
(1957) 02 BOM CK 0042

In the Bombay High Court

Case No : Miscellaneous Petition No. 192 of 1955

Pandurang Rama

APPELLANT

Vs

Divisional Mechanical Engineer, Central Railway

RESPONDENT

Date of Decision : 14-02-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 313, 320, 372
Government of India Act, 1935 — Section 256, 266

Citation : (1957) 59 BOMLR 675

Hon'ble Judges : Kotval, J;Bavdekar, J

Bench : Division Bench

Judgement

Bavdekar, J.—This is an application under Article 226 of the Constitution by a person who was holding a post of a fitter and went on leave for two months. He rejoined at the end of the leave on May 21, 1954, and it appears that on May 23, 1954, he did not attend the Office on the ground that May 23, was a rest day for him. He did not subsequently resume his duties until May 28. On that date he produced a certificate from a railway doctor that he was fit to resume his duties, the certificate having been actually given by the doctor on May 27. A notice was then served upon him to show cause why because of certain conduct alleged to be misconduct, action should not be taken against him, the action mentioned being permanent reversion to the post of Basic Fitter in the grade of Rs. 35-60 per month. The notice also called upon him to show cause why any lesser penalty should not be inflicted. The petitioner gave his explanation and it appears that subsequently respondent No. 1, who is the Divisional Mechanical Engineer, passed an order permanently reverting him to the post of Basic Fitter in the grade of Rs. 35-60 per month. The petitioner appealed to the Divisional Transportation Superintendent, who passed an order, in the first instance, on October 28, 1955, asking the petitioner to resume his original, post with effect from November 1, 1955, and ultimately he confirmed this order on September 29, 1956. In the result, therefore, the petitioner was punished by being reduced to the post on a lower grade for the period from October 1, 1954, to October 31,

1955.

2. The petitioner has come to this Court under Article 226 of the Constitution, and it is urged on his behalf, in the first instance, that the notice which called upon him to show cause why he should not be reduced to a lower post or a lesser penalty should not be imposed upon him was vitiated because it was vague. Now, there is no substance in this contention because the only alleged vagueness consists in the fact that the petitioner Avas not told whether the order which the Foreman had passed calling upon him to explain his absence on May 23, 1954, was oral or was passed in writing. It seems to us that this is not really a complaint which could, be utilized to characterise the notice which was given as a vague one; nor can it be said that the notice was vitiated because of the absence of mention in the notice as to whether the order which the foreman gave was oral or was in writing.

3. The second point which has been made is that after this notice there was another notice served upon the petitioner calling upon him to show cause against the penalty proposed. That notice was admittedly issued after the petitioner was found guilty of certain misconduct. The contention here, however, is that inasmuch as the original notice told the, petitioner that he had to show cause why he should not be reduced permanently, the second notice was really issued as a routine affair, and in law therefore there was no second notice given to the petitioner at all to show cause against the punishment proposed as the Constitution required respondent No. 1 to do.

4. In our opinion, this contention has no substance either. Even if the first notice told the petitioner that he had to show cause why he should not be reduced to a lower post, that was a superfluity; but whether it was a superfluity or not, it does not render the second notice which specifically told the petitioner the action proposed to be taken against him a mere routine matter. In the result, therefore, the second notice which was given to the petitioner was a valid notice. Two notices were given to the petitioner and an opportunity was given to him first to show cause against the misconduct, and, in the second instance, to show cause against the punishment which, it was proposed, would be inflicted upon him.

5. The next point which was made no longer survives, that is, that respondent No. 1 had no authority to pass an order reverting the petitioner to a lower grade. In support of this contention, the petitioner relied upon Rule 1714, schedule I, which is printed at page 191 of the first volume of the Indian Railway Establishment Code, 1951. But the respondents have filed along with their return a revised schedule which has got to be taken instead of the schedule which is printed at page 1951 of the first volume of the Indian Railway Establishment Code. That schedule leaves no doubt whatsoever that respondent No. 1, who in this case is a District Officer, being ATS, had power in the case of the petitioner to pass an order reducing him, to a lower grade or to a lower scale in the time-scale. It is contended on behalf of the petitioner that the petitioner is an artisan and that he is not a class IV servant. We will assume for the sake of argument

that that is so, but that does not make any difference to the revised schedule, because even so far as artisans are concerned, the District Officer has got power to reduce them to a lower post or to a lower scale in the time-scale, unless the artisan concerned was an artisan in the grades of Rs. 360 or 500. The petitioner admittedly is not a person in those grades.

