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After referring to section 69(2), the learned Judge came to the conclusion that in that case the firm was registered and continued to be registered at the date of the institution of the suit. Moreover, he considered that the fact that the firm was registered at the date of the institution of the suit and that the names of the persons sued were shown in the register at the date of the institution of the suit constituted compliance with section 69(2) of the Act. Applying the same test here which, with respect, I accept as the correct one, it must be held that in the present case the requirements of section 69(2), were fully satisfied inasmuch as the firm was registered and the name of the person through whom it sued appeared on the register as a partner at the relevant time which was the date of the institution of the suit. It may be mentioned that the Bombay view was accepted by Panckridge, J., in *Tapendra Chunder Goopta and others* (1), which was a case of dissolution of a firm by retirement of a partner. It was held that notwithstanding such dissolution by retirement, the firm remained a registered one and was entitled to institute a suit.

It is then urged that there is nothing to show that the death of Sant Ram was ever notified to the Registrar under section 63(1) of the Indian Partnership Act and, therefore, as there had been non-compliance with the provisions of the statute it should be deemed that the plaintiff-firm was not duly registered on the date of the institution of the suit. In the *Bombay case* (2), also the notice under section 63 of the death of the partner and change of constitution of the firm was given after the institution of the suit and the learned Judge did not consider that the absence of giving

(1) A.I.R. 1942 Cal. 76
(2) A.I.R. 1940 Bom. 267

any notice under section 63 had any such effect on the registration of the firm that the same should be considered to be not registered for the purposes of section 69. Subba Rao, C. J., (as he then was) in *Sudarsanam* v. *Viswanadhah Bros.* (1), has expressed the view that there is an essential distinction between the constitution of a firm and its dissolution. Non-compliance with the provisions of section 63(1), may have other consequences but under section 69(2), only two conditions had to be complied with by a firm to enforce a right arising from a contract.

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In view of the above discussion, all the contentions that have been raised to the entertainability of the suit must be repelled and the decree that has been granted by the Courts below must be sustained. The appeal is consequently dismissed, but in the circumstances of the case there will be no order as to costs.

B.R.T.

SUPREME COURT

Before Sudhi Ranjan Das, C.J., and Sudhanshu Kumar Das, P. B. Gajendragadkar; K. N. Wanchoo and M. Hidayatullah, JJ.

D. S. GAREWAL;—*Appellant.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

THE UNION OF INDIA;—*Intervener.*

Civil Appeal No. 426 of 1958.

All-India Services Act (LXI of 1951) and All-India Services (Discipline and Appeal) Rules, 1955—Whether Constitutional—Constitution of India (1950)—Articles 312

(1) A.I.R. 1955 Andrh 12

and 392—Constitution (Removal of Difficulties) Order No. II of 26th January, 1950—Effect of—Article 312—Parliament, whether can delegate power to make rules to other authorities—All-India Services (Discipline and Appeal) Rules—Rule 5—Government competent to institute enquiry.

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Held, that the power given to the President under Article 392 of the Constitution was very wide and it cannot be said that he could make the adaptation in one way and not in another. It was left to him to consider whether the adaptation should be by way of modification.addition or omission; and if he thought it necessary or expedient with respect to a particular Article that adaptation should be by way of omission it cannot be said that he had exceeded his power. The All-India Services Act (LXI of 1951) cannot be declared unconstitutional on the ground that the President had exceeded his power under Article 392 and that if he had not done so a resolution of the provisional Parliament would have been necessary with the requisite majority before any law could be undertaken to regulate the recruitment and the conditions of service of an All-India Service. Nor can it be struck down on the ground of excessive delegation.

Held, that the All-India Services (Discipline and Appeal) Rules, 1955 are not repugnant to Article 312 of the Constitution on the ground that the words of Article 312 which had been omitted by the Constitution (Removal of Difficulties) Order No. II of 26th January, 1950, had re-appeared in Article 312 when these Rules were promulgated and no resolution of the Council of States as required by that Article, had been passed. The re-appearance of these words in Article 312 has nothing to do with the *vires* of the Rules. The Rules were framed under the power given to the Central Government by the Act, and if the Act was valid when it was passed, the Central Government would have power to frame rules under it, as it is a permanent measure. The Rules framed in 1955, therefore, cannot be challenged on the ground that the omitted words re-appeared in Article 312. The Rules derive their force from the Act and the form in which Article 312 emerged, after the Constitution (Removal of Difficulties) Order No. II came to an end in 1952, would not have any effect on the Rules.

