Shyam Lal vs State Of U.P. And Anr. on 10 October, 1953

Equivalent citations: AIR1954ALL235, AIR 1954 ALLAHABAD 235

JUDGMENT

Agrwala, J.

1. Shyam Lal, applicant, was a member of the Indian Service of Engineers occupying the post of the Superintending Engineer, VI Circle in the Irrigation Department of the State ot Uttar Pradesh. He was promoted to the rank of Superintending Engineer in August 1944 and was holding that post when the dispute in the case, that calls for decision, arose. The applicant passed his Civil Engineering Examination from the Thomason College, Roorkee, in 1922 standing first in his class. He was awarded the Council of India Prize of Rs. 1,000/- for being the best student of the year and a prize of Rs. 250/- for being the best Indian student of the year. He was also awarded the Cautley Gold Medal for the best Engineering design of the year. He was appointed in the Indian Service of Engineers in October 1923 by the Secretary of State for India in Council.

At the time of his appointment the applicant was given a letter of appointment by the Secretary of State for India in Council which prescribed 'inter alia' the conditions governing the applicant's terms of appointment condition's of service, promotion, leave, pension etc. A copy of the letter has been annexed to the petition. After the attainment of Independence by India a fresh covenant was entered into between him, and the Governor of Uttar Pradesh and the Governor-General of India, by which the applicant's original conditions of service were confirmed.

According to the applicant, he incurred the displeasure of certain colleagues in the service whose work he had the misfortune to criticise in connection with his routine duties as Superintending Engineer, and those person's started making wrong reports against him. On January 4, 1950, the U.P. Government addressed a letter No. 43-B/XIII/277-B-1948 to the Chief Engineer, Irrigation Branch, U.P. asking for the applicant's explanation in respect of certain charges. The charges related to certain alleged excess payments by him to certain contractors which, in the opinion of the Government, were unjustified. One of the charges, however, related to dishonest conduct,

2. The applicant submitted his explanation to the charges to the Chief Engineer. It appears that thereafter the Chief Engineer sent his own note in reply to the applicant's explanation to the Union Public Service Commission, which decided that the charge relating to dishonesty was not proved while the other charges were proved. On the arrival of this report, the President of India passed an order on the 17th of April 1953 compulsorily retiring the applicant from service with effect from the date of the handing over of the charge by the applicant. Before the order could be served on him, the applicant made an application to this Court under Article 226 of the Constitution, praying that a writ of certiorari be issued quashing the President's order dated the 17th April, 1953, ordering the

compulsory retirement of the petitioner. In this petition he alleged that the order had not yet been served on him and that it might be served on him at any time. He prayed for an 'ad interim' order directing the opposite parties, namely, the State of Uttar Pradesh and the Union of India to refrain from relieving the petitioner of his present post and from carrying into execution the aforesaid order.

The grounds on which the petition was based was that the applicant was not given any reasonable opportunity to show cause against the action proposed to be taken against him, that he was merely asked to submit an explanation which he did but was not given an opportunity of controverting by evidence and argument the charges which were levelled against him or the remarks which were made against him by the Chief Engineer. When this application was presented to us, we considered that a 'prima facie' case had been made out and acceded to the request for the grant of an interim order, and directed that the order of 17th April 1953 be not carried into effect till the decision of this petition. Later, on the representation of the Advocate-General on behalf of the State, the interim order was modified and we directed that the Government may not if they like, take any work from the applicant but may pay him the salary till the decision of the application. We understand that the applicant has been drawing his salary during this time.

3. We have now heard learned counsel on both sides and we have come to the conclusion that the applicant is not entitled to the relief claimed by him. The applicant relies upon Article 311 of the Constitution. That Article provides-

> "No person who is 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 shall be dismissed or removed by an authority subordinate to that by which he was appointed.
> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

There is a proviso to sub-article (2) which is not relevant for the purpose of the present case. In substance, Article 311 provides a twofold protection to an employee in the civil service of the Union or of a State-- (a) that such an employee shall not be dismissed or removed by an authority subordinate to that by which he was appointed and (b) that such an employee shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The applicant's case is that he was 'removed' from service and, as such, he was entitled to a reasonable opportunity of showing cause against his removal, which he was not given.

4. The alleged 'removal' of the applicant was under paragraph 465A of the Civil Service Regulations which provides as follows: "For officers mentioned in Article 349A the rule for the grant of retiring pension is as follows :

> (1) An officer is entitled, on his resignation being accepted, to a retiring pension after completing qualifying service of not less than 25 years or in the case of officers of

> Imperial Services of the Forest, Geological Survey, Public Works, Railway and Telegraph Departments and any others covered by Article 635 who entered the service before the 6th day of December, 1932, not less than twenty years.
>
> (2) A retiring pension is also granted to an officer who is required by Government to retire after completing twenty-five years' qualifying service or more."

