

P. C. Wadhwa vs Union Of India & Anr on 27 August, 1963

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Author: S.K. Das

Bench: S.K. Das, Raghubar Dayal, N. Rajagopala Ayyangar, J.R. Mudholkar

PETITIONER:

P. C. WADHWA

Vs.

RESPONDENT:

UNION OF INDIA & ANR.

DATE OF JUDGMENT:

27/08/1963

BENCH:

DAS, S.K.

BENCH:

DAS, S.K.

SUBBARAO, K.

DAYAL, RAGHUBAR

AYYANGAR, N. RAJAGOPALA

MUDHOLKAR, J.R.

CITATION:

1964 AIR 423 1964 SCR (4) 593

CITATOR INFO :

D 1966 SC1529 (17)

D 1967 SC1910 (6)

D 1968 SC 754 (1,5,10,15)

D 1971 SC 766 (10)

ACT:

Police Service-Officer officiating in the senior time-scale served with charge sheet-Before enquiry reverted to substantive post-Whether entitled as of right to promotion to senior scale-Whether order of reversion amounts to "reduction in rank"-Constitution of India, Art. 311-Indian Police Service (Pay) Rules, 1954, r. 3-Indian Police Service (Cadre) Rules, 1954, rr. 3, 4(1), 8, All India Service (Discipline and Appeals) Rules, 1955 Explanation 4, r. 3-Indian Police Service (Recruitment) Rules, 1954, r. 3.

HEADNOTE:

The appellant is a member of the Indian Police Service. He joined the service in 1952 and was confirmed in 1953. In 1958 the appellant was promoted to officiate in the senior time-scale and was posted as Additional Superintendent of Police at Ferozepore, in the place of one Siasat Singh who was granted leave, and his pay was fixed at Rs. 600.00 per month. He earned an increment and his pay was raised to Rs. 640.00 per month. In July 1958 he was served with a charge sheet and was called upon to submit his defence and he submitted his reply. Before the enquiry started he was reverted to his substantive rank of Asstt. Superintendent of Police by an order dated November 3, 1958. His reversion was not due to "the return of the permanent incumbent from leave or deputation" or for any administrative reason. Other officers junior to the appellant continued to officiate in the senior scale while he was reverted.

The personal file of the appellant which was produced both before this Court and the High Court showed that the reason given by the respondent for the reversion of the appellant was that he was tried as Superintendent of Police and was found to be immature and was not true. The file also revealed a note made by the Senior Superintendent of Police on 6-10-58 to the effect that as the regular enquiry into the conduct of the appellant would take a long time it was advisable to revert him.

The appellant filed before the High Court of Punjab a petition under Art. 226 of the Constitution of India against the order of reversion. The High Court dismissed the petition. The present appeal was by way of

special leave granted by this Court.

It was contended that under the relevant rules governing the Indian Police Service, a member thereof was entitled as of right to be promoted to a post in the senior scale as and when a vacancy (except a vacancy in the promotion quota) arose therein and no one senior to him was available for that post, that -upon the facts and circumstances of the case the order of reversion was in effect a reduction in rank within the meaning of Art.

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311(2) of the Constitution and that inasmuch as he was not given an opportunity of showing cause against the said order there was a violation of Art. 311. Relying on the principle laid down in *Purshottam Lai Dhingra v. Union of India*, [1958] S.C.R. 828 the appellant alternatively contended that the order of reversion involved penal consequences and operated as a punishment.

The respondent denied that the appellant had any right to be appointed to a vacancy to a senior scale as claimed by him since such appointment was not automatic and it involved a process of selection. This being the position the reversion

order did not amount to a reduction in rank so as to attract the provision of Art. 311(2). As to the alternative contention of the appellant the respondent replied that since the order of reversion was made for the reason that the appellant was found to be unfit and immature to hold a senior post, it could not be said that his reversion amounted to a punishment.

Held:(per K. Subba Rao, Raghubar Dayal and J. R. Mudholkar, JJ.) A consideration of the various rules would make it clear beyond doubt that a person in the junior time-scale of the service is as much a cadre officer as one holding a post in the senior time-scale or a post above the time-scale. The efficiency bar contained in r. 6(2) of the Pay Rules has no bearing on the appointment of a person whose increment has been barred to a post in the senior scale. The wording of this rule lends support to the conclusion that in the service what counts is the length of service of a member and not even whether he has or has not passed the departmental examination. Had it been the intention of the Government to bring in the element of selection in so far as promotion of Assistant Superintendents of Police to the posts of Superintendents of Police is concerned express provisions would have found place in the rules.

The whole scheme of the rules indicates that a person in the junior scale of pay has a right to hold a post on the senior scale of pay subject to the availability of a post in the senior scale of pay and his seniority in the junior scale of pay. If a person holding a post in the senior scale, though in an officiating capacity, is found to be unfit to hold that post action will have to be taken against him as required by r. 5 of Discipline and Appeal Rules because his reversion to a post in the lower scale would amount to a reduction in rank within the meaning of Art. 311.

From the facts and circumstances of the case it is found that the appellant has not only been reduced in rank but his promotion to the senior scale also has been withheld and this could be done only by holding a departmental enquiry.

The appellant was reverted to facilitate the departmental enquiry against him and the order of the Government was therefore mala fide.

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Held : (per S. K. Das, Acting C.J. and N. Rajagopala Ayyangar J.) An officer in the junior scale has no right to go automatically into the senior scale. On the contrary the suitability of a cadre officer is a relevant consideration even in the matter of a temporary appointment. The Indian Police Service (Pay) Rules, 1954, which provides for two independent scales spread over a period of years, seem to indicate that an officer in the junior scale cannot claim such automatic promotion. The provision for an efficiency bar at the stage when the salary of a junior officer reaches Rs. 590.00 also leads to this conclusion. The expression

"on appointment to a post on the senior time-scale" occurring in r. 4(2) and the provision in r. 8 which states that any member of the service appointed to hold a post specified in Schedule 11 shall be entitled, as long as he holds that post, to draw the pay indicated for that post also support this conclusion. Explanation (4) to r. 4 of the All India Services (Discipline and Appeal) Rules, 1955, shows clearly that a member of the service cannot claim the right to officiate in a higher post merely by reason of his seniority and even when he is officiating in a higher post he may be reverted after a trial in that post or for administrative reasons and such a reversion does not amount to 2 reduction in rank.

When a person is reverted to his substantive rank, the question of penal consequences in the matter of forfeiture of pay or loss of seniority must be considered in the context of his substantive rank and not with reference to his officiating rank from which he is reverted for every reversion must necessarily mean that the pay will be reduced to the pay of the substantive rank.

A matter of this kind has to be looked from the point of view of substance rather than of form. All the relevant factors should be taken into consideration and if on such a consideration the conclusion is that the reduction is by way of punishment involving penal consequences to the officer even though the Government has a right to pass the order of reduction the provisions of Art. 311 will be attracted and the officer must be given a reasonable opportunity of showing cause against the proposed action.