Held, 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. The delegation of legislative functions can be made to executive authorities within certain limits. But it has to be seen in each case how far the intention of the Constitution was that the entire provision should be made by law without recourse to any rules framed under the power of delegation. The words "Parliament may by law provide" in Article 312 do not take away the usual power of delegation, which ordinarily resides in the legislature. Regulation of recruitment and conditions of service require numerous and varied rules. which may have to be changed from time to time as the exigencies of public service require. In the circumstances of Article 312 it could not have been the intention of the Constitution that the 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. The words used in Article 312 do not exclude the delegation of power to frame rules for regulation of recruitment and the conditions of service of All-India services nor can this Article be read 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.

Held, that rule 5 of the All-India Services (Discipline and Appeal) Rules, 1955, contemplates that the enquiry will be instituted by the Government of the State in connection with the affairs of which the officer is serving. The Central Government will only come into the picture after the enquiry is concluded and if it is decided to impose one of the three punishments (dismissal, removal or compulsory retirement) mentioned in rule 4(1).

Appeal by Special Leave from the Judgment and Order, dated the 30th July, 1958 of the Punjab High Court in Civil Writ Application No. 732 *of* 1958.

For the Appellant . Mr. N. C. Chatterjee, Senior Advocate, (M/s. I. M. Lal and B. P. Maheshwari, Advocates, with him).

For Respondent No. 1 : Mr. S. M. Sikri, Advocate-General for the State of Punjab and Mr. Mohinder Singh Pannum, Additional Advocate-General for the State of Punjab (Mr. D. Gupta, Advocate. with them).

For the Intervener : Mr. B. Sen, Senior Advocate, (Mr. T. M. Sen, Advocate; with him).

JUDGEMENT

The following Judgment of the Court was delivered by

Wanchoo, J.

Wanchoo, J.—This appeal by special leave raises the question of the constitutionality of the All-India Services Act, (LXI of 1951) (hereinafter called the Act). The appellant was appointed to the Indian Police Service on October 1, 1949, and posted to the State of Punjab. He held charge as Superintendent of Police in various districts but was reverted as Assistant Superintendent of Police in August 1957, and was eventually posted to Dharamsala in March, 1958. In the same month he was informed that it was proposed to take action against him under rule 5 of the All-India Services (Discipline and Appeal) Rules, 1955, (hereinafter called the Rules), framed under section 3 of the Act. He was thereafter placed under suspension under rule 7 of the Rules pending disciplinary proceedings against him, and Shri K. L. Budhiraja, I.A.S. was appointed enquiry officer to hold the departmental enquiry against him. Notice was issued to him by the Enquiry Officer in July, 1958. He thereupon immediately made an application under Article 226 of the Constitution before the Punjab High Court challenging the constitutionality of the Act and the legality of the enquiry against him. The application was dismissed on July 30, 1958, and his application for a certificate to appeal to this Court was dismissed next day. Thereupon he came to this Court and was granted special leave.

Shri Chatterjee appearing for the appellant has raised the following six points in support of the appeal:—

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(1) The amendment made by the President in Article 312 of the Constitution by virtue of his power under Article 392 by the Constitution (Removal of Difficulties) Order No. II of 26th January, 1950, was in excess of the power conferred on him under Article 392;

(2) It was not within the competence of the provisional Parliament to enact the Act in 1951, as there was no compliance with the condition precedent to such an Act being passed under Article 312;

(3) The Rules when promulgated in 1955 were bad as they were repugnant to Article 312 as the amendment made by the President by the Constitution (Removal of Difficulties) Order No. II had ceased to have force and Article 312 stood in 1955 as original by enacted in the Constitution;

(4) Article 312 laid a mandate on Parliament to make a law regulating the recruitment and conditions of service of all India services created under that Article and Parliament could not delegate this function to the Central Government, and, therefore, section 3 of the Act was invalid;

(5) In any event, the delegation made by section 3 of the Act was excessive and, therefore, section 3 should be struck down, and

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(6) The Punjab Government has no authority to institute these proceedings under the Rules.

