PETITIONER:
MOTI RAM DEKA ETC.

Vs.

RESPONDENT:
GENERAL MANAGER, N.E.F. RAILWAYS,MALIGAON, PANDU, ETC.(With

DATE OF JUDGMENT:
05/12/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
WANCHOO, K.N.
HIDAYATULLAH, M.
GUPTA, K.C. DAS
SHAH, J.C.
AYYANGAR, N. RAJAGOPALA

CITATION:
1964 AIR 600 1964 SCR (5) 683
CITATOR INFO :

R	1964 SC1585	(5,7,10,11,12)
R	1965 SC 280	(5)
D	1965 SC1567	(5)
F	1966 SC1607	(32)
D	1967 SC1260	(10,11)
R	1970 SC 143	(6)
RF	1970 SC1314	(15,16)
RF	1971 SC1516	(7)
R	1971 SC1547	(5)
RF	1972 SC 908	(9)
E	1973 SC2641	(15,22,24,25,TO 34)
R	1974 SC2192	(46,49,52,53)
MV	1975 SC1331	(171)
R	1975 SC2299	(485)
R	1980 SC1382	(81)
D	1982 SC1107	(24,26,30,31)
D	1982 SC1126	(8)
D	1985 SC 551	(29,33)
F	1985 SC 722	(4)
E&R	1985 SC1416	(43,50,57,58,106,107)
RF	1986 SC 555	(6)
F	1987 SC2135	(7)
RF	1989 SC 662	(8)
D	1989 SC1843	(17)
R	1991 SC 101	(8,21,32,33,39,41,43,48,56,57,
RF	1992 SC 165	(18)

ACT:
Civil Service-Termination of services of a permanent servant-Validity of Rules 148(3) and 149(3) of the Railway Establishment Code vis-a-vis Art. 311(2)-If Rules violate Art. 14-Scope of exercise of Pleasure of President-Basis of superannuation-Rule compulsory retirement when can be applied-Constitution of India, 1950, Arts. 14, 310, 311(2)-Indian Railway Establishment Code, Vol 1, Rules 148(3), 149(3).

HEADNOTE:
Moti Ram Deka was a peon employed by the North East Frontier Railway and Sudhir Kumar Das was a confirmed clerk. General Manager, North East Frontier Railway, terminated th services under R. 148(3) of Indian Railway Establishment Co Vol. 1. They challenged the termination of their services but th writ petitions were rejected by the Assam High Court and t came to this court by special leave.
Priya Gupta was an Assistant Electrical Foreman in North Eastern Railway. His services were terminated under R. 148. His writ petition and Letters Patent Appeal challenging termination of his services having been rejected by Allahabad High Court, he came to this Court by special leave.
Tirath Ram Lakhanpal was a Guard employed by the Northen Railway. His services were terminated under R. 148. His writ petition and Letters Patent Appeal were dismissed by Punjab High Court and he came to this court by special leave.
S.B. Tewari, Parimal Gupta and Prem Chand Thakur employed in the. North Eastern Frontier Railway. Their service were terminated under R. 149. Their writ petitions challenging termination of their services were accepted by the Assam High Court and Union of India came to this Court after getting a certificate of fitness from the Assam High Court.
The only question involved was the constitutional validity or otherwise of Rules 148(3) and 149(3) of the Indian Railway Establishment Code on the ground that they violated Arts. 14 and 311(2) of Constitution of India.
Held: By majority by Gajendragadkar, Wanchoo, Hidaya-tullah, Ayyangar, Subba Rao and Das Gupta JJ.(Shah J. dissenting)
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that Rules 148(3) and 149(3) of Indian Railway Establishment Code were invalid.
Per Gajendragadkar, Wanchoo, Hidayatullah and Ayyangar, jj. Rules 148(3) and 149(3) are invalid inasmuch as they are inconsistent with the provisions of Arts. 311(2). The termination of the services of a permanent servant which is authorised by those rules, is no more and no less than his removal from service and hence Art. 311(2) must come into play in respect of such cases. The rule which does not require compliance with the procedure prescribed under Art. 311(2) must be struck down as invalid.
A person who substantively holds a permanent post has a right to continue in service, subject to the rules of superannuation and compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on ground of superannuation or compulsory retirement, must per se amount to his removal and if by R. 148(3) or R. 149(3), such a termination is brought about, the rule clearly contravenes Art. 311(2) and must be held to be invalid.
Rules 148(3) and 149(3) contravene Art. 14 of the Constitu-tion. It is difficult to understand on what ground employment by the Railways alone can be said to constitute a class by itself for the purposes of framing the impugned rules. If considerations of administrative efficiency or exigencies of service justify the making of such a rule, such rules should have been framed in other departments also.

The pleasure of the President has lost some of its majesty and power as it is controlled by the provisions of Art. 311. Rules of superannuation are based on considerations of life expectation, mental capacity of civil servants having regard to climatic conditions under which they work and the nature of the work they do. They are not fixed on any ad hoc basis and do not involve the exercise of any discretion. They apply uniformly to all public servants falling under the category in respect of which they are framed. There can be no analogy between the rule of superannuation and rules 148(3) and 149(3) of the Code.

