FULL BENCH

Before Mehar Singh, C.J., A. N. Grover and Shamsher Bahadur, JJ.

SHAM LAL,—*Petitioner*

versus

THE DIRECTOR MILITARY FARMS AND OTHERS,—*Respondents*

Civil Writ No. 2811 of 1964

May 17, 1966

Constitution of India (1950)—*Arts.* 309, 310 *and* 311—*Person holding a civil post connected with defence—Whether can claim protection of a civil Court or invoke extraordinary jurisdiction of High Court for interference with departmental proceedings or a departmental order of punishment on the ground that the same has been commenced or inflicted against him in violation of service rules framed by the President under Art. 309 in spite of the fact that he may not be entitled to invoke the protection of Art.* 311.

Held, that a person holding a civil post connected with defence can claim protection of a civil Court or invoke the extraordinary jurisdiction of the High Court for interference with departmental proceedings or a departmental order of punishment on the ground that the same has been commenced or inflicted against him in violation of the service rules framed by the President under Article 309 of the Constitution in spite of the fact that the employee in question may not be entitled to invoke the protection of Article 311 of the Constitution. Although the pleasure of the President or the Governor cannot be controlled or fettered except to the extent provided in Article 311 of the Constitution, the President or the Governor may respectively direct that such pleasure must be exercised in accordance with the rules or the statute made in that behalf under Article 309 of the Constitution. If such rules or statutory provisions exist and the competent authority proceeds to exercise power in the matter of taking disciplinary action against a Government servant, it is bound to follow the procedure prescribed by such provisions and their non-compliance would be justiciable.

Case referred by the Hon'ble Mr. Justice R. S. Narula, on August 5, 1965, *to a larger bench for the decision of an important question of law involved in the case. The Full Bench consisting of the Hon'ble Chief Justice Mehar Singh the*

Hon'ble Mr. Justice A. N. Grover, and the Hon'ble Mr. Justice Shamsher Bahadur, after deciding the question referred to them on 17th May, 1966, sent the case back to the learned Single Judge for decision on merits. The Hon'ble Mr. Justice R. S. Narula finally decided the case on 21st July, 1966.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari *or any other appropriate writ, order or direction be issued quashing the impugned show-cause notice and the enquiry proceedings against the petitioner and the respondents be directed to withdraw the same and to refrain from acting thereon or punishing the petitioner in any way, and further praying that pending the decision of the petition any actions in pursuance of the impugned show-cause notice and the enquiry proceedings may be stayed.*

H. S. Gujral with Sushil Malhotra and Amar Singh Ambalvi, Advocates, for Petitioner.

C. D. Dewan, Deputy Advocate-General, with S. K. Jain and Bhim Sen, Advocates, for the Respondents.

ORDER OF THE FULL BENCH

Grover, J.—The question that has to be decided is whether a person holding a civil post connected with Defence can claim protection of a Civil Court or invoke the extraordinary jurisdiction of this Court for interference with departmental proceedings or a departmental order of punishment on the ground that the same had been commenced or inflicted in violation of service rules framed by the President under Article 309 of the Constitution in spite of the fact that such an employee may not be entitled to invoke the protection of Article 311 of the Constitution.

It is common ground that the petitioner, while serving as Assistant Supervisor in the Military Dairy Farm, Ferozepur Cantonment, was compulsorily retired from service as a measure of punishment. His main grievance was that the procedure prescribed by rule 15 of the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952 (hereinafter called the rules) promulgated by the President of India in exercise of the powers conferred by Article 309 of the Constitution was not followed. This rule provides in detail for the manner in which opportunity is to be given to a member of a service governed by the rules before any order can be made of dismissal, removal, compulsory retirement or reduction in rank. The safeguard contained in the rule is almost in the same terms as is provided by Article 311(2) of the Constitution but it has been laid down with more particularity and details.

