was warranted by the terms of the previous *ryotwari* settlement."

Section 4(10), of the Punjab Tenancy Act, defines land revenue as meaning land revenue assessed under any law for the time being in force or assessable under the Punjab Land Revenue Act, 1887. For the reasons given above, this definition makes the surcharge and the special charge under the 1954 and 1958 Acts, part of the land revenue and for this reason the words "land revenue" in section 26, of the Act, are to be read as meaning the land revenue assessed under the Punjab Land Revenue Act, the surcharge levied under the 1954 Act, and the special charge levied under the 1958 Act. All these levies together make the land revenue which is payable under section 26 of the Act. In order to determine the compensation at ninety times the land revenue, the land revenue has to be determined as above.

(10) For the reasons given above, these petitions are accepted and the respondents are directed to determine the land revenue as including the surcharge and the special charge levied under the 1954 and 1958 Acts, in the land revenue assessed under the Punjab Land Revenue Act. If the amount of compensation worked out at this rate exceeds Rs. 200.00 per acre, respondent 4 in each case shall be liable to pay compensation at the rate of Rs. 200.00 per acre but if ninety times the land revenue worked out as above falls short of Rs. 200.00 per acre, the compensation payable will be at the lesser rate. Since the matter involved interpretation of section 26 of the Act, and there is no reported judgment on the point, I leave the parties to bear their own costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

KRISHNA MURTI SULHIAN,—*Petitioner.*

versus

CANTONMENT BOARD, AMBALA AND OTHERS.—*Respondents.*

Civil Writ No. 1631 of 1967

May 29, 1969

Cantonment Fund Servants Rules (1937)—*Rule* 8(1)(c)—*Constitution of India* (1950)—*Articles* 14, 16 *and* 311—*Rule* 8(1)(c)—*Whether offends*

Articles 14 and 16—Cantonment Board's servants—Whether can claim protection of Article 311—Confidential communication by Cantonment Board to Controlling authority casting aspersions on the integrity of a Cantonment Board servant—Such servant discharged under Rule 8(1)(c)—Resolution of the Board making no mention of the aspersions—Such discharge—Whether casts stigma on the servant.

Held, that Rule 8(1)(c) of the Cantonment Fund Servants Rules, 1937, does not offend Articles 14 and 16(1) of the Constitution. The rule of 30 years' qualifying service as mentioned in this Rule is applicable to all persons who have not attained the age of 55 years and the rule of 55 years is applicable to all those persons above the age of 55 years, whether they have put in more than 30 years' service or not. The exercise of power under rule 8(1)(c) cannot be said to be arbitrary. Rule 8(1)(c) constitutes a term of the service of the servants of the Cantonment Boards and, if their services are dispensed with under that rule and not by way of punishment, they can have no grievance. (Paras 23 and 26)

Held, that the protection of Article 311(2) of the Constitution of India is not available to the servants of a Cantonment Board, as they are not the civil servants of the Union or any State Government. They are the employees of the Cantonment Board which is a body corporate under section 11 of the Cantonments Act. (Para 25)

Held, that a servant of the Cantonment Board, whose services are terminated under rule 8(1)(c) of the Rules, cannot complain that any confidential communication made by the President of the Cantonment Board to the Controlling authority contained any statement casting aspersions on his integrity. This confidential communication was only meant for the information of the Controlling authority and not for any other person nor for such servant. If that servant has come to know of it, he cannot make use of it as it was not meant for him and he cannot be said to have come by that communication in accordance with the rules or practice. If the resolution of the Cantonment Board discharging the servant and the notice issued to him do not cast any stigma on the servant, the discharge from service is not bad. (Para 35)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the Resolution No. 2 dated 28th March, 1967 discharging the petitioner from service and also the confirming orders of Respondent No. 2 dated 2nd May, 1967 and the order of Respondent No. 3 dated 30th May, 1967 and further praying that respondents Nos. 1 to 3 be directed to treat the petitioner in the service of the Board.

R. SACHAR AND HARBHAGWAN SINGH ADVOCATES, for the Petitioner.

C. D. DEWAN AND J. L. GUPTA ADVOCATES, for respondent No. 3.

H. L. SIBAL AND R. N. MITTAL ADVOCATES, for respondent No. 1.

JUDGMENT

TULI, J.—This judgment will dispose of C.W. 1631 of 1967 *Krishan Murti Sulhian* v. *Cantonment Board, Ambala, and others* and six other Civil Writs, namely, C.W. 1731 of 1967 *Hans Raj* v. *Cantonment Board, Ambala, and others, C.W.* 1786 *of* 1967 *Dr. Harbans Singh* v. *Cantonment Board, Ambala and others, C.W.* 2329 *of* 1967 *Mati Ram Sharma* v. *Cantonment Board, Ambala and others, C.W.* 2330 of 1967 *Dhian Singh* v. *Cantonment Board, Ambala and others*, C.W. 2331 of 1967, *Ram Partap Jolly* v. *Cantonment Board, Ambala, and others* and C.W. 2332 of 1967 *Basdev Ram* v. *Cantonment Board, Ambala and others*, as common questions of law arise in all these petitions and they have been argued together.

