SUPREME COURT

Before Sudhi Ranjan Das, C.J., and T. L. Venkatarama Aiyar, Sudhanshu Kumar Das, A. K. Sarkar and Vivian Bose, JJ.

K. S. SRINIVASAN,—*Appellant*

versus

UNION OF INDIA,—*Respondent*

Civil Appeal No. 78 of 1957

1958

Feb., 18th

Constitution of India (1950)—Article 311—Protection under—Whether available to a Government servant who held a post to which he was not entitled—Central Civil Services (Temporary Service) Rules, 1949—Rule 6—Scope of—Appellant holding the post of Public Relations Officer on

a quasi-permanent basis—*Posts of Public Relations Officers reduced in number and appellant shifted to the post of Assistant Station Director—Whether two posts in the same grade or cadre—Fundamental Rule 9(31) (C)—Application of—Conditions requisite—Central Civil Services (Temporary Service) Rules, 1949—Rules 3 and 4 Declaration of* quasi-permanent *status—Whether can be in two posts of different grades or different cadres simultaneously—Indian Evidence Act (I of 1872)—Section 21—Admissions—Evidentiary value of—Whether conclusive—Constitution of India (1950)—Article 320—Applicability of.*

Held, by majority (S. R. Das, C.J., and T.L. Venkatarama Aiyar, S. K. Das and A. K. Sarkar, JJ.)—

(1) that if a person had a right to the post which he was holding when the order terminating his service in the post he was holding and reducing him to a lower post without compliance with the provisions of Article 311 of the Constitution was passed, the order should be bad as it deprives him of the right to hold that post. In such a case he is entitled to the protection of Article 311. But if, on the contrary, he has no right to the post he was holding and, under the rules governing the conditions of his service, his service was liable to be terminated then he is not entitled to the protection of Article 311 of the Constitution of India;

(2) that the post of Assistant Station Director is not a post in the same grade or cadre as that of the Public Relations Officers and the appellant who had a quasi-permanent status in the post of Public Relations Officer had no *quasi-permanent* status in the post of Assistant Station Director and so his services were 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(1) of the Central Civil Services (Temporary Service) Rules, 1949, nor was he entitled to the benefit of the proviso to clause (ii) so far as the post of Assistant Station Director was concerned.

There was, thus, no violation of the Constitutional guarantee under Article 311(2) in his case ;

(3) that two conditions must be fulfilled for the application of Fundamental Rule 9(31)(C). One is that the two time-scales must be identical and the other is that the two posts must fall in the same cadre or class in a cadre. Neither the same scale of pay nor the fact that the two posts belong to class II determine the question whether they belong to the same grade or cadre ;

(4) that there cannot be a declaration of quasi-permanent status in two posts of different grades or different cadres simultaneously and at the same time under rules 3 and 4 of the Central Civil Services (Temporary Service) Rules, 1949 ;

(5) that an admission is not conclusive proof of the matter admitted, though it may in certain circumstances operate as an estoppel. At best an admission of a fact casts upon the person making the admission the burden of proving that what was admitted was not a fact ;

(6) that Article 320 of the Constitution may not be mandatory as against the President ; but a subordinate appointing authority who has to make a declaration under rules cannot ignore or abrogate the very rules under which he has to make the declaration. *Quasi-permanent* status is a creature of the rules, and rule 4(b) requires that no declaration under rule 3 shall be made except after consultation with the Public Service Commission (when recruitment to a specified post is required to be made in consultation with the Public Service Commission). An officer cannot claim the benefit of rule 3 and ignore at the same time the condition laid down in rule 4(b) ; in other words, he cannot claim the benefit of a part of the rules and refuse to be bound by the conditions of the other part.

Appeal by Special Leave from the Judgment and Order, dated the 25th November, 1955, of the Punjab High Court in Civil Writ No. 209-D of 1955, with Petition No. 81 of 1956.

For the Appellant: Mr. K. S. Krishnaswamy Aiyangar, Senior Advocate, Dr. C. V. L. Narayan, Advocate with him.

Ror the Respondent: M/s. P. A. Mehta, R. Ganapathy Iyer and R. H. Dhebar, Advocates.

JUDGMENTS

The following judgments of the Court were delivered by—

Das, J.

S. K. DAS, J.—On May 1, 1946, Shri K. S. Srinivasan, appellant before us, was appointed to post of Liaison Officer, All-India Radio, on a pay of Rs. 350 per month in the scale of Rs. 350—20—450—25/2—550. The appointment was made on the recommendation of the then Federal Public Sevice Commission, and the advertisement or memorandum of information for candidates, as it is more properly called, issued by the Public Service Commission when calling for applications for the said post, related to the recruitment for nine posts of Listeners' Research Officers and nine posts of Liaison Officers, All-India Radio. It was stated in the said memorandum that the posts were permanent and pensionable, but would be filled on a temporary basis; the memorandum further stated that if the persons concerned were retained in service and confirmed in the posts, they would be allowed pensionary benefits and would also be eligible to contribute to the General Provident Fund. In the first instance the appointments were made on probation for six months subject to termination on certain conditions mentioned in para 4 of the memorandum,

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which need not be set out at this stage. The duties of a Liaison Officer were stated in para 5 of the memorandum, the main duty being to organize and conduct publicity for the programmes and other activities of a Radio Station. The designation Liaison Officer was later changed to Public Relations Officer, and along with other posts of Listener Research Officer and Assistant Station Director, the posts of Public Relations Officers were upgraded to Rs. 450—25—500—30—800 with effect from January 1, 1947. On May 23, 1952, the Director-General, All-India Radio, passed an order bearing No. 2(1) A/50 in which it was stated that whereas the appellant had been in continuous Government service for more than three years and a declaration had been issued to him in pursuance of rules 3 and 4 of the Central Civil Services (Temporary Service) Rules, 1949, and whereas an appointment to the post of Public Relations Officer was required to be made in consultation with the Union Public Service Commission and their concurrence to the appointment had been obtained, the appellant was appointed to the Public Relations Officer's grade in a quasi-permanent capacity with effect from May 1, 1949. On September 3, 1952, however, the appellant received an order from the said Director-General in which it was stated that his services would not be required after October 6, 1952. The appellant was naturally taken by surprise on receipt of this order and made a representation on September 8, 1952, in which he stated that as a quasi-permanent Public Relations Officer he had a claim to an alternative post in the same grade, so long as any post in the same grade was held by a Government servant not in permanent or quasi-permanent service. On September 13, 1952, the appellant was informed by means of an order that he was appointed to officiate as Assistant Station Director, Madras