Now, in view of the language of Article 311, it cannot be disputed that the petitioner, who is not a member of a civil service of the Union or an All-India service or a civil service of a State or holds a civil post under the Union or a State, cannot claim the protection of that Article. It is, however, maintained on his behalf that rule 15 of the rules confers a similar protection on him and that if the procedure prescribed thereby has not been followed, he can agitate the matter in a Court of law. The rules were framed under Article 309 which reads as follows:—

> "Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State:
>
> Provided that it shall be competent for the President or such persons as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rule so made shall have effect subject to the provisions of any such Act."

But Article 310(1) provides—

> "Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an All-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State."

It is well known that the tenure of a Government servant till the enactment of the Government of India Act, 1935, was based on the English doctrine of pleasure of the sovereign, "*Durante Bene Placito*".

As pointed out by Das, C.J., in *Parshotam Lal Dhingra* v. *Union of India* (1), the established notion was that the implied condition between the Crown and its servant was that the latter held his office during the pleasure of the Crown and that public policy demanded this qualification. In the Government of India Act, 1915, as originally enacted, there was no provision embodying the English doctrine. Section 96B, which was introduced along with other sections by the Government of India Act, 1919, gave a statutory recognition to the rule that the servants of the Crown held office during the pleasure of the Crown. One restriction was imposed upon the exercise of the Crown's pleasure in that a servant could not be dismissed by an authority subordinate to that by which he was appointed. It was for the first time that section 240(3) of the Government of India Act, 1935, provided a statutory safeguard in respect of dismissal or reduction in rank of a Government servant. Finally, our Constitution makers incorporated a similar safeguard in Article 311(2) but Article 310(1) in terms embodies the rule that public servants hold their office during the pleasure of the President or the Governor, as the case may be. That pleasure must be exercised subject to the provisions contained in Article 311. With regard to public servants who could not claim the benefit of Article 311, the view which was widely held prior to the decision of the Supreme Court in *State of Uttar Pradesh* v. *Babu Ram Upadhya* (2), was that such servants could not agitate in the Law Courts that the procedure laid down by the properly framed rules or other legislation had not been followed and could seek relief only from departmental authorities. In this connection the twin decisions of the Privy Council in *R. T. Rangachari* v. *Secretary of State* (3) and *R. Venkata Rao* v. *Secretary of State* (4), constitute an important landmark in the history of law relating to public servants in India. According to these decisions, His Majesty's pleasure was paramount and could not legally be controlled or limited by the Civil Service Classification Rules made under section 96-B (2) of the Government of India Act and that these rules made provisions for redress of grievances by administrative process. In other words, it was clearly held that the statute of 1919 did not confer any right of action to enforce the aforesaid rules.

(1) A.I.R. 1958 S.C. 36.
(2) A.I.R. 1961 S.C. 751=(1961) 2 S.C.R. 679.
(3) A.I.R. 1937 P.C. 87.
(4) A.I.R. 1937 P.C. 31.

In this Court the question of justiciability of the breach of the rules came up before a Division Bench in *Naubat Rai* v. *Union of India* (5). In that case Naubat Rai, who was at one time the Manager of the Military Dairy Farm in Ambala Cantonment, moved this Court under Article 226 of the Constitution challenging his removal from service. It was contended *inter alia* before the Bench on behalf of Naubat Rai that Army Instructions (India) No. 212 had not been followed and rule 158 of the rules made under the Army Act had been disregarded in the matter of the enquiry which was held against him. Relying on the decision in *Venkata Rao's case* it was held that even if there had been any transgression of A.I.I. 212, that could not be a ground for interference by this Court. In *Union of India* v. *Ram Chand-Reli Ram* (6), another Bench had to consider the case of a Military servant who had filed a suit for a declaration that his discharge from service was wrongful, void and inoperative. Harnam Singh, J., referred to the decisions of the Privy Council mentioned before and said that even though such a suit satisfied one of the conditions of section 9 of the Civil Procedure Code it was impliedly barred on the principle that Courts were not to countenance matters which were injurious to and against the public weal. Kapur, J. (as he then was) delivering a separate but concurrent judgment observed—

> "But the law in regard to the Defence services has remained the same. At no time in the constitutional history of India has any similar protection against arbitrary dismissal, removal or reduction in rank been provided in regard to these services. On the other hand they continued to hold office during the pleasure of the Crown and now they hold office during the pleasure of the President, and therefore the law as was stated by the Privy Council in *B. Venkata Rao* v. *Secretary of State* (4) would continue to apply to them. The question whether their dismissal or removal is arbitrary or not is not a justiciable issue and it must be taken that this matter is by implication barred even if an extended meaning is to be given to section 9, Civil Procedure Code."

