evidence in support of its allegations, but may be in a position to substantiate the same from the material which is already available on the record. In such cases it appears that even if no evidence is led in support of the recrimination, the party concerned can still take advantage of the provisions of sub-section (1) of section 97 of the Act.

In view of the above discussion, I am of the opinion that it is only in cases in which the provisions of sections 117 and 118 with regard to security deposit are not complied with before the date fixed for recording evidence in support of the recrimination that the Tribunal is entitled to refuse to admit evidence in support of the recrimination. But in cases like the present where the entire security has been deposited in accordance with section 117, the Tribunal is not justified in refusing an opportunity to the party filing the recrimination to adduce evidence in support of his case. Accordingly, I would accept the petition and quash the order of the Election Tribunal so far as it relates to issue No. 10. In view of the nature of the question involved in the decision, the parties are left to bear their own costs.

S. B. CAPOOR, J.—I agree.

R.N.M.

APPELLATE CIVIL

Before Harbans Singh and J. N. Kaushal, JJ.

UNION OF INDIA,—*Appellant*

versus

LACHHMI NARAIN—*Respondent*

Regular First Appeal No. 175 of 1962

December 19, 1966

Constitution of India (1950)—*Article* 311—*Temporary Government servant—Departmental inquiry against him initiated but later dropped and simple order of discharge passed—Such order—Whether amounts to dismissal—Formal order dropping the inquiry—Whether necessary to be made—Central Civil Services (Temporary Services) Rules* (1949)—*Rule* 5—*Order of termination of service providing for payment of fifteen days' pay and allowances instead of one month's—Whether invalid—Punjab Civil Service Rules, Volume II—Rule* 5.32—*Provision as to three months' notice to be given to a government servant before retiring him after attaining the age of* 55 *years—Whether mandatory—Non-observance of the rule—Whether makes the order of retirement invalid.*

Held, that if the authority, after initiating a formal departmental enquiry, takes the view that it may not be necessary or expedient to terminate the services of the temporary Government servant by issuing an order of dismissal against him, stops the enquiry and passes a simple order of discharge from service, it meets the requirement of law. No formal order dropping or stopping the inquiry is necessary. The order of termination of service in such a case cannot be said to have been passed by way of punishment nor does it entail any penal consequences. The provisions of Article 311 of the Constitution are, therefore, not attracted.

Held, that if by misreading of Rule 5 of Central Civil Services (Temporary Service) Rules 1949, only fifteen days' pay and allowances are ordered to be paid, that does not mean that the authority terminating the service has consciously and deliberately imposed any penalty. If mistake is committed, the Government servant in law is entitled to pay and allowances of fifteen days but the order of termination of service under the Rule does not become an order of dismissal or removal only because pay and allowances for fifteen days instead of one month have been ordered to be paid.

Held, that the condition of giving three months' notice of retirement to a Government servant after he attains the age of 55, is not of such a vital nature that its non-observance should invalidate the order of retirement. The spirit underlying the rule requiring three months' notice, obviously, is that the Government servant should be given enough time so that he can make arrangement for seeking employment elsewhere during that period, and if immediate retirement is contemplated, he should be paid three months' pay in lieu of notice. If the order of retirement is passed without giving three months' notice or pay, the Government servant is entitled to claim only three months' pay and has no right to continue in service inasmuch as the authority has the absolute right to retire him.

First appeal from the decree of the Court of the Sub-Judge, 1st Class, Patiala (C), dated the 30th day of April, 1962, *granting the plaintiff a decree for a declaration to the effect that the order of the plaintiff's termination of services, dated 31st December,* 1957, *as per Ex. A1 was illegal,* ultra vires, *null and void, unconstitutional and* mala fide *and that the plaintiff in law always continued as Rent Collector as temporary hand in a temporary post and was entitled to all the rights and privileges of that post together with a decree for recovery of Rs.* 4,468.15 *paise with proportionate costs of the suit against defendant No.* 1 *only and dismissing his suit with regard to the remaining amount as claimed in the plaint and further ordering that no interest was allowed to the plaintiff and leaving defendant No.* 2 *and the plaintiff to bear their own costs and further ordering that the suit being in* forma pauperis *the amount of Court-fees as payable in the suit would be a first charge on the entire decretal amount and further*

ordering that a copy of the decree sheet be sent to the Collector, Patiala, for his information and necessary action regarding the recovery of Court-fees.

