

**(1958) 09 AHC CK 0004**

**In the Allahabad High Court**

**Case No : Civil Miscellaneous Writ No. 3962 of 1956**

Priya Gupta

APPELLANT

Vs

General Manager, North Eastern Railway, Gorakhpur

RESPONDENT

**Date of Decision : 11-09-1958**

**Acts Referred:**

Allahabad High Court Rules, 1952 — Rule 1(2)  
Civil Services (Classification, Control and Appeal) Rules — Rule 49  
Constitution of India, 1950 — Article 14, 16, 226, 310, 311  
Contract Act, 1872 — Section 23  
Evidence Act, 1872 — Section 60  
Railway Establishment Code — Rule 143, 148, 148(3), 148(4)

**Citation : AIR 1959 All 643**

**Hon'ble Judges : J. Sahai, J**

**Bench : Single Bench**

**Advocate : S.C. Khare, for the Appellant; K.L. Misra, General, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

J. Sahai, J.—The petitioner was appointed as Assistant Electrical Foreman in 1944 in the erstwhile Bengal and Assam Railway. After the partition of the country the Bengal and Assam Railway was renamed as Assam Railway and the petitioner continued to work in that railway. He was promoted to the post of electrical foreman in the scale of Rs. 360-500 and was confirmed on that post a little after. The Assam Railway was merged in the North Eastern Railway and the petitioner continued to serve as electrical foreman in the railway electrical power house at Pandu under the North Eastern Railway.

The petitioner was the General Secretary of the Assam Railway Labour Association, a registered and recognised trade union of the railway workers and after the reorganisation of the railways the petitioner became the General Secretary of the North Eastern Railway Mazdoor Union and in the election held in October 1955 the petitioner was elected as General Secretary of the same Union and continues to hold that office. He is also the Assistant General Secretary of

National Federation of Indian Railwaymen, an all India organisation of the railway workers. The petitioner's case is that in his capacity as Joint General Secretary and General Secretary of the trade unions mentioned above he had to meet the General Manager and other high railway officials of the North Eastern Railway and while doing so he had to re-present the cases of workers with independence.

According to him, inasmuch as he espoused the cause of the workers fearlessly and independently and not in a "cringing or servile manner" the officers of the railway got displeased with him. It is also alleged that the petitioner worked hard to bring about amalgamation of the two unions which were functioning in the trade union field of the North Eastern Railway and succeeded in doing so. The petitioner was on leave from May 1955 till 31-8-1956, according to his allegations, for doing trade union work. He was at Gorakhpur on 10-8-1956 in connection with some trade union work at the head office of the trade union. On that day the Deputy General Manager served him, with a notice dated 8-8-1956 under the signature of the General Manager, North Eastern Railway, purporting to terminate his services with immediate effect with one month's salary in lieu of notice. The said notice runs as follows :

"General Manager's Office N. E. Railway. August 8, 1956.

No. E(SS) -19-208/1, Shri Priya Gupta, Electrical Foreman, N. E. Railway Power House, Pandu (Assam) (At Gorakhpur U. P.)

Please take notice that, in exercise of the special powers vested in me, I hereby order the termination of your service, with immediate effect, with one month's pay in lieu of notice.

Sd. B. Arora, General Manager.

After receiving that notice the petitioner on 15-8-1956 sent a letter addressed to the General Manager, North Eastern Railway. The General Manager sent a reply to this letter on 20-8-1956. A copy of the reply dated 20-8-1956 has been filed and marked as annexure "F" to the affidavit of the petitioner. Thereafter some correspondence took place between the petitioner as Secretary of the Union and the General Manager. It is not necessary to reproduce that correspondence here. On 31-8-1956 Sri Guru Swami, the General Secretary of the National Federation of Indian Railways interviewed the General Manager and thereafter issued a press statement summarising what had transpired at the interview.

Thereafter Sri Guru Swami met the Railway Minister on 22-10-1956 at Madras and some questions were also put in the Parliament in connection with, the termination of the petitioner's services but the Railway Minister refused to give replies to these questions. The petitioner's case is that he is a permanent employee and there was no service agreement executed by him. According to him the appointing authority of the petitioner is the Chief Electrical Engineer, North Eastern Railway. He has also alleged that before his services were terminated the Union Public Service Commission was not consulted. On these

facts the petitioner has prayed for the following reliefs:

"(a) That a writ of certiorari or order or direction in the nature of certiorari be issued quashing the notice dated 8-8-1956.

(b) That a writ of mandamus or order or direction be issued directing opposite party to treat the applicant in service on his post."

A counter affidavit has been filed on behalf of the respondent which is sworn by Sri Bhishma Arora, the General Manager, North Eastern Railway, Gorakhpur. Several allegations made by the petitioner in his affidavit have been controverted in this counter affidavit. His allegation that the railway authorities expected him to maintain cringing or servile attitude and not to negotiate with him in his capacity as Secretary or General Secretary of the trade unions on equal terms has been controverted. So has been his allegation that the railway authorities tried to discourage trade union activities.

It is further alleged in the counter affidavit that The proceedings of the meetings with the Trade Union Officials at the Head Office level almost invariably progressed very satisfactorily. It is further listed by way of illustration that in the various meetings of the Union and the Rly. Officers out of about 304 items on the agenda placed by the Union and discussed at such meetings between the railway authorities and the officials of the Union varying between three to ten in number during a period of about twelve months i.e. between November 1954 to January 1956, 182 items were passed and agreed to quite smoothly and no occasion arose for any un-pleasantness even in regard to the res; which were not accepted.

The petitioner's allegation that the General Manager or the other Railway Officers wanted somehow to get rid of the petitioner's services has also been controverted. According to the counter affidavit during about 5 years and three months between May 1951 and August 1956, the petitioner was on leave for three years and about eight months i.e. for more than 2/3rd of the period. During this period leave was applied for on the ground of his own illness or on the ground of the illness or death of his near relations and then extended from time to time and if during this period trade union work came in he did that work also. Due to the petitioner's frequently going on leave the District Electric Engineer, Gauhati sent a letter to the Chief Electrical Engineer, which runs as follows :

"The post of EP/Pandu in the grade 360-500 has been held by Shri P. B. Gupta. He has been taking leave in small bits and extending it from time to time by small periods with the effect that since 30-5-1955 he has been continuously on leave. Since, originally, the leave asked for was for a short period and every extension asked for was also for short period, no special arrangement was made by transferring a suitable and senior staff for posting at P. N. O. in his place. Shri R. N. Ghosh Dastidar/ AEF/PNO has been shouldering the responsibility for the entire period. Similar things had happened in the past and vide your letter No.