On an examination of the facts and circumstances of the case it is found that the appellant was reverted by way of punishment but he was given no opportunity of showing cause against the action proposed to be taken against him. Therefore the order of reversion was in violation of Art. 311 of the Constitution.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 720 of 1962. Appeal by special leave from the judgment and order dated January 20, 1961, of the Punjab High Court in Civil Writ No. 752/1959.

The appellant appeared in person.

S.V. Gupte, Additional Solicitor-General for India, Mohinder Singh Punnu, Deputy Advocate-General for the State of Punjab, N. S. Bindra, R. H. Dhebar, R. N. Sachthey and P. D. Menon, for the respondents.

August 27, 1963. The Opinion of S. K. Das, Acting C.J., and Rajagopala Ayyangar, J. was delivered by S. K. Das, Acting C.J. The judgment of K. Subba Rao, Raghubar Dayal and Mudholkar, JJ. was

delivered by Mudholkar, J. S.K. DAS, Acting Chief Justice--This is an appeal by special leave. The appellant is a member of the Indian Police Service. He joined that service on October 3, 1952 as a result of a competitive examination held in, 1951, and was posted in the State of Punjab. He was confirmed on November 30, 1953. The time-scales of pay admissible to a member of the Indian Police Service consist of the junior scale, the senior scale and selection grade ; see r. 3 of the Indian Police Service (Pay) Rules, 1954. In pursuance of sub-rule (1) of r. 4 of the Indian Police Service (Cadre) Rules, 1954, the Central Government made regulations known as the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955. Under these regulations, Punjab has 57 senior posts in the Indian Police Service out of which some have to be filled by promotion in accordance with r. 9 of the Indian Police Service (Recruitment) Rules, 1954. To this aspect of the case we shall advert later. The number of junior posts is also laid, down in the regulations. The Indian Police Service (Pay) Rules, 1954, also lays down in Schedule III-(a) posts carrying pay above the time scale of pay of the Indian Police Service under the State Governments, (b) posts carrying pay in the senior time scale of the Indian Police Service under the State Governments, and (c) posts carrying pay above the time scale or special pay in addition to pay in the time-scale under the Central Government. The initial pay of a direct recruit is fixed at the minimum of the junior time, scale. The pay of a member of the Service in the junior time-scale shall, on appointment to a post on the senior time-scale, be fixed at the corresponding stage in the senior time-scale as shown in Schedule 1 of the Indian 39-2 S. C. India/64 Police Service (Pay) Rules, 1954; see r. 4 of the said rules. The posts of Superintendents of, Police are posts in the senior time-scale.

On January 27, 1958 the appellant was promoted to officiate in the senior time-scale and was posted as Additional Superintendent of Police, Ferozepore. The order dated January 18, 1958 stated that the appellant was permitted to officiate as Superintendent of Police and posted as Additional Superintendent of , Police, Ferozepore, vice Shri Siasat Singh granted leave from January 27, 1958. Because of this officiating promotion, the appellant's pay was fixed at Rs. 600.00 which is the lowest pay in the senior scale. On April 19, 1958, the appellant was transferred and posted as Additional Superintendent of Police, Punjab Armed Police, Ferozepore. This post carried a special pay of Rs. 100.00 per month. The appellant earned one increment on October 3, 1958 and his basic pay was raised from Rs. 600.00 to Rs. 640.00 per month. On July 18, 1958 the appellant was served with -a charge sheet and was called upon to submit a reply in -defence. The appellant submitted a reply which apparently did not satisfy the Government. 1 An enquiry was ordered, and an officer was appointed to hold the enquiry. However, before the enquiry started; the appellant was reverted to his substantive rank of Assistant Superintendent of Police by an order dated November 3, 1958. The post of Assistant Superintendent of Police is a post in the junior scale and the, order dated November 3, 1958 stated that the appellant was reverted to his substantive rank of Assistant Superintendent of Police from the <late he was relieved and on reversion the appellant was posted as Assistant Superintendent of Police at Amritsar. It is this order dated November 3, 1958 which is the main subject of attack in the present appeal.

We shall presently state the grounds on which the appellant attacks the order of reversion; but before we do so, we may complete the statement of facts. The appellant challenged the order of reversion by means of a Writ Petition filed in the Punjab High Court. This Writ Petition was however dismissed as premature, on the ground that the appellant had filed 'an appeal, permissible

under the rules, to the Government: of India against the order of reversion and the appeal had not then been disposed of. Subsequently, the Government of India dismissed the appeal by an order dated May 8, 1959. The appellant then filed a second Writ Petition in the Punjab High Court out of which the present appeal has arisen. This second Writ Petition was first placed before a single Judge who referred it to a larger Bench. The Writ Petition was ultimately heard by Khosla, C.J. and Dulat, J. They dismissed the petition. The appellant then moved this court for special leave and having obtained such leave, has brought the present appeal to this court from the order of the High Court dated January 20, 1961 by which the High Court dismissed the second Writ Petition.

We proceed now to state the main grounds on which the appellant has attacked the order of reversion dated November 3, 1958. The principal contention of the appellant has been that under the relevant rules governing the Indian Police Service, a member thereof is entitled as of right to be promoted to a post in the senior scale as and when a vacancy (except a vacancy in the promotion quota) arises therein and no one senior to him is available for that post; at the time when the appellant was reverted, officers Junior to him in the I.P.S. cadre of the Punjab State were officiating in the senior scale ; therefore, the order of reversion made against the appellant on November 3, 1958 was in effect a reduction in rank within the meaning of Art. 311(2) of the Constitution for it operated as a forfeiture of his right, and inasmuch as the appellant was given no opportunity of showing cause against the said order of reversion, there was a violation of the provisions of Art. 311 of the Constitution. Alternatively, the appellant has contended that on the principles laid down by this Court in *Parshotam Lal Dhingra v. Union of India*(1), the order of reversion made against the appellant involved penal consequences and operated as a punishment against the appellant both in the matter of his pay and seniority ; it has been contended that the order entailed loss of pay as well as loss of seniority and postponement of the appellant's future chances of promotion ; therefore, although in form the Government had purported to exercise its right to revert the appellant to (1) [1958] S.C.R. 828.

his substantive rank, the order of reversion really amounted to a reduction in rank by way of punishment, irrespective of whether the appellant had a right to be appointed to a vacancy in the senior scale. These are the two main grounds on which the appellant has attacked the order of reversion. He has also raised a contention that the order of reversion was malafide, improper and against the provisions of Arts. 14 and 16 of the Constitution.