(the appellant was then working as Public Relations Officer, All India Radio, Madras) in a purely temporary capacity until further orders. On September 19, 1952, the appellant was informed that his representation dated September 8, 1952, was under consideration and a suggestion was made that in the meantime he should apply for one of the posts of Assistant Station Directors which had been advertised by the Union Public Service Commission. Then, on October 4, 1952, the appellant submitted a further representation in which he said that under the rules in question, namely, the Central Civil Service (Temporary Service) Rules, 1949, he was entitled to be retained in service in a post of the same grade and under the same appointing authority, and it was, therefore, not necessary that he should be re-selected for the post of Assistant Station Director by the Union Public Service Commission. In the concluding paragraph of his representation the appellant stated that in deference to the suggestion made in the letter of the Director-General dated September 19, 1952, he was enclosing an application to the Union Public Service Commission for the post of Assistant Station Director and if, after due consideration, the Diroctor-General decided that the appellant should apply for the post of Assistant Station Director, his application should be forwarded to the Union Public Service Commission. While Government was considering the representation of the appellant, the Union Public Service Commission interviewed in March, 1953, candidates for the posts of Assistant Station Directors. The appellant appeared before the Commission on March 26, 1953. On April 18, 1953, the appellant was informed that the Union Public Service Commission had not selected him and the appellant was again informed that "it was not possible to continue him in

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service". The appellant made fresh representations to the effect that the order purporting to terminate his service on the ground that the Union Public Service Commission had not selected him for the post of Assistant Station Director, was an illegal order inasmuch as the appellant held a quasi-permanent status and was entitled to hold a post in the grade of Assistant Station Directors, as long as anyone not in permanent or quasi-permanent service continued to hold such a post. To these representations the appellant received a reply to the effect that Government had decided to keep in abeyance the post of Public Relations Officer held by him and therefore, it was not possible to retain him in that post and the appellant was given an apportunity to show cause why his service should not be terminated on the expiry of the period of notice with effect from July 18, 1953. A reply was asked for within 15 days. In reply, the appellant again pointed out that having been given a quasi-permanent status he was entitled to be retained in service under the rules governing Government servants holding such status, and the termination of his service would be in violation of Article 311 of the Constitution. On July 3, 1953, the appellant received a memorandum dated June 9, 1953. This memorandum said: "Shri Srinivasan's representation has now been considered by Government. As the posts of Public Relations Officers from a cadre by themselves and do not belong to the cadre of Assistant Station Directors, he cannot claim any protection in the post of Assistant Station Director on account of his being quasi-permanent as Public Relations Officer. Shri Srinivasan may please be informed accordingly."

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On July 10, 1953, the appellant made a fresh representation, this time to the Secretary, Ministry

of Home Affairs, in which he repeated his former objections and contended that the proposed termination of his service was irregular, unjust and illegal. He submitted that the order terminating his service was in contravention of Article 311 of the Constitution and he further said that "though the post of Public Relations Officer and Assistant Station Director were not declared to be in the same cadre, there can be no dispute that the posts are in the same grade." On August 17, 1953, the appellant received a memorandum to the effect that the notice of the termination of his service as Assistant Station Director, dated April 18, 1953, as subsequently amended by corrigenda, dated May 12, 1953, and July 3, 1953, was withdrawn, and it also stated that the notice, dated May 26, 1953, asking the appellant to show cause why his service should not be terminated was cancelled. This was followed by an order, dated December 14, 1953. This order has an important bearing on the points urged before us and must be quoted in full:

"S. No. 41(R)

Government of India,

Director-General, All-India Radio.

No. 1 (113)-SI/52.

New Delhi, the 14th December, 1953.

ORDER

In this Directorate Order No. 2(1)-A/50, dated the 23rd May, 1952, Shri K. S. Srinivasan, then officiating Public Relations Officer, All-India Radio, was appointed to that post in a quasi-permanent capacity with effect from the 1st May, 1949. Subsequently, in August, 1952, all posts of Public Relations Officers, except the one in the

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External Services Division, were held in abeyance. As the post of Public Relations Officer belongs to the same grade as Assistant Station Director carrying identical scales of pay Shri Srinivasan was appointed Assistant Station Director in the External Services Division with effect from the 22nd September, 1952. Under the provision contained in the Ministry of Home Affairs Office Memorandum No. 54/136/51-NGS, dated the 24th April, 1952, Shri Srinivasan will carry with him the *quasi-permanent* status of his former post of Public Relations Officer while holding the post of Assistant Station Director.

(Sd.) M. Lal,

Director-General."

A copy of the order was also sent to the Secretary, Union Public Service Commission. Unfortunately, the appellant soon found that his troubles did not end with the order, dated December 14, 1953. On August 31, 1955, the appellant was informed by the then Secretary, Ministry of Information and Broadcasting, that the Union Public Service Commission had objected to his appointment as Assistant Station Director, holding that such appointment was contrary to the regulations; the appellant was then asked that he should relinquish the post of Assistant Station Director and accept a temporary post of Assistant Information Officer in the Press Information Bureau or, in the alternative, he should "clear out". It may be stated here that the post of Assistant Information Officer offered to the appellant carried a scale of pay lower than that of an Assistant Station Director, namely, Rs. 350—25—500—30—620. As this new offer deprived the appellant of his *quasi-permanent* status and also amounted to a reduction in his rank, the appellant immediately sent fresh representations to the Home Ministry,

Director-General, and the Minister for Information and Broadcasting. On September 7, 1955, the appellant received the final order of Government, which is the order complained of in the present appeal. That order was in these terms:—

> "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 Officer 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 Assistant 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 the 14th December, 1953. The Union Public Service Commission have not accepted

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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 Assistant Station Director immediately.

