

(1965) 11 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition No. 27 of 1961

Naresh Chandra Saha

APPELLANT

Vs

Union Territory of Tripura and others

RESPONDENT

Date of Decision : 08-11-1965

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 311, 311(2)

Citation : (1965) 11 GAU CK 0001

Hon'ble Judges : Rajvi Roop Singh, J.C.

Bench : Single Bench

Advocate : J.K. Roy, for the Respondent

Final Decision : Dismissed

Judgement

Rajvi Roop Singh, J.C.

1. This is a petition under Article 226 of the Constitution of India by Shri Naresh Chandra Saha for the issue of a Writ of certiorari to quash the two orders of reversion dated 12-5-1954 and 7-11-1960 of the Chief Commissioner, Tripura and for such other suitable order or direction as may be just and proper. A request was also made for the issue of writ of mandamus to direct the respondent No. 2 to forbear from giving effect to those two orders and to disregard the order dated 19-7-1961 passed by the President of India in his appeal dated 30-12-1960.

2. The petitioner's case in short is that he joined the Tripura Civil Service as a probationer on 30-10-1949 as a result of competitive examination in the scale of Rs. 125/150-10-280-15-400/-. He was first posted as Divisional Purchasing Officer, Dharmanagar Division (now Sub-Division). Thereafter he was posted in different sub-divisions in different capacities. In the year, 1953 the Tripura Civil Service was split up into two divisions, which were given effect to from 1-4-1950 and the Senior Officers were absorbed as Sub-Divisional Officers and the juniors were taken as Sub-Treasury Officers. The pay scale of the Sub-Divisional Officer

was from 200-10-420-15-450/- and that of the Sub-Treasury Officer was from Rs. 200-10-300/-. He was absorbed as a Sub-Treasury Officer in the scale of Rs. 200-10-300/- with effect from 1st April, 1950 and was posted at Sonamura sub-division. Thereafter by order of Chief Commissioner dated 14-8-1953 he was transferred to Amarpur sub-division to act as sub-divisional Officer in the same pay scale of Sub-Treasury Officer. He took charge of this post on 9th September, 1953. On 10-5-1954, an order was issued appointing him as officiating Sub-Divisional Officer, Amarpur with retrospective effect from 10-9-1953. He worked at Amarpur upto April, 1954 and thereafter he was transferred to Kamalpur as officiating Sub-Divisional Officer. He handed over charge on 6-5-1954 to proceed for Kamalpur. When he reached Khowai on his way to Kamalpur he received an order dated 12-5-1954 reverting him back to the post of Sub-Treasury Officer from 6-5-1954.

According to this order he joined as Sub-Treasury Officer, Kamalpur in May, 1954 and preferred an appeal to the Chief Commissioner for a review of the order of reversion, 12-5-1954. He was informed by the Chief Secretary that his work as officiating Sub-Divisional Officer, Amarpur was unsatisfactory and hence he was reverted. If his work as Sub-Treasury Officer would be found satisfactory he might be considered again for the post of Sub-Divisional Officer in due course. Thereafter he wrote several letters to the Chief Secretary for information as to his work, which dissatisfied the Government but no reply was vouchsafed. Thereafter he was transferred, as officiating Superintendent of Surveys to Agartala in November, 1954 in the scale of Rs. 200-10-420-15150/-. He took charge of this post on, 19-11-1954. While serving as Superintendent of Surveys he sent several reminders for considering the case of his reversion, but without any effect. The appeal which he sent in 1955 to the Chief Commissioner was withheld by the D.M. on the ground that the Chief Secretary had already told him the reason for his reversion. Again on 20-6-1956, he sent another appeal to the Chief Commissioner directly. Thereupon on 7-9-1956, the D.M. and Collector called his explanation for sending the appeal directly to the Chief Commissioner in contravention of the circular of the Government of India, Ministry of Home Affairs No.. 118/52-Estt dated 30-4-1952. He submitted his explanation.