K. S. KWATRA, ASSISTANT ADVOCATE-GENERAL, WITH R. K. CHHIBBER, ADVOCATE, for the Appellant.

K. P. BHANDARI, ADVOCATE, for the Respondent.

JUDGMENT

KAUSHAL, J.—This is an appeal by the Union of India against the judgment and decree of Shri O. P. Aggarwal, Subordinate Judge, First Class, Patiala, by which the suit of Lachhmi Narain, respondent was decreed and it was held that the order of termination of the plaintiff's services, dated 31st December, 1957, was null and void and that the plaintiff continued as Rent Collector, in the service of the defendant and a decree for Rs. 4,468.15 Paise was also passed.

The facts may briefly be stated thus. The plaintiff joined service as a clerk in the scale of Rs. 50—4—70 in the Custodian Department of erstwhile Patiala State, on 1st December, 2005 BK. He was transferred as Rent Collector in the grade of Rs. 40—2—60 on 3rd February, 2006 BK. On 31st December, 1957, his services were, however, terminated by the Regional Settlement Commissioner, Patiala. The plaintiff filed the present suit in *forma pauperis* and the main contention was that the order of termination of his services was passed by way of punishment and since no enquiry was held against the plaintiff and no opportunity as contemplated under Article 311 of the Constitution was granted to him, the order was illegal and unconstitutional. It was also contended that the plaintiff was made to deposit Rs. 1,350 into the Government treasury under threat and compulsion, and since the police after investigation found that the plaintiff was wholly innocent, he was entitled to the refund of that amount. The arrears of pay and allowances amounting to Rs. 4,985 were also claimed.

On behalf of the defendant, the suit was contested and various pleas were raised. The main plea was that the plaintiff was a temporary Government servant and his services were terminated according to the terms of his appointment and the rules and that the order of termination of services was not passed by way of punishment. The pleadings of the parties gave rise to the following issues :—

(1) Whether the impugned order, exhibit A. I, is wholly illegal, *ultra vires* and null and void as alleged in para 13 of the plaint ?

(2) Whether the impugned order, exhibit A. I, violates the provisions of Articles 14 and 16 of the Constitution of India as alleged in para 14 of the plaint ?

(3) Whether the plaintiff deposited the amount of Rs. 1,350 under threat, compulsion and protest and whether he is entitled to the refund of the same ?

(4) Whether the suit is within limitation ?

(5) Whether the plaintiff is entitled to recover a sum of Rs. 4,985 as arrears of pay and allowances ?

(6) Whether the impugned order, exhibit A. 1, amounts to removal of the plaintiff within the meaning of Article 311 of the Constitution of India ?

(7) If issue No. 6 is proved, whether the plaintiff was granted a reasonable opportunity as envisaged in Article 311 of the Constitution of India before the impugned order was passed against him ?

(8) Whether there was any shortage and the plaintiff deposited Rs. 1,350 against that shortage admitting his liability as alleged in para 8 of the written statement ?

(9) Relief.