(2) The petitioner in Civil Writ 1631 of 1967, Shri Krishna Murti Sulhian was born on January 2, 1916. He joined the service of the Sadar Bazar Municipal Committee, Ambala Cantt., on July 3, 1936, and came into the service of the Cantonment Board on April 1, 1941. He was discharged with effect from April 1, 1967, on being paid three months' salary in lieu of notice. Thus on the date of his discharge from service he was of a little more than 51 years in age but had put in more than 30 years' service.

(3) Dr. Harbans Singh, petitioner in C.W. 1786 of 1967, was born on April 15, 1911, and joined the service of the Cantonment Board on October 2, 1942. He was discharged from service with effect from April 1, 1967, after he had attained the age of 55 years but the period of his service was less than 25 years.

(4) Shri Hans Raj, the petitioner in C.W. 1731 of 1967, was born on June 12, 1912. He joined the service of the Sadar Bazar Municipal Committee, Ambala Cantt., on May 1, 1935, and was discharged from service with effect from April 1, 1967. On the date of his discharge his service was of more than 30 years although he had not attained the age of 55 years.

(5) Shri Mati Ram Sharma, petitioner in C.W. 2329 of 1967, was born on December 19, 1909, and joined the service of the Cantonment Board in 1934. He was discharged from service with effect from April 1, 1967, so that by the date of his discharge he was more than 55 years of age and had also put in more than 30 years' service.

(6) Shri Dhian Singh, petitioner in C.W. 2330 of 1967, was born on February 11, 1911. He joined the service of the Board in 1943 and was discharged with effect from April 1, 1967. Thus on the date of his discharge he had attained the age of 55 years, but the period of his service was of less than 30 years.

(7) Shri R. P. Jolly, petitioner in C.W. 2331 of 1967, was born on May 30, 1911, and had joined the service of the Municipal Committee, Sadar Bazar, Ambala Cantt., in 1935. He was discharged from service with effect from April 1, 1967, so that on that date he was more than 55 years of age and had also put in more than 30 years' service.

(8) Shri Basdev Ram, petitioner in C.W. 2332 of 1967, was born on October 6, 1909. He joined the service of the Cantonment Board in 1932 and was discharged with effect from April 1, 1967.

(9) The facts are that there was a Cantonment Board for Ambala Cantt. but there also existed a Municipal Committee for the Sadar Bazar area which was later amalgamated with the Ambala Cantonment Board with effect from April 1, 1941, and the Municipal Committee ceased to exist with effect from that date. The employees of the Municipal Committee were taken over by the Cantonment Board and admittedly they are governed by the Cantonment Fund Servants Rules, 1937, hereinafter called the Rules. The relevant Rules are as under :—

> "3. Chapters I to XI of the Fundamental Rules and Supplementary Rules made under the Rules contained in the said chapters, as continued in force and subsequently modified under the Government of India Act, 1935, and the Central Civil Services (Conduct) Rules, 1955 shall, so far as they are not inconsistent with these Rules, be deemed to apply to all servants. The powers of a local Government shall be exercised in respect of such servants by the Officer-Commanding-in-Chief, the Command.
>
> 5A. (1) If, consequently upon the inclusion in a cantonment of an area theretofore included within the jurisdiction of a local authority, other than a Board persons theretofore in the service of such other local authority are transferred to the service of the Board, the Board may,

with the previous sanction of the Central Government and notwithstanding anything contained in these rules direct that all or any of such persons shall, for all or any of the purposes of these rules, be deemed to have been servants of the Board for such continuous period immediately preceding their transfer to the service of the Board as was spent by them in the service of such other local authority.

(2) In giving its sanction under sub-rule (1) the Central Government may require the imposition of such conditions, if any, as it may think proper.

8. (1) The Board or the Officer appointing a servant may discharge such servant:—

(a) during or at the end of his period of probation;

(b) on his being declared by a medical officer approved by the Board to be medically unfit for further service;

(c) at any time after he has attained the age of fifty-five years or has completed thirty years' qualifying service;

(d) in accordance with the terms of a written contract, if any, between such servant and the Board; or

(e) in pursuance of a reduction or revision of establishment, ... and not otherwise.

(2) A servant in receipt of a monthly wage, who is discharged under clause (a) of sub-rule (1), shall, in the absence of a written contract to the contrary, be entitled to one month's notice before discharge or to one month's salary in lieu thereof; and a servant not having attained the age of fifty-eight years who is discharged in pursuance of clause (c) or clause (e) of the said sub-rule shall, in the absence of a written contract to the contrary, be entitled to three months' notice before discharge or three months' salary in lieu thereof.

Provided that before a servant is discharged under clause (a) of the said sub-rule, he shall be apprised of the grounds on which it is proposed to discharge him and given an opportunity of showing cause against it.