Re. 1, 2 and 3.

These three points may conveniently be taken together. Article 392 provides that "the President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission as he may deem to be necessary or expedient; provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V". The purpose of this provision is obvious from the very words in which it was made. Further Artcile 379 provided that "until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall be the provisional Parliament and shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament". As there was only one House during the transitional period, there were bound to be difficulties in the application of the Constitution, which envisaged a bicameral legislature. Consequently, the President passed the Constitution (Removal of Difficulties) Order No. II on January, 26, 1950, by which among

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other adaptations, he made an adapation in Article 312 also, to this effect:—

> "In clause (1), omit 'if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do'."

This order was to come into force at once and was to continue until both Houses of Parliament had been duly constituted and summoned to meet for the first session under the provisions of the Constitution. After removal of the omitted words, Article 312 read as follows:—

> "(1) Notwithstanding anything in Part XI, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States, and subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.
>
> (2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article."

It is urged that though the President undoubtedly had power to make adaptations ; he exceeded that power inasmuch as he omitted the words mentioned above from Article 312 altogether. It is suggested that the adaptation would have been proper; if in Article 312 as it originally

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stood in the Constitution; the words "Council of States" had been substituted by the words "provisional Parliament", so that instead of a resolution of the Council of States a resolution of the provisional Parliament would have been necessary for the creation and regulation of recruitment and conditions of service of an all-India service common to the Union and the States. Reliance in this connection is placed on *Sankari Prasad Singh Deo* v. *Union of India and State of Bihar* (1), where dealing with an adaptation made in Article 368, by the same order, this Court observed that "the adaptation leaves the requirement of a special majority untouched". It is urged that if the President had made the adaptation in the way suggested by learned counsel that would have left the requirement of a resolution supported by requisite majority untouched and would have been within the power of the President; but inasmuch as the entire portion was omitted the President had exceeded his power. It is enough to say that *Sankari Prasad Singh's case* (supra) (1) does not lay down that if the adaptation in Article 368 had been made in some other manner it would have been invalid and unconstitutional. Reference to the fact that adaptation left the requirement of a special majority untouched was made obviously for the purpose of emphasising that there was no real ground of grievance and not for indicating that in the absence of the retention of that provision the adaptation would have been bad. Indeed, it was pointed out in that case that Article 392 was widely expressed and an order could be made under that Article for the purpose of removing any difficulties. The nature of the adaptation to be made is also equally widely expressed and it may be by way of modification, addition or omission. In the

(1) [1952] S.C.R. 89

case of Article 368 the President thought it necessary or expedient that the adaptation should be by modification. In the case of Article 312, however, he thought it necessary or expedient that the adaptation should be by way of omission of certain words from that Article. The power given to the President under Article 392 was very wide and it cannot be said that he could make the adaptation in one way and not in another. It was left to him to consider whether the adaptation should be by way of modification, addition or omission; and if he thought it necessary or expedient with respect to a particular Article that adaptation should be by way of omission it cannot be said that he had exceeded his power. We are, therefore, of opinion that the Act cannot be declared unconstitutional on the ground that the President had exceeded his power under Aricle 392 and that if he had not done so a resolution of the provisional Parliament would have been necessary with the requisite majority before any law could be undertaken to regulate the recruitment and the conditions of service of an all-India service.

Once it is held that the adaptation made by the President in Article 312 was within his power, there is vey little left in the other two points raised by Mr. Chatterjee. It is said that the provisional Parliament was not competent to pass the Act in 1951, because the condition precedent for passing such a law had not been, as required by Article 312, complied with. This means in other words that a resolution with the requisite majority had not been passed by the provisional Parliament; but this condition would not be there once those words were validly removed by the order of the President under Article 392, and the provisional Parliament would have power to pass the Act

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without any resolution being passed before the law was made.