Again on 8-11-1956 he sent an appeal to the Ministry of Home Affairs against the order of reversion dated 12-5-1954, but he did not receive any reply or order about it. On 30-4-1957 the A.D.M. deputed the petitioner in charge of Armed Forces to check the smuggling of paddy by the Ziratias (Citizens of Pakistan) in Belonia Sub-Division. He did not join this duty due to boil on his face. As he did not obey the orders of the A.D.M., so he was suspended on 6-5-1957. He was dismissed with effect from 3-7-1958 by the order of Chief Commissioner, dated 26-6-1958. On 24-1-1959 he filed a Writ petition in this Court. The Writ petition was accepted by the order dated 19-2-1960. Thereafter, in view of the order passed in the Writ petition, the Chief Commissioner by his order dated 7-11-1960 re-instated him in the post of Superintendent of Surveys with effect from the afternoon of 7th May, 1957; but by the same order reverted him to his

substantive post of Sub-Treasury Officer with retrospective effect from 7th June, 1957 on the pretext that this post was filled up by another Officer approved by U.P.S.C. from 7-6-1957. The Petitioner was, therefore,, ordered to join as Sub-Treasury Officer, Sub-room Sub-Division. He instead of joining his duty as Sub-Treasury Officer, Subroom, sent a representation to the Chief Commissioner through D.M. and Collector on 11-11-1960.

The Chief Commissioner by his order, dated 23-11-1960 informed him that this order was passed after considering all the facts. The Chief Commissioner ordered him to join his duty as a Trying Magistrate, Dharmanagar. within 8 days from the date of the receipt of this order. He joined his duty as a Trying-Magistrate, Dharmanagar on 7-12-1960. Thereafter he filed an appeal to the President for setting aside both the orders of his reversion. The President rejected his appeal. Thereupon he filed this Writ Petition for quashing these above orders of his reversion.

3. On behalf of the respondents the reply was filed on 25-7-62, denying almost all the allegations of the petitioner. In reply they denied the fact that the petitioner discharged his duties to the entire satisfaction of his superior Officers. They also denied the averments made in para 4 of the petition.

They alleged that it is incorrect to say that that the cadre of Tripura Civil Service of the former Tripura State was split up from 1-4-50 and the senior Officers of that cadre were absorbed as Sub-Divisional Officers and the junior ones as Sub-Treasury Officers. In fact, the old cadre of Tripura Civil Service was no longer in existence in the revised set up of this Administration, which was given retrospective effect from 1-4-50. The members of the old Tripura Civil Service who had been taken over and ultimately retained in service after proper screening were absorbed in different posts sanctioned by the Government of India in the revised set up of the District Administration. It is also not correct that two scales of pay of Rs. 200-10-420-15-450-E.B. (after 12th stage) for the Sub-Divisional Officers and Rs. 200-10-300/- for the Sub-Treasury Officers were introduced to absorb all the Tripura Civil Officers of the erstwhile Tripura State. They also, while denying the averment of para 5 of the petition, stated that it is incorrect to say that his position was 15th among the Sub-Divisional Officers and Sub-Treasury Officers and 4th among the Sub-Treasury Officers. In reality at that time no seniority list was prepared strictly in accordance with rules. As regards the order dated 10-5-1954, they averred that the petitioner was reverted from the post of officiating Sub-Divisional Officer to that of Sub-Treasury Officer, his substantive post, on the ground of general unsuitability and as such this action does not amount to punishment or reduction in rank and does not attract the provisions of Article 311, of the Constitution. No illegal action was taken against the petitioner and it was not a case of reduction in rank and hence the order of reversion has not affected the provisions of Rule 55 of the Classification, Control and Appeal Rules.