(3) There shall be paid to a servant not having attained the age of fifty-five years who is discharged in pursuance of clause (b) or clause (e) of sub-rule (1) a compensatory gratuity calculated at the rate of half a month's pay for each completed year of qualifying service subject to a maximum of six months' pay where his qualifying service has been less than fifteen years, and twelve months' pay where his qualifying service has been more than fifteen years, and subject also to the condition that the amount of gratuity payable shall not exceed the total amount of pay which the servant would have drawn during the period subsequent to the date of his discharge, had be remained in service untill he attained the age of fifty-five years;

* * * * * * * *

11. *Suspension, removal, dismissal etc. of Cantonment Fund* Servants.—The following penalities may, for good and sufficient reasons, to be recorded in writing, be imposed on a servant by the Board namely:—

(i) censure;

(ii) fine;

(iii) withholding of increment or promotion, including stoppage at efficiency bar;

(iv) reduction to a lower post or time-scale or to a lower stage in a time scale ;

(v) recovery from the salary or any other sum due to him or from the amount standing at his credit in his Provident Fund account, the whole or part of any pecuniary loss caused to the Board by any negligence or breach of orders on his part;

(vi) Suspension;

(vii) removal or dismissal from the service of the Board;

Provided that the powers of the Board under this rule may be exercised by the Executive Officer in respect of any servant appointed by him:

Provided further that in the case of a servant who is in receipt of a monthly pay exceeding one hundred rupees, the

powers relating to reduction or removal or dismissal from service shall be exercised only by the Board :

Provided also that :—

(i) no fine shall be imposed on any servant other than a lower grade servant and in no case shall the aggregate of fines in any one month exceed such limit as may, from time to time, be specified by the Central Government;

(ii) no servant shall be removed or dismissed otherwise than on proof of dishonesty or repeated neglect or disobedience of orders, or of continued inefficiency or of insolvency or habitual indebtedness or of any other circumstance by reason of which the Board or the Executive Officer, as the case may be, is of opinion that his retention in service would be detrimental to the efficient administration of the Cantonment; and

(iii) a list of all punishments inflicted under this rule by the Executive Officer shall be submitted monthly to the Board.

11A. (1) No order imposing any of the penalities other than dismissal, removal or reduction, specified in rule 11 (other than an order based on facts which have led to his conviction by a criminal court or an order superseding him for promotion to a higher post on the grounds of his unfitness for that post) shall be passed unless servant affected has been given an adequate opportunity of making any representation that he may desire to make and such representation, if any, has been taken into consideration:—

Provided that the observance of this sub-rule shall not be necessary for placing a servant under suspension, and where in any particular case there is any difficulty in observing the provisions of the sub-rule, the same may, for reasons to be recorded, be waived without causing injustice to the servant concerned.

(2) A copy of the order so passed and grounds thereof shall be delivered to the servant personally or by registered post.

(3) A servant superseded for promotion to a higher post may ask, in writing, for grounds as to why he has not been promoted, and the Board shall state the ground or grounds for his information.

22. *Termination of Service.*—(1) No servant shall be retained in the service of a Board after he attains the age of fifty-eight years except with the sanction of the Officer-Commanding-in-chief, the Command, in respect of servants other than lower grade servants. But retention in service of a servant other than a lower grade servant or a lower grade servant, after he has attained the age of fifty-eight years may be sanctioned by the Officer Commanding-in-chief, the Command or the Board, as the case may be, for a period not exceeding one year at a time and subject to such directions as the Central Government may from time to time issue, but under no circumstances shall a servant be retained in service after he attains the age of sixty years.

(2) In the case of a servant whose year, or year and month, of birth are known, but not the exact date, the 1st July, or 16th of the month, respectively, shall be deemed to be date of birth for determining his age for the purpose of this rule."

(10) The petitioners have been discharged in exercise of the powers of the Board under rule 8(1). The annexures filed by the respondents show that the employees of the Municipal Committee, who were taken over by the Board were offered the posts by the Board on the salary they were getting in the grade then applicable to them with effect from April 1, 1941, subject to the provisions of the rules and they were asked to inform their willingness or otherwise to accept the offer in writing. The various employees who were then in the service of the Municipal Committee accepted the new offer. The Government of India, Defence Department, issued Letter No. 16472/D.4, dated the 5th January, 1942, to the G.O.C-in-chief, Northern Command, Rawalpindi, on the subject of the Establishment of the Cantonment Board, Ambala, on the amalgamation of the Sadar Bazar with the Cantonment. A copy of that letter is Annexure R. 2 to the written statement filed by respondent 1, the Cantonment Board. This letter was issued by the Government of India under rule 5-A of the Rules and it was stated therein that "with effect from the 1st April, 1941, on the inclusion of the Sadar Bazar area into the Cantonment with the exception of those whose services have not yet been confirmed or else such others whose appointments have been ordered to be abolished, be deemed to have been servants under the Cantonment Board for such continuous periods immediately preceding the transfer of the aforesaid

employees as was spent by them in the service of the said Municipal Committee, and further subject to the following conditions:—

(a) the grant of this privilege will not in any way affect the present pay and grade of the incumbents concerned.