The further argument that the Rules were promulgated in 1955 when the words omitted by the Constitution (Removal of Difficulties) Order No. II had reappeared in Article 312 and were, therefore, repugnant to Article 312 inasmuch as there was no resolution of the Council of States, as required by that Article, is, in our opinion, completely baseless. The reappearance of these words in Article 312 has nothing to do with the *vires* of the Rules. The Rules were framed under the power given to the Central Government by the Act, and if the Act was valid when it was passed, the Central Government would have power to frame rules under it, as it is a permanent measure. The rules framed in 1955, therefore, cannot be challenged on the ground that the omitted words reappeared in Article 312. The Rules derive their force from the Act and the form in which Article 312 emerged, after the Constitution (Removal of Difficulties) Order No. II came to an end in 1952, would not have any effect on the Rules. There is no force, therefore, in any of these three points, and we reject them.

Re. 4.

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 regulation 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

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the law made by it. It was so held by the majority of Judges in *Re Delhi Laws Act,* 1912 (1). *The Delhi Laws case* was further examined in *Rajnarasi Singh.* v. *The Chairman, Patna Administration Committee, Patna* (2), 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 legislature 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 Governments of the States 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. Mr. Chatterjee contends that no delegation whatsoever was possible under Article 312 and that the Constitution required that Parliament should itself frame the entire law relating to the regulation of recruitment and the conditions of service of all-India services. 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

(1) [1951] S.C.R. 747
(2) [1955] 1 S.C.R. 290

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that there is no scope for delegation in a law made under Article 312. Our attention in this connection was drawn to words used in Article 245, which are "Parliament may make laws". It is said that the words used in Article 312 are in a special form, which import that Parliament must provide by law for regulation of recruitment and the conditions of service and cannot delegate any part of it to other authorities. Reference was also made to the words used in Article 138 (1), (namely, Parliament may by law confer); Article 138(2), (namely, Parliament may by law provide); Article 139, (namely, Parliament may by law confer); and Article 148(3), (namely, as may be determined by Parliament by law). In contrast to these Articles, our attention was drawn to the words of Article 173(c), namely, by or under any law made by Parliament), and Article 293 (2), (namely, by or under any law made by Parliament). It is urged that when the Constitution uses the words "may by law confer" or "may by law provide", no delegation whatsoever is possible. We are of opinion that these words do not necessarily exclude delegation and it will have to be seen in each case how far the intention of the Constitution was that the entire provision should be made by law without recourse to any rules framed under the power of delegation. Let us, therefore, examine Article 312 from this angle, and see if the intention of the Constitution was that regulation of recruitment and conditions of service to an all-India service should only be by law and there should be no delegation of any power to frame rules. 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

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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-today 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 the 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 delegate 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 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.

Re. 5.

The argument in this connection is that even if delegation is possible, there was excessive delegation in this case, and, therefore, the Act should be struck down. The Act is a short Act of four section. The first section deals with the short title, the second section defines the expression "all-India Service" and the third section gives power to the Central Government to frame rules for regulation of recruitment and the conditions of service after consultation with the Governments of States concerned, and lays down that all rules so framed shall be laid before parliament and shall be

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subject to such modifications as Parliament may make. Section 4 which is important is in these terms—

> "All rules in force immediately before the commencement of this Act and applicable to an all-India service shall continue to be in force and shall be deemed to be rules made under this Act."

It is urged that this Act lays down no legislative policy or standard at all and everything is left to the Central Government. In this connection reference was made to the following observations of Mukherjea, J. (as he was then) in *Re The Delhi Laws Act*, 1912 (supra) at p. 982:—

> "The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct: It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy. 'So long as a policy is laid down and a standard established by statute no constitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the legislation is to apply'."

It is said that in this case Parliament did not even exercise the essential legislative function in asmuch as is did not determine or choose the legislative policy and formally enact that policy into a

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binding rule of conduct. Apparently, if one looks at the Act, there seems to be some force in this contention. 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 rules will govern the two all-India services in the matter of regulation of recruitment and conditions of services 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 the Central Government was given 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 Government provision was made by sec-

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tion 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 or amendment on a motion made by Parliament during the session in which they are 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.

