
(1966) 08 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 962 of 1966

Naik P.V.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-08-1966

Acts Referred:

Constitution of India, 1950 — Article 310(1), 311, 311(2)

Railway Establishment Code, 1951 — Rule 148, 148(3), 148(4), 149, 149(3)

Citation : (1967) 2 LLJ 486 : (1967) MhLj 510

Hon'ble Judges : Y.V. Chandrachud, J;K.K. Desai, J

Bench : Division Bench

Judgement

K.K. Desai, J.—The first ground is that the impugned notice of discharge dated April 5, 1966, is bad and illegal as being in contravention of the provisions in Art. 311(2) of the Constitution. The submission is that the petitioners will stand discharged from Government service as from August 16, 1966, under the impugned notice. The petitioners will be deprived of their substantive posts and will have lost benefits under the service. This is per se punishment. The impugned notice, therefore, involves removal of the petitioners from service within the meaning of the article. The petitioners are sought to be removed without affording them an opportunity of showing cause in accordance with the article. The impugned notices of discharge contravene the article and are liable to be quashed and set aside.

2. The Government's reply is that, to the facts of the case, the provisions in the article are not attracted. The proposed discharge of the petitioners is a consequence of the proposed abolition of posts which were found surplus to the Government's requirements. The emphatic submission is that, generally, and also having regard to the tenure of service of a Government servant being at pleasure under Art. 310 of the Constitution, the Government has for administrative purposes an absolute right to decide the number of posts necessary for governmental purposes and to abolish posts rendered surplus. The incumbents of abolished posts are liable to be retrenched. Such retrenchment

does not attract the provisions in Art. 311(2). Having regard to the above controversy, the important questions which arise for decision are as to whether discharge and/or retrenchment of Government servants from posts rendered surplus and abolished amounts to removal within the meaning of Art. 311(2) and whether, in respect of such removal, there is an obligation on the Government to give opportunity to the concerned holders of posts to show cause that the posts are not rendered surplus and/or need not be abolished. In the first instance, it may be stated that apparently Arts. 309 and 310 of the Constitution contain provision relating to the authorities entitled to enact rules for terms and conditions of services of the Government employees in Central and State services and specifically provide that the tenure of service is "pleasure of the President." Article 311 restricts the pleasure as regards three major punishments of dismissal, removal and reduction in rank and provides protection that an opportunity to show cause against the action (of punishment) proposed to be taken must be afforded. This article is not in any other manner related to the matter of the tenure of service of the Government employees. It is not contended on behalf of the petitioners that the Government has not got an inherent right to create and abolish posts for administrative purposes and reasons. The submission on behalf of the State, therefore, is that it is clear that Art. 311(2) postulates existence of posts and the vested right that is protected thereunder is in respect of posts which must exist and are not abolished.

3. It further requires to be stated that there is no dispute about the fact that by the impugned notices dated April 5, 1965, the petitioners were informed that it was proposed to abolish their permanent posts and to discharge them owing to abolition as of and from August 16, 1966. The petitioners were offered several options which are not relevant in connexion with this first contention. We have been requested to decide the question on the footing that the impugned notices are orders discharging the petitioners from Government service as of and from 16 August 1966.

4. On this question, strong reliance has been placed on behalf of the petitioners on the decision of the Supreme Court in the case of *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, . The submission is that the ratio of the decision is that every termination of service of a Government servant, except under rules of discharge upon superannuation and reasonable rules for compulsory retirement would be per se punishment and removal from service within the meaning of Art. 311(2). Every termination of service, except under the above two kinds of rules, necessitates affording of an opportunity to show cause against the proposed action in accordance with the provisions in Art. 311(2). The Supreme Court has, in the above decision, not accepted the concept of punishment being necessary for finding a termination of service as amounting to removal within the meaning of the article. In regard to the observations relating to abolition of posts in the previous decision of the Supreme Court in the case of the *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , the submission on behalf of the petitioners is that the same have been disapproved of in the case of

Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., by a larger Bench. The judgment of Subba Rao, J. (now Chief Justice), contains direct observations supporting the above submission for the petitioners. These observations are binding on this Court and must be followed.