"To save him the hardship of retrenchment, the question of offering Sri Srinivasan alternative employment has been considered. There is no intention of reviving the posts of Public Relations Officer that were held in abeyance in 1952. For publicity and public relations work of All India Radio, a few posts of Assistant Information Officer 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 Station 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 continued to make some more representations which were, however, rejected, and on October 11, 1955, an order was passed transferring the appellant to the Press Information Bureau as officiating Assistant Information Officer with immediate effect and the appellant was directed to hand over charge of the post of Assistant Station Director immediately and to take over his post in the Press Information Bureau forthwith. The validity of this order, which is also challenged in the present appeal, necessarily depends on the validity of the earlier order, dated September 7, 1955.

The appellant refused to accept the lower post of Assistant Press Information Officer and on October 19, 1955, he made over charge under protest. On November 25, 1955, the appellant filed a petition, numbered Writ Petition 209-D of 1955 in the Punjab High Court in which he prayed for the issue of a writ of *certiorari* or any other appropriate writ for quashing the orders, dated September 7, 1955, and October 11, 1955, and asked for an order directing his reinstatement as Assistant Station Director in the External Services Division of the All India Radio, the post which he was holding when the orders complained of were passed. This petition was summarily dismissed by the Punjab High Court on the same date. The appellant then moved the said High Court for a certificate for leave to appeal to this Court. That application was also dismissed on March 16, 1956. Thereupon, the appellant moved this Court for Special Leave and obtained such leave on April 23, 1956. While moving the application for special

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leave, learned counsel for the appellant stated that without prejudice to the contentions of either party, the appellant would take up the post of Assistant Information Officer in the Press Information Bureau pending disposal of the appeal.

On April 22, 1956, the appellant also filed a petition under Article 32 of the Constitution and in this petition the appellant has challenged the order, dated September 7, 1955, on the ground that the order violates the provisions of Articles 14 and 16 of the Constitution.

The present judgment will govern the appeal by special leave as also the petition under Article 32 of the Constitution. It will be convenient to take up the appeal first. The main question for decision in the appeal is whether the impugned orders violate the constitutional guarantee given by Article 311(2) to the appellant, who is admittedly the holder of a civil post under the Union. The true scope and effect of Article 311 of the Constitution was fully considered in a recent judgment of this Court in *Parshotam Lal Dhingra* v. *Union of India* (1), pronounced on November 1, 1957, and it was there held by the majority as follows (we are quoting such observations only as have a bearing on the present case).

> "Shortly put, the principle is that when a servant has a 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

(1) A.I.R. (1958) S.C. 36, 48

as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has 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 a punishment. One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of 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, would 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."

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Therefore, the critical question is—did the appellant have a right to the post of Assistant Station Director, which he was holding, when the impugned orders were passed? If he had such a right, the impugned orders will undoubtedly be bad because they deprive the appellant of that right inasmuch as they terminate his service in the post he was holding and reduce him to a lower post. Admittedly, there was no proceeding against the appellant for disciplinary action and he had no opportunity of showing cause against any such action. If, on the contrary, the appellant had no right to the post he was holding and under the rules governing the conditions of his service, his service was liable to be terminated, then the appellant is not entitled to the protection of Article 311. On behalf of the appellant the contention is that under the Civil Services (Temporary Service) Rules, 1949, he held a quasi-permanent status in the post of Public Relations Officer to which he was first appointed and he carried that status to the post of Assistant Station Director to which he was later appointed; therefore, he had a right of which he could not be deprived except in accordance with those rules, and the impugned orders were passed in derogation of those rules. Furthermore, it is contended on behalf of the appellant that the Union Public Service Commission failed to appreciate the correct legal position and their opinion, officious or otherwise, was neither decisive nor binding on Government or the appellant.

On behalf of the Union of India, respondent before us, it has been conceded that the Central Civil Services (Temporary Service) Rules, 1949, are the relevant rules governing the conditions of the appellant's service. But the argument is that the impugned orders are in consonance with

those rules and the service of the appellant who was in quasi-permanent service in the post of Public Relations Officer was liable to termination under rule 6(1)(ii), because (1) a reduction had occurred in the number of posts of Public Relations Officers available for Government servants not in permanent service, and (2) the post of Assistant Station Director to which the appellant was appointed in a purely temporary capacity was not a post of the same grade as the specified post held by the appellant so as to entitle him to the benefit of the proviso to rule 6(1)(ii). On behalf of the respondent it has been further submitted that the order dated December 14, 1953 was issued under a misapprehension and when the correct position was rightly pointed out by the Union Public Service Commission, Government passed the impugned order of September 7, 1955 and by way of mitigating the hardship of the appellant who was faced with the prospect of immediate unemployment offered him the post of Assistant Information Officer—a post created for the performance of duties similar to those of the whilom Public Relations Officer.

These are the rival contentions which fall for consideration by us. We must at this stage read the relevant rules called the Central Civil Services (Temporary Service) Rules, 1949, hereinafter to be referred to as the Temporary Service Rules. Rule 2 defines certain terms used in the Temporary Service Rules. We are concerned with two of such terms—"quasi-permanent service" and "specified post". Quasi-permanent service" means "temporary service commencing from the date on which a declaration issued under rule 3 takes effect and consisting of periods of duty and leave (other than extraordinary leave) after that date"; "specified post" means "the particular post, or the

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particular grade of post within a cadre, in respect of which a Government servant is declared to be quasi-permanent under rule 3". Rule 3, which we must read in full, is in these terms:—

"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, and

(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."

Rules 4 and 6(1) are also important for our purpose and must be reproduced in full—

"Rule 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 Public Service Commission no such declaration shall be issued except after consultation with the Commission."

"Rule 6. (1) The service of a Government servant in 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 of 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 as among Government servants in quasi-permanent service whose specified posts are of 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."

As rule 6(1) refers to rule 7, we may as well quote that rule—

"Rule 7. (1) Subject to the provision of this rule, a Government servant in respect of whom a declaration has been made under rule 3, shall be eligible for a permanent appointment on the occurrence of a vacancy in the specified posts which may be reserved for being filled from 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 a right to claim a permanent appointment to any post.