6. There is also no force in the contention that respondent No. 1 is not a District Officer, because respondent No. 2, who, it is contended, is a District Officer, is not actually the District Officer, and this is quite clear again from the revised schedule which has been produced. The DVS has been shown there as a junior administrative officer which is a different category from the District Officer.

7. But we think that there is force in the last contention which has been raised on behalf of the petitioner, that is, in this case before the petitioner was reduced, the Public Service Commission was not consulted as it should have been consulted under sub-el, (c) of Clause (3) of art., 320 of the Constitution. That article reads as follows:

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted-

(a) ...

(b) ...

(c) on all disciplinary matters affecting a person serving under the Government of India or the State Government of a State in a civil capacity, including memorials or petitions relating to such matters;

The respondents deny that it was necessary to consult in regard to the petitioner the Public Service Commission. The first point which has been made is that art. 320, Clause (3), Sub-clauses (c), has no application to every person who is serving under the Government of India in a civil capacity. It is said that it is restricted to only those persons for selecting whom for recruitment to services under the Government of India the Public Service Commission has to be consulted. That was the view which, as a matter of fact, was taken by a Division Bench of the Calcutta High Court in Shiva Nandan Sinha and Others Vs. State of West Bengal, . But another Division Bench of the same High Court pointed out in the case of Munna Lal Tewary Vs. Harold R. Scott and Others, that as pointed out in the case of Sisir Kumar Das Vs. State of West Bengal and Others, :

the entire background of the Constitution was to confer equality of status on all citizens so as to evolve a classless society and, therefore, it could not be right to construe an Article in the Constitution as if the Constitution itself contemplated discrimination between citizens of different grades of position or wealth.

The learned Judges of the Division Bench who decided Munna Lal v. H.R. Scott consequently disapproved of the conclusion that Article 320, Clause (3), Sub-clauses (c), was not intended to apply to all civil posts under the Government of

India or the Government of a State. But another reason which may be given as to why it is not confined to any particular class of posts is the general language which has been used in the Sub-clauses. The Sub-clauses says without exception that the Public Service Commission have got to be consulted in all. disciplinary matters affecting" a person serving under the Government of India or the Government of a State in a civil capacity, and there is no good reason whatsoever why any exception should be made so as to exclude from the purview of the article any particular posts, whether they are class IV posts, or whether they are not posts with regard to the method of recruitment of which the Public Service Commission has got to be consulted.

8. The second point which was made is that even though Clause (3) of Article 320 uses the words, "shall be consulted", the provision is directory and not mandatory. That was also the view which was taken in Shiv Nandan's case by the Calcutta High Court. But in the later Division Bench case of Munna Lal v. H.R. Scott, the learned Judges who decided that case disagreed with all the reasons which had been given for holding that the article was directory and not mandatory. Even so, they themselves came to the conclusion that the article was directory, and the reason which was given for this was the proviso to Article 320. That proviso is as follows:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Rajpramukh, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

The learned Judges who decided Munna Lal's case observed (p. 458) :

Having said so much, I must proceed to say that Article 320(3) appears to me to be of a directory nature for a variety of other considerations. The first is that the Article itself gives the liberty to the President and the Governors to exempt themselves from its operation by regulations framed by themselves. A mandate which leaves it open to the mandated person to carry or not to carry out the mandate according to his pleasure or discretion cannot be a mandate, properly so called at all. It may be urged against this view that if the main provision of Article 320(3) had not been mandatory, there would be a necessity of empowering the President and the Governors specifically to exempt themselves from the operation of its provisions, if they chose to do so