On behalf of the respondents, the main contention has been that under the relevant rules the appellant had no absolute right to be appointed to a vacancy in the senior scale as and when such vacancy occurred therein and nobody senior to the appellant was available for it. The stand taken on behalf of the respondents is that under r. 4(2) of the Indian Police Service (Pay) Rules, 1954 appointment to a post on the senior time-scale is not automatic, because such appointment involves a process of selection ; therefore, there was no forfeiture of any right of the appellant by the order of reversion made against him and the provisions of Art. 311(2) are not attracted to it. As to the alternative contention of the appellant the reply of the respondents has been that the order of reversion made against the appellant was not made by way of punishment. In their written statements, the respondents have stated that the order of reversion was not made as a measure of punishment or penalty, but was made because the appellant who was tried as officiating

Superintendent of Police was not found fit and ripe enough for being entrusted with the duties and responsibilities of a Superintendent of Police. It was further averred that the departmental enquiry instituted against the appellant had nothing to do with the order of reversion. The respondents relied on Explanation (4) to r. 3 of the All India Services (Discipline and Appeal) Rules, 1955, which says that the reversion to a lower post of a member of the service who is officiating in a higher post, after a trial in the higher post or for administrative reasons (such as the return of the permanent incumbent from leave or deputation, availability of a more suitable officer, and the like) does not amount to reduction in rank within the meaning of r. 3 which deals with penalties that may, for good and sufficient reasons, be im-

posed on a member of the service. The respondents have contended that as the order of reversion was not passed by way of punishment, it was unnecessary to ask the appellant to show cause against the action proposed to be taken and there has been no violation of the provisions of Art. 311 of the Constitution. The respondents have also denied that the order of reversion made against the appellant was malafide or improper or that it violated the fundamental rights guaranteed under Arts. 14 and 16 of the Constitution. We may now briefly state the findings which the High Court has arrived at. The first finding of the High Court was that the appellant did not hold the officiating post of a Superintendent of Police as a matter of right and his case was covered by Explanation (4) referred to above; therefore, the order of reversion did not amount to reduction in rank within the meaning of Art. 311(2) of the Constitution. Secondly, the High Court found that the reversion of the appellant to his substantive rank of Assistant Superintendent of Police was not by way of punishment and the reasons which led to the framing of a charge sheet against the appellant were not the reasons which prompted the order of reversion. Therefore, the order of reversion was not per se an order of punishment and did not inflict any stigma or stain upon the appellant, nor was the appellant debarred from future promotion to the senior scale. The High Court did not deal with the question whether the order was malafide nor with the question whether the order of reversion violated any of the fundamental rights guaranteed under Arts. 14 and 16 of the Constitution, presumably because these were not pressed in the High Court. We proceed now to consider the first point urged on behalf of the appellant, namely, whether he had a right to a vacancy in the senior scale as and when such a vacancy occurred, except a vacancy in the promotion quota. It is perhaps necessary to explain here what the promotion quota means. Rule 9 of the Indian Police Service (Recruitment) Rules, 1954 says inter alia that the number of persons recruited by promotion from amongst the members of a State Police Service (usually Deputy Superintendents of Police) shall not exceed 25 per cent of the number of senior duty posts borne on the cadre of that State. The manner in which the promotion quota of 25 per cent is filled is laid down in the Indian Police Service (Appointment by Promotion) Regulations, 1955. It is sufficient to state here that a committee is constituted to make a selection and a list of suitable officers is prepared. The selection for inclusion in such a list is based on merit and suitability in all respects with due regard to seniority. The Select List is considered from time to time and after approval by the Union Public Service Commission, forms the Select List of the members of the State Police Service from which the promotion quota is filled. It is conceded on behalf of the appellant that a vacancy in the promotion quota is not filled automatically and that the regulations laid down in the Indian 'Police Service (Appointment by Promotion) Regulations, 1955 clearly indicate that there is a process of selection in the matter of filling up the promotion quota.

The argument of the appellant is that there is no such selection with regard to vacancies in the senior scale other than vacancies in the promotion quota ; therefore, a member of the Indian Police Service who is in the junior scale is entitled as of right to go into the senior scale in a vacancy other than a promotion quota vacancy, provided that nobody senior to him in the Indian Police Service is available for that post. In support of his contention the appellant has relied on the Indian Police Service (Regulation of Seniority) Rules, 1954, particularly r. 6 thereof which says inter alia that there shall be prepared every year for each State Cadre a gradation list consisting of the names of all officers borne on that Cadre arranged in order of seniority in accordance with the provisions of the said rules.

We are unable to accept this line of argument as correct. Under r. 4 of the Indian Police Service (Recruitment) Rules, 1954 recruitment to the Indian Police Service is done by two methods: (1) by a competitive examination ; and (2) by promotion of substantive members of a State Police Service. Under r. 3 of the Indian Police Service (Cadre) Rules, 1954 there shall be constituted for each State or group of States an Indian Police Service Cadre. The strength and composition of each of the Cadres constituted under r. 3 shall be determined by regulations made by the Central Government. These regulations are known as the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955. We have already stated that so far as Punjab is concerned, there are 57 senior posts out of which 14 have to be filled by promotion and 43 by direct recruitment. Amongst the senior posts are included the posts of the Inspector General of Police, Deputy Inspectors General of Police Assistant Inspectors General of Police, Principal, Police Training School etc. If the argument of the appellant were to be pushed to its logical extreme, then a member of the Indian Police Service would be entitled as of right to all the senior posts including the post of Inspector General of Police, Deputy Inspectors General of Police etc. This, we do not think, can be correct, and indeed the appellant does not so contend.

Under r. 8 of the Indian Police Service (Cadre) Rules, 1954, save as otherwise provided in the rules, every cadre post shall be filled by a cadre officer. That does not however mean that a cadre officer is entitled as of right to go into the senior scale or to hold every post in the senior scale. The appellant has drawn our attention to r. 9(b) of the Indian Police Service (Cadre) Rules, 1954. That relates to the temporary appointment of a non-cadre officer to a cadre post and the rule lays down, inter alia, that a cadre post may be filled by a person who is not a cadre officer if the State Government is satisfied that there is no suitable cadre officer available for filling the vacancy. We do not think that rule shows that an officer in the junior scale has the right to go automatically into the senior scale. On the contrary, the rule seems to show that the suitability of a cadre officer is a relevant consideration even in the matter of a temporary appointment. We think that the matter is governed by the Indian Police Service (Pay) Rules, 1954. Every person recruited to the Indian Police Service by a competitive examination remains on probation for a period of two years; see r. 3 of the Indian Police Service (Probation) Rules, 1954. Thereafter, on his confirmation, he starts on the Junior scale. The Indian Police Service (Pay) Rules, 1954, lay down two independent scales of pay ; one is the junior scale spread over 19 years and the other is the senior scale spread over 22 years. These two independent scales spread over a period of years seems to indicate that an officer in the junior scale cannot claim the right of automatically passing into the senior scale without any selection by the State Government, though normally we apprehend that an officer in the junior scale may expect

to go into the senior scale if nothing is found against him. It may be here stated that there is an efficiency bar in the junior scale at the stage when the salary of the officer reaches Rs. 590.00 per month which corresponds to the eleventh year of his service. If every officer in the junior scale has the right to pass automatically into the senior scale, then it is difficult to understand the meaning of this efficiency bar at the eleventh year of service. Such a bar would serve no useful purpose in the majority of cases, because all officers would automatically go into the senior scale long before the eleventh year unless they were kept back by way of punishment.