The trial Court decided issues 1, 3 and 6 together. The finding was that the impugned order, exhibit A. 1, amounted to the removal of the plaintiff within the meaning of Article 311 of the Constitution of India and since no reasonable opportunity as envisaged therein was granted to him, the order was held to be illegal and void. Issues 1 and 3 were decided in the affirmative and in favour of the plaintiff. On issue 6 also, the finding was in the plaintiff's favour and it was held that he deposited Rs. 1,350 under threat, compulsion and protest and he was entitled to that amount subject to the claim being within limitation. Issue 2 was not pressed by the counsel for the plaintiff and it was decided against the plaintiff. On issue 4, it was found that suit for the recovery of Rs. 1,350 was barred by time under Article 62 of the Indian Limitation Act. On issue 5, the finding was in favour of the plaintiff and he was held entitled to recover a sum of Rs. 4,468.15 Paise on account of arrears of pay and allowances. Issues 7 and 8 were decided against the

defendant. A decree was consequently passed in favour of the plaintiff, as mentioned above, and his claim for Rs. 1,350 was disallowed. The plaintiff has not filed any appeal against this item and we have the appeal of the defendant only.

The learned counsel for the appellant contends with vehemence that the trial Court has come to a wrong conclusion when it says that the order of termination of the service of the plaintiff was passed by way of punishment and that it amounted to the removal of the plaintiff within the meaning of Article 311 of the Constitution of India. In order to determine whether the order of termination of the service of the plaintiff was passed by way of punishment or it is an order passed according to the terms of the appointment of the plaintiff and the relevant rules, it would be necessary to have a clear picture of what had happened. It is admitted on all hands that the plaintiff was a temporary Government servant. It is also admitted that the impugned order, exhibit A. 1, purports to have been passed under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949. The order does not cast any stigma on the plaintiff nor does it impose any penalty in so many words. The order reads as follows :—

> "Under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, the services of Shri Laxmi Narain, Rent Collector, are hereby terminated with effect from the date of service of this order on him. He will be paid a sum equivalent to the amount of his pay and allowances for 15 days, which is period of notice due to him. The payment of allowances will, however, be subject to the conditions, under which such allowances are otherwise admissible."

As to how the services of the plaintiff were terminated, will be clear from a narration of events. There being allegations of temporary embezzlement against the plaintiff, he was suspended on 19th April, 1957. It was contemplated that disciplinary proceedings would be taken against him and the suspension was ordered under sub-rule (1) of rule 12, of the Central Civil Services (Classification, Control and Appeal), Rules 1957. On 10th May, 1957, Shri C. L. Sardana, Assistant Settlement Officer, was appointed enquiry officer to enquire into the charges. This was done under sub-rule (4) of the above-said rule. The enquiry was being held under rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. On 13th June, 1957, a letter was written to the police for registration of

a case against the plaintiff and it was alleged that he had committed an offence of embezzlement under section 409 of the Indian Penal Code. The case of the plaintiff is that before the case was registered, he was threatened with dire consequences unless he deposited Rs. 1,350 which he did deposit under compulsion and threat. The police registered the case on 15th June, 1957 and investigated the matter. The investigation revealed that the plaintiff was not guilty of any embezzlement. The police also found that the sum of Rs. 1,350, which was deposited by the plaintiff, should be refunded to him. The report of the investigating officer is, dated 15th of August, 1958. On this report of the police, the plaintiff was discharged by the Magistrate on 3rd October, 1958. Before the completion of the investigation by the police, the plaintiff's services were, however, terminated on 31st December, 1957, under rule 5 of the Central Civil Services (Temporary Service) Rules, 1959. This order was served on the plaintiff on 9th January, 1958. As is clear from the impugned order, the plaintiff was paid a sum equivalent to the amount of his pay and allowances for fifteen days. It is also admitted that during the period of suspension from 26th April, 1957 to 9th January, 1958, the plaintiff was paid only subsistence allowance. He was not given full pay for the period of suspension even at the time of the termination of his services or at any time thereafter.