E/9/11/6020 d/ 16/ 21-7-55 it was decided that Shri R. N. Ghosh Dastidar should be treated as having been promoted to the grade 360-500 for the period,

Similar action is now called for and it is recommended that Shri Ghosh may be treated as having been promoted to the grade 360-500 with effect from 30-5-1955. This promotion, of course, will have to be treated entirely as fortuitous because had the leave been asked for, for the long period initially suitable arrangements for posting senior staff would have been made by you.

The present position is that I have received a telegram today from Shri P. B. Gupta requesting extension of his leave up to 31-3-1956. It is not possible for me to indicate whether Shri Gupta is expected to join on 1-4-1956.

An immediate reply sanctioning Shri Dastidar's promotion is requested."

It is also alleged in the counter affidavit that due to the petitioners going frequently on leave and specially because of his having asked for leave up to 31-3-1956 the Railway Administration "remained in a dilemma as to when the applicant would rejoin duty." However leave was always granted or regularised subsequently. It is admitted in the counter affidavit that the General Manager terminated the petitioner's services on 8-8-1956 under Rule 148 of the Indian Railway Establishment Code, Volume I, with one month's pay for the period of notice. It is also alleged that the services of the petitioner were actually terminated, he was neither dismissed, nor removed from service as a disciplinary measure. It is admitted that before the services of the petitioner were terminated the Union Public Service Commission was not consulted.

2. A rejoinder affidavit has also been filed. It is not necessary to mention the allegations made in the rejoinder affidavit because mostly the allegations made in the original affidavit have been reiterated therein. If and when it would be necessary to notice any allegation made in the rejoinder affidavit I will do so at the proper place.

3. I have heard Mr. S. C. Khare, learned counsel for the petitioner and Mr. Kanhaiya Lal Misra, learned Advocate General for the respondent. The, first contention of Mr. Khare is that the petitioner has actually been removed from service under the garb of his services being terminated and inasmuch as that has been done without giving him an opportunity of showing cause as required by Article 311(2) of the Constitution of India, the termination of his services is illegal. In this connection it is also contended that Rule 148 of the Railway Establishment Code is void on the ground that it defeats the provisions of Article 311 of the Constitution of India, and is void u/s 23 of the Indian Contract Act.

I will first take the argument that though apparently the services of the petitioner have been terminated, actually he has been removed. The petitioner has filed a true copy of a news item appearing in the issue of the "Leader" dated 13-8-1956 and marked as annexure "B" to his affidavit. Learned counsel for the petitioner has placed reliance upon the following portion of the news item and

has on the basis of it submitted that the relations between the railway administration and the petitioner were far from cordial due to the activities of the petitioner as a trade union worker :

"Explaining the sudden dismissal of Mr. Gupta, a railway officer said that this was never a case of victimisation or a measure against trade union activity. In fact the step had been decided sometime ago and its service was delayed in the hope that Mr. Gupta might improve in his behaviour towards officers. The officer recalled an incident of May 28 when several officers had been humiliated and the General Manager had been dragged by the hand from one office to another in connection with what was described as a "fraud" by the selection board in the selection of a draftsman. It had been alleged by the union that the marks of certain candidates had been increased. The General Manager, had sealed these mark-sheets and the answer books in the presence of Mr. Gupta and sent them for re-marking to the Principal of the Engineering College, Banaras Hindu University, who had returned them with the remark that the marking was quite correct"

For the same purpose learned counsel for the petitioner has relied upon another news" item which appeared in the issue of "Amrit Bazar Patrika" dated 14-8-1958. It runs as follows :

"Later on Saturday evening, Shri D. R. Kohili, Senior Deputy General Manager of the North Eastern Railway, at a meeting with the press-men in his room explained that the Railway Administration intended to cause no victimisation by the action against Shri Gupta which aimed at preventing the indiscipline and insubordination among the employees. in the interest of the successful implementation of the Second Five Year Plan."

Learned counsel has also invited my attention to a press statement issued by Sri Guru Swami, the General Secretary of the National Federation of Indian Railwayman on 31-8-1956, at Gorakhpur. In this press-statement Sri Guru Swami said that when he had interviewed Sri Arora, the General Manager, North Eastern Railway, in connection with the termination of services of Sri Priya Gupta, Sri Arora had told him as follows :

"Sri Arora admitted that Mr. Priya Gupta was a sincere and active trade union worker but it was felt that his continued employment on the N. E, Railway was incompatible with the maintenance of discipline and therefore a notice of discharge was served on him....."

It is contended that this admission of Sri Arora also shows that the petitioner was actually removed from service as he was disliked by the railway administration. Learned counsel has also placed reliance upon a letter issued by Sri Guru Swami to the affiliated Unions and members of the Working Committee of the National Federation of Indian Railwaymen, which runs as follows :

"Dear Comrades,

x x x x As regards victimisation of Shri Priya Gupta, the Minister justified the action taken to protect the Officers against intimidation and although he received a letter from Shri Jayaprakash Narain the decision taken will not be altered.

Annexure L to the petitioner's affidavit gives the question which Sarvsri Jugal Kishore Sinha and Ram Narain Singh, members of the Parliament, put to the Railway Minister. The question is as follows :

"..... Will the Minister of Railways be pleased to state (a) whether it is a fact that the General Secretary of North Eastern Railway Mazdoor Union has been dismissed, (b) If so when and on what charge and (c) Whether there is a widespread agitation against this dismissal order among the employees of the North Eastern Railway and (4) If so what steps are being taken in this connection."

It has been alleged in the affidavit filed by the petitioner that no reply was given to this question. The material which I have just mentioned above has been placed before me by the learned counsel for the petitioner to show that the railway administration was displeased with the petitioner and therefore removed him from service but in order to avoid unnecessary tension the procedure of charge sheet and full enquiry was not followed and his services were terminated by a notice. In the counter affidavit the allegations made by the petitioner have been controverted. It is stated that the news items that were published in the "Leader" and "Amrit Bazar Patrika", mentioned above, do not state correct facts.