Rule 4 of the aforesaid rules lays down that the initial pay of a direct recruit shall be fixed at the minimum of the junior time-scale. R. 4(2) is important for our purpose and may be quoted here.

"4. (2) The pay of a member of the Service in the junior time-scale shall, on appointment to a post on the senior time-scale, be fixed at the corresponding stage in the senior time-scale as shown in Schedule I:

* * * * The learned Additional Solicitor-General who has argued the case on behalf of the respondents has rightly drawn our attention to the words "on appointment to a post on the senior time-scale" occurring in r. 4(2). His argument is that those words indicate that the competent authority must appoint a member of the Indian Police Service to a post on the senior time-scale before he can claim the pay fixed for the senior time-scale as shown in Schedule I ; in other words, the argument is that the words "appointment to a post on the senior time-scale" show by necessary implication that the appointing authority has the right either to appoint or not to appoint a member of the Indian Police Service to a post on the senior time-scale and there is no automatic advance from the junior to the senior scale. We think that this contention of the learned Additional Solicitor-General is correct. Rule 8 of the Indian Police Service (Pay) Rules, 1954 is also relevant in this connection and fortifies the argument of the learned Additional Solicitor-General. That rule says that any member of the Service appointed to hold a post specified in Schedule 111, shall, for so long as he holds that post, be entitled to draw the pay indicated for that post in the said Schedule. The rule makes it clear that there must first be an appointment to a post specified in Schedule III and then a member of the Service appointed to that post is entitled to draw the pay indicated in Schedule III. When we go to Schedule III we find that the posts mentioned therein are classified under three heads, A, B and C. Category A relates to posts above the timescale of pay and includes the posts of Inspector General of Police and Deputy Inspectors General of Police. The appellant concedes that to these posts there is no automatic right to promotion. Category B relates to posts in the senior time-scale and includes, so far as Punjab is concerned, the posts of Assistant Inspectors General of Police, Superintendents of Police, Adjutant, Punjab Armed Police, Principal, Police Training School etc. Category C relates again to posts carrying pay above the time-scale. The argument of the appellant, when properly analysed, is that with regard to category B posts there is an automatic right, but not so to category A and category C posts. This argument falls to the ground when the terms of r. 8. are examined. The rule makes no difference in the

matter of the three categories of posts specified in Schedule III ; on the contrary, the rule in express terms says that any member of the Service appointed to hold a post specified in Schedule III shall, for so long as he holds that post, be entitled to draw the pay indicated for that post in the said Schedule. The expression "for so long as he holds that post" is important and shows clearly enough that the appointing authority has a right to appoint or not to appoint a member of the Service to a post in Schedule III. It is conceded that such a right exists in the matter of category A and category C posts; but the argument is that no such right exists in the appointing authority in the matter of category B posts. We do not see how in view of the express terms of r. 8 any such distinction between category A and category C posts on one side and category B posts on the other can be made. In our view, r. 8 shows beyond any doubt that the posts of Superintendents of Police which are mentioned in category B of Schedule III are posts to which an appointment must first be made by the appointing authority and a member of the Service cannot claim an automatic right to such a post. This conclusion inevitably flows from r. 4(2) and r. 8 of the Indian Police Service (Pay) Rules, 1954. There is another aspect of the question. In exercise of the powers conferred by sub-section (1) of s. 3 of the All-India Services Act, 1951, the Central Government has made rules known as the All India Services (Discipline and Appeal) Rules, 1955. Rule 3 of the said rules states the penalties which may, for good and sufficient reasons, be imposed on a member of the Service. Rule 5 lays down the procedure to be followed for imposing those penalties and states that no order shall be passed imposing any of the penalties specified in r. 3 on a member of the Service 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. In the Central Civil Services (Classification, Control and Appeal) Rules, 1957, a distinction is drawn between penalties which are minor in nature such as censure, withholding of increments or promotion and recovery from the pay of an officer any pecuniary loss caused to Government by his negligence, and other punishments of a major character such as reduction in rank, compulsory retirement, removal or dismissal from service. No such distinction appears to have been made 'in the All-India Services (Discipline and Appeal) Rules, 1955 save for certain exceptional cases mentioned in sub-rule (10) of r. 5. Under r. 3 of the said rules there are seven kinds of penalties one of which is "reduction in rank in-

cluding reduction to a lower post or time-scale, or to a lower stage in a time scale". There are certain Explanations to r. 3 of which Explanation (4) is important for our purpose. This Explanation reads thus :

"The reversion to a lower post of a member of the Service who is officiating in a higher post, after a trial in the higher post or for administrative reasons (such as the return of the permanent incumbent from leave or deputation, availability of a more suitable officer, and the like) does not amount to reduction in rank within the meaning of this rule."

The High Court was of the view that the case of the appellant was covered by the aforesaid Explanation even though the reversion of the appellant was not caused by the return of the permanent incumbent from leave or deputation nor by the availability of a more suitable officer. The High Court took the view that the instances mentioned in the Explanation were not exhaustive and the phrase "and the like" was intended to cover other instances of reversion when reversion was not intended to be by way of punishment or penalty. Whether the reversion of the appellant in the present case was by way of punishment or penalty, apart from the alleged forfeiture of his right to go automatically to the senior scale, is a question which we shall presently consider in relation to his alternative argument. At the present moment, we are considering the question from the point of view as to whether there has been any forfeiture of his right to go automatically into the senior scale. In our view Explanation (4) to r. 3 shows clearly enough that a member of the Service cannot claim the right of officiating in a higher post merely by reason of his seniority and even when he is officiating in a higher post he may be reverted after a trial in that post or for administrative reasons and such reversion does not amount to reduction in rank within the meaning of r. 3. The existence of such a rule negatives the claim of the appellant that he has the right to officiate in a post on the senior scale, and any reversion from that officiating post amounts to reduction in rank within the meaning of Art. 311 of the Constitution. There is a third aspect of the question. We have stated earlier that r. 3 of the Indian Police Service (Pay) Rules, 1954 states that there shall be two time-scales of pay, junior and senior, and also a selection grade. The first proviso to the rule states that a member of the Ser-

vice holding a post in the senior time-scale may be appointed to a post in the selection grade and where he is so appointed, he shall be entitled to draw pay of the post in the selection grade. Here again the proviso talks of "appointed to a post in the selection grade". The words show by necessary implication that an officer may or may not be appointed to a post in the selection grade. Exactly the same words occur also in r. 4(2) which we have earlier quoted. If the words "appointed to a post" are to be interpreted in the same way, then there is no escape from the position that there is no automatic right of appointment to a post on the senior time-scale.

We have therefore come to the conclusion that the first contention urged on behalf of the appellant that he has a right to go automatically into the senior scale is not correct and cannot be upheld.