Then there are two notes to this paragraph.

Note I reads-

> "Government retains an absolute right to retire any officer after he has completed twenty-five years' qualifying service without giving any reasons, and no claim to special compensation on this account will be enter-tamed. 'This right will not be exercised except when it is in the public interest to dispense with the further Services of an officer."

It is not necessary to quote Note 2.

5. The applicant was, according to him, removed under sub-paragraph (2) of paragraph 465A read with note I. The applicant had completed 25 years of qualifying service. He had not attained the age of 55 years which is an age of superannuation and which he would do on the 10th of January 1955. Retirement under this rule does not entail any reduction in the pension which the applicant may be entitled to. It is conceded in the present case that no such reduction was ordered in his case and no other punishment was inflicted on him.

6. On behalf of the opposite party it is alleged that a compulsory retirement under paragraph 465A is not "removal" within the meaning of Article 311 of the Constitution, and further that even if it be so, the applicant was given a reasonable opportunity of showing cause against his removal, inasmuch as he was asked to submit an explanation which he did, and nothing more, in the circumstances of the case, was necessary to be done.

7. Therefore, two questions fall for decision-- (1) whether "removal" within the meaning of Article 311 includes "retirement", as may be ordered under paragraph 465A of the Civil Service Regulations, and (2) whether, if removal includes retirement under that paragraph, a reasonable opportunity was given to the applicant? A third question also arises in the case and it is whether paragraph 465A is a valid rule or regulation and whether it is applicable to the applicant.

8. The word "removal" means in its dictionary meaning "displace" or "discharge" from a certain position. In its widest scope it would include every kind of displacement of a person, from a post he holds. It would, therefore, also in that sense include a compulsory retirement on the attainment of the age of superannuation under Rule 56 of the Fundamental Rules. It may also be said that it would include, in that larger sense, the termination of the service of an employee for any reason whatever, for instance on the expiry of his term of office which he held. It is obvious that a wide meaning such

as this cannot be given to the word "removal" as used in Article 311 of the Constitution. The Article requires that a reasonable opportunity is to be given to an employee to show cause against the action proposed to be taken against him. There can be no question of showing cause when a service is terminated, because a person has attained the age of superannuation, or because his term of service which he could hold under a contract under which he was employed, expires. In all these cases the action of terminating an employee's service is taken not because of any misconduct or fault of the employee but because his term of office has come to an end by the automatic operation of some rule applicable to him or by some term of the contract of his service.

A person can be asked to show cause against an action proposed to be taken against him, if the action proposed to be taken against the applicant is of such a nature that it may possibly be avoided if properly explained. If the termination of service is ostensibly not for any fault of the employee, no question of explanation can arise. Therefore, it must be held that "removal" within the meaning of Article 311 must refer to a removal which is for some fault, or misconduct of the employee himself which he may try to explain. The word "removal" is not used in its widest connotation in Article 311, as has recently been laid down by the Supreme Court in -- 'Satish Chandra Anand v. Union of India', AIR 1953 SC 250 (A). In that case a temporary employee's term of service was terminated by means of a notice as required by the terms of the contract of his service. The Supreme Court pointed out that such termination of service did not amount to "removal" within the meaning of Article 311. We have, therefore, necessarily to put some limitation on the connotation of the word "removal" in Article 311.

Under paragraph 465A of the Civil Service Regulations, there may be compulsory retirement of a person who has completed 25 years of qualifying service. On completion of that period of service, the employee is granted full pension, as would be available to him after completing that period of service, and he is entitled to all emoluments as be would be entitled to if his services were terminated at that particular point of time. With the exception of the fact that he may stand to lose monetarily by a premature retirement from service he suffers no other stigma. But the difficulty that arises is that paragraph 465A itself provides that this premature retirement of an employee will not be made unless it is in the public interest to do so.

9. The argument on behalf of the applicant is that this is tantamount to saying that the employee is blame-worthy or, at any rate, has some defect or disqualification for which he is compulsorily retired under that paragraph; and, it is urged that, for that reason, it is natural and just that he should be afforded reasonable opportunity of showing why he should not be prematurely retired and put on a level different from his compeers in the service. We have given our best consideration to this matter and although much can be said for either view, we have finally come to the conclusion that the contention advanced on behalf of the State is the correct one and must be accepted. A little consideration of the history of the rule enacted in Article 311 of the Constitution would confirm this conclusion.