5. The Advocate-General for the State has controverted each and all of the above submissions. In his submission, the observations in the decision in Parshotam Lal Dhingra Vs. Union of India (UOI), regarding termination of service resulting from abolition of posts being not punishment and not removal within the meaning of the article are not only not disapproved of but in fact approved of by the larger Bench in Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., . In his submission, the judgment of Subba Rao, J. (now Chief Justice), disapproves of the ratio in Parshotam Lal Dhingra Vs. Union of India (UOI), in this respect. But it is not a concurrent judgment but a dissenting one in that respect. He submitted that the phrases "dismissal," "removal" and "reduction in rank" had a legislative history which was directly relevant. The phrases called for interpretation not according to the dictionary meaning but to a true meaning having regard to that legislative history. Such relevant history had been noticed in the prior decisions and particularly in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), . The majority judgment in the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., had accepted the decision in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), as regards the true meaning and interpretation of these phrases. The phrases "dismissal" and "removal" were consistently held to be not tautologous. The two phrases had been held to be terms of art and not liable to be interpreted in accordance with the dictionary meaning. In his submission, the learned Judge has expressed a dissent from the previous decisions of the Supreme Court and the majority view in that connexion in the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., and has held that these phrases in the article had their dictionary meaning. In his submission, the observations of the learned Judge indicate his dissent in the matter of

(i) the true meaning of these phrases, and

(ii) the approval by the majority judgment of the observations in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), that termination of service consequent upon abolition of post is not "removal." In his submission, the observations made by the learned Judge being contrary to the previous decisions of the Supreme Court are not binding on this Court.

6. Under all the circumstances mentioned above, our main task in this connexion is to find out the relevant observations of the Supreme Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), regarding the Government's right to terminate service upon abolition of post. We have further to find out whether these observations are approved of by the majority judgment in the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., .

7. The case of Parshotam Lal Dhingra Vs. Union of India (UOI), related to an order of reverter of Parshotam Lal Dhingra from an officiating higher post to his permanent post in lower cadre. Before the order was passed, adverse remarks were made against him in his confidential report by the General Manager of the concerned railway with a note that "he should revert as subordinate till he makes good the shortcoming noticed." The General Manager had thereupon issued the impugned order reverting him to his permanent post. His case was that the order amounted to reduction in rank without affording him an opportunity to show cause and was punishment and contravened the provisions in Art. 311(2) of the Constitution. In this connexion, reference was made by the counsel for the parties and the Court to previous decisions of the Court relating to true effect of the phrases "dismissal," "removal" and "reduction in rank" contained in the article. Reference was made to the previous legislative history also. The matter of construction and interpretation of all the three phrases directly arose for consideration by the Court. Reference was made to the decisions of the Supreme Court in the cases of Satish Chandra Anand Vs. The Union of India (UOI), and Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), and several other previous decisions. At p. 554, the majority judgment, it was stated :

"... What, then, is the meaning of those expressions "dismissed," "removed" or "reduced in rank" ? It has been said in Jayanti Prasad Vs. The State of Uttar Pradesh, that these are technical words used in cases in which a person's services are terminated by way of punishment. Those expressions, it is urged, have been taken from the service rules, where they were used to denote the three major punishments and it is submitted that those expressions should be read and understood in the same sense and treated as words of art. This leads us to embark upon an examination of the service rules relating to punishments to which the Government servants can be subjected."

8. The Court thereupon examined the previous rules and the relevant provisions in the Government of India Acts, 1915 and 1935, and the contents of Art. 311(2) and held (p. 559) :

"It follows from the above discussion that both at the date of the commencement of the 1935 Act and of our Constitution the words "dismissed," "removed" and "reduced in rank" as used in the service rules, were well understood as signifying or denoting the three major punishments which could be inflicted on Government servants."

9. In that connexion, it was stated that these phrases had been explained by the Supreme Court in the case of S.A. Venkataraman Vs. The Union of India (UOI) and Another, . In further discussion, the Court stated :

"The foregoing conclusion, however, does not solve the entire problem, for it has yet to be ascertained as to when an order for the termination of service is inflicted as and by way of punishment and when it is not."

10. Apart from other findings of the Court, the relevant finding at p. 561 of

report was as follows :

"... Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by his Court in Satish Chandra Anand Vs. The Union of India (UOI), Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2), as has also been held by this Court in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), . In either of the two above mentioned cases the termination of the service did not carry with it the penal consequence of loss of pay, or allowances under rule 52 of the Fundamental Rules."

11. In arriving at the above conclusion at pp. 559-560, the Court observed :

"... It has already been said that where a person is appointed substantively to a permanent post in Government service he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311(2). Termination of service of such a servant to appointed must per se be a punishment for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment."