---

(5) A.I.R. 1953 Punj. 137.
(6) I.L.R. 1955 Punj. 840=A.I.R. 1955 Punj. 166.

The case of *Dass Mal* v. *The Union of India* (7) was one of civil personnel attached to Defence Services. Kapur, J., (as he then was) reiterated the view that if a person held office at the pleasure of the President and the protection of Article 311 of the Constitution or section 240(3), Government of India Act of 1935, was not available, then it was not for the Courts to put limitation on the exercise of the pleasure by the President or the Crown as the case might be and a suit could not be brought for infringement of any rules dealing with his condition of service. The decision in *Venkata Rao and Rangachari's* cases were followed. Chopra, J., in *Union of India* v. *Dharampal Chopra* (8) which was the case of an Assistant Supervisor, incharge Dalhousie Branch of Military Farm, followed the earlier decision in *Dass Mal's case.* The last important decision in this line of cases of this Court is the one given in *Lekh Raj Khurana* v. *Union of India* (Regular Second Appeal No. 43-D of 1956) decided by Khosla, C.J. and Tek Chand, J. on 23rd May, 1961 which dealt primarily with the question whether a person employed in the Defence Forces but holding a Civil post could claim the protection of Article 311. After referring to various decisions and in particular, the pronouncement of the Privy Council in *Venkata Rao's case* it was held that he was not entitled to such a protection and further a breach of the departmental service rules did not entitle him to seek redress in a Court of law.

A brief reference to decisions of other Courts on the point in question may be made. In *Subodh Ranjan Ghosh* v. *Major N. A. O. Callaghan* (9) the petitioner was employed in the Military Engineering Service, Sinha J., after referring to the rules, held that Articles 309 and 310 applied but Article 311 was not applicable and, therefore, the petition could not succeed. In *Chhandra Bhan Verma* v. *Union of India* (10) and *Tara Singh Ujagar Singh* v. *Union of India* (11), a similar view was expressed. It is clear from *Jagannath Singh* v. *Assistant Excise Commissioner* (12) that an identical view prevailed in Allahabad Court.

---

(7) A.I.R. 1956 Punj. 42.
(8) I.L.R. 1957 Punj. 1695=1957 P.L.R. 472.
(9) A.I.R. 1956 Cal. 532.
(10) A.I.R. 1956 Bom. 601.
(11) A.I.R. 1960 Bom. 101.
(12) A.I.R. 1959 All. 771.

It would appear that in some cases a discordant note was struck. In *Laxminarayan Chironjilal Bhargaba* v. *Union of India* (13), the petitioner was in the employment of the Defence Department as a Civilian employee. His complaint was that he had not been given an opportunity of showing cause against his reversion, as required by Article 311. It was held by a Bench consisting of Sinha, C.J. and Mudholkar, J. (as they then were) that although the petitioner could not invoke the provisions of Article 311 but if sub-rule 3(iii) of rule 212 of the Army Instructions (India), which provided that no order of dismissal, removal or reduction would be passed on a Government servant unless he had been informed in writing of the grounds on which it was proposed to take action and had been afforded an adequate opportunity for defending himself, applied, he would be entitled to a relief from the Court. In *Dwarkachand* v. *State of Rajasthan* (14), *Wanchoo, C.J.* (as he then was) and Dave, J. held that the pleasure mentioned in Article 310 had to be exercised acording to law or rules framed under Article 309 or analogous law. If there was no rule or law which laid down that an order exonerating a public servant in a departmental enquiry was open to revision and a fresh enquiry could be ordered, it was not open to the State to assume such a power on the ground that Article 310 made a provision that the tenure of public servant is at the pleasure of the President or the Governor. Similarly in *Dr. G. Valayya Pantulu* v. *Government of Andhra (Now Andhra Pradesh)* (15), Subba Rao, C.J. (as he then was) and Jagan Mohan Reddy, J. were of the view that statutory rules of procedure laid down in the Andhra Civil Service (Disciplinary Proceedings Tribunal) Rules, 1953, were as much binding on the Government as on the officer against whom an enquiry was being held; although in cases where the entire procedure which had been followed had not been objected to by the officer concerned, the High Court would not interfere under Article 226 of the Constitution.

