispute regarding date of birth, 498
Fundamental Rule 56 (j), validity: adverse entries in confidential report: whether an opportunity to be heard to be given, 472
order extending service unilaterally, if valid, 503
order of, after enquiry,—no reason for agreeing with findings of Enquiry Tribunal—effect of, 493
right of Government to continue the employee in service pending enquiry: Rule, validity of, 482
temporary appointment: Continuance of person after superannuation without approval of Government, if proper, 493
when no punishment, 461
when punishment, applicability of Art. 311, 450
what is, 452

Civil|Court

power to interfere, 296

Civil|posts

meaning of, 355

Civil Services (Classification Control and Appeal) Rules, 1920

order to hold the enquiry under the Public Servants (Inquiries) Act, 1850 instead of under rule 55 of the, if discriminatory, 44
Rule 55 provides a reasonable opportunity of showing cause against the action proposed to be taken against him, 90
rules made under section 96-B of the Government of India Act, 1915, 162

Civil Services (Safeguarding of National Security) Rules, 1949

rules made under Sec. 2411(2) of the Government of India Act, 1935, 163
validity of, 156

Civil Services (Temporary Services) Rules, 1949

Rule 5 of the, 445

Civil Service Regulations

rules made under Sec. 96-B of the Government of India Act, 1915, 162

Civil-Servant

if proposed to be dismissed or reduce in rank, to be given an opportunity of being heard, 89
to hold office at the pleasure of the Crown, 81

Civilians

in defence service, 358
Conditions of Service

discrimination in matters relating to, 178
general, 123
meaning of, 124
power of Legislature to make laws, 132
recruitment and, Sec. 241 of the Government of India Act, 1935, 83
Service Rules and executive instructions, 133
whether Service Rules constitute terms of a contract, 136

Conduct

of Government business under Art. 166 and service matters, 62
what conduct can be treated as misconduct, 3
written and unwritten Code of, for Government servants, 1

Confidential report

adverse entries in the, whether an opportunity to be heard to be given, 472

Constitution

All-India Services (Discipline and Appeal) Rules, 1955, if violate Art. 314 of the, 138
amended Art. 311 (2) of the, 75
applicability of Art. 311 (2) of the, if motive is immaterial, 69
applicability of the proviso (c) to Art. 311 (2) of the, 70
Article 14 is the first of the five Articles grouped together under the heading “Right to Equality”, 48
Articles 14 to 16 and Art. 311 of the, 54
Article 15 prohibits discrimination on some special grounds, religion, race, caste, sect, place of birth, 41
Article 16 speaks of equality of opportunity, 28

Constitution – (contd.)

Article 16 (1) and (2) gives effect to the equality before law guaranteed by Art. 14, 31
Article 16 (2) prohibits discrimination, 33
Articles 32 and 311 of the, 60
Articles 146 and 229, 383
Article 154 speaks of the executive power of the State, 128
Article 233, 371
Article 235, 371
Article 235 deals with the control over the Subordinate Courts, 376
Article 309 of the, 93,124
Article 310 of the, 93
Article 310 (1) of the, 123
Article 311 of the, 94
Article 311 : protection if it extends to temporary employees also, 321
Article 311 : protection, if not limited to permanent employees also, 321
Article 311 : scope and applicability, 63
Article 312 empowers Parliament to create new All-India Services, common to the Union or the State, 125
Article 313 of the, 95
Article 320 (3) (c), of the, 103
compulsory retirement, when punishment, applicability of Art. 311 of the, 450
conduct of Government business under Art. 166 of the, and service matters, 62
conviction on criminal charge :
Proviso (c) to Art. 311 (2), 299
conviction referred to in Art. 311 of the, meaning of, 70
cultural and educational rights —Arts. 29 and 30 of the, 51
equality before law : Arts. 14, 15 and 16 of the, 39
fixation of seniority on the basis of previous service—Rule 1 (f) (iii)—and (iv), if violative of Arts. 14 and 16, 574
Government servants and Arts. 19 and 309 of the, 54
if Art. 14 forbids class legislation, 41
if Art. 14 has retrospective effect, 47
if Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 ultra vires Art. 14 of the, 46
if Rule 3 of the Railway Service (Safeguarding of National Security) Rules, 1949, ultra vires the, 153
if Rule 12 (4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957, violates Art. 19 (1) (f) of the, 59
if Art. 311 is not retrospective, 69
if Sec. 240 (3) of the Government of India Act, 1935 embodied in Art. 311 (2) of the, 77
if Rule 12 (4) of the Central Services (Classification Control and Appeal) Rules, 1957, Contravenes Arts. 142, 144 and 311 of the, 80
if provisions of Art. 320 (3) (e) mandatory, 103
if Rule 9 of the Mysore Recruitment of Gazetted Probationers Rules, 1959, violative of Arts. 14 and 16 of the, 120
if Rule 12 (4), Central Civil Services (Classification, Control and Appeal) Rules ultra vires the, 139
if Rules 148 (3) and 149 (3), Railway Establishment Code, violative of Art. 311 of the, 140
if All-India Services (Discipline and Appeal) Rules, 1955, ultra vires the, 144
if Disciplinary Proceedings (Administrative Tribunal) Rules, 1951, violative of Art. 14 of the, 152

Constitution—(contd.)

object of Art. 14 of the, 48
power to promulgate Ordinances under Art. 123 of the, 73
preliminary enquiry against a temporary public servant—scope—Art. 311 (2) is not attracted, 334
problem of giving adequate representation to members of backward classes enjoined by Art. 16 (4) of the, 38
procedure followed in enquiry after, if discriminatory, 387
promotion once made, if liable to be upset on the revision of seniority—whether order upsetting promotion violative of Art. 16, 560
Proviso (b) to Art. 311 (2) of the, 500
right against exploitation—Arts. 23 and 24 of the, 51
right to constitutional remedies—Arts. 32 to 5 of the, 51
right to equality—Arts. 14 to 18 of the, 51
right to freedom—Arts. 19 to 22 of the, 51
right to freedom of religion—Arts. 25 to 28 of the, 51
right to property Arts. 31, 31-A and 31-B of the, 51
Rule 4-A of the Bihar Government Servants’ Conduct Rules 1956, if violates Art. 19 (1) (a), (b), (c) of the, 148
Rules 148 (3) and 149 (3), Railway Establishment Code, if violate Art. 311, 396
scope of Arts. 233 to 237, 367
termination of service for security reasons: Proviso (c) to Art. 311 (2) of the, 300
termination of service due to abolition of post—if Art. 311 applies, 433
to suspend the provisions of Arts. 268 to 279 during an emergency, 73
unamended Art. 311 (2) of the, 75
Constitution — (concl.)

unamended sub-Article [Art. 311 (2)] except the Proviso was a reproduction of Sec. 240 (3) of the Government of India Act, 1935, 76

Constitution

U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, if hit by Art. 14 of the, 150
whether Rule 4-A of the Bihar Government Servants Conduct Rules, 1956, infringed Art. 19 (1) (a), (b), (c) of the, 56
whether tenure of pleasure is controlled by Art. 311 of the, 96
who can claim protection of Art. 311, 321

Constitution of America

Government employment and constitutional guarantee, 18

Constitution of Australia

Government employment and constitutional guarantee, 19

Constitution of U. S. S. R.