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(2) Every appointing authority shall, from time to time, after consultation with the appropriate Departmental Promotions Committee, prepare a list, in order of precedence, of persons in quasi-permanent service who are eligible for a permanent appointment. In preparing such a list, the appointing authority shall consider both the seniority and the 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 permanent appointment to any grade or post may be made purely in order of seniority."

Now, it is beyond dispute and in fact admitted that the appellant held a quasi-permanent status in the grade of posts known as Public Relations Officers. The order dated May 23, 1952, stated in clear terms that (i) a declaration had been issued in respect of the appellant in pursuance of rules 3 and 4 of the Temporary Service Rules, (ii) concurrence of the Union Public Service Commission had been obtained and (iii) the grade of posts in respect of which the appellant held quasi-permanent status was the *Public Relations Officer's grade*. Under rule 4 a declaration issued under rule 3 shall specify the particular post or the particular grades of posts within a cadre in respect of which it is issued and the date from which it takes effect. A 'cadre', according to Fundamental Rule 9(4), means the strength of a service or a part of a service sanctioned as a separate unit. Some indication of what is meant by a grade can be obtained from

Article 29 of the Civil Service Regulations. That Article states—

> "29. Grade and Class—Appointments are said to be in the same "Class" when they are in the same Department, and bear the same designation, or have been declared by the Government of India to be in the same class. Appointments in the same class are sometimes divided into "Grades" according to pay. Note:—Appointments do not belong to the same Class or Grade unless they have been so constituted or recognised by proper authority. There are no Classes or Grades of Ministerial Officers."

It is, therefore, clear that so far as the posts known as Public Relations Officers, All-India Radio, are concerned, they formed a grade and the appellant held a quasi-permanent status in that grade.

Rule 6(1) of the Temporary Service Rules lays down how the service of a Government servant in quasi-permanent service can be terminated. We are concerned in this case with clause (ii) of the said rule. That clause says that the service of a Government servant in quasi-permanent service can be terminated "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". Learned counsel for the appellant has very strongly submitted that there was no reduction within the meaning of the clause in the present case, far less any certification of such reduction. Learned counsel for the respondent has urged with equal vehemence that there was a reduction within the meaning of the clause and the appointing authority had certified such reduction.

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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 published, Government also issued a 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 memordandum stated—"Under Rule 4(a) 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 such grade 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 the 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 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 that 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. In his representation, dated July 10, 1953, the appellant himself admitted that as per Director-General, All-India Radio's memorandum dated May 21, 1953, he was informed that "it was decided to keep the post in abeyance". 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 th 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.

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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 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 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 memordandum 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.

Now, we come to the far more important question of the effect of the proviso to clause (ii). The crucial point in that connection is whether the post of Assistant Station Director, to which the appellant was appointed in a purely temporary capacity on September 13, 1952, was a *post within the same grade or cadre* as the posts of Public Relations Officer. If it is in the same grade or within the same cadre, the appellant will retain his quasi-permanent status and the shifting, to use the words of the explanatory memorandum quoted

earlier, will not affect his rights. This point has caused us considerable anxiety, and on a very careful consideration we have reluctantly but ineluctably come to the conclusion that the post of Assistant Station Director is not in the same grade or cadre as the post of Public Relations Officers.

On this point it is necessary to refer to some earlier history regarding the reorganization of the All India Radio in 1944. The reorganisation, as enunciated in letter No. K-404/2397, dated December 15/28, 1944, from the Government of India, Ministry of Information and Broadcasting, was in three parts ; (1) revision of the scales of pay of certain existing posts; (2) creation of some additional posts ; and (3) creation of certain new categories of posts. The posts of Liaison Officer and Listeners' Research Officer came within the third category and *nine posts* were created under each head. The post of Assistant Station Directors came within the first two categories. In 1950 Government made necessary declaration in respect of the cadres on the programme side of the All India Radio in their letter No. 17(83)/49-BLI, dated March 20, 1950. The cadres so constituted included that of Assistant Station Directors; that cadre consisted of the following posts ; (a) Assistant Station Directors: (b) Instructor (Programmes); (c) Assistant Director of Programmes; (d) Listener Research Officer; (e) Officer on Special Duty (Kashmir); and (f) Officer on Special Duty (Hyderabad)—the last two being temporary. The Public Relations Officers were not put in the cadre of Assistant Station Directors. Exactly, the same position is envisaged in paragraph 129 of Chapter IV, Section 1, of the A.I.R. Manual, Volume I. Under fundamental Rule 9(31) (c) a "post is said to be on the *same* time-scale as another post on a time-scale if the two time-scales are

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identical and the posts fall within a cadre, or class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility, in a service or establishment or group of establishments". It is worthy of note that *two* conditions must be fulfilled for the application of Fundamental Rule 9(31)(c): one is that the two time-scales must be identical and the other is that the two posts must fall in the same cadre or class in a cadre. Paragraph 129 referred to above states in terms that only four categories of posts mentioned therein fall within the cadre of Assistant Station Directors, and those categories do not include Public Relations Officers. Learned Counsel for the appellant has referred us to Appendix 1 of the A.I.R. Manual, Volume II, which gives the scales of pay and classification of posts in the All India Radio. He has pointed out that in that appendix the posts of Assistant Station Directors (No. 77), Listener Research Officer (No. 78) and Public Relations Officer (No. 79) all come within Central Services, Class II, and bear the same scale of pay and they also belong to the Programme side. We have already pointed out that the same scale of pay is not the only test, nor does the fact that all the above-mentioned posts belong to Class II determine the question whether they belong to the same grade or cadre. We have referred to the constitution of the cadre of Assistant Station Directors in 1950, which shows clearly enough that Public Relations Officers do not belong to that cadre. Many anomalous results will follow if the scale of pay or classification of the service, were taken to be the sole test for determining whether the posts belong to the same grade or cadre. The appendix referred to by learned counsel for the appellant shows that the post of Assistant Director of Monitoring Services bears the same scale of pay and also

belongs to class II ; yet it is not suggested that that post has any cadre or grade affinity with the posts of Assistant Station Directors. A Chemist (No. 106) and an Assistant Engineer (No. 105) have the same scales of pay and both belong to Class II; but they do not belong to the same grade or cadre; otherwise a strange result will follow in that a Chemist holding a quasi-permanent status will be entitled to be appointed as an Engineer, on the reduction of the Chemist's post.