Mr. K. P. Bhandari, who appears for the plaintiff-respondent, has contended that the events, as narrated above, go to show that since the plaintiff was suspected of having committed embezzlement and an enquiry was instituted against him, the order of termination of services was passed with a view to punish him. It is also stressed that the appellant forfeited fifteen days' pay of the plaintiff which would be evident from the impugned order. It is pointed out that under rule 5, of which a mention is made in the order itself, the plaintiff was entitled to get one month's pay and not of fifteen days in lieu of notice. It is further stressed that as the plaintiff was not paid his full pay for the period during which he remained suspended, because of the enquiry against him, the appellant had forfeited half the pay and allowances of the plaintiff for the period of suspension. Since punishment was imposed on the plaintiff, it is argued, in the shape of forfeiture of fifteen days' pay and half the pay and allowances for the period of suspension, the impugned order entailed penal consequences.

Shri Kulwant Singh, who was the Regional Settlement Commissioner, at Patiala, and who had terminated the services of the plaintiff, has come in the witness-box as D.W. 1. According to his

statement, the enquiry was dropped against the plaintiff because it was not necessary to continue the enquiry. He further stated that no particular incident was considered at the time of termination of plaintiff's services, but the usefulness of the official was considered in general. In reply to a Court question it was stated that the services of the plaintiff were terminated as the witness did not find the plaintiff a useful hand. With regard to the non-payment of pay and allowances for the period of suspension, the reply of this witness was that when the services of the plaintiff were terminated under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, payment of full pay and allowances was not made because the plaintiff was not reinstated; his services were terminated without reinstating. According to the statement of Shri Bholla Singh, Clerk, P.W. 8,, who had brought the enquiry file of the plaintiff, there were no statements of prosecution or defence witnesses in the file; neither was there any report of the enquiry officer regarding the said enquiry. The evidence of the above-mentioned two witnesses clearly shows that the Regional Settlement Commissioner dropped the enquiry because it was considered not necessary to continue it. The enquiry file also shows that the enquiry was not proceeded with after the reply of the plaintiff was obtained to the charge-sheet. No witnesses were examined on either side and the enquiry officer did not submit any report. Since the plaintiff was a temporary Government servant, if the authorities decided not to proceed with the enquiry and proceeded to terminate the services of the plaintiff under rule 5 governing the service to which the plaintiff belonged, it cannot be said that the services of the plaintiff were terminated as a measure of punishment. The Supreme Court in *Jagdish Mitter* v. *The Union of India* (1), has laid down the law in the following words—

> "On the other hand, in some cases, the authority may choose to exercise its power to dismiss a temporary servant and that would necessitate a formal departmental enquiry in that behalf. If such a formal enquiry is held, and an order terminating the services of a temporary servant is passed as a result of the finding recorded in the said enquiry, *prima facie*, the termination would amount to the dismissal of the temporary servant. It is in this connection that it is necessary to remember cases in which the services of a temporary servant have been terminated directly as a result of the formal departmental enquiry, and cases in which such termination may not be the direct

(1) A.I.R. 1964 S. C. 449.

result of the enquiry; and this complication arises because it is now settled that the motive operating in the mind of the authority in terminating the services of a temporary servant does not alter the character of the termination and is not material in determining the said character. Take a case where the authority initiates a formal departmental enquiry against a temporary servant, but whilst the enquiry is pending, it takes the view that it may not be necessary or expedient to terminate the services of the temporary servant by issuing an order of dismissal against him. In order to avoid imposing any stigma which an order of dismissal necessarily implies, the enquiry is stopped and an order of discharge simpliciter is served on the servant. It must be held that the termination of services of the temporary servant which in form and in substance is no more than his discharge effected under the terms of contract or the relevant rule, cannot, in law, be regarded as his dismissal, because the appointing authority was actuated by the motive that the said servant did not deserve to be continued for some alleged misconduct. That is why in dealing with temporary servants against whom formal departmental enquiries may have been commenced but were not pursued to the end, the principle that the motive operating in the mind of the authority is immaterial, has to be borne in mind. But since consideration of motive operating in the mind of the authority have to be eliminated in determining the character of the termination of services of a temporary servant, it must be emphasised that the form in which the order terminating his services is expressed will not be decisive. If a formal departmental enquiry has been held in which findings have been recorded against the temporary servant and as a result of the said findings, his services are terminated, the fact that the order by which his services are terminated, ostensibly purports to be a mere order of discharge would not disguise the fact that in substance and law the discharge in question amounts to the dismissal of the temporary servant. That is why the form of the order is inconclusive; it is the substance of the matter which determines the character of the termination of services. In dealing with this aspect of the matter, we must bear in mind that the real character of the termination of services must be determined by reference to the material facts that existed prior to the order. Take a