10. Before the Government of India Act, 1919, there was no restriction on the power of the Crown to dismiss a servant, employed in the civil service, at pleasure. The general English rule was that servants of the Crown could be dismissed at the pleasure of the Crown. There was only one

exception to this rule and it was this that where an appointment was made under an Act of Parliament providing dismissal for good cause, the servant could not be dismissed at pleasure. This distinction between the two classes of cases was pointed out by the Privy Council in -- 'Venkatarao v. Secretary of State', AIR 1937 PC 31 (B) where their Lordships quoted the opinion of Lord Hobhouse as delivered in -- 'Shenton v. Smith', (1895) AC 229 (C).

> "It appears to their Lordships that the proper grounds of decision in this case have been expressed by Stone J. in the Full Court. They consider that, unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law suit, but by an appeal of an official or political kind .....As for the regulations, their Lordships again agree with Stone J. that they are merely directions given by the Crown to the Governments of Crown Colonies for general guidance, and that they do not constitute a contract between the Crown and its servant."

11. A special case such as was contemplated in the above cited passage occurred in -- 'Gould v. Stuart', 1896 AC 575 (D) where the Board, consisting of three members, two of whom had sat in 'Shenton's case (C)', held that the respondent Stuart held office in New South Wales under certain conditions expressly enacted in the body of the New South Wales Civil Service Act, 1884, and that these express provisions of the statute were "inconsistent with importing into the contract of service the term that the Crown may put an end to it at its pleasure."

12. This rule was applied to servants in the employ of the East India Co. -- 'G. Gibson v. The East India Co.', (1838) 5 Bing (NC) 262 (E). After the resumption of the Government of India by the Crown the same rule continued to be in force up to 1919 when the Government of India Act was amended by the insertion of section 86E. That section imposed one restriction upon the dismissal of a civil servant at the pleasure of the Crown. The restriction was that no civil servant might be dismissed by any authority subordinate to that by which he was appointed. Subject to this there was no restriction upon the power of the Crown to dismiss any person in the Civil Service at pleasure. Section 96B, however, made reference to the rules made by Government and while enacting the rule that the Crown could dismiss a person in Civil Service at pleasure, it made it "subject to the provisions of this Act and of the rules made thereunder".

Courts in India differed as to the precise scope of this phrase. One view was that the power of the Crown to dismiss at pleasure was not unqualified but was subject to the provisions of the rules applicable to the service to which the person concerned belonged. The other view was that these rules and regulations did not limit the power of the Crown to dismiss a servant at pleasure but were merely rules of administration which would ordinarily be observed by the Executive Government, but if not observed, itself conferred no right which could be enforced in a court of law by a dismissed servant.

The matter went up to the Privy Council in two cases -- 'Venkata Rao v. Secretary of State (B)', to which 'a reference has already been made and -- 'Rangachari v. Secretary of State', AIR 1937 PC 27 (F). In both of these cases the Privy Council upheld the latter view, namely, that the phrase "subject to the provisions of this Act and of the rules made under the Act" did not limit or qualify the unfettered discretion of the Crown to dismiss a servant in the Civil Service at pleasure, that the remedy for the violation of the rules and regulations was political and not legal. In the Government of India Act, 1935, the position was altered. Under that Act, over and above, the restriction on the pleasure of the Crown to dismiss a Civil Servant at pleasure which was already embodied in Section 96B, another restriction was imposed and it was that a Civil Servant could not be "dismissed or reduced in rank" unless the parson concerned was given a reasonable opportunity of showing cause against the action proposed to be taken against him. By this provision what was embodied in some of the rules was given a statutory recognition.

Under Rule 55 of the Civil Service (Classification, Control and Appeal) Rules which were made under the provisions of the Government of India Act, 1919, a Government servant in the civil service of the Crown was entitled to get a reasonable opportunity of defending himself against the action proposed to be taken against him. A similar provision was included in Section 240 of the Government of India Act, 1935, and the right of opportunity being given for showing cause was thus given a statutory recognition. Henceforth, the power of the Crown to dismiss a servant at pleasure, which meant without giving any opportunity to the dismissed servant, was no longer unfettered. The rule, which had merely administrative or political efficacy having now been given statutory recognition, imposed a statutory fetter on the power of the Crown to dismiss a servant at pleasure, but the cases to which the fetter applied were of (a) dismissal and of (b) reduction in rank, The word "removal" was not used in the Government of India Act, 1935.