(b) Full benefit of the leave earned under the rules applicable to each incumbent individually will be given.

(c) The continuous period immediately preceding the 1st April, 1941 spent in the service of the late Municipal Committee shall count for bonuses admissible under rule 39 of the Cantonment Fund Servants Rules, 1937: provided that from the amount normally payable under Rule 39(2) *ibid* shall be deducted the total extra contribution at the rate of half anna per rupee on their monthly salary received by the individuals during their service under the late Municipal Committee, this amount being deducted from the first payable bonus.

(d) The seniority of all aforesaid persons within the particular grades in which they are at present placed individually shall, for the purpose of promotion to the next higher grade, be determined on the merits of each case.

These conditions were also to apply to such servants of the late Municipal Committee who might be confirmed at a future date. By virtue of this letter, the service rendered by the petitioners, who had been in the service of the Municipal Committee was considered to be the service under the Cantonment Board for all purposes.

(11) Rule 8(1)(c) previous to its amendment in 1965, read as under :—

"8. (1) The Board or the officer appointing a servant may discharge such servant—

(c) on his attaining the age of 55 years or on the expiration of any further period for which he is retained in service after attaining that age."

This clause was amended in 1965 to read as under :—

8. (1) The Board or the Officer appointing a servant may discharge such servant—

(c) at any time after he has attained the age of fifty-five years or has completed thirty years' qualifying service:

(12) After the amendment a resolution was passed by the Cantonment Board on November 25, 1965, noting the amended rules and resolving that "A quarterly report of employees completing the age of 55 years or 30 years' service will be put up to the Board for its information and action under new Rule 3 where necessary." On February 7, 1966, a list of employees completing the age of 55 years or 30 years' service on 31st December, 1966, was laid on the table, as was desired by the resolution of the Board dated November 25, 1965, and the following resolution was passed:—

(13) "The Cantonment Executive Officer will assess the efficiency of the employees who have crossed the age of 55 years with a view to ascertain their suitability of being retained in service and whether or not retirement of unsuitable employees is in public interest. His report will be placed before the Law & Education Committee for final consideration. This will apply to all cases in future."

(14) The Cantonment Executive Officer made a report in pursuance of the said resolution which was considered by the Board in its meeting on March 11, 1966, and it was resolved that the matter be deferred for consideration in the next meeting to enable the members to study the implications of the note fully. The next meeting of the Board was held on May 20, 1966, in which the report of the Cantonment Executive Officer was considered and it was resolved "that a Committee of the following Members be appointed to look into the cases of employees who have been appointed by the Board and have completed 30 years' service or 55 years of age on 31st May, 1966:—

(i) Shri Kishori Lal, V.P.

(ii) Shri Hari Perkash.

(iii) Shri P. N. Bhatnagar.

(15) The Committee will make clear and firm recommendations on each employee and submit its report to the Board as early as possible." In the meeting of the Special Cantonment Board held on March 20, 1967, the President was authorised to go into the cases of all such employees who had attained the age of 55 years or completed 30 years' qualifying service or both and make recommendations to the Special Cantonment Board to be held on March 28, 1967. In the meeting of the Special Cantonment Board held on March 28, 1967, the recommendations of the President, Cantonment

Board, Ambala, for taking action under Rule 8(1) (c) of the Rules in respect of Cantonment Board employees who had attained the age of 55 years or completed 30 years' qualifying service were considered and it was resolved to discharge eight employees mentioned in the resolution with effect from April 1, 1967. The seven petitioners were among them and were so discharged after paying them three months' salary in lieu of notice. This is the resolution which has been impugned in the writ petitions and a copy of it is Annexure A. 2 to the writ petition and R. 10 to the return filed by the Cantonment Board.

(16) The first point argued by the learned counsel for the petitioners is that rule 8(1)(c) of the Rules is *ultra vires* Articles 14 and 16 of the Constitution inasmuch as it authorises the Cantonment Board to terminate the services of a permanent employee of the Board before attaining the age of superannuation mentioned in Rule 22 and Fundamental Rule 56 (a). It has also been submitted that rule 8(1)(c) is arbitrary and gives no guide-lines to the Board as it operates in three circumstances: (1) when an employee has put in more than 30 years' service but has not attained the age of 55 years; (2) an employee has attained the age of 55 years but has not put in 30 years' service; and (3) an employee has attained the age of 55 years and has also put in more than 30 years' service. It is also contended that this rule is contrary to Fundamental Rules 56(a) and 56(j) which are applicable to the petitioners by virtue of rule 3 of the Rules. According to rule 56(a), a Government servant is liable to retire on the day he attains the age of 58 years, while under Fundamental Rule 56(j) the appropriate authority can if it is of the opinion that it is in the public interest to do so, retire any Government servant after he has attained the age of 55 years by giving him notice of not less than three months in writing. The learned counsel has placed reliance on the judgment of their Lordships of the Supreme Court in *Moti Ram Deka and others* v. *General Manager, North East Frontier Railway and others* (1). In that case rule 148(3), Railway Establishment Code (1951), Volume I and rule 140(3), Railway Establishment Code (1959), Volume I were under challenge. Rule 148(3) read as under :—

> "(3) *Other (non-pensionable) railway servant.*—The service of other (non-pensionable) railway servants shall be liable to termination on notice on either side

(1) A.I.R. 1964 S.C. 600.

for the periods shown below. Such notice is not however, required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Art. 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."