4. As regards the order dated 7-11-60, it has been stated that the petitioner was

appointed as officiating Superintendent of Surveys till the selection of an Officer by the U.P.S.C. The requisition for selection of a candidate for the post was sent to the U.P.S.C. prior to the petitioner's joining as officiating Superintendent of Surveys. He did not apply for the post. Naturally, therefore he had no claim over that post, as soon as the nominee of the U.P.S.C. joined service on 7-6-57. The petitioner was therefore re-instated according to the judgment in the following manner:

(a) Officiating Superintendent of Surveys. - From the date of his suspension till the nominee of the U. P. S. C. joined on 7-8-57.

(b) Sub-Treasury Officer. - From 7-8-57 onwards. This is the substantive post of the petitioner.

This order of reversion, dated 7-11-60 with retrospective effect from 7-6-57 is neither illegal nor unjustified and it did not offend, violate or disobey the writ of the Hon'ble Judicial Commissioner, dated 19-2-1960. The petitioner was re-instated in pursuance of the order of Judicial Commissioner. It was not illegal to revert the petitioner to his substantive post from 7-6-1957 as he had no right to hold the post in which he was allowed to officiate. The order of Judicial Commissioner was that the petitioner shall continue in service. It was not that he shall continue to officiate in the post of Superintendent of Surveys. This order was innocuous, therefore Article 311(2) is not attracted.

5. It was also alleged that the petitioner went on 37 days' leave from 2-3-62. After the expiry of the leave neither he applied for leave nor joined his duty. The petitioner overstayed for 256 days without leave; even then the Government, on 14-4-1963, wrote a letter to him join duty at Sonamura as Sub-Treasury Officer. He has not joined his duty as yet. This shows that he is not willing to serve any further.

6. In these circumstances, the writ petition be rejected with costs.

7. Heard the petitioner and the Government Advocate at great length and perused the record of the case.

8. In this case the petitioner has challenged the two orders of his reversion dated 12-5-1954 and 7-11-1960.

9. I shall first of all deal with the reversion order dated 12-5-1954. The main grounds on which the validity of the aforesaid order has been attacked are:

(1) That it was in the nature of a penalty inasmuch as it deprived the petitioner of the benefit of officiating service rendered and of the increments earned by him and resulted in loss of emoluments and allowances.

(2) That prior to the passing of the said order, no opportunity was afforded to the petitioner to show cause against it.

(3) This order was passed on 12-5-54 but it was given retrospective effect from

6-5-1954.

(4) That the order has postponed and altogether stopped his future chances of promotion and it has also affected his seniority, and

(5) That by this order a part of his pay has been forfeited.

10. The Government Advocate at the time of controverting the contentions of the petitioner raised a preliminary objection that the petitioner should have exhausted other remedies open to him. It was also contended that this writ petition has been filed after an abnormal delay, therefore it should be rejected on that score. He further averred that in this case the provisions of Art. 311 of the Constitution have not been contravened. On the merits it is pleaded that the petitioner was appointed as Sub-Divisional Officer only in an officiating capacity and having not been found upto the mark after trial, he was reverted to his substantive rank for administrative reasons. It is expressly asserted that no punishment has been inflicted on the petitioner and that his reversion to his substantive rank does not attract the provisions of Art. 311 of the Constitution; no show cause notice was thus necessary under the law. It was also said that the order of reversion has neither stopped the petitioner's future chances of promotion nor seniority. This order has also not forfeited a part of his pay This being an innocuous order is not hit by Art. 311(2) of the Constitution of India.

11. In this case both the petitioner and the Government Advocate have placed their reliance on the decision of the Supreme Court in *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC. 36.

12. After having given my most anxious and due consideration to the arguments advanced on both sides, I find that the crucial question that arises for decision is as to whether the reversion of the petitioner from the rank of Sub-Divisional Officer to that of Sub-Treasury Officer amounted to reduction in rank, as contemplated by Art. 311 of the Constitution of India.