13. Under Rule 49 of the Civil Service (Classification, Control and Appeal) Rules several kinds of punishments could be inflicted for good and sufficient reason on a civil servant. These included dismissal, reduction in rank and also removal. The distinction between "dismissal" and "removal" was that while dismissal entailed a liability' upon a dismissed servant not to be able to seek a Government service again, "removal" did not have that effect. In the case of "removal" Government servant could be granted under Rule 353 or 353A, Civil Service Regulation, a compassionate allowance or even pension but to a reduced extent. Upon "dismissal" there was no question of the grant of any pension. "Removal" was, as used in Rule 49, by way of punishment.

A question arose under the Government of India Act, 1935, whether the statutory protection afforded by Section 240 in case of "dismissal" and "reduction in rank" also extended to the case of removal though the word "removal" was not used in that section. In --'High Commr. for India v. I M. Lall,' AIR 1948 PC 121 (G), Mr. I. M, Lall, a member of the Indian Civil Service was removed from the Indian Civil Service but not dismissed in the technical sense. The Privy Council considered the provisions of section 240, sub-section (3) as applicable to the case of removal as well which word was assumed to be comprised within the word "dismissal,"

14. When the present Constitution was framed, in addition to the word "dismissal" an opportunity was taken to add the word "removal" alter the word "dismissal" and before the phrase "reduction in

rank". As the phrase stands now, "Dismissal, removal and reduction in rank", it reminds us of the identical phrase used in Rule 55 of the Civil Service (Classification, Control and Appeal) Rules. Rule 55 says : "Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of 'dismissal,' 'removal' or 'reduction' shall be passed on a member of a service (other than an order based on facts which had led to his conviction in a criminal court or by a court-martial) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself".....

This rule follows Rule 49 which prescribes the penalties which may, for good and sufficient reason, be imposed upon members of the services. There can be no doubt whatsoever that the phrase "dismissal, removal or reduction", as used in Rule 55, has reference to "dismissal, removal and reduction in rank" which are three out of several penalties provided in Rule 49. In the Civil Service Regulations there are rules providing for pension in case of "removal from service". Rules providing for pension on "removal" of a person inter alia are Rules 353 and 353A. Rule 353 deals with pension when a person is removed for misconduct, inefficiency or insolvency. The rule says that-

> "no pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency; but to officers so dismissed or removed compassionate allowances may be granted when they are deserving of special consideration provided that the allowances granted to any officer shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on medical certificate".

15. Rule 353A deals with pension when a person is removed from service when found unfit for further advancement. It says that--"a person belonging to one of the following services, who is proved to be unfit for further advancement, is removed from service by the secretary of State on the recommendation of the Local Government and the Government of India, he may with the sanction of the Secretary of State, be granted a pension not usually exceeding, and not necessarily so great as, that which would have been admissible to the officer if he had been invalidated on medical certificate". Removal 'from service under Rule 353A is also spoken of as "compulsory retirement" but this has nothing to do with 'retirement' under Rule 405A.

16. "Retirement" under the rules is of two kinds (a) retirement on reaching the age of Superannuation which is fixed at 55, and in some cases at 60, and (b) "retirement" on completion of 25 years of service. This last is dealt with in Rule 465A which we have already quoted.

17. "Retirement" under both these provisions is not spoken of as "removal" in any of the rule's. It is conceded that "retirement" on reaching the age of superannuation is not "removal" within the meaning of Article 311. The essential difference between "removal" by way of penalty as provided for in Rule 49 and other rules and "retirement" on attainment of period of qualifying service as provided for in Rule 465A, is that while "removal" under Rule 49 and the other rules is always by way of penalty, "retirement" under Rule 465A is not at all by way of penalty. The reasons for which a person may be retired under Rule 465A are not specifically mentioned in that rule. The general reason given is that "it is not in the public interest" to retain the services of the officer concerned any longer. The reason why a person's continuance may not be in the public interest may be wholly

unconnected with any misconduct or fault on his part. It is true that the retirement under Rule 465A may be taken recourse to because of some misconduct or fault of an officer who has already put in 25 years of service, but the question is whether the retirement contemplated under that rule is intended to be by way of punishment or not.