(17) Rule 149(3) deals with other railway servants and reads thus :—

"*Other railway servants.*—The services of other railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not, however, required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."

(18) Gajendragadkar, J., who wrote the judgment on behalf of K. N. Wanchoo, M. Hidayatullah and N. Rajagopala Ayyangar, JJ. and himself, did not determine the question whether the said rules could be struck down on the ground that they conferred absolute, unguided and uncanalised powers on the appropriate authority, but struck down those rules on the ground of discrimination among classes of public servants in violation of Article 14 of the Constitution on the ground that there was no difference between the railway servants and other public servants. Das Gupta, J., who wrote a separate judgment agreeing with the majority decision, observed as under :—

"I find on scrutiny of the Rule that it does not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The Rule, thus, enables the authority concerned to discriminate between two railway servants to both of whom R. 148(3) equally applied by taking action in one case and not taking it in the other. In the absence of any

guiding principle in the exercise of the discretion by the authority, the Rule has, therefore, to be struck down as contravening the requirements of Art. 14 of the Constitution."

Shah J., on the other hand, observed as under:—

"The Rule, it is true, does not expressly provide for guidance to the authority exercising the power conferred by Rule 148, but on that account the Rule cannot be said to confer an arbitrary power and be unreasonable, or be in its operation unequal. The power is exerciseable by the appointing authority who normally is, if not the General Manager, a senior officer of the Railways. In considering the validity of an order of determination of employment under Rule 148, an assumption that the power may be exercised *mala fide* and on that ground discrimination may be practised is wholly out of place. Because of the absence of specific directions in Rule 148 governing the exercise of authority conferred thereby, the power to terminate employment cannot be regarded as an arbitrary power exerciseable at the sweet will of the authority when having regard to the nature of the employment and the service to be rendered, the importance of the efficient functioning of the rail transport in the scheme of our public economy, and the status of the authority invested with the exercise of the power, it may reasonably be assumed that the exercise of the power would appropriately be exercised for the protection of public interest or on grounds of administrative convenience Power to exercise discretion is not necessarily to be assumed to be a power to discriminate unlawfully, and possibility of abuse of power will not invalidate the conferment of power. Conferment of power has necessarily to be coupled with the duty to exercise it *bona fide*, and for effectuating the purpose and policy underlying the rules which provide for the exercise of the power. If in the scheme of the rules, a clear policy relating to the circumstances in which power is to be exercised is discernible, the conferment of power must be regarded as made in furtherance of the scheme, and is not open to attack as infringing the equality clause. It

may be remembered that the rules relating to termination of employment of temporary servants and those on probation, and even those relating to compulsory retirement generally do not lay down any specific directions governing the exercise of the powers conferred thereby. The reason is obvious: the appointing authority must in all these cases be left with discretion to determine employment having regard to the exigencies of the service, suitability of the employee for absorption or continuance in the cadre and the larger interests of the public being served by retaining the public servant concerned in service. In my view Rule 148(3) cannot, therefore, be regarded as invalid either as infringing Art. 311(2) of the Constitution or as infringing Art. 14 of the Constitution. For the same reasons Rules 149(3) cannot also be regarded as invalid."

(19) Subha Rao J., who also agreed with the majority, held that the said Rule 148(3) and Rule 149 conferring a power on the appointing authority to remove such a permanent servant on notice would infringe the constitutional protection given to a Government servant under Art. 311 of the Constitution. A permanent post and such rules cannot stand together: The latter must inevitably yield to the former. His Lordship held rule 148(3) and rule 149(3) to be violative of the provisions of Articles 14 and 311 of the Constitution and, therefore, invalid and unenforceable. This judgment was considered by a Full Bench of this Court in *Pritam Singh Brar* v. *The State of Punjab and others* (2), and it was pointed out that "Moti Ram Deka's case (1) is quite distinguishable inasmuch as the question there was of the validity of the rules which authorised removal from service whereas in the present case we are concerned with compulsory retirement and not removal." The Division Bench of Orissa High Court in *Batahari Jena and another* v. *State of Orissa and another* (3), dealt with the case of compulsory retirement and held that any valid rules relating to premature compulsory retirement must satisfy three conditions:—

(1) that the rules have fixed both an age of superannuation and an age for compulsory retirement,

(2) I.L.R. 1967 (2) Pb. & Hr. 448.