Re. 6.

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 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 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

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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 the intention is that the enquiry would be instituted by the government under which the officer is serving even in cases where the 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 whom such officer was serving at the time of commission of such act or omission 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 a 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 purpose 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. Rules 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

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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 the 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 Article 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 in 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 imposes one of the three punishments mentioned in rule 4(1). This contention must also be rejected.

We, therefore, dismiss the appeal with costs to the State of Punjab.

B.R.T.

SUPREME COURT

Before Sudhi Ranjan Das, C.J. and Sadhanshu Kumar Das, P. B. Gajendragadkar, K. N. Wanchoo and M. Hidayatullah, JJ.

HUKUM CHAND MALHOTRA,—Appellant

versus

UNION OF INDIA;—*Respondent*

Civil Appeal No. 188 of 1958.

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Dec., 12th

Constitution of India (1950)—Article 311(2)—Show cause notice mentioning all the three major penalties—Whether bad.

Held, that there is 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 proposed 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. The show cause notice is not bad if it mentions more than one punishment proposed to be inflicted on the Government servant.

Appeal by Special Leave from the Judgment and Order dated the 3rd December, 1956, of the Punjab High Court (Circuit Bench) at Delhi in Letters Patent Appeal No. 25-D of 1956, arising out of the Judgment and Order dated the 9th April, 1956 of the said High Court (Circuit Bench) at Delhi in Civil Writ No. 8-D of 1955.

For the Appellant : Mr. N. C. Chatterjee, Senior Advocate (Mr. R. S. Narula, Advocate, with him).

For the Respondent : Mr. M. C. Setalvad, Attorney-General for India and Mr. B. Sen, Senior Advocate, (Mr. T. M. Sen, Advocate, with them).

JUDGMENT

The following Judgment of the Court was delivered by:—

S. K. Das, J.

S. K. DAS, J.:—This is an appeal by special leave and the only question for decision is if the order of the President, dated October 1, 1954, removing the appellant from service with effect from that date is invalid, as claimed by the appellant, by reason of a contravention of the provisions of Article 311(2) of the Constitution.

The short facts are these. The appellant stated that he joined permanent Government service on April 4, 1924. In 1947, before partition, he was employed as Assistant Secretary, Frontier Corps of Militia and Scouts in the then North-Western Frontier Province, under the administrative control of the External Affairs Department of the Government of India. The appellant stated that the post which he held then was a post in the Central Service, Class II. After partition, the appellant opted for service in India and was posted to an office under the Ministry of Commerce in the Government of India in October, 1947. In December, 1949, he was transferred to the office of the Chief Controller of Imports, New Delhi, to clear off certain arrears of work. In August, 1951, he was posted as Deputy Chief Controller of Imports, Calcutta, and continued to work in that post till September, 1952. He then took four months' leave on average pay and on the expiry of his leave on January 24, 1953, he was transferred as Section Officer in the Development Wing of the Ministry of Commerce. The appellant thought that the order amounted to a reduction of his rank and he

made certain representations. As these representations bore no fruit; he applied for leave preparatory to retirement on February 6; 1953. In that application the appellant stated:—

> "Normally I am due to retire in April, 1956; but I find it difficult to reconcile myself to the new conditions of service under which I am now placed to work. I find that I would not be wasting only myself but I would also not be doing full justice to the interest of my Government and country in my present environment. Under the circumstances, I pray that I may be permitted to retire from the 1st May, 1953."

On February 14, 1953, the appellant amended his leave application and said that he had been informed by the Administrative Branch of the Development Wing that the question of permission to retire was under consideration, because of some difficulty with regard to the inclusion in the service of the appellant the period during which he held the post of Assistant Secretary, Frontier Corps. therefore, he said that he might be granted leave on full average pay for four months with effect from February 15, 1953, if the decision to give him permission to retire was likely to be postponed beyond May 1, 1953. He amended his leave application by making the following prayer:—

> "Leave may be sanctioned for four months from the 15th February, 1953, or up to the date from which I am permitted to retire whichever may be earlier".