We turn now to the alternative argument of the appellant that in any view of the matter his reversion involved penal consequences to him within the meaning of the rule laid down in Parshotam Lal Dhingra's case⁽¹⁾. Dealing with the question of reduction in rank, Das C.J. speaking for the majority of the court in that case said :

"A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under

the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order en (1)[1958] S.C.R. 828.

tails 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. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expression, the court has to apply the two tests mentioned above namely, (1) whether the servant has a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Art. 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

The appellant has contended that his case comes under the second test laid down in Parshotam Lal Dhingra's case(1), namely that he has been visited with penal consequences like loss of pay, loss of seniority and the stoppage or postponement of his future chances of promotion. This is an aspect of the matter which has caused us great anxiety. The admitted position is that the appellant was reverted to the post of an Assistant Superintendent of Police by an order dated November 3, 1958. The reversion was not due to the return of the permanent incumbent from leave or deputation or for any administrative reason. It is also admitted that officers junior to (1)[1958] S.C.R. 828 the appellant continued to officiate in the senior scale while the appellant was reverted. In its written statement the respondent State took the stand that the appellant was tried as Superintendent of Police and on trial he was found to be immature. It was further stated that his reversion had nothing to do with the departmental proceedings instituted against him on July 18, 1958. It appears from the judgment of the High Court that the personal file of the appellant was produced before the learned judges and on examining the personal file the learned judges found that the reasons which prompted the appellant's reversion in the present instance were not the reasons which led to the framing of a charge sheet against him. The same personal file has also been produced before us and we have examined it. The following extracts from that file are relevant:

"As the regular enquiry into Shri Wadhwa's conduct might take long, probably it will be advisable to shift him from Ferozepore some other place. His personal file is placed below."

This was apparently a note of the Senior Superintendent of Police. It is dated October 6, 1958 and was marked to the Inspector General. Below that there is a note of some other officer which begins with the following :

"Can't we revert him and then proceed with further enquiries on the charge of not carrying out the orders of his senior officers?"

Then it is stated that Mr. Wadhwa is not yet ripe and fit for the duties of a Superintendent of Police and then the note says :

"We may, therefore, get the State Government's approval to his reversion on account of his unsatisfactory record. The departmental enquiry could be proceeded with after his reversion."

The extracts quoted above show that the appellant was really reverted by way of punishment. The departmental proceedings were instituted against him on July 18, 1958. On 6-10-1958 it was noted that as the regular enquiry into the conduct of the appellant might take a long time it was advisable to shift him from Ferozepore. The reversion order was thereafter passed and the ground suggested for reversion was unsatisfactory conduct. No details of the unsatisfactory conduct were specified and the appellant was not asked for any explanation. In his writ petition the appellant stated that he has had a brilliant academic career and that no bad or adverse remarks were ever communicated to him; he further stated that he was recommended for the award of the Indian Police Medal for gallantry : only a month before the order of reversion he was given an increment of pay. The appellant's suggestion is that if his work was unsatisfactory, his increment would have been withheld. On all these grounds the contention of the appellant is that he has really been reverted by way of punishment though the order of reversion is expressed in innocuous terms.

We are inclined to agree with this contention of the appellant. It should be made clear however that when a person is reverted to his substantive rank, the question of penal consequences in the matter of forfeiture of pay or loss of seniority must be considered in the context of his substantive rank and not with reference to his officiating rank from which he is reverted, for every reversion must necessarily mean that the pay will be reduced to the pay of the substantive rank. In the case before us the appellant has not merely suffered a loss of pay which was inevitable on reduction in rank, but he has also suffered loss of seniority as also postponement of future chances of promotion to the senior scale. A matter of this kind has to be looked at from the point of view of substance rather than of form. It is indeed true, as was pointed out in Parshotam Lal Dhingra's case⁽¹⁾, that the motive operating on the mind of the Government may be irrelevant; but it must also be remembered that in a case where Government has by contract or under the rules the right to reduce an officer in rank, Government may nevertheless choose to punish the officer by such reduction. Therefore, what is to be considered in a case of this nature is the effect of all the relevant factors present therein. If on a consideration of those factors the conclusion is that the reduction is by way of punishment involving penal consequences to the officer, even though Government has a right to pass the order of reduction, the provisions of Art. 311 of the Constitution are attrac-

(1)[1958] S.C.R. 828.

ted and the officer must be given a reasonable opportunity of showing cause against the action proposed to be taken against him. Our conclusion is that in the present case the appellant was reverted by way of punishment, but he was given no opportunity of showing cause against the action proposed to be taken against him. Therefore the order of reversion dated November 3, 1958 was in violation of the provisions of Art. 311 of the Constitution. In view of this finding it is unnecessary to go into the further question of any violation of the fundamental rights guaranteed under Arts. 14 and 16 of the Constitution. We would accordingly allow this appeal and quash the order of reversion passed against the appellant on November 3, 1958. The appellant will be entitled to his costs of this court and the High Court.

MUDHOLKAR J.-This is an appeal by special leave from the judgment of the High Court of Punjab dismissing the appellant's writ petition under Art. 226 of the Constitution.

The appellant is a member of the Indian Police Service having been appointed therein on October 3, 1952 as an Assistant Superintendent of Police on the basis of a competitive examination held by the Union Public Service Commission. He was confirmed in his appointment on November 30, 1953. On January 27, 1958 he was appointed to officiate as District Superintendent of Police, which is a post in the senior scale of pay of the service, and was posted as Additional Superintendent of Police, Ferozepore. He was later transferred to the post of Additional Superintendent of Police, Punjab Armed Police, Ferozepore, which post carries a special pay of Rs. 100.00 p.m. It may be mentioned that at the date of his appointment as Additional Superintendent of Police he was drawing a salary of Rs. 440.00 in the junior scale. But on being appointed to the post of senior scale he drew the minimum salary of Rs. 600.00 in the senior scale.

On July 18, 1958 a charge-sheet was served upon the appellant to which he submitted a reply. On October 31, 1958 a departmental enquiry was ordered against him by the Government under the All India Services (Discipline and Appeal) Rules, 1955 and Mr. Bindra, Deputy Inspec-

tor General of Police, Jullunder, was appointed as an En- quiry Officer. On November 3, 1958 the appellant was re- verted to the post of Assistant Superintendent of Police and posted at Amritsir. The appellant thereupon preferred a writ petition before the High Court of Punjab. The first ground on which the writ petition rested was that the reversion of the petitioner from the post of officiating Superintendent of Police to that of Assistant Superintendent of Police involved an element of punishment and that as the provisions of the All India Services (Discipline and Appeal) Rules, 1955 and those of Art. 311 of the Constitution were not complied with, his reversion was illegal. The second ground was that the action of the Government in reverting him was mala fide. It is common ground that persons junior to the appellant in the gradation list were either continued to officiate as Superintendents of Police after the reversion of the appellant or were appointed to officiate as Superintendents of Police while the appellant continued to be Assistant Superintendent of Police. The main question, therefore, for consideration is whether the appellant's reversion amounts to a punishment.