(3) A.I.R. 1968 Orissa 44.

(2) that the services of a civil servant compulsory retired under the rules are terminated between these two points of time and

(3) that the minimum period of qualifying service after which alone an order for compulsory retirement can be effected is reasonable.

The learned Judges observed as under:—

"The purpose of vesting power in the relevant authority to retire compulsory a Government employee under either of these provisions is substantially the same, namely, to weed out inefficient and unsuitable employees. But conditions whereunder these two separate and distinct provisions came into play are not the same but different. It cannot be denied that the ground of inefficiency of a Government employee may be different in different cases and it is also quite understandable that all the employees may not become inefficient at the same point of time-in the case of one employee this inefficiency may arise when he has put in 30 years of service, but has not yet attained the age of 55 years, while the other may lose his efficiency when he reaches the age of 55 years though he may not have by that time put in 30 years of service. Therefore, the two sets of provisions fixing different dates with effect from which an employee can be made to retire compulsorily cannot apply equally to employees similarly situated."

(20) The learned Judges then relied on the decisions of their Lordships of the Supreme Court in *T. G. Shivacharna Singh and others* v. *State of Mysore* (4), *and Bishun Narain Misra* v. *The State of Uttar Pradesh and others* (5), and held as under:—

"Lastly both these sets of rules are equally applicable to all employees without any discrimination. Therefore, on that ground also the existence of the two sets of rules as to premature compulsory retirement cannot be held violative of Article 14 of the Constitution."

They went on to hold :—

"And in any case a mere possibility that the discretion vested in the authority to choose either of the two sets of rules

(4) A.I.R. 1965 S.C. 280.
(5) A.I.R. 1965 S.C. 1567.

in any particular set of circumstances may be misused can be no ground for holding that the order passed in exercise of the rule which of the two is more harsh and stringent will necessarily be violative of Article 14 of the Constitution. The presumption is that the discretion given will be justly and reasonably exercised and for the purpose underlying the rules."

(21) In *T. G. Shivacharna Singh's case* (4) (supra), rule 285 of Mysore Civil Services Rules, 1958, was under consideration which provided that it was competent to the Government to retire compulsorily a government servant prematurely if it was thought that such premature retirement was necessary in the public interest. This power could, however, be exercised only in cases where the government servant had completed 25 years' qualifying service or had attained 50 years of age. The petitioner in that case had completed 27 years of service at the age of 48 years and was made to compulsorily retire under the said rule. It was contended on his behalf that this rule was invalid as it contravened Articles 14 and 16(1) of the Constitution and that the Government was not justified in coming to the conclusion that it was in the public interest to retire him compulsorily. Their Lordships observed "that the rule permitting compulsory premature retirement was valid as the validity of such rules had been well-settled by their decisions and that such a rule was not violative of Articles 14 and 16 of the Constitution as it applied to all Government servants and whether or not the petitioner's retirement was in the public interest was a matter for the State Government to consider and as to the plea that the order was arbitrary and illegal it was impossible to hold on the material placed by the petitioner before the Court that the said order suffered from the vice of *mala fides*."

(22) In *Bishun Narain Misra's case* (5) (supra) the notification dated 15th May, 1961, was held to be not discriminatory for it had treated all public servants alike and the challenge to the notification on the basis of Article 14 was repelled.

(23) In the present cases, the discharge from service is akin to compulsory retirement and not removal from service. Rules similar to Rule 8(1)(c) have been upheld as valid by their Lordships of the Supreme Court in the cases referred to above and it has been held that such a rule does not offend Articles 14 and 16(1) of the Constitution so that the attack on the validity of Rule 8(1)(c) on the basis of Articles 14 and 16(1) of the Constitution fails.

(24) In *Shyamlal* v. *State of Uttar Pradesh and another*, (6), it was held that compulsory retirement does not amount to dismissal or removal and, therefore, does not attract the provisions of Article 311 of the Constitution or of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and Note 1 to Article 465A of the Civil Service Regulations is not repugnant to Article 311. Dass J., speaking for the Court observed as under :—

> "There can be no doubt that removal—I am using the term synonymously with dismissal—generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. Such grounds, therefore, involve the levelling of some imputation or charge against the officer which may conceivably be cantroverted or explained by the officer.
>
> There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed twenty-five years' service and that it is in the public interest to dispense with his further services. It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to Article 465A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity."

This judgment was considered by their Lordships in the *State of Bombay* v. *Subhagchand M. Doshi* (7), and it was observed as under :—

> "There, the point for determination was simply whether an order of retirement was one of dismissal or removal falling within the purview of Aticle 311(2), and it was held

(6) A.I.R. 1954 S.C. 369.
(7) A.I.R. 1957 S.C. 892.

that it was not. The *ratio decidendi* of that decision is this: Under the rules, an order of dismissal is a punishment laid on a Government servant, when it is found that he has been guilty of misconduct or inefficiency or the like, and it is penal in character, because it involves loss of pension which under the rules would have accrued in respect of the service already put in."