It would appear from the above discussion that in majority of cases the two decisions of the Privy Council in *Venkata Rao* and *Rangachri's cases* were followed and applied and the ambit and range of any rules framed under section 210 of the Government of

---

(13) A.I.R. 1956 Nag. 113.
(14) A.I.R. 1958 Raj. 38.
(15) A.I.R. 1958 Andh. Prad. 240.

India Act or Article 309 of the Constitution were circumscribed within the narrow limits of administrative instructions or directions which were not justiciable at the instance of an aggrieved public servant who could not claim the protection provided by section 240(2) of the Government of India Act, 1935, or Article 311(2) of the Constitution. The decision in *State of Uttar Pradesh* v. *Babu Ram Upadhya* (2) marks the next landmark in this branch of law. In the majority judgment delivered by Subha Rao, J., *Venkata Rao* and *Rangachari's cases* were discussed in paragraph 24 and it has been said:

> "On a construction of these provisions the Judicial Committee held that His Majesty's pleasure was paramount and could not legally be controlled or limited by the rules. Two reasons were given for the conclusion, namely (i) S. 96B in express terms stated that the office was held during the pleasure and there was no room for the impletion of a contractual term that the rules were to be observed; & (ii) sub-section (2) of S. 96-B and the rules made careful provisions for redress of grievances by administrative process and that sub-section (5) reaffirmed the superior authority of the Secretary of State in Council over the civil service. It may be noticed that the rules framed in exercise of the power conferred by the Act was to regulate the exercise of His Majesty's pleasure. The observations were presumably coloured by the doctrine of 'tenure at pleasure' obtaining in England, namely, that it could only be modified by statute, influenced by the principle that the rules made under a statute shall be consistent with its provisions and, what is more, based upon a construction of the express provisions of the Act. These observations cannot in our opinion, be taken out of their context and applied to the provisions of our Constitution and the Acts of our Legislatures in derogation of the well-settled principles of statutory construction."

Subha Rao, J. further proceeded to observe that the above remarks would equally apply to *High Commissioner for India* v. *I. M. Lall* (16) and made it quite clear that in *S. A. Venkataraman* v. *Union of India* (17), their Lordships did not lay down any general proposition

(16) A.I.R. 1948 P.C. 121.
(17) A.I.R. 1954 S.C. 375.

but only stated the gist of the reasoning in *Venkata Rao's case* and similarly Das, C.J., stated the scope of the rule in *Venkata Rao's case* in the decision in *Khem Chand* v. *Union of India* (18). The learned Judge next observed that the decisions of the Judicial Committee on the provisions of the earlier Constitution Acts could be sustained on the ground that the rules made in exercise of power conferred under the Acts could not override or modify the tenure at pleasure provided by section 96B or section 240 of the said Acts. Therefore, when the paramountcy of the doctrine was conceded or declared by the statute, there might have been justification for sustaining the rules made under that statute in derogation thereof on the ground that they were only administrative directions, for otherwise the rules would have to be struck down as inconsistent with the Act. Referring to the decisions of the different High Courts in India, the learned Judge said that they expressed two divergent views: one line relied upon the observations of the Privy Council in *Venkata Rao's case* and laid down that all statutory rules *vis-a-vis* the disciplinary proceedings taken against a Government servant were administrative directions, and the other applied the well-settled rules of construction and held that the appropriate authority was bound to comply with the mandatory provisions of the rules in making an enquiry under a particular statute. The majority view of the Court on this point was expressed in the following words:—

> "In our view, subject to the overriding power of the President or the Governor under Article 310, as qualified by the provisions of Article 311, the rules governing disciplinary proceedings cannot be treated as administrative directions, but shall have the same effect as the provisions of the statute whereunder they are made, in so far as they are not inconsistent with the provisions thereof."