If any rule permits the appropriate authority to retire compulsorily a civil servant without imposing a limitation in that behalf that such civil servant should have put in a minimum period of service, that rule would be invalid and the so-called retirement ordered under the said rule would amount to removal of the civil servant within the meaning of Art. 311(2).

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Where a rule is alleged to violate the constitutional guarantee afforded by Art. 311(2), the argument of contract between the parties and its binding character is wholly inappropriate.

Per Subba Rao, J.-Rules 148(3) and 149(3) which confer a power on the appointing authority to remove a permanent servant on notice, infringe the constitutional protection guaranteed a Government servant under Arts. 14 and 311 of the Constitution A permanent post and rules such as 148(3) and 149(3) cannot stand together and the latter must inevitably yield to the former.

It is neither the phraseology nor the nomenclature given to the act of termination of service that is material but the legal effect of the action taken that is decisive in considering the question whether a Government servant is dismissed or not. Whether the services of a permanent Government servant are terminated by giving him 15 day's notice or whether his services are dispensed with before the age of superannuation by way of compulsory retirement under or outside a rule of compulsory retirement, the termination deprives him of his title to the permanent post. If in the former case it amounts to dismissal,in the latter case,it must be equally so. In both cases, Art. 311(2) is attracted.

Compulsory retirement before age of superannuation is not an incident of tenure. It does not work automatically. It is not conceived in the interest of the employee. It is a mode of terminating his employment at the discretion of the appointing authority. As a matter of fact, whatever the language used in that connection, it is a punishment imposed on him. It not only destroys his title but also inevitably carries with it a stigma and hence such a termination is dismissal or removal within the meaning of Art. 311.

A title to an office must be distinguished from the mode of its termination. If a person has title to an office, he will continued to have it till he is dismissed or removed from there. Terms of statutory rules may provide for conferment of a title to an office and also for the mode of protecting it. If under such rules, a person acquires title to an office, whatever mode of termination is prescribed and whatever phraseology is used to describe it, the termination is neither more nor less than a dismissal or removal from service and that inevitably attracts the provisions of Art. 311 of the Constitution. The argument that the mode of termination prescribed derogates from the title that otherwise would have been conferred on the employee mixes up

two clear concepts of conferment of title and the mode of its deprivation. Article 311 is a constitutional protection given to Government servants, who have title to office against their arbitrary and summary dismissal. Government cannot by rule evade the provisions of Art. 311. Parties also cannot contract themselves-out of the constitutional provision

Per Das Gupta, J. Rule 148(3) does not contravene Art 311(2). A railway servant to whom R. 148(3) applied has two

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limitations put on his right to continue in service, viz., termination on attaining a certain age and termination of service on a notice under R. 148(3). Where service is terminated by order of retirement under R. 2046, the termination is of a service where the servant has no right to continue and it is not removal or dismissal. Likewise when service is terminated by notice under R. 148(3) that termination is not removal or dismissal.

The words 'removal' and 'dismissal' in Art. 311 mean and include only those terminations of service where a servant has acquired a right to continue in the post on the basis of terms and conditions of service and such other terminations where though there is no such right, the order has resulted in loss of accrued benefits. Terminations of service which do not satisfy either of these two tests do not come within any of these words.

Both Arts. 309 and 310 are subject to Art. 311. If any rule is made under Art. 309 as regards conditions of service of a Government servant in the matter of his dismissal or removal or reduction in rank, it has to comply with the requirements of Art. 31 1. Before an order dismissing or removing or reducing a Government servant in rank is made by President or Governor in exercise of his pleasure, President or Governor has to comply with the requirements of 311(2). Under Art 310, all servants of the State hold office during the pleasure of the President or Governor as the case may be. That means that the officer has no right to be heard before his services are terminated. Article 311 provides an exception in the case of removal or dismissal.

However, R. 148(3) contravenes Art. 14 as it does not give any guidance for exercise of discretion by the authority concerned and hence is invalid.

Per Shah, J.Rules 148(3) and 149(3) do not infringe Art.311(2) or Art. 14of the Constitution. There is neither logic nor law in support of the contention that r. 148(3) contravenes Art. 311(2). The termination of employment under r. 148(3)does not involve the public servant concerned in loss of any right which he has already acquired. It does not amount to loss of a post to which he is entitled under the terms of his employment because the right to a post is necessarily circumscribed by the conditions of employment which include r. 148(3). It also does not cast any stigma upon him.

Mere determination of employment, of a public servant, whether he is a temporary employee, a probationer, a contractual appointee or appointed substantively to hold a permanent post, will not attract the provisions of Art. 311(2) unless the determination is imposed as a matter of punishment. A railway servant who has accepted employment on the conditions contained in the rules, cannot after having obtained employment, claim that the conditions which were offered to him and which he accepted, are not binding upon him. The sole exception to that rule is in cases where the

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condition prescribed by contract or statutory regulations is void as inconsistent with the constitutional safeguard. This exception is founded not on any right in the public servant to elect, but on t invalidity of the covenant or regulation. There is no distinction between cases of termination of employment resulting from attaining the age of superannuation or from orders of compulsory retirement terminating temporary employment or employment on probation and orders terminating employment after notice under R. 148(3)

An appointment to a public post is always subject to th pleasure of the President, the exercise of such pleasure being restricted in the manner provided by the Constitution. A person appointed substantively to a post does not acquire a right t hold the post till he dies. He acquires merely a right t hold the post subject to the rules. If employment is validly terminated, the right to hold the post is determined even apart from th exercise of the pleasure of the President or the Governor. public servant cannot claim to remain in office so long as he is of good behavior. Such a concept of the tenure of a public servant's post is inconsistent with Arts. 309 and 310 of the Constitution.