A little later, their Lordships observed as under :—

"Now, the policy underlying Article 311(2) is that when it is proposed to take action against a servant by way of punishment and that will entail forfeiture of benefits already earned by him, he should be heard and given an opportunity to show cause against the order. But that consideration can have no application where the order is not one of punishment and results in no loss of benefits already accrued, and in such a case, there is no reason why the terms of employment and the rules of service should not be given effect."

(25) In the instant cases, the order of discharge from service is not by way of punishment but has been made in terms of the rules of service applicable to the petitioners. Protection of Article 311(2) of the Constitution is not available to the petitioners as they are not the civil servants of the Union or any State Government. They are the employees of the Cantonment Board which is a body corporate under section 11 of the Cantonments Act. It is not even alleged by the petitioners that they were discharged from service as a measure of punishment. No charge was ever framed against them nor were they apprised of any charge so that it can not be presumed that the Board dispensed with their services by way of punishment.

(26) The learned counsel for the petitioners has also relied upon the judgment of their Lordships of the Supreme Court in the *State of Orissa* v. *Dhirendranath Das* (8). In that case for disciplinary proceedings, two rules were available to the Government. One set of rules was more drastic and prejudicial than the other. Their Lordships held "Article 14 of the Constitution enjoins on the State not to deprive any person of equality before the law. If against two public servants similarly circumstanced, enquiries may be directed

(8) A.I.R. 1961 S.C. 1715.

according to procedure substantially different at the discretion of the Executive authority, exercise whereof is not governed by any principles having any rational relation to the purpose to be achieved by the enquiry, the order selecting a prejudicial procedure, out of the two open for selection, is hit by Article 14 of the Constitution. If the two sets of rules are in operation at the material time when the enquiry is directed against non-gazetted public servant and by order of the Governor, the enquiry is directed under the Tribunal Rules which are "more drastic" anl prejudicial to the interests of the said servant, a clear case of discrimiation arises, and the order directing enquiry against the servant and the subsequent proceedings are liable to be struck down as infringing Article 14 of the Constitution." This judgment, in my opinion, has no applicability to the facts of this case. Rule 8(1)(c) is not violative of Article 14 of the Constitution for the reasons stated by their Lordships in the cases referred to above. Rule of 30 years' service will be applicable to all persons who have not attained the age of 55 years and the rule of 55 years will be applicable to all those persons above the age of 55 years, whether they have put in more than 30 years' service or not. So such exercise of power under rule 8(1)(c) cannot be said to be arbitrary. When the petitioners entered the service of the Board, they knew that they were governed by the rules which were liable to alteration. Rule 8(1)(c) constitutes a term of the service of the petitioners and if their services have been dispensed with under that rule and not by way of punishment, they can have no grievance.

(27) It is then submitted by the learned counsel for the petitioners that when the petitioners entered the service of the Cantonment Board, rule 8(1)(c) in the present form was not there, because the amendment of the rule was made in 1965 when the rule of 30 years' service was introduced. It is well-established that the statutory rules of service can be unilaterally altered by the Government or the statutory authorities. It was held by their Lordships of the Supreme Court in *Roshan Lal Tandon and another* v. *Union of India and others* (9), that—

> "It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But

(9) A.I.R. 1967 S.C. 1889.

once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee."

(28) It cannot, therefore, be said that rule 8(1)(c) as amended cannot be made applicable to the petitioners.

(29) The next point argued by the learned counsel for the petitioners is that in the cases of Shri Krishan Murti Sulhian, Shri Hans Raj and Shri R. P. Jolly, the service was not of more than 30 years as they joined the service of the Ambala Cantonment Board on April 1, 1941, and were discharged with effect from April 1, 1967. According to the learned counsel, service of these petitioners in the Municipal Committee, Sadar Bazar, Ambala, cannot be counted towards qualifying service as defined in the Explanation to sub-rule (3) of rule 8. The Explanation is as under :—

"For the purpose of this sub-rule,—

(i) "qualifying service" means continuous service under the Board or Boards and where there has been a break in service, the last period of continuous service, unless the break in service is condoned with the previous sanction of the Officer Commanding-in-Chief, the Command :

Provided that the Board may, in its discretion, include in the computation of qualifying service the amount of any leave earned but not availed of by the servant concerned."

(30) As the preamble shows this definition is only applicable to sub-rule (3) of rule 8 and not to rule 8(1)(c), but, even if it is

applicable, the service in the Municipal Committee, Sadar Bazar, Ambala, has to be considered towards the qualifying service of the petitioners under the Board by virtue of letter No. 16473/D. 4, dated the 5th January, 1942, Annexure R. 2, referred to above which prescribed the conditions of service of the employees of the Municipal Committee taken into service by the Cantonment Board. By virtue of this letter, the employees of the Municipal Committee taken into service under the Cantonment Board were to be deemed to have been servants under the Cantonment Board for such continuous periods immediately preceding the transfer as was spent by them in the service of the said Municipal Committee. In view of this deeming provision, the petitioners have to be considered as being in the service of the Cantonment Board with effect from the date from which they were in continuous service of the Municipal Committee. In *East End Dwellings Co. Ltd. and Finsbury Borough Council* (10) it was laid down by Lord Asquith of Bishopstone :—

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it."