12. The Advocate-General has strongly relied on the above-quoted passage in the judgment in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), as containing the ratio and in any event binding observations of the Supreme Court. Justifiably he has submitted that termination of service consequent upon abolition of post has been pointed out by the Supreme Court in the above passage as not attracting the provisions of Art. 311(2). The submission on behalf of the petitioners is that the Supreme Court has disapproved of the above quoted passage in the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., . Before parting with the case of Parshotam Lal Dhingra Vs. Union of India (UOI), the following passage from the judgment of Bose, J., may be quoted :

"I also agree with my Lord that the words, dismissal", "removal", and "reduction in rank", used in Art. 311(2) have special meaning. I would not have said this had it not been for ambiguities that arise otherwise. We were faced with that in Satish Chandra Anand Vs. The Union of India (UOI), where we had to construe the words "dismissal" and "removal" and to determine whether they were merely tautologous or had been introduced to emphasize a difference in meaning. According to the dictionary, they mean the same thing or, at any rate, have subtle shades of distinction that are meaningless in the context in which

they are used. It was therefore necessary to look to the surrounding circumstances and determine whether they had acquired special technical significance at the date of the Constitution. For that purpose, it was necessary to examine the history of the conditions of service under the Crown and look to the various statutes and rules then in force."

13. Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., deals with validity of the rules 148 and 149 of the Railway Establishment Code. Rule 148(3) related to non-pensionable railway service and, inter alia, provided :

"The service of other (non-pensionable) railway servants shall be liable to termination on notice on either said for periods shown below. Such notice is not however required in the case of dismissal or removal as a disciplinary measure after compliance with the provisions of Clause (2) of Art. 311(2) of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."

As regards this rule, the Court observed :

"It is thus clear that rule 148(3) empowers the appropriate authority to terminate the services of other non-pensionable railway servants after giving them notice for the specified period, or paying them their salary for the said period in lieu of notice under rule 148(4) ". After 1957, non-pensionable services was ended, and rule 149(3) provided :

"Other railway servants. - The services of other railway servants shall be liable to termination on notice on either side for the periods shown below ..."

The Court observed :

"Just as under rule 148(3) the services of the railway employees to which it applied could be terminated after giving them notice for the period specified. So under rule 149(3) termination of services of the employees concerned can be brought about by serving them with a notice for the requisite period, or paying them their salary for the said period in lieu of notice under rule 149(4)."

On the question that arose the Court said :

"That takes us to the question as to the true scope and effect of the provisions contained in Art. 311(2), and the decision ..."

The Court then gives the previous legislative history as had been done in the case of Parshotam Lal Dhingra 1958 II L.L.J. 544 (vide supra). The ratio of the decision of the Court admittedly is contained in Para. 26, p. 479 of the judgment. As regards the permanent railway servants, the Court held :

"... A person who substantively holds a permanent post has a right to continue in service, subject of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is

asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must per se amount to his removal ..."

14. Having made the above findings, the Court held that rules 148(3) and (149) contravened the provisions in Art. 311(2) and were, therefore, invalid. The submission on behalf of the petitioners is that we must take cognizance of the phrase "if for any other reason that right is invaded" as contained in the above passage. The submission is that the court had carved out two exceptions to the ordinary rule that the termination of service must inevitably mean the defeat of Government servant's right to continue in service and as such would be in the nature of a penalty and amounted to removal. The two exceptions were the rule of superannuation and the rule as to compulsory retirement. The Advocate-General has submitted that, in the above passage, the observations made by the court in the case of *Parshotam Lal Dhingra Vs. Union of India (UOI)*, relating to the Government's right to abolish posts and retrench Government servants have not been considered. The Court was not at that stage called upon to carve out all the exceptions to the rule that the termination of service must per se amount to penalty. He has further submitted that, in fact, in the later part of its judgment, the Court has considered the relevant observations in the case of *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and has approved of the same.

15. In the majority judgment in 1964 II L.L.J. 463 the following is quoted from the majority judgment in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, at p. 552 :

"... In the absence of any special contract, the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years" service, or the post is abolished, and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him."

The Court then observed in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, :

".... Reading these two observations together, there can be no doubt that with the exception of appointments held under special contract, the Court took the view that wherever a civil servant was appointed to a permanent post substantively, he had a right to hold that post until he reached the age of superannuation or was compulsorily retired, or the post was abolished ..."