Rules 148(3) and 149(3) do not infringe Art. 14 of the Constitution. Art. 14 forbids class legislation but it does not forbid reasonable classification for the purpose of legislation. special conditions in which the railways have to operate and t interests of the nation which they serve, justify the classification If for the purpose of ensuring the interests and safety of the public and the State, the President has reserved to the Railway Administration power to terminate employment under the Railways, it cannot be assumed that such vesting of authority singles out the railway servants for a special or discriminatory treatment so as to expose the rule which authorises termination of employment to the liability to be struck off as infringing Art. 14.

It is true that R. 148(3) does not expressly provide for guidance to the authority exercising the power conferred by it, but on that account, the rule cannot be said to confer an arbitrary power and be unreasonable or be in its operation unequal. The power exercisable by the appointing authority who normally is if not the General Manager, a Senior Officer of the Railways. In considering the validity of an order of determination of employment under r. 148, an assumption that the power may be exercised mala fide and on that ground discrimination may be practiced, is wholly out of place. Because of the absence of specific directions in R. 148, governing the exercise of authority conferred the by the power to terminate employment cannot be regarded as an arbitrary power exercisable at the sweet will of the authority when having regard to the nature of the employment and the service to be rendered, importance of the efficient functioning of the rail transport in the interest of national economy and the

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status of the authority invested with the exercise of power, it may reasonably be assumed that the exercise of the power would appropriately be exercised for the protection of public interest or on grounds of administrative convenience. Power to exercise discretion is not necessarily to be assumed to be a power to discriminate unlawfully and possibility of abuse of power will not invalidate the conferment of power.

Case law referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 711-713 of 1962.
Appeals by special leave from the judgments and order dated May 27, 25, 1960, of the Assam High Court in Civil Rule Nos. 3 and 25 of 1960 respectively and December 15, 1959 of the Allahabad High Court in Special Appeal No. 502 of 1958.
CIVIL APPEAL No. 614 OF 1962.
Appeal by special leave from the order dated April 6, 1961 of the Punjab High Court in Letters Patent Appeal No. 81/1961.
CIVIL APPEALS Nos. 837 To 839 of 1963.
Appeals from the judgment and order date January 18, 1963 of the Assam High Court in Civil Rule 386 to 388 of 1961.
B.C. Ghose and P.K. Chatterjee, for the appellants (in C. A. Nos. 711 to 713/1962).
I.M. Lall and V.D. Mahajan, for the appellant (in C.A. Nos. 714 of 1962).
S.V. Gupte, Additional Solicitor-General, Naunit Lal and R.H. Dhebar, for the respondents (in C.A. Nos. 711-714/1962).
C.K. Daphtary, Attorney-General, R. Ganapathy Iyar and R.H. Dhebar, for the appellants (in C.A. Nos. 837-839/1963).
B.C. Ghosh and P.K. Chatterjee, for the respondents (in C.A. Nos. 837-839/1963).
R.K. Garg, M.K. Ramamurthi, S.C. Agarwal and D.P. Singh, for the intervener (in C.A. No. 711/ 1962.)
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R.K. Garg and P.K. Chatterjee, for the intervener ,(in C.A. Nos. 837-839./1963).
December 5, 1963. The Judgment of P.B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah and N. Rajagopala lyyangar, JJ. was delivered by Gajendragadkar J. K. Subba Rao, and K.C. Das Gupta JJ. delivered separate Opinion s. J.C. Shah J. delivered a dissenting Opinion.
GAJENDRAGADKAR J. These two groups of appeals have been placed before us for hearing together, because they raise a common question of law in regard to the Constitutional validity of Rules 148(3) and 149(3) contained in the Indian Railway Establishment Code, Vol. 1. (hereafter called the Code). The first group consists of four appeals. C.A. Nos. 711 & 712 of 1962 arise from two petitions filed by the appellants Moti Ram Deka and Sudhir Kumar Das respectively in the Assam High Court. Deka was a peon employed by the North East Frontier Railway, whereas Das was a confirmed clerk. They alleged that purporting to exercise its power under Rule 148 of the Code, the respondent, the General Manager North East Frontier' Railway, terminated their services and according to them, the said termination was illegal inasmuch as the Rule under which the impugned orders of termination had been passed, was invalid. This plea has been rejected by the Assam High Court and the writ petitions filed by the two appellants have been dismissed. It is against these orders of dismissal that they have come to this Court by special leave.
Civil Appeal No. 713 of 1962 arises out of a petition filed by the appellant Priya Gupta who was an Assistant Electrical Foreman employed by the North Eastern Railway, Gorakhpur. His services having been terminated by the respondent General Manager of the said Railway, he moved the Allahabad High Court under Art. 226 of the Constitution and challenged the validity of the order terminating his services on the ground that Rule 148 of the Code was invalid. The