(31) This dictum was approved by their Lordships of the Supreme Court in *State of Bombay* v. *Pandurang Vinayak and others* (11).

(32) In view of these judgments, the Cantonment Board rightly determined that these petitioners had put in more than 30 years' service taking into consideration the continuous service in the Municipal Committee preceding the date of their transfer to the Cantonment Board. The petitioners Hans Raj and R. P. Jolly had also attained the age of 55 years before they were discharged and, therefore it was not material in their cases whether they had put in 30 years' service or not. I, therefore, find no merit in the submission of the learned counsel that Krishan Murti Sulhian had not put in 30 years' qualifying service and since he had not attained the age of 55 years, he was not liable to be discharged from service under rule 8(1)(c).

(33) The learned counsel for the petitioners has then submitted that there has been discrimination between the petitioners and other

(10) 1952 A.C. 109.
(11) A.I.R. 1953 S.C. 244.

employees similarly situated, that is, the employees who had attained the age of 55 years or had put in more than 30 years' service but were not discharged and, therefore, the orders of discharge in the case of the petitioners were discriminatory. This submission is without any force as rule 8(1)(c) is applicable to all Cantonment Board employees and it could not be said to be violative of Article 14 because some of the employees to whom the rule applied have not been discharged from service. The cases of the employees who are subject to the rule are to be considered and the decision lies with the appointing authority or the Board whether to discharge them from service or not. It is not obligatory on the appointing authority or the Board to dispense with the services of every employee who has either attained the age of 55 years or has put in 30 years' service.

(34) The next argument advanced by the learned counsel is that the order of discharge has resulted in penal consequences to the petitioners inasmuch as they were not allowed salary for the earned leave period. Again, I find no substance in this argument as under rule 8(2), the employees who are discharged from service under rule 8(1)(c) are entitled only to three months' notice and there is no rule providing that they are to be paid salary for the earned leave period. In any case, if the petitioners have any such claim against the Cantonment Board, they can file a suit for the recovery of the amount due to them, but it does not make the order of discharge illegal.

(35) The last argument of the learned counsel for the petitioners is that the order of discharge casts a stigma on the petitioners for the reason that the Officer Commanding-in-Chief, the Command, asked for the reasons for the discharge from service of the petitioners and in reply thereto, the President cast certain aspersions on the efficiency and the integrity of the petitioners. The President has admitted that he wrote a letter to the Officer Commanding-in-Chief in reply to his letter stating the reasons which led the Board to dispense with the services of the petitioners but it was a confidential communication the contents of which have not been disclosed on this record. The petitioners cannot complain that any confidential communication made by the President of the Cantonment Board to the controlling authority contained any statements which amounted to stigma on the petitioners. This confidential communication was only meant for the information of the Officer Commanding-in-Chief and not for any other person nor for the petitioners. If the petitioners have come to know of it, they

cannot make use of it as it was not meant for them and they cannot be said to have come by that communication in accordance with the rules or practice. The resolution of the Cantonment Board does not cast any stigma on the petitioners. From the notice issued to the petitioners, nobody can imagine that the petitioners had been discharged from service for any misconduct or by way of punishment and since the resolution and the notice do not cast any stigma on the petitioners, their discharge from service cannot be held to be bad.

(36) No other point has been argued before me.

(37) For the reasons given above, these petitions fail which are dismissed but in the circumstances of the case, I leave the parties to bear their own costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit and H. R. Sodhi, JJ.

KULWANT SINGH,—*Petitioner.*

Versus

THE INCOME-TAX OFFICER AND OTHERS,—*Respondents.*

Civil Writ No. 3212 of 1968

May 30, 1969

Income-tax Act (XLIII of 1961)—Section 288(3)—Constitution of India (1950)—Article 19—Section 288(3)—Whether violative of Article 19—Conditions for the applicability of the section—Stated—Person not acting as Income-tax Officer immediately before retirement or resignation—Disqualification to act as authorised representative—Whether attaches.

Held, that it is not the fundamental right of any person to practise the profession of representing the assessees as their authorised representative before the Income-tax authorities. Section 288(1) allows an assessee to attend before any Income-tax authority or the Appellate Tribunal either personally or through an authorised representative. Sub-section (2) of the same section mentions the persons who can act as authorised representative. Sub-section (3) places a bar on a certain type of authorised representatives not to act as such for a period of only two years. The Act could as well have laid down that the assessee had to appear personally before the Income-tax authorities. If that had been done, there could be no grievance to any one. Any person in order to represent as authorised representative derives his right from the provisions of section 288 only and not from the Constitution and if in that very section, certain restrictions are placed, they have