According to the counter affidavit the petitioner was neither dismissed nor removed from service as a result of any disciplinary action and any statement to the contrary is wrong. It is stated by the General Manager in the counter affidavit that he had no occasion to meet Sri D. R. Kohili till 12-8-1956 and if Sri Kohili made any such statement as is mentioned in the news items appearing in the issues of the "Leader" and the "Amrit Bazar Patrika" of 11-8-1956, the same are not correct. It is further alleged that in reply to the letter of the petitioner the General Manager has informed him that his services have been terminated under Rule 148 of the Railway Establishment Code. With regard to the statement attributed to the General Manager by Sri Guruswami to which Sri Guru-swami referred in the press statement, the statement of the General Manager in the counter affidavit is that the same is very much distorted and incorrect on vital points.

It is stated that while it is true that the General Manager had told Shri Guruswamy that the petitioner was a sincere trade union worker, and that his relations with the petitioner even after the termination of his service continued to remain very cordial, and he had no grudge against the Union or the petitioner but it is altogether false that the General Manager ever told Sri Guruswamy that the petitioner had been removed from service or that it was felt by the administration that his continued employment on the North Eastern Railway was incompatible with the maintenance of discipline and therefore a notice of

discharge had been served on him to avoid unnecessary tension that might be caused by the process of lengthy enquiry and by taking disciplinary proceedings.

It is stated that this is all a very ill conceived post-termination attempt by the petitioner or by his friends to wrongly make, what was a simple termination of service, look like a removal or dismissal as a disciplinary measure. In the counter affidavit it is also mentioned that Sri Shah Nawaz Khan made the following statement in the Parliament :

"Sir,

I rise to make a statement to correct the information given on the floor of this House on 20-12-1956 in reply to supplementaries on question 395. Shri P. B. Gupta, an office bearer, of the North Eastern Railway Mazdoor Union, who was referred to, was neither dismissed nor discharged from service. It was Sarvshri Pandey and Sharma who were discharged from service after issue of charge sheets. Shri Gupta's services were terminated in accordance with Rule 148 of the Indian Railway Establishment Code. Volume I without serving any charge sheet and without assigning any cause,"

It would be noticed that all the allegations made by the petitioner in connection with his allegation that he was actually removed and the order of removal was given the garb of termination of service in order to circumvent the provisions of Article 311 of the Constitution have been controverted. Apart from the fact that the allegations are controverted in my opinion, the petitioner cannot rely upon the news items or the press interviews of Sri Guruswami or his letter as pieces of evidence.

He has filed no affidavit either of the correspondent who was responsible for the news items appearing in the issues of the "Leader" or the "Amrit Bazar Patrika", or of Sri Guruswami or of Sri D. R. Kohili, Evidence of a person who is alive and is available for examination as a witness but has not been examined in the case is not admissible in judicial proceedings. All the items which are mentioned above and on which learned counsel for the" petitioner wants to rely are hit by the "hearsay" rule and none of these items can be used as evidence. The mere fact that a writ petition is decided on affidavits does not mean that all what is inadmissible if incorporated in an affidavit becomes admissible. Clause (2) of Rule 1 of Chapter XXII of the Rules of the Court runs as follows :

"(1) .....

(2) The application shall set out concisely in numbered paragraphs the facts upon which the applicant relies and the grounds upon which the Court is asked to issue a direction, order or writ, and shall conclude with a prayer stating clearly, so far as circumstances permit the exact nature of the relief. The application shall be accompanied by an affidavit or affidavits in proof of the facts referred to in the application. Such affidavit or affidavits shall be restricted to matters which are within the deponent's own knowledge."

4. This rule clearly requires that the affidavit filed in support of the writ petition should contain only such matter which is in the personal knowledge of the deponent. No piece of the evidence mention-ed above is in the personal knowledge of the petitioner. The petition therefore is not in accordance with the rules of the Court also. It is not possible to rely on any one of these allegations in view of what I have said above.

To my mind, if the petitioner wanted to raise the questions of fact that there was ill-will between him and the railway administration and he was actually removed and for that purpose wanted to rely upon certain pieces of evidence, his proper remedy was to file a regular suit and not to have come to this Court under Article 226 of the Constitution of India. Even when he had filed a writ petition in this Court he should have filed the affidavits of the persons who had personal knowledge about the things they deposed. The petitioner has admittedly got an alternative remedy of filing a suit which is undeniably most suitable for the decision of these questions of fact. In the case of Union of India (UOI) Vs. T.R. Varma, , their Lordships of the Supreme Court observed as follows:

"Under the law, a person whose services have been wrongfully terminated is entitled to institute an action to vindicate his rights and in such an action, the Court will be competent to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition.

It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ ..... And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226. unless there are good grounds therefor. None such appears in the present case. On the other hand, the point for determination in this petition whether the respondent was denied a reasonable opportunity to present his case, turns mainly on the question whether he was prevented from cross-examining the witnesses, who gave evidence in support of the charge.

That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of Courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit."

I would have dismissed the petition on the ground of alternative remedy but I am not doing so because learned counsel for the petitioner has contended that even if it be assumed that the services of the petitioner were terminated and he has not been removed he is challenging the validity of Rule 148 of the Railway Establishment Code and that is not a matter which requires going into evidence. I do not see any reason why the allegations made by Mr. Arora be not accepted as correct. In my opinion the petitioner has completely failed on the material before me to make out a case that the railway authorities were ill-disposed

towards him and removed him but in order to avoid complications and to circumvent the provisions of Article 311 of the Constitution they gave the order of removal the shape of a notice or order of termination of service. Mr. Khare has also relied upon the following observations of their Lordships of the Supreme Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), ;

""But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences.

Thus if the order 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 to reduce: the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment and by way of penalty."

I have already held above that there is no material in the shape of admissible evidence on which a finding can be recorded that in truth and reality the Government has terminated the employment of the petitioner by way of penalty. In view of what is stated in the order of termination there is a presumption in favour of the respondents that the services of the petitioner have been terminated under Rule 148 of the Railway Establishment Code and in fact his employment has not been terminated by way of penalty.

The burden was on the petitioner to prove that his services had been terminated by way of penalty. This the petitioner has miserably failed to discharge. I, therefore, overrule the first contention of the learned counsel for the petitioner and proceed to consider the other points on a finding that the services of the petitioner have been terminated under Rule 148 Clauses (3) and (4) & it is not a case of removal under the garb of termination of service by a notice. The motive for terminating the service is not material. (See Parshotam Lal Dhingra Vs. Union of India (UOI), .

5. Now, I take up the second submission of learned counsel for the petitioner that Rule 148 of the Railway Establishment Code, is ultra vires. Rule 148 runs as follows :

"148. Termination of service and periods of notice.