appellant's plea has been rejected
1/SCI/64-44
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by the said High Court both by the learned single Judge who heard his petition in the first instance and by the Division Bench which heard his Letters Patent Appeal. That is how the appellant has come to this Court by special leave.
Civil Appeal No. 714/1962 arises out of a writ petition filed by Tirath Ram Lakhanpal who was a Class A Guard employed by the Northern Railway, New Delhi. His services were terminated by the Respondent General Manager of the said Railway r under Rule 148 of the Code and his writ petition to quash the said order has been dismissed by the Punjab High Court. The learned single Judge who heard this writ petition rejected the pleas raised by the appellant, and the Division Bench which the appellant moved by way of Letters Patent Appeal summarily dismissed his Appeal. It is this dismissal of his Letters Patent Appeal which has brought the appellant to this Court by Special Leave. That is how this group of four appeals raises a common question about the validity of Rule 148.
The next group consists of three appeals which challenge the decision of the Assam High Court holding that the orders of dismissal passed by appellant No. 2, the General Manager, North East Frontier Railway, against the three respective respondents S.B. Tewari, Parimal Gupta and Prem Chand Thakur, under Rule 149 of the Code, were invalid. These three respondents had moved the Assam High Court for quashing the impugned orders terminating their services, and the writ petitions having been heard by a special Bench of the said High Court consisting of three learned Judges, the majority opinion was that the impugned orders were orders of dismissal and as such, were outside the purview of Rule 149. According to this view, though Rule 149 may not be invalid, the impugned orders were bad because as orders of dismissal they were not justified by Rule: 149. The- minority view was that Rule 149 itself is invalid, and so, the impugned orders were automatically invalid. In the result, the three writ petitions
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filed by the three respondents respectively were allowed. That is why the Union of India and the General Manager, N.E.F. Railway, appellants 1 & 2 respectively, have come to this Court with a certificate granted by the Assam High Court,. and they challenge the correctness of both the majority and the minority views. Thus, in these three appeals, the question about the validity of Rule 149 falls to be considered.
The first group of four appeals was first heard by a Constitution Bench of five Judges for some time. At the hearing before the said Bench, the learned Addl. Solicitor-General conceded that the question about the validity of Rule 148 had not been directly considered by this Court on any occasion, and so, it could not be said that it was covered by any previous decision. After the hearing of the arguments before the said Bench had made some progress, the learned Addl. Solicitor-General suggested that he was strongly relying on certain observations made in the previous decisions of this Court and his argument was going to be that the said observations are consistent with his contention that Rule 148 is valid and in fact, they would logically lead to that inference. That is why the Bench took the view that it would be appropriate if a larger Bench is constituted to hear the said group of appeals, and so, the matter was referred to the learned Chief Justice for his

directions. Thereafter, the learned Chief Justice ordered that the said group should be heard by a larger Bench of seven Judges of this Court. At that time, direction was also issued that the second group of three appeals which raised the question about the validity of Rule 149 should be placed for hearing along with the first group. In fact, the learned counsel appearing for both the parties in the said group themselves thought that it would be appropriate if the two groups of appeals are heard together. That is how the two groups of appeals have come for disposal before a larger Bench; and so, the main question which we have to consider is whether Rule 148(3), and Rule 149(3) which has superseded it are valid. The contention of the
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railway employees concerned is that these Rules contravene the Constitutional safeguard guaranteed to civil servants by Art. 311(2). It is common ground that if it is held that the Constitutional guarantee prescribed by Art. 311(12) is violated by the Rules, they would be invalid; on the other hand the Union of India and the Railway Administration contend that the said Rules do not contravene Art. 311(2), but are wholly consistent with it.

At this stage, it would be. convenient to refer r to the two Rules. Rule 148 deals with the termination of service and periods of notice. Rule 148(1) deals with temporary railway servants; R. 148(2) deals with apprentices, and R. 148(3) deals with other (non-pensionable) railway servants. It is with R. 148(3) that we are concerned in the present appeals. It reads thus:-

> "(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 dismissal or removal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."
>
> "Note:-The appointing authorities are empowered to reduce or waive, at their discretion, the stipulated period of notice to be given by an employee, but the reason justifying their action should be recorded.
>
> This power cannot be re-delegated."

Then follow the respective periods for which notice has to be given. It is unnecessary to refer to these periods.

We may incidentally cite Rule 148(4) as well which reads thus:-
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> "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."

It is thus clear that R. 148(3) empowers the appropriate authority to terminate the services of other nonpensionable railway servants after giving them notice for the specified period, or paying them their salary for the said period in lieu of notice under R. 148(4).

The non-pensionable services were brought to an end in November, 1957 and an option was given to the non-pensionable servants either to opt for pension. able service

or to continue on their previous terms and conditions of service. Thereafter, Rule 149 was framed in place of R. 148. Rule 149(1) & (2) like Rule 148(1) & (2) deal with the temporary railway servants and apprentices respectively. Rule 149(3) deals with other railway servants; it reads thus:-

> "Other railway servants:-The services of other 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 dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity"

The Rule then specifies the different periods for which notice has to be given in regard to the different categories of servants, It is unnecessary to refer to these periods.