> case where a temporary servant, attacks the validity of his discharge on the ground of *mala fides* on the part of the authority. If in resisting the plea of *mala fides*, the authority refers to certain facts justifying the order of discharge and these facts relate to the misconduct, negligence or inefficiency of the said servant, it cannot logically be said that in view of the plea thus made by the authority long after the order of discharge was the result of the consideration set out in the said plea. What the Court will have to examine in each case would be, having regard to the material facts existing up to the time of discharge, is the order of discharge in substance one of dismissal ? If the answer is that notwithstanding the form which the order took, the appointing authority, in substance, really dismissed the temporary public servant, Article 311 would be attracted."

Mr. Bhandari, counsel for the respondent, contends that in order that the law laid down by the Supreme Court in the above-mentioned case may be applicable, there must be a formal order dropping or stopping the enquiry. This, is, however, not what the Supreme Court has observed. If the authority after initiating a formal departmental enquiry takes the view that it may not be necessary or expedient to terminate the services of the temporary servant by issuing an order of dismissal against him, stops the enquiry and passes a simple order of discharge from service, it meets the requirement of law as laid down by the Supreme Court. This is what has happened in the present case. The enquiry was not proceeded with and did not result in any report being made by the enquiry officer. In fact, no witnesses were examined and it conclusively shows that the enquiry was stopped. There are no reasons for this Court to disbelieve the statement of Shri Kulwant Singh, when he states that the enquiry was dropped because it was not necessary to continue it.

There is no force in the other contention of Mr. Bhandari that since the appellant forfeited fifteen days pay and allowances due to the plaintiff for the period of suspension, the order which says that the pay of the plaintiff for fifteen days is forfeited. On the other hand, the impugned order shows that the authority passing the order thought that under the rule fifteen days' notice was due to the plaintiff. This will be evident from the following sentence—

> "He will be paid a sum equivalent to the amount of his pay and allowances for fifteen days which is period of notice due to him."

Obviously, a mistake has been made in reading in the rule that the notice period is fifteen days, whereas in fact it is one month. The authority terminating the services, therefore, did not consciously and deliberately impose any penalty and did not order the forfeiture of fifteen days' pay. If a mistake has been committed, the plaintiff may, in law, be entitled to the pay and allowances for fifteen days, but it is difficult to hold that the order of termination of service under rule 5 of the relevant rules becomes an order of dismissal or removal only because fifteen days' pay and allowances were paid to the plaintiff. Similarly, no order has been passed by any authority that the plaintiff should not be paid his full pay and allowances for the period of suspension. According to Shri Kulwant Singh, non-payment of full pay and allowances happened since the plaintiff was not reinstated before his services were terminated. It may again be a case where the plaintiff may be entitled to the full pay and allowances for the period of suspension since the enquiry was dropped, but there is no warrant for contending that the full pay and allowances due to the plaintiff for the period of his suspension were withheld consciously with a view to punish him. According to the law laid down by the Supreme Court in *Parshotam Lal Dhingra* v. *Union of India* (2), the real test for determining whether the order is by way of punishment is to find out if the order also visits the servant with any penal consequences. The learned counsel for the plaintiff-respondent lays emphasis on the following lines in the above-mentioned judgment at page 49—

> "Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty."