On behalf of the appellant it has been next argued that the order, dated December 14, 1953, contains a clear admission to the effect that the post of Public Relations Officer belongs to the same grade as Assistant Station Director, and the order shows that it was made after unofficial consultation with the Ministry of Informtaion and Broadcasting. It is contended that this admission should be accepted as an admission of fact and held binding on the respondent, particularly when the respondent has not produced the particular order by which a separate cadre, if any, of Public Relations Officers might have been created, in order to disprove the correctness of the admission. We are unable to accept this argument. An admission is not conclusive proof of the matter admitted. though it may in certain circumstances operate as an estoppel. It is not suggested that a question of estoppel arises in this case (a point which we shall again advert to); at best, it may be said that the respondent having once admitted that the post of Public Relations Officer belonged to the same grade, the admission casts upon the respondent the burden of proving that what was deliberately asserted on December 14, 1953, is not a fact. It is unfortunate that this case was summarily dismissed in the High Court and the respondent was not called upon to make an affidavit

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and file the necessary documents at that stage. We have now a copy of the letter, dated December, 15/28, 1944, by which the nine new posts of Liaison Officer (later designated as Public Relations Officer) were created and the letter, dated March 20, 1950, by which the cadre of Assistant Station Directors was declared. These letters we have already referred to, and they leave little room for doubt in the matter: they show clearly enough that the posts of Public Relations Officers do not belong to the same grade or cadre as the posts of Assistant Station Directors. As a matter of fact, the respondent said so in the memorandum of June 9, 1953, though later, on December 14, 1953, a different statement was made. It has been submitted before us that even in the impugned order of September 7, 1955, the respondent does not say that a mistake was made; the respondent merely states that the appellant was irregularly transferred as Assistant Station Director and was irregularly allowed to carry a quasi-permanent status to the new post. We think that the impugned order of September 7, 1955, must be read as a whole, and so read, it shows that Government had earlier made a mistake in thinking that the posts of Public Relations Officers belonged to the same grade or cadre as the posts of Assistant Station Directors, and the mistake was rectified when the Union Public Service Commission pointed it out.

We shall now consider the further question if the order, dated December 14, 1953, can be read as a separate or independent declaration in favour of the appellant in respect of the post of an Assistant Station Director, under rules 3 and 4(a) of the Temporary Service Rules. We shall consider this question from four points of view: (1) whether on the terms of the order itself, it can be read as an independent declaration under the relevant rules; (2) whether the relevant authority

intended the order as an independent declaration under rules 3 and 4(a) and if the parties thereto understood the order in that sense; (3) if the order is so read, whether consultation with the Public Service Commission was necessary under rule 4(b); and (4) whether any estoppel arises out of the order.

It seems to us that the order itself is very clear and if it is contrasted with the earlier order, dated May 23, 1952, (by which a declaration was indeed made in favour of the appellant under rules 3 and 4 of the Temporary Service Rules in respect of the post of Public Relations Officer), it is at once clear that the order, dated December 14, 1953, is not a declaration under rules 3 and 4 of the said rules. What does the order state in terms? Firstly, it states that the appellant was appointed in a quasi-permanent capacity to the post of Public Relations Officer; secondly, it states that all the posts of Public Relations Officer are held in abeyance except one; thirdly, it states that as the post of Public Relations Officer belonged to the same grade as Assistant Station Director carrying identical scales of pay, the appellant was appointed as Assistant Station Director in September, 1952, and fourthly, it states that under the instructions contained in a particular office memorandum issued from the Ministry of Home Affairs the appellant was entitled *to carry the quasi-permanent status of his former post of Public Relations Officer while holding the post of Assistant Station Director.* The order means what it in terms states and must operate according to its tenor; and if the order is read as a whole, without straining or perverting the language, it seems clear that it is not a declaration under rules 3 and 4 of the Temporary Service Rules. It merely gives effect to the instructions contained in the Home Office memorandum referred to therein and

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states that the appellant will carry with him his quasi-permanent status of the former post while holding the post of Assistant Station Director. It is obvious that there cannot be a declaration of quasi-permanent status in two posts of different grades or different cadres simultaneously and at the same time. The order, dated December 14, 1953, makes it abundantly clear that the appellant retained his quasi-permanent status in the former post of Public Relations Officer and on the mistaken view that the post of Public Relations Officer belonged to the same grade as Assistant Station Director, he was allowed to carry the same status while holding the new post. This is sufficiently borne out by a reference to the Home Office memorandum No. 54/136/51 N.G.S., dated April 24, 1952, a copy of which has been placed before us. That memorandum said, "The undersigned is directed to say that a question has been raised whether a quasi-permanent Government servant on transfer from one office to another, should be allowed to retain a lien on the post to which he has been appointed in a quasi-permanent capacity. A reference in this connection is invited to sub-paragraph (c) of the Explanatory Memorandum of Rule 2 of the Central Civil Services (Temporary Service) Rules, 1949, under which a Government servant who is declared as quasi-permanent in respect of a particular post can be shifted from one post to another within the cadre or grade concerned due to reduction or other causes without his rights being affected. In other words, if a quasi-permanent employee is transferred from one office to another within the same grade, he will carry with him his quasi-permanent status." The order dated December 14, 1953, purported to give effect to the decision embodied in the aforesaid memordandum, and was in no sense an independent declaration under rules 3 and 4 of the

Temporary Service Rules. If it were an independent declaration in respect of a different and new post, a reference to the office memorandum was wholly unnecessary; it was equally unnecessary to recite that the appellant held a quasi-permanent status in his former post and that the former post belonged to the same grade as the new post and, therefore, *he carried his former status to the latter post.* In the order itself there is no reference to rules 3 and 4 and it is in sharp contrast to the order dated May 23, 1952, which was indeed a declaration under the said rules. To hold that the order dated December, 14, 1953, is an independent declaration under rules 3 and 4 is to run counter to the entire tenor of the document.