Then follow sub-rule (4). The same may be conveniently set out at this place:

> "(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.
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> 694.
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> Note:-The appointing authorites are empowered to reduce or waive, at their discretion, the stipulated period of notice to be given by an employee, but the reason justifying their action should be recorded.
>
> This power cannot be re-delegated."

Just as under' Rule 148(3) the services of the railway employees to which it applied could be terminated after giving them notice for the period specified, so under R. 149(3) termination of services of the employees concerned can be brought about by serving them with a notice for the requisite period, or paying them their salary for the said period in lieu of notice under R. 149(4). Rule 149(3) applies to all servants other than temporary servants and apprentices. The distinction between pensionable and non-pensionable servants no longer prevails. The question which we have to consider in the present appeals is whether the termination,of services of a permanent railway servant under Rule 148(3) or Rule 149(3)amounts to- his removal under Art. 311(2) of the Constitution.If it does,the impugned Rules are invalid; if it does not, the said Rules are valid.

That takes us to the question as to the true scope and effect of the provisions contained in Art.311(2),and the decision of this question naturally involves the construction of Art. 311(2) read in the light of Articles 309 and 310. In considering this point, if may be useful to refer very briefly to the genesis of these provisions and their legislative background. In this connection, it would be enough for our purpose if we begin with the Government of India Act, 1833. Section 74 of the said Act made the tenure of all Services under the East India Company subject to His Majesty's pleasure. These servants were also made subject to the pleasure of the Court of Directors with a proviso which excepted from the said rule those who had been appointed directly by His Majesty. In due course, when the Crown took over the government of this country by the Government of India Act, 1858, section 3 conferred on the

Secretary of
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State all powers which has till then vested in the Court of Directors, while the powers in relation to the servants of the Company which had till then vested in the Director were, by s. 37, delegated to the Secretary of State.
This position continued until we reach the Government of India Act, 1915. This Act repealed all the earlier Parliamentary legislation and was in the nature of a consolidating Act. There was, however a saving clause contained in section 130 of the said Act which preserved the earlier tenures of servants and continued the rules and regulations applicable to them. Section 96B of this Act which was enacted in 1919 brought about a change in the constitutional position of the civil servants.' Section 96B(1) in substance, provided that "subject to the provisions of this Act and the rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasures and it added that no person in that service may be dismissed by any authority subordinate to that by which he was appointed. It also empowered the Secretary of State in Council to reinstate any person in that service who had been dismissed, except so far as the Secretary of State in Council may, by rules, provide to the contrary. Section 96B(2) conferred power on the Secretary of State in Council to make rules for regulating the classification of the Civil Services in India, the method of recruitment, the conditions of service, pay and allowances and discipline and conduct while sub section (4) declared that all service rules then in force had been duly made and confirmed the same.
In 1935, the Government of India Act 1935 was passed and s. 96B(1) was reproduced in subsection (1) and (2) of section 240, and a new sub-section was added as ss. (3). By this new sub-section, protection was given to the civil servant by providing that he shall not be dismissed or reduced in rank until he had be en given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The definition contained in s. 277 of the said
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act shows that the expression "dismissal" included removal from service.
That continued to be the position until the Constitution was adopted in 1950. The Constitution has dealt with this topic in Articles 309, 310 and 311. Art.310 deals with the tenure of office of persons serving the Union or a State, and provides that such office is held during the pleasure of the President if the post is under the Union, or during the pleasure of the Governor if the post is under a State. The doctrine of pleasure is thus embodied by Art. 310(1). Art. 310(2) deals with cases of persons appointed under contract, and it provides that if the President or the Governor deems it necessary in order to secure the services of a person having special qualifications, he may appoint him under a special contract and the said contract may 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. it is significant that Art. 310(1) begins with a clause "except as expressly provided by this Constitution"'. In other words,if there are any other provisions in the Constitution which impinge upon it, the provisions of Art. 310(1) must be read subject to them. The exceptions thus contemplated may be illustrated by

,reference to Articles 124, 148, 218 and 324. Another exception is also provided by Art. 31 1. In other words, Art. 311 has to be read as a proviso to Art. 310, and so, there can be no doubt that the pleasure contemplated by Art. 310(1) must be exercised subject to the limitations prescribed by Art. 31 1.

Art. 309 provides that subject to the provisions of the constitution, Acts of the appropriate Legislative may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. This clearly means that the appropriate Legislature may pass Acts in respect of the terms and conditions of service of persons appointed to public

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services and posts, but that must be subject to the provisions of the constitution which inevitably brings in Art. 310(1). The proviso to Art. 309 makes it clear that it would be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may. direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and prescribing the conditions of service of persons respectively appointed to services and posts under the Union or the State The pleasure of the President or the Governor mentioned in Art. 310(1) can thus be exercised by such person as the President or the Governor may respectively direct in that behalf, and the pleasure thus exercised has to be exercised in accordance with the rules made in that behalf. These rules, and indeed the exercise of the powers conferred on the delegate must be subject to Art. 310, and so Art. 309 cannot impair or affect the pleasure of the President or the Governor therein specified. There is thus no doubt that Art. 309 has to be read subject to Articles 310 and 31 1, and Art. 310 has to be read subject to Art 311. It is significant that the provisions contained in Art. 311 are not subject to any other provision of the Constitution. Within the field covered by them they are absolute and paramount. What then is the effect of the provisions contained in Art. 311(2)? Art. 311(2) reads thus:-