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On March 10, 1953, the appellant was informed that he could not be allowed to retire at that stage, but the Ministry had agreed to grant him leave from February 16, 1953 to April 30, 1953. The appellant then went on leave and on February 25, 1953, he wrote to Government to say that he was contemplating to join the service of Messrs. Albert David and Co. Ltd., Calcutta, and for that purpose he was accepting a course of training in that Company for two months. In April, 1953, the appellant accepted service under Messrs. Albert David and Co., Ltd., and he wrote to Government to that effect on April 6, 1953. On June 16, 1953, the appellant was charged with having violated rule 15 of the Government Servants' Conduct Rules and fundamental Rule 11. Rule 15 of the Government Servants' Conduct Rules states, *inter alia,* that a Government servant may not without the previous sanction of Government engage in any trade or undertake any employment other than his public duties. Fundamental Rule 11 says in effect that unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of the Government which pays him. A. P. Mathur, Joint Chief Controller of Imports, was asked to hold an enquiry against the appellant on the charge mentioned above. The appellant submitted an explanation and an enquiry was held by A. P. Mathur in due course. The Enquiring Officer submitted his report on September 12, 1953, in which he found that the appellant had, contrary to the rules governing the conditions of his service, accepted private employment without previous sanction of Government during the period when he was still in Government service. On April 14, 1954. the appellant was asked to show cause in accordance with the provisions of Article 311(2) of the Constitution. As the whole of the argument

in this case centres round this show cause notice, it is necessary to set out in full:

"Sir,

I am directed to say that the Enquiry Officer appointed to enquire into certain charges framed against you has submitted his report; a copy of the report is enclosed for your information.

2. On a careful consideration of the report, and in particular of the conclusions reached by the Enquiry Officer in respect of the charges framed against you, the President is provisionally of opinion that a major penalty, viz., dismissal, removal or reduction should be enforced on you. Before he takes that action, he desires to give you an opportunity of showing cause against the action proposed to be taken. Any representation which you may make in that connection will be considered by him before taking the proposed action. Such representation, if any, should be made, in writing, and submitted so as to reach the undersigned not later than 14 days from the receipt of this letter by you.

Please acknowledge receipt of this letter.

Yours faithfully,

Sd. S. Bhoothalingam,
Joint Secretary to the Government of India."

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The appellant then showed cause and on October 1, 1954, the President passed an order in which it was stated that after taking into consideration the report of the Enquiring Officer and in consultation with the Public Service Commission, the President found that the charge had been proved against the appellant and the appellant was accordingly removed from service with effect from that date.

The appellant then moved the Punjab High Court by a petition under Article 226 of the Constitution in which his main contentions were (a) that he had no opportunity of showing cause against the action proposed to be taken in regard to him within the meaning of Article 311 (2) of the Constitution and (b) that he had asked for leave preparatory to retirement and accepted service under Albert David and Co., Ltd., in the *bona fide* belief that Government had no objection to his accepting such private employment. Dulat, J., who dealt with the petition in the first instance, held against the appellant on both points. He found that there was no contravention of the provisions of Article 311 (2) of the Constitution and on the second point, he held that on the facts admitted in the case there was no doubt that the appellant had accepted private employment in contravention of the rules governing the conditions of his service and there was little substance in the suggestion of the appellant that he had no sufficient opportunity to produce evidence.

The second point no longer survives, and the only substantial point for our consideration is the alleged contravention of Article 311(2) of the Constitution

Mr. N. C. Chatterjee, who has appeared on behalf of the appellant, has submitted before us that

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the show cause notice dated April 14, 1954, stated all the three punishments mentioned in Article 311 (2) asd inasmuchas it did not particularise the actual or exact punishment proposed to be imposed on the appellant the notice did not comply with the essential requirements of Article 311 (2) of the Constitution: therefore, the final order of removal passed on October 1, 1954, was not a valid order.