Even according to these observations either the order should provide for the forfeiture of pay and allowances or the order should entail such consequences. In the present case, as stated earlier, the order does not provide for any such penalty nor any loss or forfeiture of pay or allowances has resulted as a consequence of the impugned

(2) A.I.R. 1958 S.C. 36.

order. In the *Union of India* v. *Pandurang Kashinath More* (3), it was observed—

> "We do not think that the refusal to pay the subsistence allowance indicates that the termination of service was by way of punishment. It is clear that such refusal was due only to a misreading of the relevant rules by the appellant's officers. The withholding of subsistence allowance during the period of suspension had no connection with the termination of service and did not follow as a consequence of it at all. As regards the order of suspension, it is sufficient to say that article 311 is not concerned with the suspension from service."

What had happened in the case before the Supreme Court was that Pandurang Kashinath was put under detention under the Bombay Public Security Measures Act. On 21st July, 1949, the manager of the workshop suspended him from duty with effect from the date of his detention. The order of suspension stated that the respondent was not entitled to any subsistence allowance during the period of suspension. On 29th March, 1950 the manager passed an order terminating the service of the respondent with effect from 9th July, 1949, the date on which he was suspended. He was given one month's pay in lieu of notice. In view of these facts, the contention that the termination of service was by way of punishment since the payment of the subsistence allowance during the period of suspension was refused was over-ruled. In the case in hand, there is not even an order withholding the full pay and allowance due to the plaintiff for the period of suspension. It is too much to assume that the Regional Settlement Commissioner, who terminated the services of the plaintiff, punished him by not giving the full pay and allowances for the period of suspension. The normal way of looking at things is that it did not strike the concerned authority that the plaintiff should be paid his full pay and allowances for the period of suspension, since enquiry against him had been stopped. It is difficult to import an element of punishment in the order of termination of the service, as the concerned authority has stated on oath that the service was terminated and the enquiry was dropped since in his view it was not necessary to proceed with the enquiry and the service was terminated because he did not find the plaintiff a useful hand.

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(3) A.I.R. 1962 S.C. 630.

Great reliance was placed by Mr. Bhandari of *Union of India* v. *Jeewan Ram* (4). The facts in that case were, however, different. The reproduction of the first head-note of that authority will clearly bring out the points of distinction. The head-note reads—

> "The plaintiff, who was a permanent booking clerk in the service of a Railway Company was charge-sheeted on 21st February, 1949, on the allegation of certain misconduct and was directed to show cause and submit a written explanation within 7 days as to why he should not be dismissed from service under rule 1702, Railway Establishment Code. The plaintiff submitted an explanation denying the allegation on 28th February, 1949. On 16th March, 1949, an order was passed against him that he would be given one month's pay in lieu of notice of removal from service. The order was headed 'Notice of imposition of penalty of removal from service under item 8 of rule 1702'. The order itself stated that the plaintiff was deprived of half of his pay during the period of his suspension. The order also stated that the plaintiff had a right of appeal under rule 1717. The plaintiff was deprived of his dearness allowance and house-rent allowance during his suspension:
>
> *Held*, that the order of removal, passed against the plaintiff was certainly of a penal nature, that is by way of punishment and as the order clearly contravened the provisions of section 240(3), Government of India Act, 1935, it was illegal and ineffective. The fact that the order talked of one month's pay in lieu of notice did not mean that it was an order under rule 148(3) and (4), Railway Establishment Code."

Apart from the fact that the order in the above-mentioned case purported to be an order of imposition of penalty of removal, the order itself stated in clause (c) that the respondent was deprived of half of his pay during his period of suspension. This factor made it abundantly clear that the order was a penal order. After holding because of the above-mentioned circumstances that the order was intended to be a penal order, their Lordships also noted that in the plaint the respondent (before them) pointed out further penal consequences which he had suffered. He pointed out that he did not get

(4) A.I.R. 1958 S.C. 905.

dearness allowance and house rent allowance from 8th February, 1949 to 18th April, 1949, etc. Only because this fact was noted by the Supreme Court, it cannot be said that the order was held to be of a penal nature because of this consideration. As a matter of fact, as observed earlier, unless the order of withholding of full pay and allowances for the suspension period followed as a consequence of the order of termination of service, it will have no connection whatsoever with the order of termination.