Government employment and constitutional guarantee, 19

Constitutional

if a law to be, 43
The U. P. Higher Judicial Service Rules, if, 155

Constitutional Guarantee

see American Constitution

see Constitution of Australia
see Constitution of U. S. S. R.
see Government of India Act, 1935

Constitutional guarantees

extent of executive power of State and, 61
Government employment and, 15

Constitutional-provisions

Service Rules and, 138

Constitutionality

of an enactment, presumption in favour of, 43

Consultation

with High Court necessary in case of subordinate Judiciary, 367
with Public Service Commission, 293
with Public Service Commission, if necessary, where Registrar of the High Court is dismissed, 106
with State Public Service Commission in case of subordinate Judiciary, if necessary, 375

Contract

whether Service Rules constitute terms of a, 136

Control

over subordinate courts, 376

Conviction

on criminal charge, 299
on criminal charge: Proviso (a) to Art. 311 (2), Constitution, 299
referred to in Art. 311: Meaning of, 7u

Corporations

servants of statutory companies and, 412
Courts

application of preceding section to railways, customs, postal and telegraph services and officials of, 87
powers of, acting under Commission, 255

Criminal charge

conviction on, 299
conviction on, Proviso (a) to Art. 311 (2), Constitution, 299

Criminal prosecution

departmental enquiry and, 305

Cross-examination

of witnesses, 245

Cultural and educational rights

Articles 29 and 30 of the Constitution, 51

Customs

application of preceding section to railways, postal and telegraph services and officials of courts, 87

Dearness allowance

enforceable right of a Government servant, 166

Defence

legal assistance for, 237

Defence service

civilians in, 358

Defence evidence

in the disciplinary proceedings, 245

Definition

of demonstration, 56

Delhi Road, Transportation Authority (Conditions of Appointment and Service) Regulations, 1952

Regulations 9-B and 15 (2), Cl. 7 of the, 438
duty of Enquiry Officer to disclose material acted upon to, 282

Delinquent employee

reply of the, 233

Demonstration

definition of, 56

Demonstrations and Strikes

—149

Departmental action

when justiciable, 4

Departmental enquiry

—and criminal prosecution, 305
bias, 265
defined under the Uttar Pradesh Disciplinary proceedings ( Summoning of Witnesses and Production of Documents) Act, 1953, 255
first-stage enquiry: preliminary enquiry, 227
holding of, for the same offence, 395
nature and scope of, 225

Departmental examination

date of passing the test to regulate seniority, 25

Departmental proceedings

initiation of, cancellation of leave preparatory to retirement, 506
prosecution under Sec. 29, Police Act, is not necessary before taking, 395

Departmental promotees

and direct recruits, 564
Deputation

enforceable right of a servant, 176

Direct recruits

and promotoes, if they constitute different classes, 27
and promotoes, percentages differ, if discriminatory, 29
departmental promotoes and, 564

Direct recruits and promotoes

rules prescribing different methods for determining seniority of, 568

Direct recruited

and promotee—if they form one class—no discrimination, 565

Disciplinary action

against servant, 177
procedure and principles for, against a temporary public servant, 333

Disciplinary authority(ies)

findings and report of Enquiring officer—how far binding on, 260
Rule 9 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1967, 381
satisfaction of the Enquiry Authority is immaterial, 275
tentatively determining to impose particular punishment before explanation to show cause notice, if illegal, 282
using against employee charges of which he was acquitted without warning him, 207

“Disciplinary matters”

if includes suspension, 544

Disciplinary proceedings

admission of facts, 256

Disciplinary Proceedings

appointment of Enquiry Officer, 233
charge against the employee, 271
charge must be specific, 205
competent authority to be satisfied, 274
consultation with the Public Service Commission, 293
Cross-examination of witnesses, 245
defence, evidence-in-the, 245
defence written statement, 271
departmental enquiry and criminal prosecution, 305
departmental enquiry: Bias, 265
departmental enquiry: Nature and scope, 225
disciplinary authority using against employee charges of which he was acquitted without warning him, 207
discretion of Government to hold enquiry or launch prosecutions: Provision if discriminatory, 305
dismissal, removal or reduction in rank of persons employed is civil capacities under the Union or a State, 186
duty of Enquiry officers to disclose material acted upon to delinquent employee, 282
enquiry by a tribunal having no jurisdiction, effect of, 260
Enquiry Officer acquitting employee of first two charges and finding him guilty of third charge—Punishing Authority relying on charges on which employee was acquitted, effect of, 294
ex parte enquiry, 264
examination of witnesses—whether rules of evidence to be followed, 241
facilities for inspection of copies of documents, 231
findings and report of Enquiry Officer—how far binding on disciplinary authority, 260
first-stage enquiry: Chargeheet, 28

1
Disciplinary proceedings—(contd.)

proceedings against employee: charge in personnel after examination of some witnesses—dismissal of employee based on report of Enquiry Committee after charge in personnel, 218 proposed punishment based on previous punishment a bad record, 280 punishing authority failing to indicate in notice its concurrence with conclusions of Enquiry Officer, 276 punishment, 295 punishment ord-r: communication of, 296 reasonable opportunity—requirements of, 189 reasons for agreeing with Enquiring Officer need not be given unless rules specifically require, 277 reply of the delinquent employee, 233 reply to show-cause notice, 290 report of Enquiry Officer, 271 show-cause notice against any of the three major punishments: effects of, 278 statement of allegations, 271 statement of allegations accompanying the charge-sheet not supplied, effect of, 207 supplying of statement of allegations at the stage of second show-cause notice, if admissible, 207 suspension and, if initiation of, is condition precedent to suspensions, 552 termination of service for security reasons: Proviso (c) to Art. 311 (2) of the Constitution, 300 whether Enquiry Officer need make recommendations as to punishment, 270 whether fresh proceedings can be started in respect of same matter: double jeopardy, 303
Disciplinary proceedings—(concl.d.)

whether personal satisfaction of President or the Governor essential, 301
whether President or Governor is bound to give reasons for his satisfaction, 301

Disciplinary Proceedings (Administrative Tribunals) Rules, 1951

enquiry against the respondent under, 44
if ultra vires Art. 14 of the Constitution, 46
if violative of Art. 14 of the Constitution, 152

Discretion

of Government to hold enquiry or launch prosecution : provision if discriminatory, 305

Discrimination

Art. 16 (2) of the Constitution prohibits, 33
burden of proof, on whom lies, 27
in matters relating to conditions of service, 178
Munsif not promoted to Subordinate Judge and others promoted, if, 45
selection for recruitment by competitive examination, if, 558

Dismiss or revoke

who can, 309

Dismissal

appointing authority, 317
authority who can dismiss or remove a Government servant, 309
declared illegal—if suspension revived, 541
no dismissal or removal by an authority subordinate to appointing authority, 319