(1) Temporary railway servants -- When a person without a lien on a permanent post under Gov- eminent is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of the termination of his service if

such termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy, or is due to mental or physical incapacity or to his removal or dismissal for serious misconduct, If the termination of his service is due to some other cause, he shall be entitled to one month's notice provided he was engaged on a contract for a definite period and the contract does not provide for any other period of notice, and to a notice of 14 days if he was not engaged on a contract. In the latter case steps should be taken to bring this condition to the notice of temporary employees.

(2) Apprentices -- Except as otherwise provided in his service agreement, the service of an apprentice shall be liable to termination on one week's notice.

(3) Other (non-pensionable) railway servants --The service of other (non-pensionable) railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not however required in cases of summary dismissal or discharge under the provisions of service agreements, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity -

(a) Probationary officers and officers on probation other than these in the Medical Department

3 months' notice.

(b) Officers on probation in the Medical Department

1 month's notice.

(c) Permanent Gazetted Officers

6 months' notice.

(d) Permanent Non-gazetted employees -

1 month's notice,

(4) In lieu of the notice prescribed in this rule it shall be permissible on the part of the Railway Administration to terminate the service of a railway servant by paying him the pay for the period of notice."

In the present case the services of the petitioner had been terminated under Rule 148 Clauses (3) and (4). The learned counsel for the petitioner submits that Rule 148 of the Railway Establishment Code is void in view of the provisions of Section 23 of the Indian Contract Act inasmuch as the said rule is of such a nature that if permitted it would defeat the provisions of Article 311 of the Constitution of India. Section 23 of the Indian Contract Act runs as follows :

"23. The consideration or objection of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public

policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

I have found it a little difficult to follow the argument of the learned counsel for the petitioner on this point. It is his own case that the petitioner has not executed any agreement. See paragraph 38 of the petition and paragraph 39 of the affidavit. They are similar and run as follows :

"That no service agreement has been executed by the deponent".

The provisions of Section 23 of the Indian Contract Act make an agreement void if it is forbidden by law or is of such a nature that, if permitted, would defeat the provisions of any law. Before Section 23 can apply there must be an agreement. In the present case, admittedly, there is no agreement and I fail to see how can the provisions of Sec. 23 of the Contract Act be invoked in favour of the petitioner. Mr. Khare has relied upon the following cases ;

Ghassu and Another Vs. Babu Ram and Another, ; Mohan Lal v. Udai Narain 14 CWN 1031; Ratan Dei Vs. Durga Shankar Bajpai and Others, ; Bithal Das and Another Vs. Raghunath Das and Another, ; Mahabal Singh and Another Vs. Ram Raj and Others, Naoroji Nusserwanji Thoonthi v. Sidick Mirza. ILR 20 Bom 636; AIR 1922 165 (Privy Council); Saleh Abraham Vs. Manekji Cowasji, ; Moti Chand v. Ikram Ullah Khan LR 44 IndAp 54 : AIR 1916 PC 59; Makund Lal and Others Vs. Mt. Sunita and Another, and Dasrath.v. Mt. Sandala 3 OWN 217 : AIR 1926 Oudh 270. I have looked into all these cases. They are all cases of contract and not of rules. To my mind they are of no help in deciding the present case. Mr. Khare has also placed reliance upon paragraph 229 of Halsbury's Laws of England, Simonds Edition, Vol. 8, on page 133, which runs as follows :

"229. Master and servant. A contract, or provision in a contract, between a master and his servant by which the latter agrees to waive the breach by the master of an obligation imposed upon him by state for the protection of his servants in the course of their employment may be void as contrary to public policy."

This statement of law is based upon the decision of *Baddeley v. Granville* (1887) 19 OBD 123. In my opinion this paragraph of Halsbury's Laws of England also does not help the petitioner for the same reason for which Section 23 of the Indian Contract Act does not help. Learned counsel for the petitioner has also placed reliance upon paragraph 248 at page 143 of the same Volume of Halsbury's Laws of England, which runs as follows :

"248. Contracting out. As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said, can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory conditions may, however, be imposed in such terms that they cannot

be waived by agreement and in certain circumstances, the legislature has expressly provided that any such agreement shall be void."

In my opinion this paragraph is also of no help for the reason among others that the present case is not of a contract but of a rule. Learned counsel has also relied upon the following passage on page 252 in the case of Satish Chandra Anand Vs. The Union of India (UOI), :

"But of course the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and these who chose to accept these terms and enter into the contract are bound by them even as the State is bound."

It is contended that their Lordships of the Supreme Court have held that only these contracts are valid which are consistent with the Constitution. I have already said above that the present is not a case of contract. It is true that under Rule 143 of the Railway Establishment Code every railway servant must sign an agreement. The said rule runs as follows ;

"143. Service agreement. Every non-pensionable railway servant, except one in inferior service shall be required to execute a service agreement with the President at the time of his substantive appointment or, if he belongs to the category of workshop staff after the completion of 3 years continuous service. The railway servants appointed for a limited period may also be required to execute an agreement. All agreements shall be stamped, the costs being borne by the railway servant concerned."

We are however, not concerned with the validity of that rule as admittedly in the present case the petitioner did not sign any agreement. Ordinarily when a railway servant enters into a service agreement at the time of entering the railway service Rule 148 of the Railway Establishment Code, either the whole of it, or in modified form, is incorporated, as one of the terms of the agreement. In a case where a railway servant has entered into such a contract his services are liable to be terminated not only under Rule 148 but also under the terms of the agreement. In the present case the petitioner's services have not been terminated under the terms of an agreement but under Rule 148. We are therefore called upon only to decide the validity of Rule 148 of the Railway Establishment Code. I will however say a few words about the submission of the learned counsel for the petitioner about the validity of Rule 143 also.

6. Even if the petitioner had executed an agreement, to my mind, there would have been no conflict with the provisions of either Section 23 of the Indian Contract Act or with the statement of law as given in the Halsbury's Laws of England or with the Supreme Court decision mentioned above. The submission of the learned counsel for the petitioner is that Article 311 of the Constitution gives a guarantee to civil servant that he will not be dismissed, removed or reduced in rank without being given a reasonable opportunity of showing cause against the action proposed. The contention is that inasmuch as Rule 148 permits the

termination of service by a notice and Rule 143 makes it incumbent upon a railway servant to execute a service agreement one of the terms of which is that his services can be terminated at will by a notice even without giving an opportunity of showing cause, the said rules are in conflict with the guarantee given by Article 311 of the Constitution of India and are therefore void.