It is worthy of note that under rule 4(a), a declaration issued under rule 3 shall specify the particular post or particular grade of posts within a cadre in respect of which it is issued and the date from which it is to take effect. The order dated December 14, 1953, does not state that the appellant is declared to hold a quasi-permanent status with regard to the post of Assistant Station Director; on the contrary, it states that he carries with him the *quasi-permanent status of his former post.* If the order dated December 14, 1953, were an independent declaration in respect of the post of Assistant Station Director, it would have specified that post and also the date with effect from which the order was to take effect in regard to that post. We are, therefore, satisfied that the order dated December 14, 1953, cannot, on its terms, be treated as a declaration under rules 3 and 4 of the Temporary Service Rules.

It may be stated here that learned counsel for the appellant did not urge that the order dated

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December 14, 1953, was an independent declaration under rules 3 and 4 or that his client understood the order in that sense. It is also evident from the various documents in the record that the order was never intended to be a declaration under rules 3 and 4 of the Temporary Service Rules; and the appellant himself took the orders as merely giving effect to the office memorandum cited therein, the main plank of the appellant's case being that the post of Assistant Station Director is in the same grade as the post of Public Relations Officer. The appellant was appointed to officiate as Assistant Station Director in a purely temporary capacity until further orders on September 13, 1952. Even before that date the appellant was asked to apply for the post of an Assistant Station Director through the Public Service Commission. On June 9, 1953, long after the appellant had been appointed to officiate as Assistant Station Director, he was told that he could not claim any protection in the post of Assistant Station Director on account of his quasi-permanent status as Public Relations Officer. Even in the letter which the Ministry of Information and Broadcasting wrote to the Public Service Commission on June 22, 1954, it was stated: "The Commission were not consulted at the time of shifting of quasi-permanent status of Shri Srinivasan from the grade of Public Relations Officer to that of Assistant Station Director in view of the provision of sub-paragraph (c) of the Explanatory Memorandum of Rule 2 of the Central Civil Service (Temporary Service) Rules which states that 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 the number of posts or other causes. Such shifting does not affect his rights. As the posts of Assistant Station Director

and Public Relations Officer carry the same grade of pay, consultation with the Commission in this case was not considered necessary". This letter makes it abundantly clear that the appropriate authority never intended the order dated December 14, 1953, to be a declaration under rules 3 and 4 of the Temporary Service Rules.

Even the appellant did not take the order in that sense. In all his representations, the appellant's plea was that the post of Public Relations Officer in which he held a quasi-permanent status was in the same grade as that of Assistant Station Director and, therefore, he carried his status in the former post to his new post. He never pleaded anywhere that the order dated December 14, 1953, was an independent declaration in respect of the post of Assistant Station Director. We refer first to paragraph 17 of the appellant's writ petition to the Punjab High Court. In that paragraph the appellant said: "That after four months' careful consideration and discussion between the Ministry of Information and Broadcasting, Home Ministry and the Union Public Service Commission, Government issued an order dated December 14, 1953, declaring that the petitioner will carry quasi-permanent status in his new post of Assistant Station Director *as per rules relating to the transfer of quasi-permanent officers.* In paragraph 30 the appellant again stated that the post of Assistant Station Director and Public Relations Officer were constituted and recognized to be in the same grade and under rule 2(c) of the Temporary Service Rules the shifting from one post to another in the same grade did not affect his status; in other words, the appellant also understood the order dated December 14, 1953, not as an independent order declaring his quasi-permanent status in the post of Assistant Station Director,

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but merely as giving effect to rule 2(c) of the Temporary Service Rules by reason of the fact, which now appears to be incorrect, that the post of Public Relations Officer was in the same grade as that of Assistant Station Director. Even in his statement of the case, the appellant stated—"It may be emphasised that the Government in their order dated December 14, 1953, reiterated the appellant's quasi-permanent status in the post of Assistant Station Director, not on the basis of the appellant's representation but on the authority of the Home Ministry's order No. 54/136/51-NGS, dated April 24, 1952, relating to the lien of quasi-permanent employees." The reference to the Home Ministry's office memorandum shows how the appellant understood the order dated December 14, 1953.

Rule 4(b) of the Temporary Service Rules states that when recruitment to a specified post is required to be made in consultation with the Public Service Commission, no declaration under rules 3 and 4(a) shall be issued except after consultation with the Commission. In the view which we have taken of the order dated December 14, 1953, it is not really necessary to decide in the present case whether the provisions of rule 4(b) are merely directory or mandatory. It is sufficient to state that the Public Service Commission was not consulted before the order dated December 14, 1953, was issued, and the appointing authority did not intend the order as a declaration under rules 3 and 4(a). *In the State of Uttar Pradesh* v. *M. L. Srivastava* (1), it has been held that the provisions of Article 320(3)(c) of the Constitution, as respects consultation of the Public Service Commission on all disciplinary matters affecting a person serving the Government of India or a State

(1) A.I.R. 1957 S.C. 912

Government, are not mandatory in spite of the use of the word 'shall' therein. That decision is founded on the following grounds: (1) the proviso to Article 320 itself indicates that in certain cases or classes of cases the Commission need not be consulted; (2) the requirement of consulting the Commission does not extend to making the advice of the Commission binding on Government as respects disciplinary matters; and (3) on a proper construction of the Article, it does not confer any right or privilege on an individual public servant. We may point out that none of these grounds have any application so far as rule 4(b) of the Temporary Service Rules is concerned. Article 320 may not be mandatory as against the President; but a subordinate appointing authority who has to make a declaration under the rules cannot ignore or abrogate the very rules under which he has to make the declaration. Quasi-permanent status is a creature of the rules, and rule 4(b) requires that no declaration under rule 3 shall be made except after consultation with the Public Service Commission (when recruitment to a specified post is required to be made in consultation with the Public Service Commission). An officer cannot claim the benefit of rule 3 and ignore at the same time the condition laid down in rule 4(b) ; in other words, he cannot claim the benefit of a part of the rules and refuse to be bound by the conditions of the other part.