The argument consequently was that the provision could not be mandatory because there was power in the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Rajpramukh as respects other services and posts in connection with the affairs of a State, to make regulations which would render it

unnecessary to consult a Public Service Commission. But it appears to us that this proviso need not come in the way of our holding that Article 320(3), is mandatory and not directory. It has got to be remembered that the Constitution has got to make provision for all sorts of posts and services. Article 320 starts, therefore, with a provision applicable to all such services and posts requiring consultation with the Public Service Commission. Then, in order that it should not create any difficulties, it empowers the President or the Governor to make regulations which would make it unnecessary that the Public Service Commission should be consulted. The powers with regard to the making of the regulations have been conferred, in one case, upon the President, and in the other case, upon the Governor or the Rajpramukh. of a State. It is obvious that the Constitution expected that these authorities would exercise the powers which have been conferred upon them., after bearing in mind the fact that the Constitution, in order to give protection to public servants, has made it necessary in each case falling within the purview of Article 320, Clause (3), to consult the Public Service Commission. They may, of course, in any particular case, or class of cases, say that it shall not be necessary to consult the Public Service Commission. But, obviously, the framers of the Constitution expected that these powers would be exercised after due care and deliberation. The President or Governor could, for example, say that a particular post or a class of posts was such that it was not a suitable one for submitting to the consultation of the Public Service Commission. One could conceive of such cases. There may be other classes of cases in which they may say that it was not necessary to consult the Public Service Commission. But it is obvious that even so, the Constitution contemplated a very large majority of cases in which the proviso would not have any application because no regulations would be made. The question which is before us is: what is it that the Constitution contemplated in regard to these posts? Taking" up for example the question of disciplinary action, such action would not always be taken by the Governor or the President. One or more appeals may be provided but the last appeal may not lie to the Governor or the President; e.g. the posts of the ministerial servants of the Courts. The argument that the power to make regulations is entrusted to the Governor or the President does not, with respect, seem to us to be a strong one, and it seems to us that looking to the object of the whole article which was to provide protection to public servants in the case of a parliamentary democracy, the framers of the Constitution intended that the consultation with the Public Service Commission which was obligatory was to be regarded as a mandatory provision and not a directory one.

9. It is necessary now to go to one case which has been relied upon on behalf of the respondents. That is a case of the Federal Court, namely, *Biswanath Khema v. Emperor* AIR [1945] F.C. 67. The Federal Court was concerned in that case with construing Section 256 of the Government of India Act, 1935, which read as follows:

No recommendation shall be made for the grant of magisterial powers or of

enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the district magistrate of the district in which he is working, or with the Chief Presidency magistrate, as the case may be.

Now, their Lordships of the Federal Court, bearing in mind the principle which has been established in such cases, that is, that every provision which is couched in the form of "shall" is not to be regarded as mandatory, followed the well-established rule that where a statute lays a duty upon a public authority, and where to hold that the performance of this duty was obligatory would render acts done invalid and would entail general inconvenience and injustice to the persons who had no control over those entrusted with that duty, and, at the same time, would not promote the main objects of the legislation, the provision should be construed as a directory provision. If in that case their Lordships of the Federal Court had held that the appointment of the Magistrate was invalid, it would necessarily have led to the result that all the proceedings which were held by that Magistrate were without jurisdiction and that would render a large number of people who had been tried by the Magistrate before and may be even acquitted liable to be tried again over what had been done once. It was this general inconvenience and injustice which were likely to be caused to persons who had no control over the actions of the persons upon whom there was laid a duty that the Federal Court held that the provisions of Section 256 of the Government of India Act, 1935, were directory and not mandatory. But so far as the present case is concerned, we do not think that any such general inconvenience is likely to be caused if we hold that the consultation with the Public Service Commission was mandatory and not directory. On the other hand, so to hold would compel the authority which takes action to consult in each case the Public Service Commission unless the case fell within the proviso of Article 320.

10. The learned advocate who appears on behalf of the railway says, however, that in this case there may be a regulation made by the President which may be applicable to the case of the petitioner and that he should be allowed time in order to ascertain if any such regulation which would cover the case of the petitioner has been passed. "We think it fair that he should be allowed 15 days time in order to produce such a regulation.

11. The learned Counsel who appears on behalf of the respondents has produced now before us regulations made u/s 266, Sub-section (3) of the Government of India Act, 1935. Regulation 5 of those regulations is as follows:-

5. (1) It shall not be necessary to consult the Commission before an order is passed in any disciplinary case other than:-

(a) an original order by the President imposing any of the following penalties:-

(i) censure;

- (ii) withholding of increments or promotion, including stoppage at an efficiency bar;
- (iii) reduction to a lower post or time-scale, or to a lower stage in a time-scale;
- (iv) recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;
- (v) removal from service; or
- (vi) dismissal;
- (b) an order by the President on an appeal, not being an appeal against an order of suspension pending enquiry into misconduct;
- (c) an order by the President proposed to be made in response to any petition or memorial or of his own motion, overruling or modifying the order of a subordinate authority.