> "No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

We are not concerned with the cases covered by the proviso to this article in the present appeals. It may be taken to be settled by the decisions of this Court that since Art. 311 makes no distinction between permanent and temporary posts, its protection must be held to extend to all government servants holding

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permanent or temporary posts or officiating in any of them. The protection afforded by Art. 311(2) is limited to the imposition of three major penalties contemplated by the service Rules, viz., dismissal, removal or reduction in rank. It is true that the consequences of dismissal are more serious than those of removal and in that sense, there is a technical distinction between the two; but in the context, dismissal, removal and reduction in rank which are specified by Art. 311 (2) represent actions taken by way of

penalty. In regard to temporary servants, or servants on probation, every case of termination of service may not amount to removal. In cases falling under these categories, the terms of contract or service rules may provide for the termination of the services on notice of a specified period, or on payment of salary for the said period, and if in exercise of the power thus conferred on the employer, the services of a temporary or probationary servant are terminated, it may not necessarily amount to removal. In every such case, courts examine the substance of the matter, and if it is shown that the termination of services is no more than discharge simpliciter effected by virtue of the contract or the relevant rules, Art. 311(2) may not be applicable to such a case. If, however, the termination of a temporary servant's services in substance represents a penalty imposed on him or punitive action taken against him, then such termination would amount to removal and Art. 311(2) would be attracted. Similar would be the position in regard to the reduction in rank of an officiating servant. This aspect of the matter has been considered by this Court in several recent decisions, vide Jagdish Mitter v. Union of India(1) State of Bihar v. Gopi Kishore' Prasad(2) State of Orissa & Anr. v. Ram Narayan Das(3) S. Sukhbans Singh v. The State of Punjab(4) and Madan Gopal v. The State of Punjab & Qrs. (5)

(1) A. 1. R. 1964 S. C. 449.
(3) [1961] 1 S. C.R. 606.
(2) [1961] 2 S. C. R. 590.
(4) [1963] 1 S. C. R. 416.
(5) [1963] 3 S. C. R. 716.

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This branch of the law must, therefore, be taken to be well-settled.

In regard to servants holding substantively a permanent post who may conveniently be describe hereafter as permanent servants, it is similarly wellsettled that if they are compulsorily retired under the relevant service rules, such compulsory retirement does not amount to removal under Art. 311 (2). Similarly, there can be no doubt that the retirement of a permanent servant on his attaining the age of superannuation does not amount to his removal within the meaning of Art. 311(2).

The question which arises for our decision in the present appeals is: if the service of a permanent civil servant is terminated otherwise than by operation of the rule of superannuation, or the rule of compulsory retirement does such termination amount to removal under Art. 311(2) or not ? It is on the aspect of the question that the controversy between the parties arises before us.

Before dealing with this problem, it is necessary to refer to the relevant. Railway Rules themselves Speaking historically, it appears that even while the affairs of the country were in charge of the East India Company, there used to be some regulations which were substantially in the nature of administrative instructions in regard to the conditions of service of the Company's employees. These regulations were continued by s. 130(c) of the Government of India Act, 1915 which provided, inter alia that the repeal shall not affect the tenure of office, conditions of service, terms of remuneration or right to pension of any officer appointed before the commencement of this Act. Section 96B(2) which was inserted in the said Act in 1919, however, provided that the said regulations could be modified or superseded by rules framed by the Secretary of State. In due course, the Secretary of State framed certain

rules The first batch of rules was framed in December 1920. They applied to all officers in the All India Provincial as well as Subordinate Services and governed
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even officers holding special posts. The Local Government had a limited power in respect of officers in the All-India Services under their employment and this power was confined to imposing on them punishments of censure, reduction, withholding of promotion and suspension (vide Rule 10); in the case of Provincial Services, however, the powers of the Local Government were plenary They could not only impose the penalties to which we have just referred, but also remove or dismiss them (vide Rule 13). It appears that Rule 14 prescribed the procedure which had to be followed in imposing the penalty of dismissal, removal or reduction; and so, it may be said that for the first time these three major punishments were collated together and a special procedure prescribed in that behalf. No definition of removal was, however, prescribed. Incidentally, we may refer to Rule XX which is included in the group of rules relating to appeals. Under this rule, an appeal would not lie against; (1) the discharge of a person appointed on probation before the end of his probation, and (2) the dismissal and removal of a person appointed by an authority in India to hold a temporary appointment. It would be permissible to point out that this provision would show that the termination of the services of a person permanently employed would not have fallen within the ambit of this rule.

The Rules thus framed in 1920 were amended from time to time and were re-issued in June, 1924. It appears that subsequent to 1924, fresh rules were made under the Governors Provinces Civil Services (Control and Appeal) Rules and Governors Provinces Civil Services (Delegation) Rules of 1926 which were published in March, 1926. Then followed the Rules framed by the Secretary of State in 1930. These Rules were in force when the Government of India Act, 1935 was enacted, and they continue in force even now by reason of Article 313. We ought to add that these Rules superseded all the earlier rules and constitute an exhaustive code as regards disciplinary matters. Rule 3(b) of these rules excluded the
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Railway Servants from the application of said rules, and that furnishes the historical background why separate Fundamental Rules for Railway corresponding to the Fundamental Rules in other public services, came to be framed.