Now, as to estoppel: in our view, the appellant was not misled in any way as to his quasi-permanent status—a status which he undoubtedly held in the post of Public Relations Officer; the mistake that was made was in thinking that the post of Assistant Station Director was in the same grade as that of Public Relations Officer and then giving effect to the Home office memorandum, referred to previously, on the basis of that mistake.

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We do not think that any question of estoppel really arises, and in fairness to learned counsel for the appellant it must be stated that he has not founded the case on estoppel.

Learned counsel for the appellant has contested the correctness of the opinion of the Union Public Service Commission and has suggested that the Commission had indulged in an officious opinion, because under the Union Public Service Commission (Consultation) Regulations, it was not necessary to consult the Commission. Our attention has been drawn to Regulation 3, which reads as follows so far as it is relevant for our purpose:—

> "3. It shall not be necessary to consult the Commission in regard to the selection for appointment:—
>
> (a) to a Central Service, Class I, of any Officer in the Armed Forces of the Union or any officer who is already a member of an All-India Service, Central Service Class I, a Railway Service, Class I.
>
> (b) to a Central Service, Class II, of any officer from another Central Service, Class I, or from a Central Service, Class II, or of any officer in the Armed Forces of the Union or of a Railway Service, Class II;.....
> ....."
>
> *Note.*—In this regulation, the term 'officer' does not include a person in 'temporary employment'."

The correspondence with the Union Public Service Commission has now been placed before

us. That correspondence shows that the Union Public Service Commission took the view that Regulation 3 did not apply to an officer who was in 'temporary employment' in the sense in which that expression was used when the Regulations were made, and 'quasi-permanent servant' as defined in the Temporary Service Rules also meant temporary service, but subject to certain benefits in the matter of leave, etc., and certain safeguards in the matter of termination of service. Whether the Union Public Service Commission is right in this view or not we are not called upon to decide, particularly when the Union Public Service Commission is not before us. It is enough for us to hold that the post of Assistant Station Director is not a post in the same grade or cadre as that of the Public Relations Officer. 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); nor was he entitled to the benefit of the proviso to clause (ii) so far as the post of Assistant Station Director was concerned.

For the reasons given above, we hold that there has been no violation of the constitutional guarantee under Article 311(2) in the case of the appellant. The appeal must, therefore, be dismissed.

As to the petition under Article 32 of the Constitution, we do not think that there has been any such discrimination against the appellant as is contemplated by Articles 14 and 16 of the Constitution. It is true that others who did not hold a quasi-permanent status were subsequently appointed as Assistant Station Directors *through selection* by the Union Public Service Commission. We

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can only say that it is unfortunate that the appellant was not so selected; but that does not involve the breach of any fundamental right.

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 Assisant 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 per cent because he held a post which was not (to use an expression of the Commission) 'in the field for 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.

With these observations, we dismiss the appeal and the petition, but in the circumstances there will be no order for costs.

Bose, J.

BOSE, J.—With great respect I disagree.

The appellant's services as Public Relations Officer, All-India Radio, were terminated because

of the reduction in that post. There was no other post of equal status in that grade or cadre, so I agree that he had no right to any continuance of employment.

But he was appointed to officiate as Assistant Station Director in a purely temporary capacity "until further orders", on September 13, 1952. (Order No. 1 (101)-51/52).

Later, on December 14, 1953, further orders were passed by the same authority (Order No. (113)-51/52). These orders confirmed the order appointing the appellant Assistant Station Director and concluded:—

> "Under the provision contained in the Ministry of Home Affairs Office Memorandum No. 54/136/51-NGS, dated the 24th April, 1952, Shri Srinivasan will carry with him the quasi-permanent status of his former post of Public Relations Officer while holding the post of Assistant Station Director."

This order is a "further order" and, in my judgment, it clearly and unequivocally makes him "quasi-permanent" in the new post.

It is true that this was done under a mistake which was discovered at a later date but the mistake is that of Government and others cannot be made to suffer because of the unilateral mistake of Government. I had occasion to observe, while delivering the judgment of the Court in *The Commissioner of Police, Bombay* v. *Gordhandas Bhanji* (1), that:—

> "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making

(1) (1952) S.C.R. 135, 140

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> the order of what he meant, or of what was in his mind, or what he intended to do" (and I add in this case, "what he subsequently discovered"). "Public orders made by Public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

The principle underlying those observations applies with equal force here.

Here is a man who was in no way at fault. He had served faithfully in various capacities from May, 1, 1946. His services were terminated on September 3, 1952, with effect from October 6, 1952. That was not his fault nor was it the fault of Government. It was just the fortunes of war. The post was "reduced" and there was no more room for him. No one can quarrel with that.

But before the termination took effect he was continued in service in another post on September 13, 1952, in a purely temporary capacity "until further orders". There was consequently no break and he was still in service on December 14, 1953, when he was told that he was quasi-permanent in the post of Assistant Station Director.

He accepted this position and acted on it and continued to serve in it for nearly two years. That, naturally enough, has lessened his chances of seeking other employment because after a man reaches a certain age it becomes increasingly difficult to find new employment. I do not say this was Government's fault, for no one can be blamed for not knowing where they are in this wilderness

of rules and regulations and coined words and phrases with highly technical and artifical meanings; and I think Government did all they could to assuage the hardships of an unfortunate situation. But equally, it was not the appellant's fault and in a case like this, a broad equity requires that the one least at fault should not be made to suffer.

The old technically rigid conceptions of contract and equity have given place in modern times to a juster appreciation of justice, and the fusion of law and equity in one jurisdiction has resulted in the emergence of a new equity in England more suited to modern ideas of human needs and human values. Lord Denning has cited instance after instance in his book "The Changing Law" to show how this has come about and how it is still in the process of formation, flexible and fluid with the drive behind to do real justice between man and man, and man and the State, rather than to continue to apply a set of ancient hide-bound technicalities forged and fashioned in a wholly different world with a different conscience and very different evalutions of human dignity and human rights. At pages 54 and 55 Lord Denning sums up this new orientation in legal thinking thus :—

> "In coming to those decisions, the Courts expressly applied a doctrine of equity which says a court of equity will not allow a person to enforce his strict legal rights when it would be inequitable to allow him to do so.
>
> This doctrine warrants the proposition that the courts will not allow a person to go back on a promise which was intended to be binding, intended to be acted on, and has in fact been acted on."