5. (2) Notwithstanding anything hereinbefore contained in this regulation, it shall not be necessary for the President to consult the Commission

- (a) in any case relating to a person belonging to a Defence Service (Civilians),
- (b) in any case where the President proposes to make an order of dismissal, removal or reduction in rank after being satisfied that such action is necessary in the interest of the security of the State; and
- (c) in any case where the President proposes to make an order under Rule 3 of the Central Civil Services (Safeguarding of National Security) Rules, 1953, or Rule 3 of the Railway Services (Safeguarding of National Security) Rules, 1954.

12. It is not in dispute that if this regulation is in force now, it was not necessary to consult the Public Service Commission with regard to the reversion of the petitioner. It is contended, however, on his behalf that this regulation was made by the Governor-General in his discretion in exercise of the powers conferred upon him by Sub-section (3) of Section 266 of the Government of India Act. It is true that under Article 313 of the Constitution until other provision was made all laws in force immediately before the commencement of the Constitution and applicable to any service or any post which continued to exist after the commencement of the Constitution, as an all-India service or as a post under the "Union or a State are to continue in force. But it is pointed out that that is only in so far as the laws in force immediately before the commencement of the Constitution were consistent with the provisions of the Constitution. Similarly, it is conceded that the repeal of the Government of India Act, 1935, by the Constitution does not make any difference because under Article 372(1) the laws in force in the territory of India immediately before the commencement of the Constitution were to continue in force until altered, repealed, or amended by a competent Legislature or other competent authority, but it is pointed out that they continue in force only subject to the other provisions of the Constitution.

That means that if there is any conflict between the law which was made under the Government of India Act and was in force in the territory of India immediately before the commencement of the Constitution and the Constitution itself, then the law will not continue in force. It is pointed out then that there is a conflict between Regulation 5(1) made under the Government of India Act and Article 320, Clause (3), Sub-clauses (c), of the Constitution, which makes it incumbent upon the authority who is taking disciplinary action to consult the Public Service Commission before taking disciplinary action against a member of the service to which the petitioner belongs or to the holder of the post which the petitioner was holding.

13. The reply on behalf of the respondents to this contention is that the regulations made by the Governor-General in exercise of the powers conferred u/s 266 of the Government of India Act do not conflict with any provisions of the Constitution including Article 320, Clause (3)(c). It is pointed out that the Regulations are laws in force and it is contended that there is no difficulty in the way of the Regulations remaining in force after the Constitution because in Article 320, Clause (3) itself there is a proviso which empowers the President as respects the all-India services and also as respects other services and posts in connection with the affairs of a State, to make regulations specifying the matters in which either generally or in any particular class of cases, or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted.

14. Now, in order to find out whether there is any conflict between Regulation 5(1) of the Regulations framed u/s 266, Sub-section (3), of the Government of India Act, and any provision of the Constitution, it is necessary to consider whether they can stand together. Now, what the Regulation says is that it shall not be necessary to consult the Public Service Commission in regard to matters covered by Regulation 5(1) of the Regulations. On the other hand, Article 320, Clause (3), of the Constitution says that the Public Service Commission must be consulted with regard to all disciplinary matters affecting the person serving under the Government of India in a civil capacity. It is obvious, therefore, that the two cannot stand together. No doubt the Regulation says that it shall not be necessary to consult the Public Service Commission with regard only to certain specified matters, but Article 320(3) of the Constitution says that the Public Service Commission must be consulted with regard to every disciplinary matter; there is an obvious conflict.

15. The question which then arises is whether there is anything else in the Constitution owing to which this conflict is avoided. The argument is that the conflict is avoided because there is a proviso to Article 320, Clause (3), which empowers the President to make regulations exempting from the purview of the Public Service Commission certain matters. But even though the Constitution did not contemplate that in every disciplinary matter Public Service Commission shall be consulted, the intention obviously was that it shall be consulted except in so

far as non-consultation would be justified by a regulation made by the President under the proviso to Article 320(3). It is not possible therefore to avoid the conflict or to say that there is no conflict merely by reference to the proviso. If a regulation is made by the President under the powers conferred upon him under Article 320, Clause (3), then there could be no question of any conflict because the regulation made by the President will itself justify the Public Service Commission not being consulted and any regulation made under the Government of India Act need not be resorted to. But since there is no provision by way of regulation made by the President under the Constitution, it is difficult to understand how a Regulation which says that in certain disciplinary matters the Public Service Commission cannot be consulted, is not in conflict with Article 320, Clause (3) of the Constitution. It is obvious that we cannot say that there is no conflict because the Constitution contemplated that the President may in certain cases make regulations exempting from the purview of the Public Service Commission certain disciplinary matters.