Before we proceed to the relevant Railway Rule we may incidentally mention Rule 49 of the Rules framed by the Secretary of State in 1930. This provides that 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. These penalties. number seven in all. Amongst them are mentioned reduction to a lower post, dismissal and removal. Then follows an explanation which is useful for our purpose. Before quoting that explanation it may be. pointed out that the said explanation which was originally introduced under Rule 49, was subsequently amended once in 1948, then in 1950 lastly in 1955 when explanation No. 2 was added Thus amended, the two explanations read as follows:

> "Explanation 1 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 Services (Temporary Service) Rules, 1949; or
(c) of a person engaged under a contract, does not amount to removal or dismissal within the meaning of this rule or of rule 55.
Explanation II:-Stopping a Government Servant at an efficiency bar in the time scale of his pay on the ground of his unfitness to cross the bar does not amount to withholding of increments or promotions within the meaning of this rule."

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Looking at clauses (a), (b) and (c) of Explanation 1, it would be apparent that these clauses deal with persons appointed on probation, or appointed as temporary servants, or engaged on a contract, and the effect of the said explanation is that the termination of the services of such persons does not amount to removal or dismissal within the meaning of Rule 49 or Rule 55. In other words, R. 49 read along with explanation 1, would,prima facie, inferentially support the contention that in regard to a permanent civil servant, the termination of his services otherwise than under the rule of superannuation or compulsory retirement would amount to removal.

Let us then consider the relevant Railway Fundamental Rules which have a bearing on the point with which we are concerned. Paragraph 2003 of the Code, Vol. 11 which corresponds to Fundamental Rule 9 contains definitions. Fundamental Rule 9(14) defines a lien as meaning the title of a Railway servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively. An officiating servant is defined by F.R. 9(19) as one who performs the duties of a post on which another person holds a lien, or when a competent authority appoints him to officiate in a vacant post on which no other railway servant holds a lien. There is a proviso to this definition which is not relevant for our purpose. That takes us to the definition of a permanent post which under F.R. 9(22) means a post carrying a definite rate of pay sanctioned without limit of time. A, temporary post, on the other hand, means under F.R. 9 (29) a post carrying a definite rate of pay sanctioned for a limited time, and a tenure post means under F. R. 9 (30) a permanent post which an individual railway servant may not hold for more than a limited period. It is thus clear that as a result of the relevant definitions, a permanent post carries a definite ate of pay without a limit of time and a servant who substantively holds a permanent post has

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a title to hold the post to which he is substantively appointed, and that, in terms, means that a permanent servant has a right to hold the post until, of course he reaches the age of superannuation, or until he is compulsorily retired under the relevant rule.

It is in the light of this position that we must now proceed to examine the question as to whether the termination of the permanent servant's services either under Rule 148(3) or R. 149(3) amounts to his removal or not. On this point, two extreme contentions have been raised before us by the parties The learned Addl. Solicitor-General contends that

in dealing with the present controversy, we must bear in mind the doctrine of pleasure which has been enshrined in Art. 310(1). He argues that every civil servant holds his office during the pleasure the President or the Governor. It is true that in the present cases, we are dealing with rules framed under the proviso to Art. 309 and in that sense, the question of pleasure on which so much stress is laid by the learned Addl. Solicitor-General may not directly arise; but it must be conceded that the point raised for our decision may have some impact on the doctrine of pleasure, and so it needs to be examined. The argument is that all civil service is strictly speaking precarious in character. There is no guarantee of any security of tenure, because the pleasure of the President or the Governor can be exercised at any time against the civil servant. It is true that this pleasure would not be exercised capriciously, unjustly or unfairly, but the existence of the doctrine of pleasure inevitably imposes a stamp of precarious character on the tenure enjoyed by the civil servant, and so it is urged whether Rule 148 or R. 149 is made or not, it would be open to the President or the Governor to terminate the services of any civil servant to whose case Art. 110(1) applies.

The learned Addl. Solicitor-General has also impressed upon us the necessity to construe Art. 310(1) and Art. 311 in such a manner that the pleasure
contemplated by Art. 310(1) does not become illusory or is not completely obliterated. He, therefore, suggests that Art. 311(2) which is in the nature of a proviso or an exception to Art. 310(1) must be strictly construed and in all cases falling outside the scope of the said provision, the pleasure of the President or the Governor must be allowed to rule supreme.

On the other hand, it has been urged by the learned counsel appearing for the railway servants concerned before us that the pleasure of the President is controlled by Art. 311 and if the argument of the learned Addl. Solicitor-General is accepted and full scope given to the exercise of the said pleasure, Art. 311 itself would become otiose. It is urged that the employment in civil service can be terminated only after complying with Art. 311 and any rule which violates the guarantee provided by the said Article would be invalid. In fact, the argument on the other side is that the word "removal" should receive a much wider denotation than has been accepted by this Court in its decisions bearing on the point, and that all terminations of services in respect of all categories of public servants should be held to constitute removal within Art. 311(2). We are inclined to hold that the two extreme contentions raised by both the parties must be rejected. There is no doubt that the pleasure of the President on which the learned Addl. Solicitor General so strongly relies has lost some of its majesty and power, because it is clearly controlled by the provisions of Art. 31 1, and so, the field that is covered by Art. 311 on a fair and reasonable construction of the relevant words used in that article, would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there, but it has to be exercised in accordance with the requirements of Art. 311.