13. The scope and ambit of Article 311 of Constitution of India and, in particular, the question as to what is tantamount to reduction in rank within the meaning of the aforesaid Article, was considered, in details, by the Hon'ble Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . Prior to the Supreme Court decision in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , the view was, of course, taken in some cases, e.g. *Bejoy Chand v. State of Assam*, AIR 1954 Ass 12 , *Union of India (UOI) Vs. Someswar Banerjee*, that Article 311(2) was attracted whenever the termination of service or reduction was imposed on some ground which was capable of being explained, that is to say, against which it was possible for the Government servant to show cause, e.g. the ground of inefficiency or incapacity.

But the position has been clarified in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , a decision which has been adhered to in all subsequent decisions of the Supreme Court without any dissent. In that case, the Court formulated the

twofold tests of right to post or rank and penal consequences, to determine whether a particular order constituted a dismissal or reduction of rank within the meaning of Art. 311(2). As regards "reduction in rank", the Court envisaged two situations:

(i) If the Government servant had a right to a particular rank, then the very reduction from that rank will operate as a penalty, so as to attract Art. 311(2) for he will then lose the emoluments and privileges of that rank, (P.49 Ibid).

Earlier, the Court had expressed the view that when a Government servant is appointed to a post on an officiating basis, the Government servant so appointed does not acquire any substantive right so that he cannot complain if his service is terminated at any time (p. 42). It follows from this that the present test for the application of Art. 311(2) would not apply where a Government servant had been promoted to a higher post on an officiating basis and thereafter reverted to his substantive lower post, for, by the promotion on an officiating basis, the Government servant had not acquired any right to hold the higher" post or rank (p. 49 *ibid*).

As explained in later cases e.g.. *The State of Bombay Vs. F.A. Abraham*, the motive or the ground behind the reversion is immaterial in such cases; in other words, Art. 311(2) is not attracted where an employee is merely reverted from his higher officiating post to his substantive post, *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, even though the motive or ground for such reversion be misconduct, inefficiency, unsuitability or the like: *The State of Bombay Vs. F.A. Abraham*, *Ibid*.

(ii) But even in cases of such reversion, that is, where the employee had no substantive right to the post or rank from which he has been reverted, Art. 311 (2) may be attracted if an additional factor is presents namely, that besides the physical degradation or reversion to the lower post.

the order for reduction also visits the servant with any penal consequences (p. 49 *Ibid*).

On this point also, it is to be noted that in some earlier case, e.g., *Balai Chand Basak Vs. N. Roy Choudhury*, Additional Refugee Rehabilitation Commissioner, West Bengal and Others, , *Bhojraj v. Chief Secy. Govt. of Saurashtra*, AIR 1952 Sau 40 at p. 42 it was supposed that in order to attract Art. 311 (2), an indispensable condition was the intention or motive of the superior authority to punish the employee for some misconduct. This condition has not been approved by the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . The Supreme Court observed (p. 49) that what was crucial was whether the employee had a right to hold the post and, conversely, whether the Government had a right to terminate the service or reduce the employee in rank under the rules or the contract of employment. As regards misconduct, again, the Supreme Court had laid down that in every case punishment on a charge of misconduct is not an essential condition for the application of Art. 311(2). What is essential is

whether the impugned order has any additional penal consequences other than mere termination of the service or reversion, as the case may be. "Punishment" has thus come to be a technical concept for the application of Art.311(2).

Thus observed the Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, :

The real test for determining whether the reduction in such case is or is not by way of punishment is to find out if the order for reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or 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 had 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 expressions, the Court has to apply the tests mentioned above namely, (1) whether the servant had 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 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 the Government servant have not been complied with the reduction in rank must be held to lie wrongful and in violation of the constitutional right of the servant.

It is clear from the above that the petitioner cannot succeed merely because the reversion has been ordered on the ground of his unsuitability to the higher post of Sub-Divisional Officer, but that he may succeed if he can show that the impugned order has entailed any penal consequence other than mere reversion from the officiating higher post.

For that, I must turn to the other points taken on behalf of the petitioner.