16. In *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, the Court quoted from *Parshotam Lal Dhingra Vs. Union of India (UOI)*, the following at p. 485 :

"... It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311(2). Termination of service of such a servants so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment."

17. Now, in disapproving of a part of the observations from the above-quoted passage, the Court observed as follows in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, :

"... the learned Chief Justice ... has made two significant additions ... he refers to a contract or service rules which may permit the authority to terminate the services of a permanent servant without taking the case under Art. 311(2) though such termination may amount to ordinary or compulsory retirement. The absence of contract express or implied, or a service rule, which has been introduced in the present statement, are not to be found in the earlier statements ... and addition of these two clauses apparently is due to the fact that the learned Chief Justice considered rule 49 and the explanations attached thereto and brought them in to the discussion of a permanent servant, and that, we venture to think, is not strictly correct."

18. The Court then quoted the following further passage from *Parshotam Lal Dhingra Vs. Union of India (UOI)*, at p. 562 :

"... As already stated, if the servant has got a right to continue in the post then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause ..."

and observed in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, :

"... With respect, we wish to make the same comment about this statement which we have already made about the statement just cited ..."

19. We have in some detail referred to the above passages from the judgment in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, in order to find out if the observations in the case of *Parshotam Lal Dhingra Vs. Union of India (UOI)*, relating to the termination of service of a Government servant upon abolition of his post have been disapproved of by the Court in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, and/or whether these observations have ceased to be binding on us. We have given anxious consideration to the question and have come to the conclusion that, in

fact, in Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., the majority judgment does not refer to the third exception specifically mentioned in Parshotam Lal Dhingra Vs. Union of India (UOI), viz., "unless the post itself is abolished" in the above passage where the "two significant additions" have been disapproved of. The above third exception, therefore, may justifiably be held to have been approved of. In any event, it cannot be held to have been disapproved of and the law of the third exception as enunciated in Parshotam Lal Dhingra Vs. Union of India (UOI), must be held to be binding.

20. It is significant that whilst dealing with the Additional Solicitor-General's contention that rule 148 and 149 of the Railway Code Only provided for cases of termination of service simpliciter in case where rules provided for retirement and/or posts were abolished the Court had an opportunity to disapprove of this third exception, viz., termination of service arising on abolition of posts but the Court did not do so. [See Para. 33 1964 II L.L.J. 481 of the judgment.] This supports conclusions mentioned in the foregoing paragraph.

21. The conclusions derive support from the decision of the Supreme Court in the case of Champaklal Chimanlal Shah Vs. The Union of India (UOI), the Court observed :

"... One reason for terminating the services of a temporary servants may be that the posts that he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end ..."

22. This decision re-affirms the previous view of the Supreme Court that termination of service simpliciter consequent upon cessation and abolition of post does not attract provision in Art. 311(2).

23. It is clear that Subba Rao, J. (now Chief Justice), in his judgment in Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., ascertained afresh the true meaning of the phrases "dismissal" and "removal" and arrived at a dissenting conclusion in respect of "rules relating to compulsory retirement" and observed in respect of retrenchment, abolition of post and compulsory retirement that :

"... If an opportunity is given ... to show cause against the proposed action, he may plead and establish that either there was no genuine retrenchment or abolition of posts or that others should go before him."

24. These findings are not adopted by the majority and are, with respect, contrary to the other binding decision of the Supreme Court referred to by us.

25. Following the majority decision in Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., and the other binding decisions of the Supreme Court, we hold that termination of service consequent upon abolition of posts does not involve "removal" from service within the meaning of Art. 311(2) and does not involve punishment at all. As the discharge from service indicated

in the impugned notices is to result upon abolition of posts, the petitioners were not entitled to any opportunity to show cause against the impugned notices (and orders) of discharge. The notices are, therefore, not invalid as contravening Art. 311(2) and the first contention fails.

[His lordship after considering points not material to this report, concluded.]

26. In the result, the petitioners are entitled to reliefs claimed in prayers (A) and (B) of the petition. The notices of discharge and allotments dated April 5, 1966, are set aside as against petitioners 2 and 3. The notice having been withdrawn against petitioner 1, he does not need any relief. Respondents to pay costs, fixed at Rs. 500.

27. Rule absolute.

Chandrachud, J.

28. I agree respectfully with the judgment of my learned brother, but as the case before us involves important issues, I would like to add a few words ...