In *Babu Ram Upadhya's case*, the delinquent Sub-Inspector of Police along with one Lalji had been accused of misappropriating a sum of Rs 250 belonging to Tikka Ram. At the instance of the Deputy Inspector-General of Police proceedings were taken against him under section 7 of the Police Act by the Superintendent of Police. After the departmental enquiry had been held and the show-cause

---

(18) A.I.R. 1958 S.C. 300.

notice issued, the Superintendent of Police reduced him to the lowest grade of Sub-Inspector for a period of three years. The Deputy Inspector-General of Police, however, on consideration of the entire record was of the view that he should be dismissed from service and he ordered accordingly. That order having been confirmed by higher authorities, a petition was filed under Article 226 of the Constitution for quashing those orders. The learned Judges of the High Court held that the provisions of paragraph 486 of the U. P. Police Regulations had not been observed and, therefore, the proceedings under Section 7 of the Police Act were invalid and illegal. On appeal being taken to the Supreme Court, one of the main contentions raised on behalf of appellant State of Uttar Pradesh, was that the rules made in exercise of a power conferred on a Government under a statute delegating powers to a subordinate officer to dismiss a servant could only be administrative directions to enable the exercise of the pleasure by the concerned authorities and that any breach of those regulations could not possibly confer any right on the aggrieved Government servant to go to a Court of Law. Subba Rao, J., delivering the judgment of the majority, after referring to Section 7 of the Police Act and Section 46 under which the U. P. Police Regulations prescribing the procedure for investigation and enquiry had been made, traced the historical background of the provisions embodied in Articles 309, 310 and 311 of the Constitution and the matter of justiciability of any law enacted by the Legislature or rules framed under Article 309 was considered to which reference has already been made before. While dealing with the scope of the aforesaid Articles it was observed in paragraph 20 about Article 309 of the Constitution:—

> "A law made by the appropriate Legislature or the rules made by the President or the Governor, as the case may be, under the said Article may confer a power upon a particular authority to remove a public servant from service; but the conferment of such a power does not amount to a delegation of the Governor's pleasure. Whatever the said authority does is by virtue of express power conferred on it by a statute or rules made by the competent authorities and not by virtue of any delegation by the Governor of his power. There cannot be conflict between the exercise of the Governor's pleasure under Article 310 and that of an authority under a statute, for the statutory power would be always subject to the overriding pleasure of the Governor."

In paragraph 22, Subba Rao, J., summarised his conclusions thus :—

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

As regards the Police Act and the rules made thereunder, it was said that they constituted a self-contained code providing for the appointment of police officers and prescribing the procedure for their removal. It followed that where the appropriate authority took disciplinary action under the Police Act or the rules made thereunder, it must conform to the provisions of the statute or the rules which had conferred upon it the power to take the said action. If there was only violation of the said provision, the public servant would have a right to challenge the decision of that authority provided the rules were mandatory and not directory. While holding

that paragraph 486 of the U. P. Police Regulations was mandatory it was observed that when a rule said that a departmental trial could be held only after a police investigation it was not permissible to hold that it could be held without such investigation.