It has been seen from the passage just quoted from the decision in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, that one of the penal consequences which their Lordships, envisaged as sufficient to attract Art. 311(2) was:

The stoppage or postponement of his future chances of promotion.

According to the petitioner, the impugned order has the above effect inasmuch as it conveyed the decision of the Government that the petitioner:

Is unsuitable for promotion to a post of Sub-Divisional Officer.

The test which is to be applied in order to find whether a person's future chances of promotion have been affected has been formulated by *Sinha J.* in *Dhajadhari Dutta Vs. Union of India (UOI)*, (Home Police Department) New Delhi and Others, , and I find myself in complete agreement therewith. Almost in every

case where an employee is reverted from an officiating higher post because of inefficiency or unsuitability, his future chances would be indirectly affected because the authorities competent to promote him in future will certainly take the fact of previous reversion into account to determine his suitability on the future occasion. This is, however, not sufficient to attract Art. 311(2); had it been so, every case of reversion from an officiating higher appointment would have per se attracted Art. 311(2). But that is not the import of the observations in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, referred to above. But if there is anything in the order of reversion which would stand in the way of his earning future promotion to the higher rank even by his subsequent display of merit, it is certainly a penal consequence within the meaning of the dictum in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, .

14. In a simple case of reversion from a higher officiating post, the only loss incurred by the employee is a deprivation of the higher emoluments attached to the higher post which he had no substantive right to hold. This is not a "penal consequence" within the meaning of the dictum in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , as explained in the later cases of *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, .

15. Now coming to the instant case, I find that the reversion of the petitioner is not by way of punishment or penalty and the impugned order does not visit him with any penal consequences as envisaged in the Supreme Court decision, because it neither entails, nor provides for forfeiture of his pay or allowances or loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion. His seniority in his substantive rank remains the same and nothing has been said at the Bar to convince me that it has. in any way been adversely affected. There was also no stoppage or postponement of future chances of promotion, as admitted by the petitioner. He was again appointed to officiate as Superintendent of Surveys at Agartala in November, 1954 in the scale of Rs. 200-10-420-15-450/-. He took charge of this post on 19-11-1954. The question of giving retrospective effect to the order also does not arise in this case. The petitioner handed over charge of the post of Sub-Divisional Officer, Amarpur on 6-5-54. Under Order dated the 12th May, 1954 he was reverted to his substantive post of S.T.O. As he was reverted just after his making over charge at Amarpur he was naturally treated as reverted from 6-5-54. He got the joining time and pay from this date. I, therefore, find that *Parshotam Lal Dhingra Vs. Union of India (UOI)*, is thus clearly against the petitioner and his reversion to his substantive post as S.T.O. cannot be deemed to amount to reduction in rank.

16. The case of *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, relied upon by the petitioner, can also be of no help to him. Therein, as a result of the reversion the position of the government servant in the selection grade of the substantive post was affected and the question of promotion to the higher grade could not be considered for a period of three years. The loss in seniority in the

Selection grade and also non-promotion to the higher grade for a specified period were the direct result of the order of reversion and these two were, in the eye of law, penal consequences as contemplated by *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . It was for this reason that their Lordships of the Supreme Court allowed the appeal by holding that the appellant had been reduced in rank. On the other hand in the instant case the seniority of the petitioner in the grade of S.T.O. was not affected. There is no selection grade of S.T.O. Further, his promotion to the higher grade was considered and he was again appointed officiating Superintendent of Surveys in November, 1954. Similarly, the case of *P.C. Wadhwa Vs. Union of India (UOI)* and *Another*, does not help the petitioner in any way. In this case the petitioner was really reverted by way of punishment. He not merely suffered a loss of pay which was inevitable on reduction in rank but he had also suffered loss of seniority as also postponement of future chances of promotion to the senior scale. As he was reverted by way of punishment and was given no opportunity of showing cause against the action proposed to be taken against him, the order of reversion was in violation of the provisions of Art. 311. It was for this reason that their Lordships of the Supreme Court allowed the appeal by holding that he had been reduced in rank.