To my mind this argument is not correct, and the petitioner can only succeed if it is held that the words "dismissal" and "removal" as used in Article 311 or the Constitution of India will include all sorts of termination of service and there can be no termination of service which would not fall within the expressions "dismissal" or "removal." The termination of services of a civil employee may be brought about in many more ways than by an order of "dismissal" or "removal." It can be brought about by terminating the services of a probationer at the end of the period of probation in accordance with the terms of his appointment. The services of a temporary government servant appointed otherwise than under a contract in accordance with Rule 5 of the Central Civil (Temp. Services) Rules, 1949 can be terminated in accordance with that rule.

Similarly the services of a person engaged under a contract can be terminated in accordance with, the terms of his contract. In none of these three cases it can be said that the person has been dismissed or removed. It is now well established that the words "dismissal" and "removal" have a technical meaning and these words do not embrace in their ambit all sorts of termination of service. In the case of Jayanti Prasad Vs. The State of Uttar Pradesh, while dealing with the case of a temporary Government servant whose services had been terminated by one month's notice in accordance with the conditions of his service, a Division Bench of this Court observed as follows

"The first point that is to be considered is whether the main Clause (2) of Art, 311 at all applies to a case of this kind. It will be noticed that the applicant was a temporary employee whose contract of service laid down that his services were liable to termination with one month's notice. One month's notice was duly given, to him and in accordance with the conditions of service, his services would terminate upon the expiry of the period specified in the notice. From 26-5-1951 the applicant cannot claim to remain as an employee of the State. He would no longer after that date hold a "civil post" -- it is conceded that he is not a member, or the civil service of the State or of the Union,

Article 311 applies only to a case in which a person is dismissed or removed or reduced in rank. These are technical words used in cases in which a person's services are terminated for misconduct. They do not apply to cases in which a person's period of service determines in accordance with the conditions of his service. It is not so much a question of the post being held temporarily or it being of a permanent nature; the real question is whether a person's services are being dispensed with before his normal period of service has terminated by reason of misconduct on his part, or otherwise."

This case therefore does support the contention of the learned Advocate General who appears for the railway that the words "dismissal" and "removal" are technical words used only in cases in which a person's services are terminated for misconduct.

7. In the case of *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, their Lordships of the Supreme Court while dealing with the question of compulsory retirement and while discussing whether compulsory retirement can ever amount to removal observed as follows :

"The word "removal" which is used in the rules is also used in this clause and it may safely be taken, for reasons stated above, that under the Constitution removal and dismissal stand on the same footing except as to future employment. In this sense removal is but a species of dismissal. Indeed, in our recent decision in *Satish Chandra Anand Vs. The Union of India (UOI)*, it has been said that these terms have been used in the same sense in Article 311.

Removal, like dismissal, no doubt brings about a termination of service but every termination of service does not amount to dismissal or removal. A reference to Explanation to Rule 49..... will show that several kinds of termination of service do not amount to removal or dismissal.

There can be no doubt that removal -- I am using the term synonymously with dismissal--generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against in such circumstances is thus founded and justified on some ground personal to the officer."

It would be noticed that their Lordships while coming to the conclusion to which they arrived had considered the provisions of Rule 49 of the Civil Service (Classification Control and Appeal) Rules, which are as follows :

"49. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of the services, comprised in any of the Clauses (1) to (5) specified in Rule 14, namely:

(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) Suspension.

(vi) Removal from the civil service of the Crown, which does not disqualify from future employment.

(vii) Dismissal from the Civil service of the Crown, which ordinarily disqualifies from future employment.

(Explanation. The termination of employment-

(a) of a person appointed on probation during or at the end of the period of probation, in accordance with the terms of the appointment and the rules governing the probationary service; or

(b) of a temporary Government servant appointed otherwise than under contract in accordance with Rule 5 of the Central Civil Service (Temporary Service) Rules, 1949; or

(c) of a person engaged under a contract in accordance with the terms of his contract does not amount to removal or dismissal within the meaning of this rule or of Rule 55.

Rule 55 runs as follows:

"55. Without prejudice to the provisions of the Public Servants Inquiries Act, 1850 no order of dismissal, removal or reduction shall be passed on a member of a service (other than an order based on facts) which had led to his conviction in a criminal Court or by a Court martial unless he has been informed in writing of the grounds on which it is pro-posed to take action, and has been afforded an adequate opportunity of defending himself ....."

In the case of *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, their Lordships of the Supreme Court have held that the words "dismissal" and "removal" used in Article 311 of the Constitution have been used in the sense of termination of service for a fault and by way of punishment as provided for in Rule 49 mentioned above. This case therefore is a clear authority for the proposition that the termination of service under the terms of a rule or under an agreement is different from termination of service brought about by an order of dismissal or removal passed under Rule 49 of the Civil Service (Classification, Control and Appeal) Rules, and that case is also an authority for the proposition that the guarantee given under Article 311(2) of the Constitution of India extends to those cases of termination of services where an order of removal or dismissal has been passed by way of (punishment, under Rule 49 of the Civil Service (Classification, Control and Appeal) Rules. In the case of *Satish Chandra Anand Vs. The Union of India (UOI)*, their Lordships of the Supreme Court While dealing with the case of civil employee who was temporarily employed by means of in agreement and whose services were terminated under the terms of agreement, observed as follows:

"In our opinion. Article 311 has no application because this is neither a dismissal nor a removal from service nor is it a reduction in rank It is an ordinary case of a contract being terminated by notice under one of its clauses. The services in India have long been afforded certain statutory guarantees and safeguards against arbitrary dismissal or reduction in rank. u/s 240 Government of India

Act, 1935, the safeguards were limited to these two cases. Under the present Constitution, a third was added, namely removal from service. In order to understand the difference between "dismissal" and "removal" from service, it will be necessary to turn to the Rules which governed, and with modifications still govern, the "services" in India because of Article 313 of the Constitution.

Part 12 of the Civil Services (Classification, Control and Appeal) Rules relating to Conduct and Discipline includes Rule 49 which sets out the various penalties to which a member of the services can be subjected for indiscipline and misconduct. They are seven in number and include censure, suspension, reduction in rank, removal from service and dismissal from service. The Act of 1935 selected only two of these possible penalties as serious enough to merit statutory safeguards, namely reduction in rank and dismissal from service. The Constitution has added a third to the list. The distinction which is drawn between the two is explained in Rule 49. There is first removal from service "which does not disqualify from future employment" and there is next dismissal from service "which ordinarily disqualifies from future employment." Then follows an Explanation :

"The discharge --

(c) of a person engaged under contract, in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this rule."