Dismissal— (cont’d.)
of employee based on report of Enquiry Committee after charge in personnel, 218
of the Registrar of the High Court—Consultation with Public Service Commission, if necessary, 106
order of, based on several grounds some of which unsustainable—order, if bad, 294
order of, with retroactive effect, if valid, 448
protection given by the rules to the Government servants against, removal or reduction in rank, 65
removal, or reduction in rank of persons employed in civil capacities in Union or a State, 186
removal or reduction in rank of persons employed in civil capacities under the Union or State, 63
U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, and power to dismiss, 386
who can remove or dismiss, 309

Dismissal and removal

genral, 421
meaning of, 426
preliminary enquiry before services are terminated in terms of contract, 435
scope of, 426
termination of probationer’s services as per Rules, 432
termination of service—when would amount to removal or dismissal, 422

Dismissal or discharge

after resignation, 439

Dismissal order

when takes effect, 448
Disobedience

penalty for, to process, 256
power of inquiring officer and penalty for, to process, 255

District Judge

appointment and promotion of persons as, order of Governor, if illegal, 371
combined cadre comprising, Registrar, High Court and Judicial Officers in Secretariat—Procedure to be followed in appointment, postings and transfer, etc., 375
recruitment of persons other than, 374

Doctrine of equality

selection by Board on the basis of interviews, if discriminates, 28

Doctrine of Pleasure, 81

Documents

facilities for inspection of copies of, 231

Domestic tribunal

natural justice and, 5

Double Jeopardy

whether fresh proceedings can be started in respect of same matter, 303

Duty

of Enquiry Officers to disclose material acted upon to delinquent employee, 282

Effect

of enquiry by a Tribunal having no jurisdiction, 260
of non-supply of copy of En-

Effect—(contd.)

quiry Officer’s report, 288
of Punishing authority relying on charges on which employee was acquitted, 294
of show-cause notice against any of the three major punishments, 278
of statement of allegations accompanying the charge-sheet not supplied, 207
of where service was terminated on one month’s notice and Public Service Commission not consulted, 106

Employee

duty of the Enquiring Officer to disclose material acted upon to delinquent, 282
power to suspend, 535
proceedings against, 218
quasi-permanent employees, 350

Employment

equality of opportunity in matters of, 19
equality of opportunity in matters of, when can be predicated, 31
Government employment and constitutional guarantees, 15
Guarantee contained in Art. 16 (1) is for ensuring equality of opportunity for all citizens relating to, 38
matters of promotion if included in matters relating to, 30
meaning and scope of, 1

Enforceable right

bonus, 166
cadre, 176
dearness allowances, 166
deputation, 176
department, 166
promotion, 166
salary, 165
scales of pay, 166
seniority, 166
Enquiry Authority

satisfaction of the, is immaterial, 275

Enquiry

admission of facts, 256
appointment of the Enquiry Officer, 233
a Tribunal having no jurisdiction, effect of, 260
charge against employee, 271
cross-examination of witnesses, 245
defence evidence in the disciplinary proceedings, 245
defence written statement, 271
departmental enquiry: bias, 265
ex parte enquiry, 264
examination of witnesses—whether rules of evidence to be followed, 241
facilities for inspection of copies of documents, 231
findings and report of Enquiring Officer—how far binding on disciplinary authority, 260
first stage enquiry—charge-sheet, 228
first stage enquiry—preliminary enquiry, 727
if not to be held by authority competent to impose punishment, 236
interim orders, if any, 271
interim suspensions can be passed even when no enquiry is pending, 537
legal assistance for defence, 237
notice to delinquent officer, 230
oral and documentary evidence considered during the, 271
oral enquiry, 230
order of compulsory retirement after: no reason for agreeing with findings of Enquiry Tribunal, effect, 493
reliminary enquiry against a temporary public servant—Scope—Art. 311 (2) is not attracted, 334
proposed punishment based on provisions punishment a bad record, 280

Enquiry—(contd.)
punishing authority failing to indicate in notice its concurrence with conclusions of Enquiry Officer, 276
reasons for agreeing with Enquiring Officer need not be given unless rules specifically require, 277
reply of the delinquent employee, 233
report of the Enquiry Officer, 271
right of Government to continue the employee in service pending rule, validity of, 482
show-cause notice against any of the three major punishments: effect of, 278
statement of allegations, 271
whether Enquiry Officer need make recommendations as to punishment, 270

Enquiry Committee
dismissal of employee based on report of after charge in personell, 218

Enquiry officer

acquitting employee of first two charges and finding him guilty of third charge, 294
appointment of the, 233
derived under the Uttar Pradesh Disciplinary Proceedings (Summoning of Witnesses and Production of Documents) Act, 1953, 255
findings and report of the, how far binding on disciplinary authority, 260
power of, and penalty for disobedience to process, 255
punishing authority failing to indicate in notice its concurrence with conclusions of, 226
reasons for agreeing with, need not be given unless rules specifically require, 277
whether need make recommendations as to punishment, 270
Enquiry Officer's report

non-supply of copy of, effects of, 288

Enquiry Tribunal

order of compulsory retirement after enquiry: no reason for agreeing with findings of, effect of, 493

Equal protection of laws

does not postulate equal treatment of all persons without distinction, 42

Equality

meaning of, 37

Equality before law

Arts. 14, 15 and 16 of the Constitution, 39
Art. 16 (1), (2) of the Constitution gives effect to the guaranteed by Art. 14, 31

Equality of opportunity

Art. 16 of the Constitution speaks about the, 28
Art. 16 (2) prohibits discrimination and assures the effective enforcement of the fundamental right of, 33

guarantee contained in Art. 16 (1) is for ensuring, for all citizens relating to employment, 38
in matters of employment, 19
in matters of employment, when can be predicated, 31
is guaranteed by Art. 17 (1) of the Constitution, 35

Evidence

defence evidence in the Disciplinary Proceedings, 245

Ex-parte enquiry, 264
except as expressly provided by this Constitution, 125

Executive instructions

Service Rules and, 133

Executive order

if treated as "law" within the meaning of Art. 13, 49

Executive powers

extent of, of State and constitutional guarantees, 61
of the State; Art. 154 speaks of the, 128

Extent

of executive power of State and constitutional guarantee, 61

Findings and report

of Enquiring Officer—how far binding on the disciplinary authority, 260

First stage enquiry

admission of facts, 256
appointment of the Enquiry Officer, 233
Charge-sheet, 225
cross-examinations of witnesses, 245
defence evidence in the disciplinary proceeding, 245
departmental enquiry : bias, 265
enquiry by a Tribunal having no jurisdiction, effect of, 260
ex parte enquiry, 264
examination of witnesses—whether rules of evidence to be followed, 241
facilities for inspection of copies of documents, 231
Findings and report of Enquiring Officer—how far binding on the disciplinary authority, 260
First stage enquiry—(concl.)

legal assistance for defence, 237
notice to delinquent Officer, 230
oral enquiry, 230
preliminary enquiry, 227
reply of the delinquent employee, 233
whether enquiry officer need make recommendations as to punishment, 270

Fresh proceedings

whether can be started in respect of matter: double jeopardy, 303

Fundamental right

of equality before the law or the equal protection of the territory of India, Art. 14 enshrines the, 41
The word “State” has a different connotation in Part III relating to, 41
waiver of, 47