17. Now I shall deal with the reversion order dated 7-11-1960. The principal grounds on which the validity of this order has been attacked are:

- (1) That the order of reversion has postponed or altogether stopped his future chances of promotion,
- (2) That the order of reversion has affected the seniority of the petitioner,
- (3) That a part of his pay has been forfeited,
- (4) That no opportunity, whatsoever, was given to the petitioner to show cause against the proposed reversion as is required under Article 311(2) of the Constitution of India, and
- (5) That the order was passed on 7-11-60 but it was given retrospective effect from 7-6-57.

18. After considering the argument advanced at the bar regarding the order dated 7-11-60, I am constrained to hold that the reversion of the petitioner in the instant case is not by way of punishment or penalty as envisaged in the two Supreme Court decisions, therefore, the Article 311 is not attracted in this case.

19. As regards the question of stoppage or postponement of the future chances of promotion, I find that his chances of promotions have not been stopped by this reversion.

In the year, 1954 he was reverted as S.T.O. but within 6 months he was promoted as Superintendent of Surveys. If he behaves well in his substantive rank, nothing substantial has been said at the Bar to show or even to suggest that he would not get his promotion in due course in future on account of the

order of reversion. It is true that he has been reduced from the post of Superintendent of Surveys but as observed above, he was appointed to this post only in an officiating capacity and he has acquired no right to continue to hold the post. Besides, the petitioner was appointed as officiating Superintendent of Surveys till the selection of an Officer by the U.P.S.C. The requisition for selection of a candidate for the post was sent to the U.P.S.C. prior to the petitioner's joining as officiating Superintendent of Surveys. He did not apply for the post. He, therefore, had no claim over that post. The nominee of the U.P.S.C. joined service on 7-6-57.

20. The petitioner contended that one Officer junior to him was allowed to officiate to a higher post and he was reverted. As a rule the junior most Officer should have been reverted instead of reverting him. This contention is without any merit. There is absolutely nothing on the record to infer that when he was reverted his junior was allowed to officiate as Sub-Divisional Officer. It might be possible that after his reversion, Officers junior to him might have been promoted as Sub-Divisional Officers. But who is to be blamed for that. On 2-3-62 he went on 37 days leave. After the expiry of the leave neither he applied for leave nor joined his duty. The petitioner overstayed for 256 days without any leave even then the Government instead of taking disciplinary action against him, on 14-4-1963, wrote a letter to him to join his duty at Sonamura as S.T.O. He has not joined his duty as yet. This shows that he is not interested in service. In these circumstances he should not have any grudge regarding the promotion of his juniors.

21. As regards the question of loss of seniority of the petitioner, I find that there was loss of seniority in the grade but not in the substantive rank, therefore, this contention too falls to the ground.

22. As regards the point No. 3, there is nothing on the record to show that there was any forfeiture of pay or allowances which were due or payable for the period of the officiating appointment. From the order of Chief Commissioner, it is clear that the nominee of the U.P.S.C. joined service on 7-6-57, as Superintendent of Surveys, therefore, the petitioner was entitled to get the pay and allowances for officiating on this post till 7-6-57 and he got it for that period.

23. The petitioner has contended that according to the order of Judicial Commissioner and the provisions of F.R. 54(a) he was entitled to get the pay till his reversion dated 7-11-60. This contention is devoid of force. According to the order of Judicial Commissioner he was to continue in service. There is no direction in the order of Judicial Commissioner that the petitioner would continue in the post of Superintendent of Surveys even though that post was filled up by a nominee of U.P.S.C. When this post of Superintendent of Surveys was filled up on 7-6-57, in that case how two persons could be allowed to work on this post and to get pay from 7-6-57 to 7-11-60. In this case the question of refund of money already drawn by the petitioner would not arise as during the period of suspension he was given only the subsistence allowance for that period according

to the rules.