16. We shall now come to the cases upon which reliance is placed on behalf of the respondents. Our attention has been drawn first of all to the case of Banarsi Das and Others Vs. State of Uttar Pradesh and Others, . Now, it was pointed out in that case that the Regulations which had been made by the Governor u/s 266(3) of the Government of India Act were included in the expression "law in force" used in Article 372(2) of the Constitution. The term "other competent authority" was wide enough to include the Governor or any other authority which had been empowered to make regulations having the force of law under the Government of India Act. It was then observed that the regulations which had therefore been made under the Government of India Act, Section 266(3), continued to remain in force till new regulations were made in 1954. Now reference was made to Article 320, Clause (3), but no contention appears to have been raised that there was a conflict between the regulation which had been made and Article 320, Clause (3)(c). Only a reference was made to an earlier case of Jagannath Prasad Vs. State of U.P. and Others, . Now, that was a case of a post in the police force, covered by Section 266(4) of the Government of India Act. There was a regulation made also u/s 266(3), excluding the dismissal of its holder from the matters in regard to which it was necessary to consult the Public Service Commission. What was decided in the case was that in view of the provisions of Section 266(4) of the Government of India Act it was unnecessary to have the regulation which excluded from the purview of the Public Service Commission the post in police force in question, but all the same it could not possibly be said that the regulation was invalid merely because it was unnecessary. That being so, the view which was taken was that the regulation, was a law in force which continued in force after the coming into force of the Constitution. The question whether the regulation was inconsistent with Article 320, Clause 3(c), of the Constitution does not appear to have been referred to.

17. Then we come to the case of the Patna High Court in Mahadev Prasad v. S.N. Chatterjee AIR [1954] Pat. 285. The question whether there was any conflict

between the regulation made u/s 266(3) of the Government of India Act and Article 320(3) of the Constitution was specifically raised in that case. Reference was then made to the proviso to Article 320(3). It was then held that reading together Section 266(3) of the Government of India Act and Article 313 of the Constitution which continued in force any regulation affecting any public service or post, it was manifest that the proviso to Article 320(3) of the Constitution applied to that case and it was not necessary on the part of the Deputy Superintendent to consult the Public Service Commission before passing an order of suspension or dismissal. The implication seems to have been that the regulation which was made u/s 266(3) of the Government of India Act continued as a valid regulation under the proviso to Article 320(3) of the Constitution. Consequently it was held that it was justifiable not to consult the Public Service Commission. With respect, it seems to us that a law in force, whether it is regarded as a law continued under Article 313 or a law continued under Article 372(3) of the Constitution, will have to be proved in the first instance to be not in conflict with, the Constitution. It is only then and then alone that it can continue to remain in force. Once it continues in force, the question whether it continues in force as a law made under the provisions of Article 320(3) of the Constitution would not arise. But if it did arise, with respect, it is difficult to understand how a regulation which was made under" the Government of India Act by an entirely different authority could be said to be a regulation made under the proviso to Article 320(3), which empowers an entirely different authority to make a regulation. It is one thing to say that the regulation continues in force and it is an entirely different thing to say that the regulation continues in force under the proviso to Article 320(3) of the Constitution.

18. Then we come to two cases of the Nagpur High Court. The first is *Waman v. State* AIR [1953] Nag. 69. There was a similar rule with which the Nagpur High Court was concerned in that case. The counsel who appeared for the petitioner contended that the rule was not in conformity with Article 320(3) of the Constitution and it could not consequently have effect against this provision. It was held that the argument was without substance because the rule was framed under the identical provision of the Government of India Act and it not being contended that it was in conflict with any provision of the Government of India Act it was difficult to see how that rule was being regarded as in contravention of Article 320 of the Constitution.