The determination of this question would depend upon the answer to be found to another question and that is whether the appellant, by virtue of his appointment to the Indian Police Service had a right to be promoted to and to hold the post of Superintendent of Police, if at the time his turn came to officiate in that rank there was a vacancy and he was not barred from stepping in because of any punishment awarded to him as a result of an enquiry made under the Discipline and Appeal Rules. The High Court, while negating the contention of the appellant, observed that this Court held in *Parshotam Lal Dhingra v. Union of India*(1) that a Government servant acquires a right to hold a post only in three kinds of cases : the first is when he is substantively appointed to a permanent post in Government service ; the second is when he is appointed to a temporary post for a fixed term ; and the third is when a person having been appointed temporarily to a post has been in continuous service for (1)[1958] S.C.R. 828.

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more than three years or has been certified by the appoint- ing authority as fit for appointment in a quasi-permanent capacity. The learned judges, however, overlooked the fact that there this Court was interpreting the Fundamental Rules and not rules applicable to an All India Service, which have their source in the All India Services Act, 1951 (LXI of 1951). It may be mentioned that this Act applies only to two All India Services namely the Indian Administrative Service and the Indian Police Service and to no others. Sub-section (1) of s. 3 of this Act empowers the Government to make rules for the regulation of recruitment and conditions of service of persons appointed to an All-India Service. In exercise of this power the Indian Police Service Recruitment Rules, 1954, were framed by the Go- vernment. Rule 3 provides that the service shall consist of three classes of persons : (a) members of the Indian Police ; (b) members recruited to the service before the commencement of the rules and (c) persons recruited to the Service in accordance with the provisions of the Rules. The method of recruitment prescribed by rule 4 are : (a) by a competitive examination and (b) by promotion of substantive members of a State Police Service. Rule 6 provides that all appointments to the Service shall be made by the Central Government and no such appointment shall be made except after recruitment by one of the methods specified in r. 4. Rule 9 provides for recruitment by promotion. Sub-rule (2) of that rule provides that the number of posts available for being filled by recruitment or promotion would not exceed at any time 25% of the number of senior duty posts borne on the cadre of a State. Sub-rule (1) of that rule empowers the Central Government, in consultation with the State Go- vernments and the Union Public Service Commission, to make regulations governing recruitment and promotion. In exercise of this power the Indian Police Service (Ap- pointment by Promotion) Regulations, 1955 were made by the Government. It is sufficient to say that these rules provide for the preparation of "select lists" in each State in which persons belonging to state service were selected by a committee and placed in their order of merit and appointments to cadre posts i.e., posts in the Indian Police Service were to be made in accordance with these Lists. It would be relevant here to make a mention of the fact that according to the High Court a cadre post means only a senior post in the service, that is, the post of Superintendent of Police or a higher post. In coming to this conclusion the High Court has purported to rely on the Indian Police Service Cadre Rules, 1954, framed under sub- section (1) of s. 3 of All India Services Act. Rule 2(b) defines a cadre post to be one specified as such in the regulations made under sub-rule (1) of r. 4. Rule 3 provides that there shall be constituted for each

State or group of States an Indian Police Service Cadre. Here we are not concerned with a cadre for a group of States but one for a single State. 'Cadre Officer', according to the definition in r. 2(a) means a member of the Indian Police Service. Rule 4(1) provides for determining the strength and composition of each of the cadres constituted under r. 3. Rule 5 provides for the allocation of members to various cadres by the Central Government. From these rules it is clear that once a person is appointed in the Indian Police Service it is the Central Government which allocates such person to the cadre of a State. No State has more than one cadre and as soon as a person appointed to the Indian Police Service is allocated to a State he is borne on the cadre of that State. Consequently the post which he holds would be cadre post. These rules do not differentiate between posts held in the junior scale of pay and those in the senior scale of pay. Rule 8 provides "Save as otherwise provided in these rules, every cadre post shall be filled by a cadre officer" which means by an officer of the Indian Police Service. Thus it is immaterial whether the post is borne on the junior scale of pay or on the senior scale of pay but so long as the post is borne on the cadre of the Indian Police service it must be filled by a cadre officer and none else except of course as provided in the cadre rules. The only other rules which have any bearing on this point in the Cadre rules are rules 9 and 10. Rule 9 deals with temporary appointment of non-cadre officers to cadre posts and rule 10 deals with keeping cadre posts vacant. In pursuance of the power conferred by r. 4(1) the Central Government has made regulations fixing the cadre strength for the State of Punjab at 82. The number of senior posts is fixed at 57, 43 of which are to be filled by direct recruitment and 14 by promotion. The total direct recruitment posts is fixed at 68 and, therefore, 25 of them must be junior posts. The cadre thus comprises not necessarily of senior post but includes also junior posts. In addition to these rules, the Central Government framed Police Service (Pay) Rules, 1954 in exercise of the powers conferred by sub-section (1) of s. 3 of the All India Services Act, 1951. Rule 2(a) provides that 'Cadre' and 'Cadre post' shall have the meanings respectively assigned to them in the Indian Police Service (Cadre) Rules, 1954. Rule 3 prescribes the time-scale of pay admissible to members of the service. The rules prescribe two scales of pay-junior scale and the senior scale, in addition to the selection grade. The junior scale is Rs. 350-350-380-380-30500-E.B.-30-770-10-850 (19 years). The senior scale is Rs. 600 (6th year or under)-40-1000-1000-1050-1050-1100-1100-1150 (22 years). The selection grade is Rs 1250. It also contains some other provisions which are not relevant for the present discussion. Sub-rule (1) of r. 4 provides that the initial pay of a direct recruit shall be fixed at the minimum of the junior time-scale. Sub-rule (2) of that rule provides that the pay of a member of the service in the junior time scale shall, on appointment to a post on the senior time-scale, be fixed at the corresponding stage in the senior time-scale as shown in Schedule I of the rules. Further, the rule deals with promoted officers but with that part of the rule we are not concerned. Rule 5 deals with regulation of increments and cl. (1) of sub-rule (1) of that rule says that in the case of a member appointed as a result of competitive examination the increment shall accrue on the expiry of each year from the date of his appointment to the service. The point to be noted is that where an Assistant Superintendent of Police is appointed as Superintendent of Police in the senior scale his annual increment falls due not on the expiry of one year from the date of his appointment as Superintendent of Police but by reference to his initial appointment in the junior scale. Rule 6 deals with withholding of increments and r. 7 with grant of advance increments. The heading of r. 8 is "Pay of officers holding posts enumerated in Schedule III". The posts in the Schedule are (a) posts carrying pay above the time-scale pay of the Indian Police Service under the State Governments, specified in Section A, (b)