24. Now I shall take up the points 4 & 5 together.

25. It has to be seen if the retrospective operation of the impugned order will bring it within the mischief of clause (2) of Article 311 of the Constitution of India.

26. The petitioner has contended that such an order would be tantamount to a punishment inasmuch as it would normally result in forfeiture of pay and would make the petitioner reduced in rank liable to refund the difference between the emoluments admissible to him while he had the higher rank and those admissible to him on reversion.

27. The Government Advocate on the other hand urged that in the instant case the reduction in rank with retrospective effect does not entail penal consequences. In this case the question to disgorge the excess amount in pay drawn by him would not arise.

28. After having given my anxious consideration to the arguments advanced on both sides, I cannot persuade myself to concur with the arguments advanced by the petitioner in view of the facts of the case. While discussing the point No. 3, I fully discussed this point, therefore, it shall now amount to repetition. But it would suffice to say that the petitioner was under suspension during this period, therefore, he got only subsistence allowance for this period according to rules, hence the question of refund of pay drawn by him would not arise. Besides, according to the order of Judicial Commissioner he was allowed to continue in service. In the order it was not mentioned that he would continue as officiating Superintendent of Surveys. Moreover, as pointed out above how two persons can be allowed to work on the same post from 7-6-57. The order of reversion, dated 7-11-1960, with retrospective effect from 7-6-57 in view of the facts of the case is neither illegal nor unjustified and it did not offend, or violate the writ of Judicial Commissioner dated 19-2-1960. He was re-instated in pursuance of the order of Judicial Commissioner. But when the nominee of U.P.S.C. joined this post on 7-6-57, then in that case there was no other alternative but to revert him from this post from the back date. The order of reversion is also not against the provisions of the Civil Service (Classification, Control and Appeal) Rules, as it has been clearly provided in Rule 55 that provisions contained therein shall not apply to reversion to a lower post of a person who is officiating in a higher post. The reversion to the post of S.T.O. did not, therefore, amount to reduction in rank and Article 311 of the Constitution was inapplicable. Consequently, it was not necessary for the State Government to hold an enquiry before reverting the petitioner nor was it necessary to acquaint the petitioner of the grounds on which he was being reverted to his substantive post.

29. The petitioner alleged that the Chief Commissioner was displeased with him, therefore, he reverted him due to the enmity. There is not an iota of evidence on the record to prove this fact. On the persual of the order, I find that this order of reversion cannot be said to be arbitrary as it was passed due to his general

unsuitability for that post. Further, there is nothing on the record to show that the Chief Commissioner was acting mala fide. From the facts it appears that he formed the opinion in good faith on consideration of the factors brought to his notice. The order cannot on similar grounds be said to be discriminatory. Further, the petitioner was not the victim of discrimination as his claim was considered and he was promoted as Superintendent of Surveys. If the Chief Commissioner had been displeased with him in that case he would not have promoted him as Superintendent of Surveys. I, therefore, find no reason to regard the order of reversion to be arbitrary or discriminatory and to be hit by Article 16 of the Constitution of India.

30. It was urged that the order of reversion suggests a stigma on the petitioner but, in my opinion, it would attract the provisions of Article 311 of the Constitution only if the petitioner had a right to continue in the officiating post. It is not contended that the petitioner possessed any such right. This reversion thus does not operate as a forfeiture of any right possessed by the petitioner, with the result that it can, by no means, be described as reduction in rank by way of punishment. I am, therefore, clearly of the view that no evil or penal consequences flow from the order of reversion so as to clothe the petitioner with a right to invoke the aid of the provisions of Art. 311 of the Constitution which in the circumstances are clearly inapplicable to his case. This provision not being applicable to the petitioner, he can obviously make no grievance on account of non-compliance with it.

31. No other argument worth mentioning was pressed before me.

32. For the reasons given above, this writ petition fails and is hereby dismissed. In the circumstances, however, there will be no order as to costs.