Government

decision of, retain some public servants in service after the age of retirement, if violative of Art. 14, 466

defined under the Uttar Pradesh Disciplinary Proceedings (Summoning of Witnesses and Production of Documents) Act, 1953, 255
discretion of, to hold enquiry or launch prosecution: Provision, if discriminatory, 305
may have to employ temporary servants to satisfy the needs of a particular contingency, 34
Order of the, of repatriation to parent department, if reversion, 528
power of, to invoke revisional jurisdiction, 393

Government—(concl.)

reservation by, of right of appointment to any particular cadre irrespective of merit position, 120
to lay down qualifications a test for the post, 35

Government business

conduct of, under Art. 166 and service matters, 62

Government employment

and constitutional guarantees, 15
and constitutional guarantees; American Constitution, 18
and constitutional guarantees; Constitution of Australia, 19
and constitutional guarantee; Constitution of U. S. S. R., 19
and constitutional guarantee; Government of India Act, 1935, 19

Government of India Act, 1935

Sec. 96-B provides in express term that every servant of the Crown holds office during His Majesty’s pleasure, 83
Sec. 240 of the, 360
Rules made under Sec. 96-B of the, 162

Government of India Act, 1935

Government employment and constitutional guarantee, 19
if provisions of sub-section (3) of Sec. 240 are prohibitory in form, 89
if Sec. 240 (3) embodied in Art. 311 (2) of the Constitution, 77
Rules made under Sec. 241 (2) of the, 162
Sec. 240 of the, 85
Sec. 241 of the, 86
Sec. 242 of the, 87
unamended sub-Article [Art. 311 (2)] except the proviso was a reproduction of Sec. 240 (3) of the, 76
Government of India Order

of 25 the August, 1955, validity of, 157

Government Servant

and Arts. 19 and 309, 54
authority who can dismiss or remove a, 309
mere transfer of, holding permanent post, to new post, if removal, 425
on leave preparatory to retirement, if can be suspended—Punjab Civil Service Rules, 1559, 545
permission to retire : Government Servant can change his mind subsequently, 488
protection given by the rules to the, against dismissal, removal or reduction in rank, 65
show-cause notice issued to, 78
when can be deemed to be in quasi permanent service, 351
written and unwritten code of conduct for, 1

Governor

to keep full security of the State, 79

Guiding factors

making of regulations : exigencies of service are, 138

Hearing

personal hearing of an employee, 291

High Court

consultation with; if necessary, in case of subordinate judiciary, 367
dismissal of the Registrar of Consultation with Public Service Commission, if necessary, 106
meaning of, 376
officers and servants and expenses of, 584

High Court—(concl.)

power of, to issue writs in the matter of promotion, 562
staff of the Supreme Court and, 383

High Court Judges, 363
determination of age, 363
question of deciding age : Consultation with Chief Justice of India, nature of, 366
whether judge whose age is in dispute is entitled to personal hearing, 366

History

of tenure of pleasure, 81
of the status of the subordinate police force, 385

I. C. S. Officers

407

Indian Administrative Service (Regulation of Seniority) Rules, 1954

promotion after the commencement of the, 588
validity of, 1954

Indian Police Service

selection post in the, promotion —principles, 576

Initiation

of departmental proceedings : cancellation of leave preparatory to retirement, 306

Inspection

facilities for, of copies of documents, 231

Integration of States

reduction in rank due to, 572

Interim Suspension

can be passed even when no enquiry is pending, 537
Judiciary

High Court Judges, 363

Junior Accountants

seniority for promotion as, Junior Inspectors of Station or Stores Accounts, 25

Junior Inspectors of Station

seniority for promotion as Junior Accountants, or Stores Accounts, 25

Jurisdiction

enquiry by a tribunal having no, effect of, 260

Kinds

of suspension, 534

Law

as to residence for appointment in a particular part of State— Sec. 3, Andhra Pradesh Public Employment (Requirement as to Residence) Act, 1957, 119
equality before, Arts. 14, 15 and 16 of the Constitution, 39

“Law”

whether an executive order is a, 419

Laws

power of legislature to make, 132

Leave preparatory to retirement

177

initiation of departmental proceedings : cancellation of, 306

Legal Assistance

for defence, 237

Legality

of considering seniority in one cadre for another cadre, 566
of notice terminating his services given by servant during period of suspension; disciplinary proceedings, if valid, 307

Legislature

if free to recognise degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest, 43
power of, to make laws, 132

Liability

in tort of State for acts of its servants, 7

Life Insurance Corporation

servants of, 358

Life Insurance Corporation Act, 1956

Regulations made under Sec. 49 of the, 163

Madhya Pradesh Government, (Temporary and Quasi Permanent Service) Rules, 1960

Rule 12 of the, 444

Madras District Police Act, 1859

Compulsory retirement of Police Officers under the, 393

Mala fides

disciplinary proceedings, 222

Matters of promotion

if included in the words “matters relating to employment”, 30

“Matters relating to employment”
matters of promotion, if included in the term, 30
Meaning

of a quasi-judicial Act, 6
of actionable wrong, 7
of civil posts, 355
of conditions of service, 124
of conviction referred to in Art. 311 of the Constitution, 70
of "dismissal", 426
of employment, 1
of equality, 37
of High Court, 376
of quasi-permanent post, 351
of "reasonable opportunity of showing cause against the action proposed to be taken", 77
of reduction in rank, 505
of "removal", 426
of specified post, 351
of suspension, 531

Merit position

reservation by Government of right of appointment to any particular cadre irrespective of, 120

Misconduct

what conduct can be treated as, 3

Motive

if immaterial, applicability of Art. 311 (2) of the Constitution, 69

Mouzadars, 357

Munsifs

village Munsifs, 355

Mysore Civil Service (Classification, Control and Appeal) Rules, 1967

Rule 2 of the, 380
Rule 8 of the, 380
Rule 9 of the, 381
Rule 11 of the, 381

Mysore Civil Service Rules, 1958

what is normal age of retirement under the, 54

Mysore Recruitment of Gazetted Probationers Rules, 1959

Rule 9, if violative of Arts. 14 and 16 of the Constitution, 120

Mysore Seniority Rules

seniority and reversion - Rule 2 (e) of the, 583

Mysore Seniority Rules, 1956

reversion of persons promoted earlier on ad hoc and out of seniority basis - subsequent reversion on account of return of senior incumbents from deputation — whether Rule 2 (e) applies to reversion cases, 514

Natural Justice

and domestic tribunal, 5
requirements of, 208
tribunal to hold the enquiry on the basis of, 46

Nature

and scope of departmental enquiry, 225

Nature of penalties

Rule 8 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1967, 380

Non-selection posts

seniority on promotion to, 26

Non-supply

of copy of Enquiry Officer’s Report, effect of, 288

Notice

disciplinary authority tentatively determining to impose particular, before explanation to show cause notice, if illegal, 282
punishing authority failing to indicate in, its concurrence with conclusions of Enquiry Officer, 276
Notice—(concld.)
 terminating his service given by servant during period of suspension—Legality—disciplinary proceedings, if valid, 307
to delinquent officer, 230
to show cause, 275
to show cause not issued formally in the name of Rajpramukh—if provisions of Art. 166 contravened and show-cause notice invalid, 282