It is necessary to refer to the judgement of the minority delivered by Wanchoo, J., because that would throw a good deal of light on the nature and content of the contentions that were raised in *Babu Ram Upadhya's case*. Wanchoo, J., with whom Gajendragadkar, J. (as he then was) agreed, noticed the argument of Mr. Pathak who had appeared for Babu Ram Upadhya that in view of the words of Article 310 a statute or statutory rules could also cut down the nature of the pleasure-tenure provided by Article 310 in the same way as in England an Act of Parliament cuts down the ambit of His Majesty's pleasure in the matter of dismissal. Wanchoo, J., referred to the Articles in question as also to the decision of the Privy Council in *Venkata Rao's case* and said that if the rules or the law defined the content of the guarantee contained in Article 311(2) they might to the extent be mandatory but only because they carried out the guarantee contained in Article 311(2). Excepting this, according to him, any law or rule framed under Article 309 cannot cut down the pleasure-tenure as provided in Article 310 and further that all public servants other than those who are expected expressly by the provisions of the Constitution hold office during the pleasure of the President or the Governor, as the case may be, and that no law or rule passed or framed under Article 309 or Article 154(2)(b) can cut down the content of the pleasure-tenure as contained in Article 310 subject to Article 311. With regard to section 7 of the Police Act and the regulations framed thereunder Wanchoo, J., observed that if any of the rules framed under section 7 carry out the purpose of Article 311(2) to that extent they will be mandatory and in that sense their contravention would in substance amount to contravention of Article 311 itself. He went on to say:

> "If this were not so, it would be possible to forge further fetters on the pleasure of the Governor to dismiss a public servant and this in the light of what we have said above is clearly not possible in view of the provisions of the Constitution."

Dealing with the argument that power had not been delegated by the Governor under Article 154(1) in the instant case and that it had

been conferred on the police officers by law, Wanchoo, J., expressed the view that that would make no difference to the nature of the power, which was being exercised under section 7 of the Police Act. According to him, whether it was delegation by the Governor himself or whether it was delegation by law under Article 154(2)(b) or by an existing law, which must be treated as analogous to a law under section 154(2)(b), the officer exercising the power of dismissal was only indirectly exercising the Governor's power to dismiss at pleasure and his order of dismissal had the same effects as the order of the Governor to dismiss at pleasure. As regards Regulation 486, it was observed that it was not meant for the purpose of carrying out the object of Article 311(2) and, therefore, it could not be mandatory and could not add a further fetter on the exercise of the power to dismiss or remove at the pleasure of the Governor over and above the guarantees contained in Article 311. It was then said that paragraph 486 of the Police Regulations was meant for the purpose of making a preliminary enquiry only and it was not meant to carry out the object contained in Article 311(2) and consequently it was merely directory.

Mr. H. S. Gujral for the petitioner has sought to establish from the majority decision of the Supreme Court that it has now been finally settled that any rules framed under Article 309 of the Constitution governing disciplinary proceedings cannot be treated as administrative directions. According to him, it is clear from the majority judgement that the tenure of the public servant in India is dependent on the pleasure of the President or the Governor, as the case may be, and that if the pleasure is exercised by either of these authorities the only fetters on the exercise of that power are those which are to be found in Article 311 of the Constitution but if certain authority other than the President and the Governor is empowered by a statute or by the rules framed under Article 309 to appoint as also to dismiss, remove or compulsorily retire servants of a particular class or category and if it is that authority which exercises the said power, it is bound to comply with the rules of which it is the creature.

Mr. Gujral has referred in detail to the rules by which the petitioner is governed which have admittedly been promulgated under Article 309 of the Constitution. He says that indisputably the Director of Military Farms, Army Headquarters, who made the impugned order, did so in exercise of the powers conferred on him by the rules. It was under rule 13 that the punishment which was

awarded was inflicted. It was, therefore, incumbent on the aforesaid authority to comply with the procedure laid down in rule 15 before exercising the powers conferred on the said authority of inflicting punishment under rule 13.