posts carrying pay in the senior time-scale of the Indian Police Service under the State Governments including posts carrying special pay (in addition to pay in the time-scale) specified in Section B and (c) posts carrying pay above the time-scale or special pay in addition to pay in the time-scale, under the Central Government held by members of the Service, specified in Section C. In category (a) so far as the State of Punjab is concerned the posts are those of Inspector General of Police and Deputy Inspector(s) General of Police ; posts in category (b) in that State are : Assistant Inspector(s) General of Police, Superintendent(s) of _ Police of District(s), Additional Superintendent(s) of Police and others. The posts in category (c) are posts held under the Central Government and not under the State Government. It will be seen that the posts of Superintendents of Police and Additional Superintendents of Police in category (b) are included in Sec. B of Schedule III. It is urged by the learned Additional Solicitor General that by the inclusion of the posts of Superintendents of Police in sec. B of the Schedule it is made clear that officers have to be appointed to the posts therein in the same manner as to posts in Sections A and C. No doubt a formal order of appointment to all posts has to be made, whether an element of selection is involved therein or not. But if the contention means that appointments to posts in the senior scale must be made by selection, we cannot accept it is sound. The rule in question does not deal with the question of appointment at all. Its heading clearly discloses its purpose: that of indicating the pay of certain classes of officers. While the pays of posts in Sections A and C are specifically set out in those sections, those of posts in Section B are not. The heading of Section B merely describes the posts dealt with in that section as those carrying senior scale of pay and provides mainly for two matters concerning such posts namely, calculation of selection posts and competency of the State Government to grant special pay and allied matters. It will thus be seen that this rule has no relevance to the determination of the question before us. A consideration of the various rules would therefore, make it clear beyond doubt that a person in the Junior time-scale of the Service is as much a cadre officer as one holding a post in the senior time-scale or a post above the time-scale, such as those in Category (a) of Schedule III.

As to what is meant by senior post we must go to the definition contained in the Indian Police Service (Regu- lation of Seniority) Rules, 1954, also framed under sub- section (1) of s. 3 of the All-India Services Act, 1951. Senior post is defined thus in r. 2(g) "'senior post' means a post included under item 1 of each Schedule to the Indian Police Service (Fixation of Cadre strength) Regulations, 1955, framed under sub-rule (1) of Rule 4 of the Indian Police Service (Cadre) Rules, 1954, or any post declared equivalent thereto by the State Government concerned ;"

The senior posts in the cadre of the State of Punjab are 57 in number and include 18 posts of Superintendents of Police and 5 posts of Additional Superintendents of Police. Rule 3 provides that every officer directly recruited to the Indian Police Service shall be assigned a year of allotment according to the provisions contained in that rule. Rule 4 provides for determining seniority of officers. Rule 6 provides that there shall be prepared every year for each State cadre a gradation list of names of all officers borne on that cadre arranged in the order of seniority in accordance with the provisions of rules 4, 5, 5-A and 7. Even though a large body of rules has been framed by the Central Government governing the rights, privileges, discipline etc., of the members of the Indian Police Service, there is not a single rule which specifically deals with the appointment of an Assistant Superintendent of Police to the post of

Superintendent of Police. In other words there is no specific rule which prescribes the condition for transfer or 'promotion' of a person holding a post carrying a pay in the junior scale to a post carrying salary in the senior pay scale. Nor again, is there any rule which specifically provides that in so far as a member of the Indian Police Service is concerned he has to be freshly appointed to a post carrying a salary in the senior scale of pay. This may be apparently because 'appointment' connotes only initial appointment to the Service.

In this situation we have (Tot to deduce the precise legal position from the large body of rules to which we have referred. It seems clear beyond doubt that in so far as the Indian Police Service is concerned there is only one cadre. Appointments to posts borne on that cadre are to be made by direct recruitment except to the extent of 25% of the senior posts which may be filled by promotion from the State Police Service, leaving aside for the moment appointments made by special recruitment or 'emergency recruitment. Now, according to the learned Additional Solicitor General, what is guaranteed to a person who is appointed to the posts of Assistant Superintendent of Police is that he will be allowed to reach the maximum of Rs. 850.00 in the 19th year of his service in the junior scale subject of course to his increment not being withheld. His contention is that an Assistant Superintendent of Police has no right to hold a post carrying a pay in the senior scale even though according to his seniority in the gradation list he may be eligible for such a post. He emphasises that an element of selection is involved in promoting an Assistant Superinten- dent of Police to the post of a Superintendent of Police. No doubt the junior time scale goes upto Rs. 850.00 which would be reached by an Assistant Superintendent of Police in his 19th year of service and thereafter he would continue to draw only that salary till he retires. But it would not be right to conclude from this circumstance that is all that is guaranteed to him. We must take into account all the relevant rules bearing on the matter. There are also good reasons for providing a complete time scale for the junior posts. Thus it may well happen that the senior posts are unavailable for a long period because of having been filled by younger persons say as special or emergency recruits. Or again, the Government may find an officer in the junior scale unsuitable for holding a post in the senior scale and may either not appoint him to or revert him from a post in the senior scale. Thus, if after conforming to the appropriate proce-

dure the Government withholds the promotion of such person or reverts him provision for granting increment to him had to be made so that he could expect to draw a reasonably fair salary with the passage of time and not be left to stagnate at a very low salary for the rest of the period of his service. The argument of the Additional Solicitor General on the point cannot, therefore, be accepted. It is true that we are not directly concerned in this case with initial appointment of a person to a post in the senior time-scale but only with that of one who has been reverted. Apart from grounds of administrative convenience the guiding factors would be the same, namely, seniority, whether the case is of initial appointment to a post in the senior

scale or reversion therefrom to the junior scale. No doubt, r. 6(2) of the Pay Rules contemplates provision of an efficiency bar in the junior scale and a bar has been placed at Rs. 590.00. But the placing of this bar has no bearing on the appointment of a person whose increment has been barred, to a post in the senior scale. Indeed, the proviso to r. 6(2) clearly states that even where the increment of a member has been withheld, but he is appointed to a post in the senior scale his pay in that scale will not be affected but would be regulated according to his length of service. This proviso in fact lends further support to the conclusion that in the Service what counts is the length of service of a member and not even whether he has or has not passed the departmental examination. Increments can, under r. 6(1), be withheld but that is only if a member fails to pass the departmental examination in a prescribed time. This is a condition of service and when the condition is not satisfied the member affected can have no legitimate grievance. But the result of this is different from that of not allowing a person to hold a post in the senior time-scale in his turn according to his seniority.