29. Sri Singhvi, who appears on behalf of the petitioners, has raised many questions but considering the concessions made by him and the points which were not seriously pressed by him, it would be possible to classify his argument under four heads :

(1) The termination of the services of a person holding a civil post under a State amounts to removal from service within the meaning of Art. 311(2) of the Constitution even those cases in which the services are terminated on account of abolition of the post held by the person concerned, and therefore, a reasonable opportunity of showing cause against the action proposed to be taken must be afforded to such person.

(2) * * * (3) * * * (4) * * *

30. The first point has, in my opinion, the support neither of text nor of authority. Under Art. 310 of the Constitution the members of the services mentioned therein hold their office during the pleasure of the President of the pleasure of the Governor of the State, as the case may be. As observed by the Supreme Court in a recent decision to which I will call attention immediately the field covered by Art. 311(2) is excluded from the operation of the absolute doctrine of pleasure. In other words, in regard to cases falling under Art. 311(2) the pleasure mentioned in Art. 310 has to be exercised in accordance with the provisions of Art. 311(2).

31. Article 311 provides by Clause (2) that no person mentioned in Clause (1), as for example a person holding a civil post under the State,

"... 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."

32. If the termination of the services of the petitioners amounts to their removal within the meaning of Art. 311(2) of the Constitution there can be no doubt that a reasonable opportunity would have to be afforded to them of showing cause against the action proposed to be taken in regard to them. Looking at the language of Art. 311(2), it seems to me plain that it contemplates removal from service and not a termination of service or discharge from service on account of abolition of the post held by the person concerned. It assumes the existence of the post and the removal of a person from that post. It is conceded before us that the Government, like any other employer, has the right to abolish a post even if it be permanent. It is undisputed that the petitioners are proposed to be discharged from service not by way of punishment but because the posts held by them are found to be surplus and are therefore, required to be abolished. In my opinion, therefore, the text of Art. 311(2) does not support the submission that the petitioners are entitled to be heard before their services are terminated.

33. It is, however, urged on behalf of the petitioners that there is clear authority for the proposition that Art. 311(2) applies to cases where the services of a civil servant are terminated on account of the abolition of the post held by him. In support of this submission Sri Singhvi strongly relies upon the judgment of Subba Rao, J., as the learned Chief Justice then was, in *Moti Ram v. Northeast Frontier Railway* [1964 - II L.L.J. 467] (vide supra). In that case, rules 148(3) and 149(3) contained in the Indian Railway Establishment Code, 1951, Vol. I, were challenged as unconstitutional on the ground that they violated Art. 311(2) of the Constitution. Stated briefly, the services of even permanent servants could be terminated under these rules by a simple notice. These rules were struck down by the Supreme Court on the ground that a servant who holds a permanent post has a title to hold the post to which he is substantively appointed and if that right is invaded, the termination of his service is in the nature of a penalty and would amount to his removal from service.

34. In *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, the judgment of the majority was delivered by Gajendragadkar, J., Subba Rao, J., agreed with the majority that the impugned rules violated Art. 311(2), but on the impact of those rules on Art. 311(2), he has stated his own reasons. It is on these reasons that strong reliance is placed by Sri Singhvi in support of his submission, that even if services are terminated on account of the abolition of a permanent post, Art. 311(2) is attracted. Now, it does appear that Subba Rao, J., has expressed the view in his judgment that a person who is removed from service on account of the abolition of the post held by him is entitled to a reasonable opportunity to show cause against the action proposed to be taken in regard to him, under Art. 311(2) of the Constitution. This would be clear from the following passage towards the end of Para 65 of his judgment :

"... Reasonable opportunity given to a Government servant enables him to establish that he does not deserve the punishment, because he has not been guilty of misconduct. That apart, a Government servant may be removed or

dismissed for many other reasons, such as retrenchment, abolition of post, compulsory retirement and others. If an opportunity is given to a Government servant to show cause against the proposed action, he may plead and establish that either there was no genuine retrenchment or abolition of posts or that others should go before him."

35. In my opinion, however, this is not the view of the majority and that perhaps is one of the reasons why Subba Rao, J., gave a separate judgment while concurring in the conclusion to which the majority had come, if one turns to the judgment of the majority it would be clear that it was not prepared to accept the view of Subba Rao, J., on the impact of discharge on account of abolition of a post, on Art. 311(2) of the Constitution.