Mr. Chetan Das Dewan for the respondents has sought to press the points on the lines of the minority judgment in *Babu Ram Upadhya's case*. According to him, the decisions of the Privy Council in *Venkata Rao* and *Rangachari's cases* are still good law and that the Rules should be regarded as merely administrative directions which are not justiciable. He has relied a great deal on a recent decision of the Madhya Pradesh Court in *Kailashchand Ratan Chand* v. *The General Manager, Ordnance Factory* (19). In that case P. V. Dixit, C.J., and K. L. Pandey, J., held that a machinist in Ordnance Factory who was excluded from the benefit of Article 311 could not claim the benefit of the rules which had been made under Article 309, the rules there being the same as in the present case. *The case of Babu Ram Upadhya* was regarded by them as distinguishable on the ground that it had been held therein that the rules prescribing the process for removal of a police officer only laid down and regulated the scope and content of reasonable opportunity contemplated by Article 311(2) and did not in any way affect the powers of the President or the Governor under Article 310 read with Article 311 of the Constitution and further the Supreme Court had no occasion to consider the case of dismissal or removal of an employee who did not fall within the purview of Article 311 of the Constitution and had relied solely on the rule made under Article 309 prescribing procedure for the removal or dismissal of a Government servant from service. Indeed, the Madhya Pradesh Court sought to press into service the seven propositions laid down by Subba Rao, J., in the majority judgment in support of the view that no rules under Article 309 of the Constitution could be made so as to modify the tenure at pleasure embodied in Article 310 as qualified by Article 311. With the utmost respect to the learned Judges of the Madhya Pradesh Court it is not possible to see how *Babu Ram Upadhya's case* was limited only to the narrow question whether the Police Regulations defined or implied the content of reasonable opportunity envisaged by Article 311(2) of the Constitution. The majority and the minority judgements in that case which have been

---

(19) A.I.R. 1966 M.P. 82.

considered in detail by me do not justify the conclusion which has been drawn by the Madhya Pradesh Court, the discussion in that case covered a good deal of general field relating to this branch of law and the propositions, which were enunciated in the form of conclusions by Subba Rao, J., did not deal merely with the narrow question whether statute or rules could be made defining the scope and content of the reasonable opportunity envisaged by Article 311(2) of the Constitution. At any rate, there can be no manner of doubt that according to the majority judgement although any law or statutory rules made under Article 309 in relation to conditions of service of public servants could not cut down the pleasure of the President or the Governor, as the case may be, they could not be regarded as mere administrative directions and to that extent the decisions of the Privy Council must be regarded as having not been accepted in their entirety, particularly where the authority that has proceeded to award punishment has done so in exercise of the powers conferred by a statute or the rules framed thereunder.

The Madhya Pradesh Court does not appear to have noticed an earlier decision of a learned Single Judge of that Court in *Kapoor Singh Harnam Singh* v. *Union of India* (20), in which the same rules which were being considered in the later decision of that Court had been held to be justiciable nor is it possible to accept, with respect, the distinction made by Dixit, C. J., who delivered the judgement of the later case that the subsequent pronouncement of the Supreme Court in *the State of Mysore* v. *M. H. Bellary* (21) would not govern the matter. In that case the claim of the petitioner was that on a proper construction of rule 50(b) of the Bombay Civil Service Rules he should have been posted as an Assistant Secretary and been allowed the scale of emoluments applicable to that post. It was observed in paragraph 4 by their Lordships:—

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

---

(20) A.I.R. 1960 M.P. 119.
(21) A.I.R. 1965 S.C. 868.

In that case the writ petition had been allowed by the High Court and that decision was affirmed by the Supreme Court. According to Dixit, C. J., in *Kailash Chand Ratan Chand's case,* there was no question of the illegality of the order of dismissal or removal of a Government servant to whom Article 311 did not apply. To my mind that case leaves no room for doubt that according to the decision *in Babu Ram Upadhya's case,* the rules framed under Article 309 in relation to the conditions of service were justiciable and enforceable in Courts of Law.