In the recent decision of *Khem Chand* v. *Union of India* (1), this Court explained the true scope and effect of Article 311(2) of the Constitution. It was stated in that decision that the reasonable opportunity envisaged by Article 311(2) of the Constitution included (a) an opportunity to the Government servant to deny his guilt and establish his innocence, (b) an opportunity to defend himself, 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 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 no longer in dispute that the appellant did have opportunities (a) and (b) referred to above. The question before us is whether the show cause notice, dated April 14, 1954, gave the appellant a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Mr. N. C. Chatterjee has emphasised two observations made by this Court in *Khem Chand's case* (1). He points out that in connection with opportunity (c) aforesaid, this Court observed that a Government servant can only make his representation

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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. Mr. Chatterjee emphasises the observation " one of the three punishments". Secondly, he has drawn our attention to the observations made in the judgment of the Judicial Committee in *High Commissioner for India and High Commissioner for Pakistan* v. *I. M. Lall* (1); which observations were quoted with approval in *Khem Chand's case* (2). One of the observations made was:—

> "In the opinion of their Lordships no action is proposed within the meaning of the sub-section" (their Lordships were dealing with sub-section (3) of section 240 of the Government of India Act, 1935) "until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on."

Mr. Chatterjee emphasises the expression "actual punishment" occurring in the said observations. It is to be remembered, however, that both in I. M. *Lall's case* (1) and *Khem Chasd's case* (2) the real point of the decision was that no second notice had been given to the Government servant concerned after the enquiry was over to show cause against the action proposed to be taken in regard to him. In *I. M. Lall's case* (1) a notice was given at the same time as the charges were made which directed the Government servant concerned to show cause "why he should not be dismissed, removed or reduced or subjected to such other disciplinary action

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(1) (1948) L.R: 75 I.A. 225, 242
(2) A.I.R. 1958 S.C. 300

as the competent authority may think fit to enforce etc." In other words, the notice was what is usually called a combined notice embodying the charges as well as the punishments proposed. Such a notice, it was held, did not comply with the requirements of sub-section (3) of section 240. In *Khem Chand's case* (1) also the report of the Enquiring Officer was approved by the Deputy Commissioner, Delhi, who imposed the penalty of dismissal without giving the Government servant concerned an opportunity to show cause against the action proposed to be taken in regard to him. *In Khem Chand's case* (1) the learned Solicitor General, appearing for the Union of India, sought to distinguish the decision in *I. M. Lall's case* (2) on the ground that the notice there asked the Government servant concerned to show cause why he should not be dismissed, removed or reduced or subjected to any other disciplinary action, whereas in *Khem Chand's case* (1) the notice issued to the Government servant before the enquiry mentioned only one punishment, namely, the punishment of dismissal. Dealing with this argument of the learned Solicitor-General this Court said:—

> "A close perusal of the judgment of the Judicial Committee in *I. M. Lall's case* (2) will, however, show that the decision in that case did not proceed on the ground that an opportunity had not been given to I. M. Lall against the proposed punishment merely because in the notice several punishments were included, but the decision proceeded really on the ground that this opportunity should have been given after a stage had been reached where the charges had been

(1) A.I.R. 1958 S.C. 300
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established and the competent authority had applied its mind to the gravity or otherwise of the proved charge tentatively and proposed a particular punishment."

Therefore the real point of the decision both in *I. M. Lall's case* (1) and *Khem Chand's case* (2) 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

(1) (1948) L.R. 75 I.A. 225, 242
(2) A.I.R. 1958 S.C. 300

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 punishment 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 very purpose for which the second show cause notice was issued.

Then, there is another aspect of the matter which has been pointedly emphasised 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 two lesser punishments 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 emphasise 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 April 14, 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

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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 proposed 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.

We turn now to certain other decisions on which learned counsel for the appellant has relied. They are: *Jatindra Nath Biswas* v. *R. Gupta* (1), *Dayasidhi Rath* v. *B. S. Mohanty* (2) and *Lakshmi Narain Gupta* v. *A. N. Puri,* (3), In the case of *Jatindra Nath Biswas* (1), no second show cause notice was given and the decision proceeded on that footing. Sinha, J., observed, however:—

> "Where there is an enquiry, not only must he have an opportunity of contesting his case before the enquiry, but, before the punishment is imposed upon him, he must be told about the result of the enquiry and the exact punishment which is proposed to the inflicted."