Object
 of Art. 14 of the Constitution, 48

Officers
 I. C. S Officers, 407

Officers and Servants
 and expenses of the Supreme Court, 383
 and the expenses of High Courts, 384

Officials of Courts
 application of preceding section to railways, customs, postal and telegraph services and, 87

Officiating capacities
 revision of persons working in, 510

Officiating persons, 345

Officiating post
 reduction from temporary or, 516

Order
 extending service unilaterally, if valid, 503
 of dismissal based on several grounds some of which unsustainable—order, if bad, 294
 of dismissal—when takes effect, 448
 of dismissal with retrospective effect, if valid, 448

Order—(concld.)
 terminating service based on events prior to coming into force of Rules, 449

Penalty
 for disobedience to process, 256

Pension
 compulsory retirement and reduction of, 492
 enforceable right of a Government servant, 166
 reduction of, if amounts to reduction in rank, 515

Period of probation, 344

Permanent employees
 protection of Art. 311, if not limited to, 321

Permanent post
 mere transfer of Government servant holding, to new post, if removal, 425

Persons
 dismissal, removal or reduction in rank of, employed in civil capacities under the Union or a State, 63
 officiating in a post, 345
 tenure of office of, employed in civil capacities in India Sec. 240, Government of India Act, 1935, 85

Personal hearing
 of an employee, 291

Pleasure
 doctrine of, 81
 position under the present law, 92
 whether controlled by Art. 311 of the Constitution, 96
 whether extends to compelling servant to continue in service even after the age of superannuation, 101
Police Act

prosecution under Sec. 29 of the, is not necessary before taking departmental proceedings, 395
Rules made under the, 163

Police Officers

compulsory retirement of, 393
reasonable opportunity, 390

Police Services, 385

history of the status of the Subordinate Police Force, 385
Para 486 of the U. P. Police Regulations, scope and effect of the, 389
reasonable opportunity to Police Officers, 390
re-organisation of States—reversion of officiating Sub-Inspectors of Police to the post of Head Constable, 392
selection in the, Promotion—Principles, 576

Position

of tenure of pleasure under the present law, 92

Post(s)

Government to lay down qualifications a test for the post, 35
reservation of appointments and, 109
reservation of, in favour of Hindu, Muslim and Christian is repugnant to the provisions of Art. 16 (2), 36
seniority on promotion to non-selection, 26
termination of service due to abolition of, if Art. 311 applies, 433

Postal and telegraph services

application of preceding section to railways customs, and officials of courts, 87

Postings transfer etc.

in case of subordinate Judiciary, 373

Power(s)

of civil court to interfere, 296
of Commissioners, 255
of Commissioners—Their protection service of their process, 255
of court etc. acting under Commission, 255
of Government to invoke revisional jurisdiction, 393
of High Court to issue writs in the matter of promotion, 562
of inquiring officer and penalty for disobedience to process, 255
of legislature to make laws, 132
of President to dismiss Civil Servant: Art. 311 (2) (e) 448
of reservation conferred on the State, how can be exercised 39
to promulgate ordinance under Art. 123 of the Constitution 73
to suspend employee, 535

What is true condition precedent for the exercise of, conferred by Art. 16 (4) of the Constitution, 32

Preliminary enquiry

against a temporary public servant scope—Art. 311 (2) is not attracted, 334
before services are terminated in terms of contract, 435
first-stage enquiry, 227

President

powers of, to dismiss civil servant: Art. 311 (2) (e), 448
vast powers exercised by the, 74

Previous record

when can be taken into consideration to determine punishment, 291
Principles

for disciplinary action against a temporary public servant, 333
of promotion to selection posts legal action, 555
with regard to protection of Art. 311, if not limited to permanent employees: if it extends to temporary employees also, 321

Probation

period of, 344

Probationers, 335

Probationer’s service

termination of, as per Rules, 432

Procedure

and principles for disciplinary action against a temporary public servant, 333
followed in enquiry after Constitution, if discriminatory, 387

Procedure for imposing major penalties

Rule 11 of the Mysore Civil Services (Classification Control and Appeal) Rules, 1967, 381

Proceedings

against employee, 218
against employee—charge in personnel after examination of some witnesses—dismissal of employee based on report of Inquiry Committee after charge in personnel, 218
whether fresh proceedings can be started in respect of same matter: double jeopardy 303

Promotees

and direct recruits, if they constitute different classes, 27
directly recruited and, if they form one class, no discrimination, 565

Promotees—(concl.)

promoted during a particular period—who should be relatively regarded as being senior to them, 591
rules prescribing different methods for determining seniority of direct recruits and, 568

Promotions

absence of statutory rule—regulating, to selection grade posts Government to issue administrative instructions, 563
after the commencement of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, 588
appointment and, of persons as District Judge—order of Governor, if illegal, 371
deputation of public servant to another department—promotion in parent department during period of deputation—Right of public servant on deputation, 561
enforceable right of a Government servant 166
if there was no reservation for appointments made by, 121
in grade based on seniority-cum-merit—fixation of seniority contrary to rule, relief, 586
matters of, if included in the term “matters relating to employment”, 30
on ad hoc basis or on the basis of provisional seniority list, 562
once made, if liable to be upset on the revision of seniority—whether order upsetting promotion violat iv of Art. 16, 560
power of High Court to issue writs in the matter of, 562
seniority for, as junior Accountants, junior Inspectors of Station or Stores Accounts, 25
seniority on, to non-selection posts, 26
to selection posts—legal action—principles 555
Promotions—(concl.d.)

to selection posts—Rules not framed—whether Government can issue administrative instructions on the point, 557 under Sec. 29, Police Act, is not necessary before taking departmental proceedings, 395

Protection

given by the rules to the Government servants against dismissal, removal or reduction in rank, 65

Protection of Art. 311

if it not extends to temporary employees also, 321 not limited to permanent employee: if it extends to temporary employees also: principles, 321 who can claim, 321

"Public Order"

refers inter alia, to security—of the State, 58

Public Servant(s)

Governments decisions to retain some, in service after the age of retirement, if violative of Art. 14, 466

preliminary enquiry against a temporary, scope—Art. 311(2) is not attracted, 1334

procedure and principles for disciplinary action against a temporary, 333 suspension of, dismissal declared invalid by the Court—if Fundamental Rules, 54 applicable, 544

Public Servant (Inquiries) Act 1850

if enquiry under the Act is was violative of Art. 14, 44 penalty for disobedience to to process, 256

powers of Commissioners and powers of court etc., 255

Public Service Commission

see State Public Service Commission

see Union Public Service Commission

Public Service Commission, 103 consultation with, 293 dismissal of Registrar of High Court consultation of, if necessary, 106 if functions entirely advisory, 103 if to be consulted in all disciplinary matters, 105 not consulted where service was terminated on one month's notice—effect of, 106 provision of Art. 320(3) of the Constitution, if mandatory, 103