At the time of arguments the learned counsel for the parties were not aware of and did not refer to a decision of a Full Bench of this Court delivered at Delhi on 23rd September, 1965 in *P. H. Laxminardyanan* v. *Engineer-in-Chief, Army Headquarters* (Letters Patent Appeal 8-D of 1962). In that case the petitioner was an Assistant Executive Engineer in the Military Engineering Service and he had been dismissed by the Chief Engineer. He had relied on the same rules as have been relied upon in the present case and had urged that he could not be dismissed without following the procedure laid down in rule 15. The following two questions were referred to the Full Bench :—

> "(1) Whether on the true construction of Articles 309 and 310 of the Constitution the pleasure of the President under Article 310 can be exercised by him alone or can it be delegated to any subordinate officer to be exercised in accordance with the rules framed or statute enacted under Article 309 of the Constitution; and
>
> (2) Whether violation of any rules or statute enacted under Article 309 of the Constitution regulating the conditions of service of such servants of the State as are not protected by Article 311 is justiciable?"

The answer of the Full Bench to the first question was that the pleasure of the President or the Governor mentioned in Article 310 could be exercised by such persons as the President or the Governor might respectively direct but such pleasure must be exercised in accordance with the rules or the statute made in that behalf, and that the President could delegate the powers under Article 310 but Article 309 could not impair or affect the pleasure of the President therein specified. The Full Bench relied largely in answering the first question

on the decision in *Moti Ram* v. *N. E. Frontier Railway* (22), in which it has been observed at page 606 that according to the proviso to Article 309, it would be competent for the President or the Governor to make rules regulating the recruitment and prescribing the conditions of service of persons respectively appointed to services and posts under the Union or the State. The pleasure of the President or the Governor mentioned in Article 310(1) can be exercised by such person as the President or the Governor may respectively direct in that behalf and the pleasure thus exercised has to be exercised in accordance with the rules made in that behalf. Further that the rules and indeed the exercise of the power conferred on the delegate must be subject to Article 310 and so Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. As regards the second question, this is what S. K. Kapur, J., who delivered the judgment of the Full Bench, said—

> "Coming now to the second question, the learned Solicitor-General contends that in cases where Article 311 is not applicable, the rights arising out of the rules or the law made under Article 309 are not justiciable. He says that the only remedy in case of violation of such rules is to approach the Government but not the Court. In support of this proposition he relies on *Venkata Rao* v. *Secretary of State* (4). He, however, does not dispute that according to the decision in *Babu Ram Upadhya's case* such rights would be justiciable. In the circumstances, we are of the opinion that the question of violation of any rules or statute enacted under Article 309 of the Constitution regulating the conditions of service of such servants of the State as are not protected by Article 311 would be a justiciable matter."

It is true that the question of justiciability of the rules was conceded before the Full Bench at Delhi and a concession was also made before their Lordships in *M. H. Bellary's case* relating to the rules under consideration there but it is not possible to see how the concessions which were made by eminent counsel were not well founded or were based on any misapprehension with regard to the law laid down in *Babu Ram Upadhya's case*. Moreover, the observations in *Moti Ram's case* further reinforce and support the view that although

---

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

the pleasure of the President or the Governor cannot be controlled or fettered except to the extent provided in Article 311 of the Constitution, the President or the Governor may respectively direct that such pleasure must be exercised in accordance with the rules or the statute made in that behalf under Article 309 of the Constitution. If such rules or statutory provisions exist and the competent authority proceeds to exercise power in the matter of taking disciplinary action against a Government servant it is bound to follow the procedure prescribed by such provisions and their non-compliance would be justiciable.

For the reasons given above, I would answer the question referred to the Full Bench in the affirmative.

MEHAR SINGH, C.J.—I agree.

SHAMSHER BAHADUR, J.—I also agree.

B.R.T.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and Daya Krishan Mahajan, J.

THE MANAGEMENT OF THE KARNAL DISTILLERY CO. LTD.,—*Appellant*

versus

THE WORKMEN OF KARNAL DISTILLERY CO. LTD. AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 144 of 1965

July 12, 1966

Industrial Disputes Act (XIV of 1947)—S. 10—Industrial Tribunal—Whether can determine the validity of reference on the ground that no industrial dispute existed between the management and the workmen—Reference by Government—Whether conclusive.

Held, that under section 10 of the Industrial Disputes Act, 1947, a Tribunal can only decide an industrial dispute and the Government can only refer an