18. It has to be noted that the Rule 465A Speaks of retirement after completion of a sufficiently long service. If it were intended to be a provision by way of punishment, it could, one would have thought, be applicable to a person at any period of his service. The compulsory retirement after a sufficiently long period of service is to our mind of the class of retirement upon the attainment of a particular age, that is to say, the age of superannuation. This is not to say that the two retirements are identical. No doubt they are different retirements -- one at the age of superannuation which is common to everybody and the other at an earlier age; but even in the first case, a servant can be retained in service for a further term for reasons to be recorded. Retirement under Rule 465A is to be for Some reason, i. e. the retention of the servant concerned not being in the public interest; and yet when all this has been said, the two sorts of retirements are essentially different from the "removal" spoken of in Rule 49 or which may be imposed by way of, penalty or punishment. The effect of Rule 465A and the fundamental Rule 56 taken together is that civil servants normally retire at the age of 55, that their services may be retained for special reasons to be recorded, and similarly their services may be terminated earlier after completion of 25 years of service for special reasons. In our opinion, though Rule 465A is on the border line between the rule of removal in Rule 49 and retirement under the fundamental Rule 56, it partakes more of the nature of retirement under fundamental Rule 56 than of removal under Rule 49. Juxtaposition of the words "dismissal, removal and reduction in rank" in Article 311 shows that "removal" is of a quality similar to "dismissal and reduction in rank" as "removal" is sandwiched between "dismissal" and "reduction" in rank", both of which are punishments.

19. In our opinion, "removal" also, therefore, appears to be 'by way of punishment'. Consequently, it must be held that a "retirement" under Section 465A is not comprised within the word "removal" in Article 311.

20. This view is consistent with almost all the cases decided so far by the various High Courts in India except one court. The cases in support of this view are -- 'Jayanti Prasad v. State of Uttar Pradesh', AIR 1951 All 793 (H). Delivering the judgment of the Bench it was observed by one of us-

> "Article 311 applies only to a case in which a person is dismissed or removed or reduced in rank. These are technical words used in cases in which a person's services are terminated for misconduct. They do not apply to cases in which a person's period of service determines in accordance with the conditions of his service."

The same view was taken in -- 'Kewalmal v. Beta Ram', AIR 1952 Raj 17 (I); -- 'State of Saurashtra v Bholanath Jatashanker', AIR 1952 Sau 49 (FB) (J) and -- 'Varadaraja Iyer v. State of Trav-C', AIR 1953 Trav-C 140 (K). The decision in -- 'C. Sambandam v. General Manager, South Indian Rly., Tiruchirapalli', AIR 1953 Mad 54 (L) is not contrary to the view that we have taken. In that case a wire-man of the South Indian Railway was served with a notice under Rule 3 of the Railway Services

(Safeguarding of National Security) Rules, 1949, and he was dismissed under that rule. The rule itself provided for termination of services of a person who was engaged in subversive activities. The servant was given an opportunity to show cause against the charge framed against him, but he contended that he was not, given a second opportunity for showing cause against the action proposed to be taken against him. He therefore applied under Article 226 of the Constitution, alleging that his dismissal was contrary to the provisions of Article 311. In argument it was urged on behalf of the State that under Rule 143(4) of the Indian Railway Establishment Code services could be terminated by giving a notice after a certain period; but the Court held that the services of the employee were not terminated under Rule 148 (4) though they could have been; and as they were terminated under Rule 148(3), and no second opportunity for showing cause against the action was given to him, his dismissal was irregular. The facts of the present case are wholly dissimilar to the facts cf that case.

The only High Court which has taken a different view is the Pepsu High Court in three cases, namely, -- 'Rama Iyer v. The State', AIR 1952 Pepsu 69 (M); -- 'Ishar Das v. State of Pepsu', AIR 1952 Pepsu 148 (N); -- 'Shambhu Dayal v. Patiala and East Punjab States Union'. AIR 1952 Pepsu 152 (O) and -- 'Anup Singh v. The State', AIR 1953 Pepsu 24 (P).

These were all cases decided before the decision of the Supreme Ccurt in 'Satish Chandra's case (A)'. The view taken was that the word "removal" includes a compulsory retirement under a rule of the State of Pepsu similar to that embodied in Rule 465A. The context in which the word "removal" is used and the source from which it is taken and the history of rule were not referred to. The main ground of decision was that there was no reason why the word "removal" should not be treated to have been used in its larger sense. We have already shown the reason why it could not be taken to have been used in its larger sense, and why it should be confined to cases in which "removal" is by way of punishment or penalty.

The discussion of the word "removal" in AIR 1953 SC 250 (A) clearly supports our view that the word "removal" was intended to import the idea of punishment or penalty.