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I am not advocating sudden and wild departure from doctrines and precedents that have been finally settled but I do contend that we, the highest Court in the land giving final form and shape to the laws of this country, should administer them with the same breadth of vision and understanding of the needs of the times as do the Courts in England. The underlying principles of justice have not changed but the complex pattern of life that is never static requires a fresher outlook and a timely and vigorous moulding of old principles to suit new conditions and ideas and ideals. It is true that the Courts do not legislate but it is not true that they do not mould and make the law in their processes of interpretation.

Now, what was the position here when looked at broadly and fairly as an upright and just juryman of plain commonsense and understanding would do? Here was a man with several years of service and with no blemish on his conduct and reputation. He was about to lose his job. Government felt that that was hard and sought ways and means to right a wrong—not wrong in the legal sense, for no one was at fault, but wrong in the deeper understanding of men who look with sympathy at the lot of those who have to suffer for no fault of theirs. Government found, or thought they found, that they could put him in another post and they actually did so. They found that in his old post he had certain protections and they wanted and intended that he should continue to have them. Under rule 3 of the Temporary Service Rules they found that they could give him those protections in a very simple way, namely, by issuing a declaration that he was quasi-permanent in his new post. He was fully eligible for it. He had been in continuous Government service for more than three years. The appointing authority was satisfied of his qualifications,

work and character for employment in a quasi-permanent capacity. The letters of Government to the Union Public Service Commission bear that out, quite apart from the orders of September 13, 1952, and December 14, 1953, which would not have been made if Government had not considered him a fit and proper person. How can it be contended that Government did not intend him to have a quasi-permanent position in his new post simply because they said that they wanted him to have the same protections as he had before? It is not the mere form of the words that matters but the meaning that they were intended to convey and do convey.

I am not concerned at this stage with whether Government was mistaken in thinking that it could confer this status on him but with what they intended to do as a fact and what they actually did do.

They said that he "will carry with him the quasi-permanent status of his former post of Public Relations Officer while holding the post of Assistant Station Director." What else can this mean ?—especially when coupled with their previous conduct showing their anxiety to do the just and right thing by this unfortunate man, except that because he was protected before he will continue to be protected in the same way. With the deepest respect I consider it ultra technical and wrong to construe this as conditional on Government having the power. The point at this stage is not whether Government had the right and the power but what they intended; and about that I have no doubt whatever. They wanted and intended; and were straining every nerve, to do the right and just thing by him and to give him the same status as he had before, in the matter of pay,

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in the matter of service and in the protections that he had in his other post.

The interpretations that Government put upon their order at a latter date are not relevant to construe it but it is a matter of satisfaction that Government themselves viewed their action in the same light as I am doing now. In their reply to the Public Service Commission dated June 22, 1954, Government said—

> "The Commission were not consulted at the time of *shifting of quasi-permanent status of Shri Srinivasan from the grade of Public Relations Officer to that of Assistant Station Director*....."

It is clear to me that Government intended, not merely to move him from one post to the other, but also to *shift the status* and that can mean nothing less than that they intended him to have this status in the new post.

I turn next to the powers of Government. I agree that if they had no power their action would be of no avail, however, well they may have meant. But rule 4(a) of the Central Civil Services (Temporary Service) Rules, 1949, gives them that power. It says that:—

> "A declaration issued under rule 3 shall specify the particular post.....in respect of which it is issued."

It does not require the declaration to be couched in any particular form of words or in the shape of a magic incantation. All that it requires is a simple declaration and that declaration is to be found in the order of December 14, 1953.

The only question then is whether rule 4(b) renders the declaration null and void because the

Public Service Commission was not consulted. The rule runs:—

> "Where recruitment to a specified post *is required to be made* in consultation with the Federal Public Service Commission, no such declaration shall be issued except after consultation with the Commission."

The essence of the prohibition lies in the words italicised: "Is required to be made." Just what do these words mean?

Now I have no doubt that in the ordinary way these words should be construed to mean what they say. But so, I would have thought *at first blush*, do the words in Article 320(3) of the Constitution. They are equally emphatic. They are equally imperative. But this Court held in the *State of U. P.* v. *Manbodhan Lal Srivastava* (1), after a careful examination of the whole position, that they do not mean what they seem to say and that they are directive only and not mandatory.

Nor is this Court alone in so thinking. The Federal Court construed a similar provision in section 256 of the Government of India Act, 1935, in the same way: (*Biswananth Khemka* v. *The King Emperor*) (2); and so did the Privy Council in a Canadian case in *Montreal Street Railway Company* v. *Normandin* (3). Their Lordships said at page 175 that when a statute prescribes a formality for the performance of a public duty, the formality is to be regarded as directory only if to hold it as mandatory would cause serious general inconvenience *or injustice*. Will it not cause injustice here ? Why should we take a

(1) A.I.R. (1957) S.C. 912
(2) (1945) F.C.R. 99
(3) (1917) A.C. 170

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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?

If we apply the same principles here, then the words "required to be made" in rule 4(b) lose their sting and the way is free and open for us to do that justice for which the Courts exist.

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 "t'is writ 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.

I am not quarrelling with the interpretation which the Public Service Commission has placed upon these rules. I have no doubt that they should be observed, and are meant to be observed; and I have equally no doubt that there are constitutional sanctions which can be applied if they are flouted. But the sanction is political and not judicial and an act done in contravention of them cannot be challenged in a Court of Law. It is legally valid. Also, the fact that Government would not have acted in this way if they had realized that they were under a directive duty of the Constitution to consult the Union Public Service Commission first cannot alter the character of their act or affect its legal consequences. They had the power and they exercised it, consequently, their act became binding despite their

mistake. That is how I would interpret the law and administer justice.

I would allow the appeal and the petition with costs.

ORDER OF THE COURT

The appeal and the petition are dismissed. There will be no order as to costs.

B.R.T.