Punishing Authority

failing to indicate in notice its concurrence with conclusions of Enquiring Officer, 276 relying on charges on which employee was acquitted, effect of, 294

Punishment(s)

compulsory retirement when 20, 461 compulsory retirement, when punishment: Applicability of Art. 311, 450 disciplinary proceedings, 295 if enquiry not to be held by authority competent to impose, 236 previous record—when can be taken into consideration to determine, 291 proposed punishment based on previous punishment a bad record, 280 reduction in rank when a, 511 reversion when, 519 show-cause notice against any of the three major, effects of, 278 whether Enquiry Officer need make recommendations as to, 270
Punishment order
communication of, 296

**Punjab Civil Services (Executive) Rules, 1932**
Rules made under Sec. 96-B of the Government of India Act, 1915, 162

**Punjab Civil Services Rules, 1941**
Rules made under Sec. 241 (2) of the Government of India Act, 1935, 162

**Punjab Civil Service Rules, 1959**
Government servant on leave preparatory to retirement, if can be suspended, 545

**Punjab Land Revenue Act, 1887**
Punjab Tahsildari Rules, 1932, framed under the, 163

**Punjab Medical Service Class I (Recruitment and Conditions of Service) Rules**
if prohibit direct appointment to selection grade, 577

**Punjab Tehsildari Rules, 1932**
framed under the Punjab Land Revenue Act, 1887, 163
validity of, 156

**Qualifications**
for appointment, 107

**Quasi Judicial act**
what is a, 6

**Quasi Permanent employees, 350 Quasi permanent service**
meaning of, 357
when a Government Servant shall be deemed to be in, 351

**Railway Board**
circulars, letters, and schemes issued by the, have a statutory force as a rule, 163

**Railway Establishmen Code**
if Rules 148 (3) and 149 (3) violative of Article 311, 140
Rules 148, 1702, and 1712, 397
Rules 148 (3) and 149 (3), if violative Article 311, 396

**Railway Fundamental Rules**
seniority after transfer, 586

**Railway official**
termination of service of, 124

**Railway services** 369

**Railway Services (Safeguarding of National Security) Rules, 1949**
Rules 3 and 7 of the, 441
if Rule 3 *ultra vires*, Constitution, 153

**Railways**
application of preceding section to, customs, postal and telegraph services, and officials of courts, 87

**Rajasthan Civil Services (Rationalisation of Pay Scales (Rules and Schedule, 1965**
validity of, 152

**Rajasthan Higher Judiciary Service Rules, 1955**
validity of, 155

**Rajasthan Service Rules, 1951**
Rule 23-A (2) of the, 445

**Rajasthan Subordinate Officers (Ministerial Staff) Rules, 1957**
Rule 7 of the, 445
Reasonable opportunity

of showing cause against the action proposed to be taken against him—Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 90
requirement of, 189
to police officers, 390

"Reasonable opportunity of showing cause against the action proposed to be taken"
meaning of, 77

Reasons

for agreeing with Enquiring Officer need not be given unless rules specifically require, 277

Recruitment

of persons other than District Judge, 374
and conditions of service, Sec. 241 of the Government of India Act, 1935, 86

Reduction and reversion, 505

Reduction in rank

confirmation of officiating Tahsildar—Pepsu merged with Punjab—cancellation of order of confirmation deconfirming concerned Tahsildar, whether amounts to, 513
during dismissal, removal or, of persons employed in civil capacities under the Union or a State, 63
dismissal, removal or, of person, employed in Union or a State 186
due to integration of States, 512
losing some places in seniority list, if amounts to, 513
meaning of, 505
protection given by the rules to the Government Servant against, dismissal or removal, 65

Reduction in rank—(contd.)
reduction of pension, if amounts to, 515
scope of, 505
transfer from one post to another carrying the same scale of pay does not amount to, 519
what it implies, 379
when a punishment, 511

Reduction in pensions

if amounts to reduction in rank, 515

Registrar of the High Court

combined cadre comprising District Judges, and Judicial Officers in Secretariat—procedure to be followed in appointment, postings and transfer, etc., 375
dismissal of the consultation with the Public Service Commission, if necessary, 106

Regulations

made under Sec. 49 of the Life Insurance Corporation Act, 1956, 138
making of, exigencies of service are guiding factors, 138

Removal

absence from duty without leave—removal—order of removal followed by grant of leave—whether removal invalid, 438
appointing authority, 317
authority who can dismiss or remove a Government servant 309
dismissal or reduction in rank of persons employed in civil capacities under the Union or State, 63, 186
mere transfer of Government servant holding permanent post, to new post, if, 425
no dismissal or removal by an authority subordinate to appointing authority, 319
Removal — (concl.)

protection given by the rules to the Government servants against, dismissal or reduction in rank, 65
who can remove or dismiss, 309

Removal and dismissal

general, 421
meaning of, 426
preliminary enquiry before services are terminated; in terms of contract, 435
scope of, 426
termination of probationer’s service as per Rules, 432
termination of services—when would amount to removal or dismissal, 422

Reply

to show-cause notice, 290

Reports

adverse entries in confidential, whether an opportunity to be heard to be given, 472

Requirements

of natural justice, 208
of reasonable opportunity, 189

Reservation

by Government of right of appointment to any particular cadre irrespective of merit position, 120
if there was no, for appointments made by promotion, 121

Reservation of posts

in favour of Hindu, Muslim and Christian is repugnant to the provisions of Art. 16 (2) of the Constitution, 36
of appointments and posts, 109
power of, conferred on the State, how can be exercised, 99

Residence

law as to, for appointment in a particular part of State, 119

Resignation

dismissal or discharge after, 439

Retirement

compulsory retirement and reduction of pension, 492
compulsory retirement: dispute regarding date of birth, 498
compulsory retirement: Fundamental Rule 56 (j): validity: adverse entries in confidential report: whether an opportunity to be heard to be given, 472
compulsory retirement of police officers, 393
compulsory retirement: order extending service unilaterally, if valid, 503
compulsory retirement: right of Government to continue the employee in service pending enquiry: Rule: validity of, 482
compulsory retirement — what is, 450
compulsory retirement: when no punishment, 461
compulsory retirement, when punishment: applicability of Art. 311, 450
due to change of age of superannuation, 488
enforceable right of a Government servant, 177
Government servant on leave preparatory to, if can be suspended, 545
Government’s decision to retain some public servants in service after the age of, if violative of Art. 14, 466
leave preparatory to, 177
order of compulsory retirement after enquiry: no reason for agreeing with findings of Enquiry Tribunal, effect of, 493
permission to retire: Government servant can change his mind subsequently, 488
Retirement—(contd).
rule as to age of, classification in fixing age of retirement: validity of, 465
rules fixing no minimum service period for, validity of, 483
rules for, public interest: validity of, 467
temporary appointment: continuance of person after superannuation without approval of Government, if proper, 493

Retirement leave
no order of suspension can be passed during post, 545

Retrospective operation
Service Rules and, 18

Reversion
from temporary or officiating post, 516
Government’s order of repatriation to parent department, if, 528
of persons promoted earlier on ad hoc and out of seniority basis—subsequent reversion on account of return of senior incumbents from deputation: whether Rule 2 (c), of the Mysore Seniority Rules, 1956 applies to reversion cases, 514
of persons working in officiating capacities, 510
seniority and, Rule 2 (c) Mysore Seniority Rules, 583
when punishment, 519