21. This leads us to the other part of the argument of the learned counsel for the applicant. According to him, Rule 465A was not validly made and is not a statutory rule at all and, therefore, the applicant's removal under that rule, is invalid. His argument is that the Civil Service Regulations in which Rule 465A occurs were not made by the Secretary of State for India in Council, and only the rules made by the Secretary of State in Council could apply to the applicant who was appointed by him to the all India Service of Engineers and, as such, his removal was illegal. Before the Government of India Act, 1919, came into force certain rules and regulations applicable to the. Civil Servants of the Crown in India had been made by various authorities. As these rules and regulation's were not made under any statutory power, it was doubted whether they were of any legal validity. It was, therefore, provided in Sub-section (4) to section 96B of the Government of India Act, 1919 as follows :

> "For the removal of doubts it is hereby declared that all rules or other provisions in operation at the time of the passing of Government of India Act, 1919, whether made

> by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section."

22. Thus all rules and regulations and other provisions which were in operation at the commencement of the Government of India Act, 1919, were validated and recognised as statutory. If Rule 465A was in force at that time, it was validated under Sub-section (4) to section 96B. It has, however, not been shown to us that this rule was in force at that time. All that has been shown to us is that in 1922 Rule 465A was amended. When it was actually made is not known. The rule, as it appears in it's present form was finally adopted in the year 1922. It could not therefore, be said to have been validated and made statutory by Sub-section (4) of Section 96B of the Government of India Act, 1919. Under sub-section (2) of that section the Secretary of State in Council was empowered to make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. He was also empowered to delegate the power of making rules to the Governor-General in Council or to local Governments or authorise the Indian legislature or local legislatures to make laws regulating the public services. This sub-section did not empower the Secretary of State in Council to delegate any power concerning rules relating to pensions.

The power to make rules regarding pension was contained in Sub-section (3) of that section. That sub-section provided that the right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council, shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, taut any such variation or addition Shall not adversely affect the pension of any member of the service appointed before the date thereof. This sub-section did not empower the Secretary of State in Council to delegate his power to make rules regarding the pension to any other authority, and as we have already noted it has not been Shown to us that Rule 465A was in existence at the commencement of the Act of 1919. Therefore subject to what follows Rule 465A which in its present form was made in 1922 could not be said to have been a statutory rule or a rule made by the Secretary of State in Council binding on the applicant as such.

The Secretary of State for India in Council however made certain other rules from time to time under Sub-sections (2) and (3) of Section 96B. These rules appear in two classes

(a) the Civil Service (Classification, Control and Appeal) Rules which were first made in December 1920 and were modified from time to time and ultimately published as rules of 1930 and modified subsequently as well and

(b) Fundamental Rules. These latter are contained in Section 2 of the compilation entitled "Fundamental Rules and the Supplementary Rules issued by the Government of India in 1949, III Edition."

23. In Rule 7 of the Civil Service (Classification, Control and Appeal) Rules it is stated-

> "Where by these rules power is delegated to, or conferred upon, any authority to make rules regulating the classification, the methods of recruitment, the conditions of service, the pay, allowances and pensions, or the discipline and conduct of any class of the Civil Services specified in Rule 14, the rules, notifications and orders, by whatsoever authority made, regulating these matters in respect of that class which were in operation on the date these rules were made shall remain in operation except in so far as they may be inconsistent with these rules or may be specifically cancelled or modified in exercise of the aforesaid power by the authority to which it is delegated." Rule 26 of these rules lays down : "Rules regulating the conditions of service, the pay and allowances and the pensions of members of the all-India Services shall be made by the Secretary of State in Council".

24. Since by Rule 26 of the aforesaid rules the Secretary of State in Council is conferred the power of making rules for regulating the conditions of service, the pay, allowances, and pension of members of the all-India Services and he validated by Rule 7, the previous rules by whatsoever authority made which were in operation on the date these rules were made, that is to say in 1930, they must be taken to have been recognised as valid by Rule 7. Rule 7, therefore, in our opinion, impressed the stamp of validity upon the Civil Service Regulations applicable to the all-India services in respect of conditions of services, pay, allowances and pensions that were in force in 1930, This would include Rule 465A of the Civil Service Regulations. It follows, therefore, that Rule 465A of the Civil Service Regulations had become a valid rule as if it were made by the Secretary of State in Council when the action was taken against the applicant.

25. Reference was made in this connection by learned counsel for the petitioner to Section 247 of the Government of India Act read with Section 250 thereof.

26. Section 247 laid down the conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State and Section 250 laid down that the provisions of the last four preceding sections including Section 247 and any rule's made thereunder shall apply to any person who was appointed before the commencement of part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India as they apply to persons appointed to a civil service or civil post by the Secretary of State.