In the *State of Punjab and others* v. *Harbans Lal* (5), a Division Bench of this Court held the order of reversion as penal inasmuch as at least part of the salary earned by each one of the three respondents (before them) in the selection grade had been ordered to be refunded by them. *Union of India* v. *Shri Jai Chand Sawhney,* (6), relied upon by the learned counsel for the respondent is also not applicable inasmuch as the Bench observed—

> "If the only reasonable inference that can be drawn from the facts proved in the present case is that the Railway authorities wanted to punish the plaintiff for what they thought was misconduct on his part and for that reason terminated his services, the ratio of the decision in *S. Sukhbans Singh* v. *The State of Punjab* (7), would at once apply."

In the present case, no such inference can be drawn that the Regional Settlement Commissioner wanted to punish the plaintiff for his misconduct. Similarly, no benefit can be derived by the plaintiff from the *State of (Pepsu) now Punjab* v. *Banarsi Dass,* R.S.A., 307 of 1959, decided on 19th September, 1960. In this case, it had been found that the bank's contribution to the respondent employee's provident fund had not been paid to him and had instead been credited to the Employees' Welfare Fund. It had also been found that the deduction had been made under the provisions of rule 7(b) and this Court on that basis held that it was clearly a case of dismissal on account of misconduct.

In the *The State of Punjab* v. *Rajinder Singh* (8), the order of reversion was held to be of a penal nature, since the name of the Sub-Inspector of Police was ordered to be removed from list 'E' as

(5) 1966 Cur. L.J. (Pb.) 813.
(6) 1962 P.L.R. 807.
(7) 1962 P.L.R. 1008.
(8) I.L.R. (1966) 1 Punj. 84=1965 P.L.R. (Supp.) 625.

a consequence of reversion debarring him from further promotion or indefinitely postponing his chances of future promotion.

For all the reasons stated above, I am of the definite view that the order of termination of the service of the plaintiff in the present case was not passed by way of punishment, nor did it entail any penal consequences. The order is a simple order of termination of service within the meaning of rule 5 of the Central Services (Temporary Service) Rules, 1949. The provisions of Article 311 of the Constitution are not attracted in such a case.

During the course of arguments, another contention was raised that inasmuch as the impugned order was not in accordance with the terms of rule 5 of the above-mentioned rules, it could not be sustained. The exact contention is that rule 5 contemplates giving of one month's notice or pay in lieu thereof and since in the present case, the plaintiff was paid a sum equivalent to the amount of his pay and allowances for fifteen days instead of one month, the order was not in accordance with the rule. Reliance was placed in support of this contention on a judgment of Pandit, J., in *Khazan Chand Dhamija*, v. *The State of Punjab and another* (9) and *P. H. Laxminarayanan* v. *Engineer-in-Chief, Army Headquarters, and another* (10). The Full Bench has only laid down that the question of violation of any rules or statutes enacted under Article 309 of the Constitution regulating the condition of service of such servants of the State as are not attracted by Article 311, would be a justiciable matter. There is no dispute so far as this proposition is concerned. In *Khazan Chand's case*, no doubt, it was held by the learned Judge that although the appointing authority had an absolute right to retire an employee after he had reached the age of 55 without assigning any reason subject to the condition that he would be given three months' notice, a retirement without notice was not valid. This case, however, runs counter to the decision of a Division Bench consisting of Dulat and R. P. Khosla, JJ., in an unreported case *State of Punjab* v. *Shri Ved Parkash Vohra*, Letters Patent Appeal, 345 of 1964 decided on 16th July, 1965. In this case, the srevices of Ved Parkash were terminated with immediate effect although he being a temporary Assistant Engineer, the services according to the rules applicable were terminable by three months' notice. In the return filed by the State, they took the position that the services were terminated under para 2 of the terms of appointment read with Article 8.321(b) of the Manual of Administration