Reversion and reduction, 505

Revisonal jurisdiction
power of Government to invoke, 393

Right against exploitation
Articles 23 and 24 of the Constitution, 51

Right of appointment
reservation by Government of, to any particular cadre irrespective of merit position, 120

Right to Constitutional remedies
Articles 32 to 35 of the Constitution, 51

Right to equality
Article 14, Constitution, is the first of the five Articles grouped together under the heading, 48
Articles 14 to 18 of the Constitution, 51

Right to freedom
Articles 19 to 22 of the Constitution, 51

Right to freedom of religion
Articles 25 to 28 of the Constitution, 51

Right to property
Articles 31, 31-A and 31-B of the Constitution, 51

Rights
waiver of other, 53

Rule(s)
as to age of retirement: classification in fixing age of retirement: validity of, 465
circulars, letters and schemes issued by the Railway Board have a statutory force as a, 163
fixing no minimum service period for retirement: validity of, 483
for retirement: public interest: validity of, 467
framed under Sec. 241(2) of the Government of India Act, 1935, 162
made under Police Act, 163
made under Sec. 96 B of the Government of India Act, 1955, 162
made under statutes, 163
statutory force of, 162
examination of witnesses—whether rules of evidence to be followed, 241

Salary
enforceable right of a Government servant, 165

Scales of pay
enforceable right of a Government servant, 166
Scheduled castes are by at large backward in comparison with other communities in the Country, 37

Scope and applicability of Art. 311 of the Constitution, 63 and effect of the U. P. Police Regulations, 389 and nature of departmental enquiry, 225 of Arts. 233 to 237, 367 of "dismissal", 426 of employment, 1 of reduction in rank, 505 of "removal", 426 of suspension, 531

Second stage enquiry charge against the employee, 271 defence written statement, 271 interim orders, if any, 271 oral and documentary evidence considering during the enquiry, 271 report of the Enquiry Officer, 271 statement of allegations, 271

Selection for recruitment by competitive examination, if discrimination, 558

Selection by Board on the basis of interviews, if discriminates doctrine of equality, 28

Selection grade posts absence of statutory rules regulating promotions to, Government to issue administrative instructions, 563

Selection post in the Indian Police Service—Promotions—Principles, 576 promotion to, legal action, principles, 5

Selection post—(concl.) promotions to Rules not framed—Whether Government can issue administrative instructions on the point, 557 Punjab Medical Service Class I (Recruitment and Conditions of Service) Rules, if prohibit direct appointment to selection grade, 577 State Government is sole judge for making appointment—High Court cannot interfere, 577 whether seniority relevant in making selection—Bihar and Orissa Agricultural Service Class I, Rules, 1935, if repealed by 1945 Rules, 576

Seniority after transfer—Railway Fundamental Rules, 586 considering seniority in one cadre for another cadre—legality of, 566 date of passing the departmental examination test to regulate, 25, 572 enforceable right of a Government servant, 166 fixation of, on the basis of previous service—Rule 1 (f), (iii) and (iv), if violative of Arts. 14 and 16, 574 for promotion as Junior Accountants, Junior Inspectors of Station or Stores Accounts, 25, 571 how seniority is determined in the electricity branch, 592 how, is to be determined, 586 ignoring seniority for officiating in senior post, 568 Junior, scale Officers if can claim right of officiating in a higher post merely by reason of his, 557 on promotion to non-selection posts, 26
Seniority—(concl.d.)

promotion once made, if liable to be upset on revision of, whether order upsetting promotion violative of Art. 16, 560
rules prescribing different methods for determining of direct recruits and promotees, 568

Seniority and merit, 566

competitive examination—Government’s right of appointment of any candidate—to any particular cadre irrespective of merit—Arts. 14 and 16 of the Constitution, if violated, 584
rule regularising a particular appointment—Constitution of India—Art. 309—validity of, 588

selection post—State Government is sole judge for making appointment—High Court cannot interfere, 577
whether a State Government has power to take a retrospective declaration about a post being equivalent to a senior post, 589

Seniority and reversion

Rule 2 (c), Mysore Seniority Rules, 583

Seniority list

losing some places in, if amounts to reduction in rank, 513
promotion on ad hoc basis or on the basis of provisional, 562

Seniority Rules

framed in 1949—if seniority liable to be changed after the Constitution came into force, 575

Servants

classification of, 7
Government Servants and Arts. 19 and 309 of the Constitution, 54
liability in tort of State for acts of its, 7
of Life Insurance Corporation, 358
of statutory companies and Corporations, etc., 412
vicarious liability of State for wrongful act of its, 9
when a departmental action is justiciable, 4
whether pleasure extends to compelling to continue in service even after the age of superannuation, 101
written and unwritten Code of Conduct for Government, 1

Service

conditions of, 123
condition of, general, 123
condition of, power of legislature to make laws, 132
conditions of Service Rules and executive instructions, 133
conditions of, whether Service Rules constitute terms of a contract, 136
discrimination in matters relating to conditions of, 178
making of regulations: exigencies of, are guiding factors, 138
of Commissioner’s process, 255
order extending, unilaterally, if valid, 503
Police services, 385
preliminary enquiry before services are terminated in terms of contract, 435
Railway services, 396
recruitment and conditions of, Sec. 241 of the Government of India Act, 1935, 86
rules fixing no minimum service period for retirement: validity of, 483
special service, 363
Service—(concld.)

terminated under the Central Civil Services (Temporary Service) Rules, 1949, 34

termination of, due to abolition of post, if Art. 311 applies, 433

termination of, for security reasons: Proviso (c) to Art. 311 (2), Constitution, 300

termination of, on one month’s notice—Public Service Commission not consulted—effect of, 106

termination of, under—rules, 441

termination of, when would amount to removal or dismissal, 422

whether mode of suspension is different in different, 554

whether pleasure extends to compelling servant to continue in, even after the age of superannuation, 101

Service matters

conduct of Government business under Art. 166 and, 62

Service Rules

alteration in, 182

and constitutional provisions, 138

and executive instructions, 133

and retrospective operation, 18.5

bonus, 166

cadre, 176

dearness allowance, 166

deputation, 176

disciplinary action, 177

enforceability of, 163

enforceability of, salary, 165

leave preparatory to retirement, 177

pension, 166

promotion, 166

retirement, 177

scales of pay, 166

seniority, 166

suspension, 177

transfer, 177

Service Rules.—(concld.)

whether constitute terms of a contract, 136

notice to, 275

Show cause notice

Show cause

notice to, 275

against any of three major punishments: effects of, 278

disciplinary authority tentatively determining to impose particular punishment before explanation to, if illegal, 282

issued to Government servant, 78

notice to show cause not issued formally in the name of Rajpramukh—if provisions of Art. 166 contravened and show cause notice invalid, 282

reply to, 290

supplying of statement of allegations at the stage of second, if admissible, 207

Special services, 363

appointment and promotion of persons as District Judges—Order of Governor, if illegal, 371

combined cadre comprising District Judges, Registrar, High Court and Judicial Officers in Secretariat—procedure to be followed in appointment, postings and transfer, etc., 375

consultation with State Public Service Commission, if necessary in case of subordinate judiciary, 375