27. Section 247 referred to persons appointed after the commencement of the Act of 1935 and the effect of Section 250 was that the rules made by the Secretary of State in Council regulating the conditions of service of all persons appointed after the commencement of the Act of 1935 were to apply to persons who had already been appointed before the commencement of part III of the Act by the Secretary of State in Council.

28. The effect of these sections was, therefore, merely to apply rules, made by the Secretary of Stats in Council after the commencement of the Act of 1935 to persons appointed by the Secretary of State in Council both before and after the commencement of the Act of 1935. We are here not concerned

with any rule made by the Secretary of State in Council under Section 245 after the commencement of the Act of 1935. We are here concerned with Rule 465A which was made before the commencement of the Act of 1935, and which had been taken by the Secretary of State in Council as a rule having been made by himself and validated as such by Rule 7 of the Civil Service (Classification, Control and Appeal) Rules, as (already stated. It cannot, therefore be said that Rule 465A of the Civil Service Regulations was invalid, or not applicable to the applicant by reason of its not having been made by the Secretary of State in Council.

29. It was next urged that Rule 465A did not apply to the service to which the applicant belonged, namely, to the all-India Service of Engineers. This contention was based upon Rules 649 and 650 of the Civil Service Regulations. Rules 649 and 650 are embodied in Chapter XXX of the Civil Service Regulations which are applicable to Civil Engineers arid Telegraph Officers. Section III of this Chapter relates to compulsory retirement. Rules 649 and 650 are in this section. Rule 649 says : "The compulsory retirement of Civil Engineers of the Public Works Department or the Engineering Department of State Railways, who are proved to be unfit for further advancement, is regulated by Article 353A. But any Civil Engineer of these Departments, who on reaching the age of 50 years has not attained the rank of Superintending Engineer, is liable to be called on to retire by the Government of India."

Rule 650 says :

> "All Civil Engineers in the Public Works and Railway Departments, Civilian Under Secretaries in the Public Works Secretariat of the Government of India or of a Local Government or Administration, and Civilians in the Superior Railway Revenue Establishment, and in the Superior Establishment of the Telegraph Department, are required to retire on attaining the age of 55 years."

Rule 650 is clearly a rule of retirement at the age of superannuation which is fixed as 55 years. Rule 649 is a rule of compulsory retirement before attaining that age-- firstly on the ground of unfitness for further advancement, as regulated by Article 353A, and secondly on reaching the age of 50 years, provided the person concerned has not attained the rank of Superintending Engineer. As the applicant had attained the rank of Superintending Engineer the second part of Rule 649 does not apply to him. The first part of the rule does apply to him, So does Rule 650.

30. The argument is that since the first part of Rule 649, which regulates premature compulsory retirement before the attainment of the age of superannuation as applicable to the members of the Service of Civil Engineers is specially provided for, the general rule embodied as applicable to all services including the all-India Services of Civil Engineers, as embodied in Section 465A, Civil Service Regulations, would not apply to the all-India service of Civil Engineers. It is pointed out that where a special rule is provided in a statute or body of rules, this Special rule has to be given preference to a general rule on the same subject. The proposition of law thus enunciated by learned counsel for the applicant is undoubted, but it does not apply to the present case for the simple reason that Rule 649 does not deal with the subject which is dealt with in Rule 465A. Rule 649 deals with compulsory and premature retirement for a special cause "unfitness for further advancement"

which is dealt with in Rule 353A of the Civil Service Regulations.

31. Rule 465A, on the other hand, is a rule of retirement after completion of 25 years of service, when it is considered that his retention in the service is not in the public interest. The two rules deal with different matters though both of them may apply in the case of a particular individual at one and the same time. We do not think that Rule 465A is at all affected by Rule 649 in the case of Civil Service of Engineers.

32. Then it was said that Rule 465A must be deemed to have been abrogated or cancelled by Rule 65 of the Fundamental Rules. Rule 56 provides for compulsory retirement on the attainment of the age of superannuation which has been fixed at 55 years. It also provides that a person may be retained in service after that age up to the age of sixty if he continues to be efficient. He must not be retained in service after that date except in very rare circumstances and with the sanction of the local Government. The rule also provides for compulsory retirement of Civil Engineers of the Public Works Department who have reached the age of 50 years. They may) however, be required by Government to retire on reaching the age of 50 years,' if they have not attained to the rank of Superintending Engineer. Rule 55 does not deal with the Subject-matter which is dealt with in Rule 465A and it cannot, therefore, be said that by reason of Rule 55, Rule 465A should be deemed to have been cancelled or abrogated.