36. One of the decisions examined by Gajendragadkar, J., who delivered the judgment of the majority, is Parshotam Lal Dhingra Vs. Union of India (UOI), . In Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., of his judgment Gajendragadkar, J., has reproduced the following passage from Parshotam Lal Dhingra Vs. Union of India (UOI), at pp. 559-560 :

"... It has already been said that where a person is appointed substantively to a permanent post in Government service he normally acquires a right to hold the post until under the rules he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311(2). Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about premature end of his employment ..."

37. The question which was specifically considered by the majority was whether this passage contained a correct exposition of Art. 311(2). The majority held that two significant additions which were made in this passage, namely, that a permanent servant could be asked to retire in pursuance of a contract, express or implied, or that his services could be terminated in pursuance of a service rule so providing, were unwarranted. The entire passage, except for these two "significant additions" was approved by the majority and was held to lay down the correct law. In my opinion, therefore, the opinion of Subba Rao, J., that termination of the services of a permanent servant on account of the abolition of the post held by him would attract the application of Art. 311(2) of the Constitution, does not reflect the view of the majority.

38. The view which the majority has taken on this aspect of the matter is also clear from para. 33 of the judgment of the majority. In that paragraph Gajendragadkar, J., deals with the argument advanced by the learned Additional Solicitor-General that the impugned rules proceeded on administrative grounds or considerations of exigencies of service and as the rules permitted, for

example, the post held by a permanent servant to be abolished or the entire cadre to be brought to an end, they should not be struck down. This argument was negated by pointing out that the rules authorize the railway administration to terminate the service of all permanent servants. In other words, if the construction canvassed by the learned Additional Solicitor-General could be reasonably put on the impugned rules, the majority would have accepted the argument that the rules should not be struck down. That emphasizes that termination of service on account of the abolition of the post held by the person whose service are terminated does not attract the application of Art. 311(2) of the Constitution.

39. The majority has also held in Para. 22 of its judgment that the word "removal" like the two other words "dismissal" and "reduction in rank" used in Art. 311(2) refer to three major penalties and that this view was concluded by the decisions of the Supreme Court. In a case in which the very post held by a permanent servant is abolished, his discharge from the service casts no reflection on him and cannot amount to a penalty per se or otherwise. It has to be borne in mind that Art. 311(2) speaks of the action proposed to be taken "in regard to him," that is to say, in regard to the person who is proposed to be dismissed, removed or reduced in rank. The discharge of a civil servant on account of the abolition of the post held by him is not in my opinion, an action which is proposed to be taken in regard to an individual but is an action which concerns the policy of the State whether a certain permanent post should continue or not.

40. In support of his submission, Sri Singhvi has placed great reliance on the following passage in Para 26 of the judgment of the majority :

"... A person who substantively holds a permanent post has a right to continue in service, subject, of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must, per se, amount to his removal, and so, if by rules 148(3) and 149(3) such a termination is brought about, the rule clearly contravenes Art. 311(2) and must be held to be invalid."

41. This passage, in my opinion, cannot be read in an insulated manner. In making these observations the Supreme Court was not considering a case of the present nature which was specifically discussed by Das, C.J., in his judgment in Parshotam Lal Dhingra Vs. Union of India (UOI), . As I have stated earlier, the approval by the majority, of the observations in Parshotam Lal Dhingra Vs. Union of India (UOI), on the consequences of the abolition of a post, puts the matter beyond a doubt.

42. It might be useful in this behalf to draw attention to the decision of the Supreme Court in Champaklal Chimanlal Shah Vs. The Union of India (UOI), . In Champaklal Chimanlal Shah Vs. The Union of India (UOI), the judgment Wanchoo, J., who delivered the judgment of the Court, has discussed the law relating to disciplinary proceedings taken against public servants. It is observed in that connexion that :

"... One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end. Similarly, a Government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But, besides the above, the Government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and/or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction with the work and/or conduct of a temporary servant may arise on complaint against him. In such cases two courses are open to Government. It may decide to dispense with the services of the servant or revert him to substantive post without any action being taken to punish him for his bad work and/or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Art. 311(2) ..."

43. It is clear from this passage that if the services are terminated because the post is abolished, the provision of Art. 311(2) would not be attracted. The observations made by the Supreme Court in this case as regards the consequence of the abolition of a post cannot, on principle, be restricted to the case of a temporary servant and I see nothing in the judgment to justify such restriction.

44. I, therefore, agree with my learned brother that the services of the petitioners having been terminated on account of the abolition of the permanent posts held by them, Art. 311(2) of the Constitution is not attracted.

[The rest of the judgment is not material to this report.]