(1) (1953) 58 C:W,N. 128
(2) A.I.R. 1955 Orissa 33
(3) A:I.R, 1954 Cal, 335

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Mr. Chatterjee has emphasised the use of the word "exact". As we have pointed out, the decision proceeded on a different footing and was not rested on the ground that only one punishment must be mentioned in the second show cause notice. The decision in *Dayanidhi Rath's case* (1), proceeded on the footing that if the punishment that is tentatively proposed against a civil servant is of a graver kind, he can be awarded punishment of a lesser kind; but if the punishment that is tentatively proposed is of a lesser kind, there will be prejudice in awarding a graver form of punishment. What happened in that case was that the show cause notice stated that in view of the Enquiring Officer's findings contained in the report with which the Secretary agreed and in consideration of the past record of the Government servant concerned, it was proposed to remove him from Government service; in another part of the same notice, however, the Government servant concerned was directed to show cause why the penalty of dismissal should not be inflicted for the charges proved against him. Thus, in the same notice two punishments were juxtaposed in such a way that it was difficult to say that the punishing authority had applied its mind and tentatively come to a conclusion as to what punishment should be given. It was not a case where the punishing authority said that either of the two punishments might be imposed in the alternative; on the contrary, in one part of the notice the punishing authority said that it was proposed to remove the Government servant concerned and in another part of the notice it said that the proposed punishment was dismissal. In *Lakshmi Narain Gupta's case* (2) the notice

(1) A:I.R. 1955 Orissa 33
(2) A:I,R, 1954 Cal, 335:

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called upon the petitioner to show cause why disciplinary action, such as reduction in rank, withholding of increments etc., should not be taken against him. The learned Judge pointed out that there were seven items of penalties under rule 49 of the Civil Service (Classification, Control and Appeal) Rules, and the notice did not indicate that the punishing authority had applied its mind and come to any tentative conclusion as to the imposition of any of the punishments mentioned in that rule. On that footing it was held that there was no compliance with the provisions in Article 311(2) of the Constitution. We do not, therefore, take these decisions as laying down that whenever more than one punishment is mentioned in the second show cause notice, the notice must be held to be bad. If these decisions lay down any such rule, we must hold them to be incorrect.

We have come to the conclusion that the three decisions on which learned counsel for the appellant has placed his reliance do not really support the extreme contention canvassed for by him, and we are further of the view that the show cause notice, dated April 14, 1954, in the present case did not contravene the provisions of Article 311(2) of the Constitution. The appellant had a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

This disposes of the principle point in controversy before us. Mr. Chatterjee referred to certain mistakes of reference in the order of the President dated October 1, 1954. Instead of referring to rule 15 of the Government Servants' Conduct Rules, rule 13 was referred to. There was also a reference to para 5 of a particular Government order which prohibited Government servants from taking up commercial employment within

two years of retirement. Mr. Chatterjee submitted that this particular order did not apply to Government servants in Class II. We do not think that the inaccurate references were of any vital importance. In effect and substance the order of removal, dated October 1, 1954, was based on the ground that the appellant violated rule 15 of the Government Servants' Conduct Rules and rule 11 of the Fundamental Rules, he accepted private employment without sanction of Government while he was still in Government service. That was the basis for the enquiry against the appellant and that was the basis for the order of removal passed against him.

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For these reasons we hold that there is no merit in the appeal which must accordingly be dismissed with costs.

B.R.T.

LETTERS PATENT APPEAL

Before A. N. Bhandari, C.J. and Bishan Narain, J.

RAJ KISHAN JAIN,—*Appellant*

versus

TULSI DASS ETC.,—*Respondents.*

Letters Patent Appeal No. 5-D of 1954.

1958

Dec., 23rd

Letters Patent—Clause 10—Order passed on a petition under Article 227 of the Constitution by a Single Judge of the High Court—Whether appealable—Petition made under Articles 226 and 227 of the Constitution dismissed—Whether appeal lies—General Clauses Act (I of 1897)—Section 8—Modification—Meaning of.

Held, that no Letters Patent Appeal under Clause 10 of the Letters Patent is competent against the judgment of a Single Judge of the High Court when an order has been