19. The other Nagpur case is *Vishweshwar v. State Transport Authority*, M.P. AIR [1955] Nag. 163. That case, however, proceeded upon a specific concession made at the Ear because it was observed at p. 165:

It is not disputed that these Regulations are still in force by virtue of Article 372 of the Constitution.

We need only consider therefore the former case and, with respect, it appears to us that even though we must consider the whole article and we cannot say that there is a conflict merely with Article 320(3), Sub-clauses (c), if there is any

provision elsewhere in that clause or as a matter of fact in the whole of the Constitution which would show that there is no conflict in considering whether there is or there is not conflict the proviso which empowers the President to make regulations exempting from the purview of the Public Service Commission certain matters in circumstances similar to those in which Section 266 of the Government of India empowered the Governor-General, does not have any bearing upon the question of the conflict. As we have already mentioned, if regulations are made by the President, then there is no question of conflict. The only question which would have to be determined is whether the regulator, justified the absence of any consultation with the Public Service Commission. If on the other hand, there is no regulation by the President under the provision of Article 320, then in that case there would be conflict between the provisions of a regulation made under the Government of India Act and Article 320(3) of the Constitution if the former permitted the Public Service Commission not being consulted.

20. The last case is the case of Sagar Mal and Others Vs. The State, . That was a case in which under the Government of India Act the power to make laws with respect to matters described as essential commodities was with the Central Legislature. Subsequently the Constitution came into force and under it production, supply and distribution of commodities were included in entry no. 27, list II, i.e. they were made subject with respect to which the State Legislature has exclusive power to make laws. It was contended that the law which had been made by the Central Legislature under the powers conferred upon it before the Constitution came into force, to make laws with respect to matters described as essential commodities in Section 2 of the India (Central Government and Legislature) Act, 1946, was not valid after the coming into force of the Constitution. This argument was repelled by their Lordships and, with respect, we are in entire agreement with that view. There was as a matter of fact, no conflict between the Constitution on the one hand and the law which was rendered valid after the commencement of the Constitution. The provision of the Constitution which was supposed to have been contravened was the provision which empowered the State Legislature exclusively to make laws on subjects in list II of the Seventh Schedule, among them the subject of making laws in regard to essential commodities. The law on the officer hand, which had already been made by the Central Legislature, had nothing whatsoever to say as to who was to have power to make laws upon the subject. It was a law made under the power given to the Central Legislature by the India (Central Government and Legislature) Act, 1946, to make laws upon the subject of essential commodities. The obvious reply to the contention which was made was that as a matter of fact there was no conflict. That is not the case here. As we have already mentioned, there is a clear conflict between the regulation which it is said still remains in force after the coming into force of the Constitution.

21. The learned Counsel who appears on behalf of the respondents says however that just as the Government of India Act provided that the Governor General

should have power to make regulations with regard to posts under the Central Government excluding them so far as disciplinary action is concerned from the purview of the Public Service Commission, the proviso to Clause (3) of Article 320 of the Constitution gives the same power to the President. The difference, if any, is only in regard to the procedure to be followed in making the regulations and the authority which has to make them. He says in that case there cannot possibly be a conflict between the regulation which was made under the Government of India Act and the Constitution itself. But the reply to that is that there is a difference in procedure and difference in authority in regard to the regulations which were to be made under the Government of India Act, Section 266(3), and which can be made under the Constitution, Article 320(3). Even so, we can understand the argument that there is no conflict in essence but between Section 266 of the Government of India Act and Article 320 in so far as they deal, with the necessity of consulting the Public Service Commission in regard to disciplinary matters. But the regulation which had already been made under the Government of India Act, and the article of the Constitution which required consultation with the Public Service Commission in regard to disciplinary matters with regard to services or posts under the Central Government are in conflict. In our view, therefore, the regulation which was framed under the Government of India Act did not remain in force after the coming into force of the Constitution, and inasmuch as it is not pointed out that subsequently any regulations have been made by the President under the powers conferred upon him under the proviso to Article 320(3) of the Constitution, it was necessary to consult the Public Service Commission in regard to the petitioner.

22. That being so, we quash the order of reduction of the petitioner for the period from October 1, 1954, to October 31, 1955. The petitioner shall recover his costs from the respondents. The security deposit to be returned to the petitioner after deducting such costs as may be payable by him.