(9) 1964 P.L.R. 818.
(10.) I.L.R. (1966) 2 Punj. 305 (F.B.).

without assigning any reasons. It was further stated that Ved Parkash would be given three months' pay in lieu of the notice. The Letters Patent Bench came to the conclusion that there was no element of punishment and as regards termination, Government had undertaken to pay three months' pay in lieu of the notice. *Jagdish Mitter's case* was relied upon for observing that if the termination of service was under the terms of appointment or rules governing the employment, the motive operating on the mind of the Government had no relevance. The order of termination of service was upheld and the judgment of the learned Single Judge (now reported as *Ved Parkash Vohra* v. *The State of Punjab* (11), by which the writ had been granted) was set aside. In *Khazan Chand's case*, no reasons are given for holding that the order of retirement was bad if three months' notice had not been given. It has been noted in the judgment that the appointing authority had an absolute right to retire a Government employee after he had reached the age of 55 without assigning any reason. The condition of three months' notice, in my view, is not of such a vital nature that its non-observance should invalidate the order of retirement. The spirit underlying the rule requiring three months' notice, obviously, is that the Government servant should be given enough time so that he can make arrangement for seeking employment elsewhere during that period, and if immediate retirement is contemplated, he should be paid three months' pay in lieu of notice. If the order of retirement is passed without giving three months' notice or pay, the Government servant is entitled to claim three months' pay and has no right to continue in service inasmuch as the authority has the absolute right to retire him. I am, therefore, in agreement with the decision in *Ved Parkash Vohra's case*. The contention raised consequently cannot prevail only because fifteen days' pay was paid to the plaintiff instead of one month's pay. He is only entitled to claim pay and allowances for fifteen days which were not paid to him.

Due to the reasons stated above, the decision of the trial Court on issues 1 and 6 is reversed and they are decided against the plaintiff. In view of this decision, issue No. 7 does not arise. As regards issue No. 5, the plaintiff is entitled to the full pay and allowances for the period of his suspension and pay and allowances for fifteen days. It is agreed on both sides, that this amount

(11) 1964 P.L.R. 1224.

comes to Rs. 558.50 Paise. Arguments were not addressed on any other issue.

As a result, the appeal is accepted and the decree passed by the trial Court is set aside. The plaintiff is, however, granted a decree for Rs. 558.50 Paise only. His suit is dismissed in all other respects. In the circumstances, there will be no order as to costs.

HARBANS SINGH, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

DIAL CHAND,—*Petitioner*

versus

MAHANT KAPUR CHAND,—*Respondent.*

Civil Revision No. 253 of 1966

December 20, 1966

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2)(i)—Application for ejectment of the tenant on the ground of non-payment of rent—Defences open to the tenant—Dispute with regard to rate of rent—Non-compliance with the proviso to section 13(2)(i)—Effect of—Courses open to the tenant in such a case stated.

Held, that it is open to the tenant, in defence to an application for ejectment on the basis of non-payment of rent, to prove that in fact rent has actually been paid and nothing is due. If he succeeds in proving that, then the application for ejectment by landlord fails. If there is a dispute as to the quantum of rent, the landlord claiming rent at a higher rate than the tenant alleging to have paid it, and if the latter proves that the rate of rent was at which he made the payment, obviously he succeeds in his defence:

Held, that if the tenant raises a dispute with regard to the rate of rent and thus makes a mistake in complying with the proviso to section 13(2)(i) of the East Punjab Urban Rent Restriction Act, he does so at his own risk. The proviso being for the benefit of the tenant, if he wishes to take advantage of it, he has to comply with it strictly and can take one of the three courses in case of dispute as to the rate of rent, viz.

(i) He can under protest make payment or tender arrears at the rate claimed by the landlord in the ejectment application, and if the rate is found subsequently to be less, he can hope for adjustment of the excess payment.