These terms are used in the same sense in Article 311."

In the case of Hartwell Prescott Singh Vs. The Uttar Pradesh Government and Others, their Lordships of the Supreme Court while considering the case of a person who was first reverted from class II U. P. Agricultural Service to the U. P. Subordinate Agricultural Service and later on his services were terminated by a notice issued by the Director of Agriculture under Rule 25 Clause (4) of the Subordinate Agricultural Service Rules, and while holding that the provisions of Article 311 of the Constitution would not be applicable to such a case, observed as follows :

"The question for consideration, therefore, is whether the orders terminating the appellant's service and reverting him to his original appointment in the Subordinate Agricultural service amount to removal, dismissal or reduction in rank within the meaning of the provisions of Art. 311 of the Constitution ..... In principle, we cannot see any clear distinction between the termination of the service of a person under the terms of a contract governing him and the termination of his services in accordance with the terms of his conditions of service. The order complained against did not contravene the provisions of Article 311 and was therefore a valid order."

Again, in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), their Lordships of the Supreme Court while dealing with a similar matter observed as follows ;

"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. The protection given by the rules to the Government Servants against dismissal, removal or reduction in rank which could not be enforced by action, was incorporated in Sub-sections (1) and (2) of Section 240 to give them statutory protection by indicating a procedure which had to be followed before the punishments of dismissal, removal or reduction in rank could be imposed on them and which could be enforced in law. These protections have now been incorporated in Article 311 of our Constitution. The effect of Section 240 of the 1935 Act reproduced in Articles 310 and 311 as explained by this Court in S.A. Venkataraman Vs. The Union of India (UOI) and Another, . It follows therefore that if the termination of service is sought to be brought about otherwise than by way of punishment, then the Government servants whose service is so terminated cannot claim the protection of Article 311(2) and the decisions cited before us and referred to above in so far as they lay down that principle must be held to be rightly decided."

This case is a clear authority for the proposition that there is a well marked distinction between the termination of service under terms of an agreement or under the rules by a notice and dismissal or removal contemplated by Rule 49 of the Civil Service (Classification, Control and Appeal) Rules and referred in Article 311 of the Constitution. Except when an order of dismissal or removal has been passed under Rule 49 by way of a punishment the provisions of Article 311 of the Constitution will not apply to the termination of service. In the case of The State of Bombay Vs. Saubhagchand M. Doshi, , their Lordships of the Supreme Court had to consider the question whether an order retiring a civil employee before the age of superannuation was in substance an order of removal or dismissal and must in order to be valid satisfy the requirements of Article 311 of the Constitution? Their Lordships observed as follows :

"Now the policy underlying Article 311(2) is that when it is proposed to take action against a servant by way of punishment and that will entail forfeiture or benefits already earned by him, he should be heard and given an opportunity to show cause against the order. But that order is not one of punishment and results in no loss of benefits already accrued, and in such a case, there is no reason why the terms of employment and the rules of service should not be given effect to."

In the present case no action has been taken against the petitioner by way of punishment and therefore this case also goes against the contention of the learned counsel for the petitioner, the services of the petitioner having been terminated under Rule 148 of the Railway Establishment Code.

8. The last case of the Supreme Court on the point is of P. Balakotaiah Vs. The Union of India (UOI) and Others, . In that case the services of a railway servant

had been terminated after giving notice under Rule 3 of the Railway Security Rules and paying him a month's salary. That person filed a writ petition in the Nagpur High Court challenging the validity of that notice. During the pendency of the writ petition an order dismissing the petitioner from service was passed. That person therefore got his petition amended. One of the grounds advanced at the hearing of the case was that the Security Rules were void, It was then contended on behalf of the railway that they had a right to terminate the services of the petitioner under Rule 148 of the Railway Establishment Code.

The learned Judge of the Nagpur High Court held that it was not necessary to decide whether the Security Rules were void as assuming they were, the order terminating the services of the petitioner could be sustained under Rule 148 of the Railway Establishment Code. The petitioner of that case then filed an appeal to the Supreme Court of India. Several questions were raised before their Lordships of the Supreme Court and one of the questions was that if the services of a railway servant have been terminated under Rule 3 of Security Rules, or Rule 148 of Railway Establishment Code would the provisions of Article 311 of the Constitution apply? Their Lordships dealing with this question observed as follows :

"Article 311 has application only when there is an order of dismissal or removal, and the question is whether an order terminating the services of the employees under Rule 3 can be said to be an order dismissing or removing them. Now, this Court has held in a series of decisions that it is not every termination of the services of an employee that falls within the operation of Article 311 and that it is only when the order is by way of punishment that it is one of dismissal or removal under that Article..... The question as to what would amount to punishment for purpose of Article 311 was also fully considered in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . It was therein held that if a person had a right to continue in office either under the service miles or under a special agreement, a premature termination of his service would be a punishment. And likewise, if the order would result in loss or benefits already earned and accrued that would also be punishment. In the present case the terms of employment provide for the services being terminated on a proper notice, and so, no question of premature termination arises ..... The order terminating the services under Rule 3 of the Security Rules stands on the same footing as an order of discharge under Rule 148, and it is neither one of dismissal or of removal within the meaning of Article 311."

in this case their Lordships have said that termination of service under Rule 3 of the Security Rules and an order of discharge under Rule 148 of the Railway Establishment Code stand on the same footing and neither of them amounts to dismissal or removal within the meaning of Article 311 of the Constitution. On the face of this authority the contention of the learned counsel for the petitioner that termination of service under Rule 148 would also amount to removal within the meaning of Article 311 of the Constitution of India cannot be accepted. If the

termination of service under Rule 148 of the Railway Establishment Code is quite different from dismissal or removal contemplated by Article 311 of the Constitution, then it cannot be said that either the rule or the agreement embodying that rule tends to defeat the provisions of Article 311 of the Constitution of India.

No guarantee has been given under Article 311(2) of the Constitution in cases of termination of service other than these which have been brought about by way of punishment either under Rule 49 of the Civil Service (Classification, Control and Appeal) Rules or possibly some other penal rule analogous to Rule 49. It may be mentioned that Mr. Khare learned counsel for the petitioner, has not been able to cite before me any case of any Court where it has been held that the termination of service under an agreement or under the rule by means of a notice has been held to amount to dismissal or removal, Rule 148 of the Railway Establishment Code or an agreement of service embodying that rule or a similar rule deal with quite a different kind of termination of service than "dismissal" or "removal".