33. It was urged on behalf of the State by the learned Advocate General that even if Article 311 of the Constitution applied to the case of retirement, under Rule 465A, reasonable opportunity was, in fact given to the applicant by this Court. His case was that Article 311 speaks of only one opportunity to be given at the time of imposing punishment. It does not speak of any opportunity being given at the time of investigation of the charges against the person concerned. In Support of his argument learned Advocate General referred to certain observations in AIR 1948 PC 121 (G). In that case their Lordships pointed out that-

> "Sub-section (3) of Section 240 of the Government of India Act, 1935, was not intended to be, and was not, a reproduction of Rule 55, Civil Services (Classification, Control and Appeal) Rules, framed under Section 96E, Government of India Act, 1919, which was left unaffected as an administrative rule. Rule 55 is concerned that the civil servant shall be informed "of the grounds in which it is proposed to take action" and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked contrast to the statutory provision of "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. No action is proposed within the meaning of the Sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which Sub-section (3) makes provision. There is no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an enquiry under Rule 55, it would not be reasonable that he should

> ask for a repetition of that stage, if duly carried out, for that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the enquiry."

It was argued on the basis of this observation that under Article 311(2) the reasonable opportunity, which is required to be given, is against the action proposed to be taken which means against the punishment proposed to be imposed and that since it was not necessary to give any opportunity to lead evidence or to defend oneself by tendering evidence or advancing argument, it was enough that an opportunity of submitting an explanation was given which was condoned in the present case.

34. It was urged that the phrase "showing cause" does not necessarily imply that any opportunity, over and above the opportunity of submitting an explanation, need be given. This contention, in our opinion, is not well-founded. The phrase "showing cause" has been the subject-matter of discussion in more than one case in this Court. In -- 'Avadhesh Pratap Singh v. State of U.P.', AIR 1952 All 63 (Q) it was held that where an opportunity is required to be given of "showing cause", the opportunity must be adequate. Enabling a mere representation to be made is not the same thing as giving an opportunity of showing cause. The expression "showing cause" was considered to connote an opportunity of leading evidence in support of one's allegations and in controverting such allegations as are made against one. This was followed in -- 'Ravi Pratap Narain Singh v. State of Uttar Pradesh', AIR 1952 All 99 (R). In that case the argument now advanced before us on the basis of the observation made by the Privy Council in 'I. M. Lal's case (G)', was also advanced, but it was rejected and the Bench deciding that case dealt with this observation in the following words :

> "It cannot be held that their Lordships ever meant to say that, at the subsequent stage when a civil servant was called upon to show cause under Sub-section (3) of Section 240, Government of India Act, 1935; he need not be given any opportunity at all to give evidence. All that their Lordships said was that it would not be reasonable that the civil servant should ask for a repetition of the enquiry that had already been made under Rule 55 if that enquiry had been duly carried out. This remark does not exclude the right of a civil servant to give any evidence which he may not have been appropriately required to give at the stage of the earlier enquiry under Rule 55. In fact, the remark that it would not be reasonable that a civil servant should ask for a repetition of the enquiry held under Rule 55 would appear to contain an implication that if there had not been an earlier enquiry duly carried out, it would have been held that the civil servant had a right at this subsequent stage to adduce evidence when showing cause why the proposed action should not be taken against him. The views of their Lordships of the Privy Council in that case, therefore, only go to confirm our view."

We respectfully agree with this view. In our opinion, the expression "showing cause" as, used in Article 311 does not imply that a mere opportunity of submitting an explanation is enough. It implies that adequate opportunity of leading evidence in support of the contentions of the person concerned and controverting the contentions raised against him must be given; and where necessary, opportunity of cross-examining witnesses of the other side and of addressing arguments

should also be afforded. No such thing was done in the present case.

35. Though reasonable opportunity of showing cause against the action proposed to be taken against the applicant was not given, the order of the 17th of April 1953 having been passed under the provisions of Rule 465A of the Civil Service Regulations, no such opporitunity was necessary; because the compulsory retirement contemplated under that rule is not covered by Article 311 of the Constitution.

36. The result, therefore, is that this application fails and is dismissed. In the circumstances, we direct the parties to bear their own costs.

37. Mr. Gopi Nath Kunzru, on behalf of the petitioner prays that a certificate may be given to the applicant to the effect that the case involves a substantial question of the interpretation of the Constitution and is otherwise a fit one for appeal to the Supreme Court. We think that the case involves a substantial question of the interpretation of the Constitution and we also think that it is otherwise a fit case for appeal to the Supreme Court. We, therefore, grant the certificate prayed for.