As already indicated very elaborate rules have been framed for the purpose of determining the inter se seniority of the officers borne on the cadre of the Indian Police Service. The gradation list has to be prepared with scrupulous regard to the rights of every member of the service. All this would have been unnecessary if seniority were meaningless. In Schedule I framed under rr. 4(2) and 5 (2) of the pay Rules the first column refers to the year of service, the second to the monthly rate of pay in the junior scale and the third column to the monthly rate of pay in the senior scale. No person is directly recruited to the Indian Police Service as a Superintendent of Police and, therefore, it will be pointless to provide in cl. 3, against the first year of service the salary of Rs. 600.00 the salary in the junior scale for that year being Rs. 350.00. The reason why this has been provided for apparently is that a situation was contemplated that a person appointed as an Assistant Superintendent of Police may immediately have to hold the office of a Superintendent of Police, the minimum salary for which was fixed at Rs. 600.00. If a question of selection were involved, surely choice could never fall upon a person who has just been recruited to the service. The circumstance that the two scales are given in parallel columns clearly indicates that the transition of a member of the service from one scale to another was not to depend upon the consideration of the comparative merits of a group of officers in the junior scale inter se but only upon a consideration of their seniority. We have already indicated that in so far as promotion of officers to the State Police Service is concerned, elaborate provisions have been made in the rules which, among other things, provide for the appointment of a selection committee and preparation of 'select lists'. Thus where a question of selection was involved the procedure has been laid down in the rules. Had it been the intention of the Government to bring in the element of selection in so far as promotion of Assistant Superintendents of Police to the posts of Superintendents of Police is concerned we have no doubt that express provisions relating to the manner in which the selection has to be made would have found place in the rules. The appellant who argued his case in person asked us to

compare the position of persons belonging to other Central Services and said that in so far as they were concerned the rules provide for a selection at every stage and in this connection he drew our attention to explanation (iii) to r. 13 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 which reads thus:

"The following shall not amount to a penalty within the meaning of this rule * * * *

(iii) non-promotion whether in a substantive or officiating capacity of a Government servant, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;

and sought to support the argument by reference to this explanation. He also pointed out that there is no corresponding provision in the All India Services (Discipline and Appeal) Rules. This argument is not without substance. The learned Additional Solicitor General, however referred us to explanation (3) to r. 3 of these Rules which runs thus:

"A refusal to promote a member of the Service, after due consideration of his case, to a post or grade to which promotions are made by selection, does not amount to withholding of promotion within the meaning of this rule."

Clearly, this provision will apply only where appointment is to be made to a post by selection and the question we have to decide is whether the post of a Superintendent of Police is of that nature. The language of this provision is different from that to which we have adverted earlier. Then the learned Additional Solicitor General, as also the High Court, relied upon explanation 4 to r. 3. Rule 3 provides for penalties including withholding of increments, promotion, reduction in rank i.e., to a lower post or time-scale or to a lower stage in a time-scale. The -explanation reads thus :

"The reversion to a lower post of a member of the Service who is officiating in a higher post, after a trial in the higher post or for administrative reasons (such as the return of the permanent incumbent from leave or deputation, availability of a more suitable officer, and the like) does not amount to reduction in rank within the meaning of this rule."

The question, however, is whether it applies to a case like the present. No doubt, this explanation speaks, of a person who was given a trial in the higher post being reverted for administrative reasons including availability of a more suitable officer. This may be a condition of service but if it means that a person who has a right to hold a post in the senior scale would be liable to be demoted if an officer junior to him, but more suitable, is available it would run contrary to the provisions of Art. 311(2) and would be ultra vires. But it would be a valid provision if we consider it to apply only to promotions to posts to which the incumbent has no right. In our opinion, the whole scheme of the rules indicates that a person borne on the junior scale of pay has a right to hold a post on the senior scale of pay depending upon the availability of a post and his seniority in the 'Junior scale of pay. We should not be understood as saying that this right extends to the appointment to a post carrying pay above time scale of pay or a post carrying a special pay. The rules governing appointment to such

posts were not placed before us. If a person holding a post in the senior scale, though in an officiating capacity is found to be unfit to hold that post, action will have to be taken against him as required by r. 5 of Discipline and Appeal Rules because his reversion to a post in the lower scale would amount to reduction in rank within the meaning of Art. 311 of the Constitution as held in Dhingra's case⁽¹⁾. In the case before us Mr. Wadhwa was not reverted for an administrative reason like the unavailability of posts but for a different reason which we will indicate while dealing with the second point raised by him. Despite the fact that he holds a certain rank in the gradation list persons who also belong to the Indian Police Service and who were recruited to it subsequent to him have continued to hold or have been appointed to hold posts carrying salary in the senior scale. This would itself indicate that the action taken against him was by way of penalty or punishment. For, he has not only been reduced in rank but his promotion to the senior scale has also been withheld. This could only be done by holding a departmental enquiry and affording him an opportunity to show cause against the action proposed to be taken against him. Nothing of the kind was done and, therefore, on (1)(1958] S.C.R. 828.

this ground alone the writ petition ought to have been granted.

On the other ground also the writ petition must succeed. The learned Additional Solicitor General very fairly placed before us the file concerning the reversion of the appellant which we find from the judgment of the High Court was also placed before it. The following extracts from that file would be relevant :

"As the regular enquiry into Shri Wadhwa's conduct might take long, probably it will be advisable to shift him from Ferozepore to some other place. His personal file is placed below."

This was apparently a note of the Senior Superintendent of Police. It is dated October 6, 1958 and was marked to the Inspector General. Below that there is a note of some other officer which begins with the following query :

"Can't we revert him and then proceed with further enquiries on the charge of not carrying out the orders of his senior officers?"

Then it is stated that Mr. Wadhwa is not yet ripe and fit for the duties of a Superintendent of Police and then the note says :

"We may, therefore, get the State Government's approval to his reversion on account of his unsatisfactory record. The departmental enquiry could be proceeded with after his reversion."

It will thus be clear that the main object with which his reversion was sought was to facilitate the departmental enquiry. No doubt, a reference is made to the unsuitability of the appellant for the post of Superintendent of Police. But that is not what mainly actuated his superior in recommending his reversion. Then, as the next note in the file would show, actually a show cause

notice was prepared and a recommendation was made to the Inspector General to send it to the Chief Minister for his approval. Thereafter there is a long note of the Inspector General in which reference is made to Explanation 4 to r. 3 of the Discipline and Appeal Rules and it is said that in view of this provision no show cause notice need be issued to the appellant. This suggestion of the Inspector General was accepted by the Chief Minister and that is how the appellant came to be reverted.

A perusal of the file thus shows that instead of suspending the appellant during the pendency of the enquiry against him which was expected to take considerable time to finish, resort was had to his reversion on the vague grounds that he was a 'problem child' and an 'immature person'. We quite appreciate that while a departmental enquiry is being held against a person in respect of a serious offence it would not be in the public interest to allow him to hold a responsible position. But in that case the more straightforward course would be to suspend him and not to resort to a devious method of the kind which the Government thought it fit to employ in this case. If as a result of the departmental enquiry the person arraigned is found not guilty or is awarded a minor punishment he may well be able to revert to the post which he was occupying. We are told that in the departmental enquiry held against the appellant, though he has been found remiss, the only punishment awarded to him was stoppage of one increment without prejudice to his future. If that is the correct state of affairs one would have expected that the appellant, had he been suspended, would have been restored to his former post in the light of the actual action taken against him on the basis of the findings of the Enquiry Officer. But, as a result of what the Government has done he loses the benefit of such a result. In the circumstances we have no doubt in coming to the conclusion that the order of the Government is mala fide.

On both these grounds, therefore, we allow the appeal as well as the writ petition and quash the order dated November 3, 1958 reverting him to the post of Assistant Superintendent of Police from the post of Superintendent of Police. Costs of this petition here and in the High Court will be paid by the respondent State.

Appeal allowed.