Therefore there is no substance in the submission that R, 148 or an agreement required by Rule 143 of the Railway Establishment Code tends to defeat the provision of Article 311 of the Constitution of India. It is not necessary to go to the decision of other Courts in view of the observations of their Lordships of the Supreme Court in the cases mentioned above. It may however be stated that so far as I have been able to see particularly every Court in India has held that Article 311 of the Constitution of India gives a guarantee only in cases of termination of service brought about by orders of dismissal or removal passed under Rule 49 of the Civil Service (Classification, Control and Appeal) Rules, by way of punishment and that these words have technical meaning and do not include termination of service under a rule or under an agreement.

This Court in the case of *Raj Kishore Vs. State of Uttar Pradesh and Another*, , held that the word "removal" in Article 311. is not used in its wider sense of termination of service but is used in its restricted sense of removal by way of punishment. The Patna High Court has taken the same view in the case of *Bhagwandas Vs. Senior Superintendent, Way and Works, Eastern Rly.*, . That was also a case of a railway servant where his services had been terminated by one month's notice. The learned Judge of the Patna High Court observed as follows :

"The expression "removal from service" docs not occur in Sub-section (2) of Section 240, Government of India Act. It is now well settled that the expressions "dismissal", "reduction in rank" and "removal" have been used in the relevant provisions of the Government of India Act, 1935 and the Constitution of India, in a somewhat technical sense, in the sense in which these expressions were used in certain rules relating to discipline, control etc. o? the civil services."

In the case of *C. Sambandam Vs. The General Manager, South Indian Railway, Tiruchirapalli*, , it was held that if the services of a railway servant had been terminated under a rule he cannot be deemed to have been removed or

dismissed. In the case of *Varadaraja Iyer v. State of Trav-Co.* AIR 1953 Ker 140 the Travancore Cochin High Court in a case of compulsory retirement observed is follows :

"The removal contemplated in Clauses (1) and (2) of Article 311 applies to cases of removal which are due to some fault or misconduct of the civil servant and does not apply to an order for retirement."

The learned counsel for the petitioner has contended that if it is permitted to have an agreement or a rule under which the services of a Government servant can be terminated by a notice or by one month's pay in lieu of notice the provisions of Article 311 of the Constitution of India would become quite unnecessary and may be defeated by the Government insisting in every case where they employ a person in the civil service of the State to sign such an agreement or to make a rule in respect of every service analogous to Rule 148 of the Rly. Estt. Code, and the result would be that what was given by the Constitution in the shape of Article 311 of the Constitution would be taken away by mere rules.

In my opinion this argument is not correct. The founding fathers for reasons which we cannot question decided that the provisions of Article 311 of the Constitution should be made applicable only to the cases of termination of service by way of punishment for a fault and it is not permissible for us to broaden the scope of the word "dismissal" or "removal" which are used in a technical sense to all cases of termination of service even though it may not have been brought about by way of punishment for a fault. If the Government insists upon employing persons on executing agreements or makes rules the terms of which are inconsistent with the Constitution these agreements or rules would be declared to be void.

But in the present case neither the agreement contemplated by Rule 143 nor Rule 148 of the Railway Establishment Code lay down anything which is inconsistent with the provisions of Article 311 of the Constitution of India. The entire attack on these rules is based on a misconception. The petitioner erroneously considers that every case of termination of service including one of termination of service by a notice would fall under the expression "removal" or "dismissal". In my opinion therefore there is no substance in this contention of the learned counsel for the petitioner.

9. It is next contended that all Government servants hold an office under the Constitution and the law and are not merely employed under a contract. It is therefore submitted that the notion that the relationship between the State and the civil employee is contractual and liable to be terminated at any moment is not correct and the terms of appointment imply conception of tenure, duration, emoluments duties and obligations fixed by law or rules having the force, of law. To support this argument learned counsel for the petitioner has placed reliance upon the case of *Sukhnandan Thakur v. State of Bihar* AIR 1957 Pat 617 where

Ramaswamy, J. has observed as follows:

"Article 16 expressly makes a distinction between "appointment" and "employment". These two words occur not only in Article 16(1) but also in Article 16(3). Article 16(2) uses the expressions "employment" and "office under the State". Article 16(4) refers to "appointment" or "posts" and to "the services under the State". In my opinion the word "employment" and "appointment" connote two different conceptions. "Appointment" obviously refers to appointment to an office. The term "appointment" therefore implies the conception of tenure, duration, emolument and duties and obligations fixed by law or by some rule having the force of law. It is obvious that these elements are absent in the case of public employment which is a contract for a temporary purposes. For example, labourers or experts engaged by Government for special professional tasks under bilateral contracts would belong to the category of persons in public employment. On the contrary, persons appointed to any Government post or service are not usually employed under bilateral contracts -- they simply work under conditions standardised by laws and regulations. This distinction between public office and public employment is well recognised in American Law (See *Hall v. State of Wisconsin* (1880) 103 US 5: 28 LEd 302 and *United States v. Hartwell* (1888) 73 US 380. I think the same distinction has been imported into Article 16 by our Constitution makers."

I confess I have been at some difficulty to follow this argument of the learned counsel for the petitioners and I do not see how the Patna case mentioned above can be of any help in deciding the instant case. In the Patna case the Government had issued a circular letter under which the services of some surplus staff had to be terminated. The main and important directions in the circular letter laid down as follows :

- "1. That there should be a further reduction in the inspectorate staff employed under the Supply Department in the districts;
2. that all the incumbents in the cadre of District Supply Inspector with certain exception should be offered the post of Supply Inspectors in case that is acceptable to them and they should be retained as Supply Inspectors with effect from 1-3-1954, in the cadre of Supply Inspectors;
3. that some posts of Supply Inspectors in the area specified therein have been decided to be abolished;
4. that provision should be made for the absorption of such Supply inspectors who are to be retained according to seniority as per details given in the statement enclosed with the Circular,
5. that the staff enumerated in the statement enclosed with the Circular should be retained in order of seniority on the basis of their service records and for their being political sufferers, members of scheduled tribes and schedule caste and displaced persons even though they are junior in service;

6. that all the existing posts of the incumbents should be terminated on 28-2-1954 and the incumbents should be appointed afresh in their new posts in the District of their allotments with the clear understanding that it would not interfere with the last pay drawn by them in the scale of Rs. 100-5-125 EB 150 and for the purpose of pay the continuity would be maintained;

7. that the services of surplus staff whose names do not find place in the enclosed statement should be terminated without assigning any reason positively with effect from 1-3-1954.