I. C. S. Officers, 407

Judiciary—High Court Judges, 363

police services, 385

postings, transfer, etc., 373

Railway services, 3.6

recruitment of persons other than District Judges, 374

“reduction in rank”—what it implies, 379

servants of statutory Companies and corporations, etc., 412

subordinate judiciary, 367
Specified post
meaning of, 351

Staff
of the Supreme Court and High Courts, 383

State
dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a, 63
extent of executive power of, and constitutional guarantees, 61
Governor to keep fully security of the, 79
if, has a different connotation in Part III relating to fundamental rights, 41
law as to residence for appointment in a particular part of a, 119
not to discriminate between a citizen and a citizen who answers the same description, 37
power of reservation conferred on the, how can be exercised, 39
“public order” refers inter alia to the security of the, 58
reduction in rank due to integration of, 512
vicarious liability of, for wrongful act of its servants, 9

State Public Service Commission,
consultation, if necessary in case of subordinate judiciary, 375
if to be consulted in all disciplinary matters, 105

Statement
of allegations accompanying the charge-sheet not supplied—effect of, 207
supplying of, of allegations at the stage of second show-cause notice, if admissible, 207

Statutes
Rules made under, 163

Statutory companies
servant of, and corporations, etc. 412

Statutory force
of Rules, 162

Stores Accounts
seniority for promotion as Junior Accountants, Junior Inspectors of Station or, 25

Strikes and demonstrations 149

Sub-Inspector
reverted to the post of Head Constable, if discrimination, 28

“Subject to the provisions of this Constitution”, 124

Subordinate Courts
control over, 376

Subordinate Judiciary
consultation with High Court, if necessary, 367
postings, transfer, etc., in case of, 373
scope of Arts. 233 to 237, 367

Superannuation
retirement due to change of age of, 488
whether pleasure extends to compelling servant to continue in service even after the age of, 101

Superior Civil Services (Revision of Pay and Pension) Rules, 1924
rules made under Sec. 96-B of the Government of India Act, 1915, 162

Supreme Court
officers and servants and the expenses of the, 383
staff of the, and High Court, 383
Suspension

and disciplinary proceedings—
if initiation of disciplinary
proceeding is condition prece-
dent to, 552
appointing authority, if can
suspend, 540
"disciplinary matters", if in-
clude, 544
dismissal declared illegal—if,
suspension revived, 541
interim suspension can be passed
even when no enquiry is
pending, 537
meaning of, 531
kinds of, 534
no order of, can be passed dur-
ing post-retirement leave, 545
no suspension by extending
service unilaterally, 544
notice terminating his services
given by the servant during
the period of; legality; disci-
plinary proceedings, if
valid, 307

Suspension

of public servant—dismissal
declared invalid by the Court
—if Fundamental Rule 54
applicable, 544
of servant, 177
to suspend employee, 535
scope of, 531
subsidence allowance, quantum
of, 545
whether mode of, is different
in different services, 554

Suspension order

when it takes effect, 546

Tahsildars, 358

Telegraph services

application of preceding section
to railways, customs, postal
and, officials of courts, 87

Temporary appointment

continuance of person after
superannuation without
approval of Government, if
proper, 493

Temporary or officiating post
reversion from, 516

Temporary public servant

preliminary enquiry against a
; scope—Art. 311 (2) is not
attracted, 334
procedure and principles for
disciplinary action against a,
333

Tenure of office

of persons employed in civil
capacities in India—Sec. 240
of the Government of India
Act, 1935, 85

Tenure of Pleasure 81

historical background, 81
position under the present law,
92
whether controlled by Art. 311
of the Constitution, 96
whether—extends to compelling
servant to continue in service
even after the age of superan-
nuation, 101

Termination

of probationers' service as per
Rules, 432
of service due to abolition of
post—if Art. 311 applies, 433
of service for security reasons :
Proviso (c) to Art. 311 (2),
Constitution, 300
of service, of railway official,
124
of service on one month's
notice—Public Service Com-
misson not consulted—effect
of, 106
of service under—rules, 441
of service—when would amount
to removal or dismissal, 422
order terminating service based
on events prior to coming
into force of rules, 449
preliminary enquiry before ser-
vice are terminated in terms
of contract, 485
Termination of services
different methods of, 34

Terms of a contract
whether Service Rules constitute, 136

Tort
liability in, of State for acts of its servants, 7

Transfer
enforceable right of a servant, 177
from one post to another carrying the same scales of pay does not amount to reduction in rank, 519
mere transfer of Government servant holding permanent post to new post, if removal, 4.5

Tribunal
enquiry by a, having no jurisdiction, effect of, 260

U P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947
and power to dismiss, 386
if hit by Art. 14 of the Constitution, 150

U. P. Disciplinary Proceedings (Summoning of Witnesses and Production of Documents) Act, 1953
departmental enquiry defined under, 255
Government defined under, 255
Inquiring Officer defined under, 255
meaning of "administrative tribunal" defined under, 255
power of Enquiry Officer and penalty for disobedience to process, 255

U. P. Higher Judicial Service Rules
if constitutional, 155

U. P. Police Regulations
Para 486 of the, scope and effect of the, 389

Union
dismissal, removal or reduction in rank of persons employed in civil capacities under the, or a State, 63

Union Public Service Commission, 103
if to be consulted in all disciplinary matters, 105

Validity
of Bombay Civil Service Classification and Recruitment Rules, 157
of Bombay Civil Service Rules, 155
of Rule 4-A of the Central and Civil Services (Conduct) Rules, 1955, 57
of Rules 4-A and 4-B, Central Civil Services (Conduct) Rules, 1955, 146
of rule as to age of retirement : classification in fixing age of retirement, 465
of rules for retirement : public interest, 467
of the Civil Services (Safeguarding of National Security) Rules, 1949, 156
of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, 154
of the Punjab Tahsildari Rules, 1932, 136
of the Rajasthan Civil Services (Rationalisation of Pay-scales), Rules and Schedules, 1965, 152
of the Rajasthan Higher Judiciary Service Rules, 1955, 155

Vicarious liability
of State for wrongful act of its servants, 9
Village Munsifs, 355

Waiver
  of fundamental rights, 47
  of other rights, 53

Who can claim protection of
Art. 311, 321
  civilians in defence service, 358
  Mouzadars, 357
  preliminary enquiry against a
  temporary public servant—
  scope—Article 311(2) is not
  attracted, 334
  probationers, 335
  procedure and principles for
  disciplinary action against a
  temporary public servant, 333

Who can claim protection of
Art. 311—(concl.)
  quasi-permanent employees, 350
  servants of Life Insurance Cor-
  poration, 358
  Tahsildars, 358
  village Munsifs, 355

Who can dismiss or remove, 309

Witnesses
  cross-examination of, 245

Wrongful act
  vicarious liability of State for,
  of its servants, 9
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