Acting in accordance with that circular letter the services of one Sukhnandan Thakur were terminated. He filed a writ petition before the Patna High Court inter alia on the ground that the impugned circular was in contravention of Article 16 of the Constitution and the circumstance that the candidate is a political sufferer or displaced person has no material bearing. The matter came up before Das, C. J. and Ahmad, J. Ahmad J. was of the view that the order of the Government mentioned above and the order terminating the services of the petitioner Sukhnandan Thakur on the basis of the order of the Government are void.

Das, C. J. held that Article 16 of the Constitution was not infringed by that Circular and the petition was liable to be dismissed. The matter was thereupon referred to Ramaswami, J. who agreed with Ahmad, J. Ramaswami J. in his judgment made the observations which I have quoted above and on which reliance has been placed by the learned counsel for the petitioner. Ramaswami, J. himself said in his judgment that distinction between "appointment" and "employment" was not important for the purpose of the case before him.

I have not been able to understand how that case can ever be of any assistance to us for the decision of the present case. Assuming that the petitioner has been appointed to an office and further assuming that the appointment implies conception of tenure, and duration fixed by law or by some rule having the force of law, I am unable to see how the petitioner can succeed in establishing that his services have been terminated before the completion of his tenure or duration. Learned counsel for the petitioner has also placed reliance upon the case of The State of Madhya Pradesh Vs. G.C. Mandawar, and in my opinion this case also is not applicable to the facts of the instant case.

10. Article 310 of the Constitution of India runs as follows :

"310 (1) Except as expressly provided by this Constitution every person who is a member of a defence service or of a civil service of the Union or an All-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor, or as the case may be, the Rajpramukh of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State

holds office during the pleasure of the President or, as the case may be, of the Governor or Rajpramukh of the State, any contract under which a person, not being a member of a defence service or of an all India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor or the Rajpramukh as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post."

Article 310 of the Constitution clearly lays down that: the services of a civil employee are at the pleasure of the President or the Governor as the case may be and not during good behaviour on the part of the employee. The only exceptions to this rule are the post of the Judges of the Supreme Court, the Judges of the High Courts, Comptroller and Auditor General, etc. The incumbents of these posts can only be dismissed or removed after a certain procedure is followed and their services are guaranteed under the Constitution to be during good behaviour,

11. In respect to other Government servants and the petitioner is one of them the tenure of service is at the pleasure of the President or the Governor as the case may be subject to what is contained in Article 311. of the Constitution. Article 311 of the Constitution is nothing but a Proviso to Article 310. The learned counsel for the petitioner has not been able to show me anything on the basis of which it should be held that the tenure of the petitioner's service was not at the pleasure and he had a fixed duration before the expiry of which he could not be removed. I am therefore unable to agree with the learned counsel for the petitioner that because the petitioner was appointed to an office he could only be removed for a fault and is entitled to continue there so long as he maintains good behaviour or till the age of superannuation.

12. The learned counsel for the petitioner has next contended that Rules 143 and 148 of the Railway Establishment Code are ultra vires inasmuch as they infringe the provisions of Articles 14 and 16 of the Constitution. The submission of the learned counsel is that whereas in the case of railway servants an employee has to sign an agreement and there is a rule under which his service can be terminated by one month's notice, that is not the case in respect of other Government servants and there is therefore a clear discrimination. This argument is based on an assumption that the duties of all Government servants are of a similar nature and all Government servants are similarly situated. It would be noticed that Rules 143 and 148 of the Railway Establishment Code apply to all railway servants whom the Railway Establishment Code applies.

There is a clear classification envisaged by these rules. All the Railway servants subject to the Railway Establishment Code have been grouped together. It is not a case where the provisions of the rule are directed against one individual person or thing or to several individual persons or things and there is no reasonable

basis of classification. In my opinion the present case would fall within the rule laid down by their Lordships of the Supreme Court in the following cases where it has been held that Article 14 of the Constitution did not apply : Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , State of Bombay v. F.N. Balsara AIR 1951 SC 318; Kedar Nath Bajoria Vs. The State of West Bengal, ; V.M. Syed Mohammad and Company Vs. The State of Andhra, ; Budhan Choudhry and Others Vs. The State of Bihar, .

I, therefore, find no substance in the petitioner's complaint that these rules infringe Article 14 of the Constitution. There is no question of any discrimination against the petitioner. The rules which have been applied to him apply to all railway servants of his class. I am also unable to agree with the learned counsel for the petitioner that Article 16 of the Constitution of India is infringed, because to my mind neither Rule 143 nor Rule 148 is discriminatory.

13. It is contended by the learned counsel for the petitioner that Rule 148 of the Railway Establishment Code can only apply if there is an agreement executed under Rule 143 inasmuch as in the present case no agreement was executed under Rule 143 the service of the petitioner cannot be terminated under Rule 148. The services of the petitioner have been terminated under Rule 148, Clause (3). That rule does not say that it would apply to these cases where an agreement has already been executed under Rule 143. Apart from it the contention on behalf of the petitioner has been that every railway servant has to sign an agreement under Rule 143. It appears that due to some oversight the petitioner was not made to sign the agreement. But as I have said above the petitioner has not been removed under the terms of the agreement, he has been removed under Rule 148 and inasmuch as the applicability of Rule 148 does not depend upon there being an agreement under Rule 143 I reject the contention of the learned counsel for the petitioner.

14. I may also notice that the petitioner has taken inconsistent pleas in this case. When faced with the difficulty that Rule 143 of the Railway Establishment Code cannot be invalidated u/s 23 of the Indian Contract Act, because Section 23 of the Indian Contract Act deals only with agreements and not with rules, learned counsel for the petitioner took up the position that though he did not sign the agreement he was required under the law to sign it and therefore it may be deemed as if he had signed it. Again, he takes inconsistent position when he says that inasmuch as there is no agreement under Rule 143, Rule 148 of the Railway Establishment Code cannot apply. I have already held above that the applicability of Rule 148 of the Railway Establishment Code does not depend upon there being an agreement under Rule 143 of the Railway Establishment Code and have therefore rejected the contention of the learned counsel for the petitioner.

15. These are all the points that the learned counsel for the petitioner argued before me. In my opinion there is no substance in any one of them. I therefore dismiss the petition with costs,