Besides, as this Court has held in the State of Bihar v. Abdul Majid(1), the rule of English Law pithily expressed in the latin phrase "duranto bene placito" ("during pleasure") has not been fully adopted either

(1) [1954] S.C.R. 786, 799.

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by section 240 of the Government of India Act, 1935, or by Art. 3 1 0(1). To the extent to which that rule has been modified by the relevant provisions of: S. 240 of the Government of India Act, 1935, or Art. 311 the Government servants are entitled to relief like any other person under the ordinary law and that relief must be regulated by the Code of Civil Procedure. It is mainly on the basis of this principle that this Court refused to apply the doctrine against abdul Majid that a civil servant cannot maintain suit against a State or against the Crown for the recovery of arrears of salary due to him. Thus, the extreme contention based on the doctrine of pleasure enshrined in Art. 310(1) cannot be sustained. Similarly, we do not think it would be possible to accept the argument that the word "removal" in Art. 311(2) should receive the widest interpretation. Apart from the fact that the said provision is in the nature of a proviso to Art. 3 1 0(1) and must, therefore, be strictly construed, the point raised by the contention is concluded by the decisions of this Court and we propose to deal with the present appeals on the basis that the word " removal" like the two other words "dismissal" and "reduction in rank" used in Art. 311(2) refer to cases of major penalties which were specified by the relevant service rules. Therefore, the true position is that Articles 310 and 311 must no doubt be read together, but once the true scope and effect of Art. 311 is determined, the scope and effect of Art. 310(1) must be limited in the sense that in regard to cases falling under Art. 311(2) the pleasure mentioned in Art. 310(1) must be exercised in accordance with the requirements of Art. 311.
It is then urged by the learned Addl. Solicitor General that Art. 310 does not permit of the concept of tenure during good behaviour. According to him, in spite of the rule of superannuation, the services of a civil servant can be terminated by the President exercising his pleasure at any time. The rule of superannuation on this contention merely gives an indication to the civil servant as to the length of time
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he may expect to serve, but it gives him no right to continue during the whole of the said period. In fact, the learned Addl. Solicitor-General did not disguise the 'act that according to his argument Whether or not a rule of superannuation is framed and whether or not Rule 148 or R. 149 is issued, the President's pleasure can, be exercised independently of these Rules and the action taken by the President in exercise of his pleasure cannot be "questioned under Art. 311(2).
Alternatively,_ he contends that if Art. 311(2) is read in a very general and wide sense, even the rule as to the age of superannuation may be questioned as being invalid, because it does put an end to the service of a civil servant. We are not impressed by this argument. We will no doubt have to decide what cases of termination of services of permanent civil servants amount to removal; but once that question is determined, wherever it is shown that a permanent civil servant is removed from his service, Art. 311(2) will apply and Art. 310(1) cannot be invoked independently with the object of justifying the contravention of the provisions of Art. 311(2).
In regard to the age of superannuation, it may be said prima facie that rules of superannuation which are prescribed in respect of public services in all modem States are based on

considerations of life expectation, mental capacity of the civil servants having regard to the climatic conditions under which they work, and the nature of the work they do. They are not fixed on any ad hoc basis and do not involve the exercise of any discretion. They apply uniformly to all public servants falling under the category in respect of which they are framed. Therefore, no analogy can be suggested between the rule of superannuation and-.Rule 148(3) or Rule 149(3). Besides., nobody has questioned the validity of the rule of superannuation, and so, it would be fruitless and idle to consider whether such a rule can be challenged at all.

Reverting then to the nature of the right which a permanent servant has under the relevant Railway Rules, what is the true position? A person Who

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substantively holds a permanent post has a right to continue in service, subject, of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is, in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must per se amount to his removal, and so, if by R. 148(3) or IC. 149(3) such a termination is brought about, the Rule clearly contravenes Art. 311(2) and must be held to be invalid. It is common ground that neither of the two Rules contemplates an enquiry and in none of the cases before us has the procedure prescribed by Art. 311(2) been followed. We appreciate the argument urged by the learned Addl. Solicitor-General about the pleasure of the President and its significance; but since the pleasure has to be exercised subject to the provisions of Art. 31 1, there would be no escape from the conclusion that in respect of cases falling under Art. 311(2), the procedure prescribed by the said Article must be complied with and the exercise of pleasure regulated accordingly.

In this connection, it is necessary to emphasise that the rule-making authority contemplated by Art. 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants under Art. 311(1). Art. 311(1) is intended to afford a sense of security to public servants who are substantively appointed to a permanent post and one of the principal benefits which they are entitled to expect is the benefit of pension after rendering public service for the period prescribed by the Rules. It would, we think, not be legitimate to contend that the right to earn a pension to which a servant substantively appointed to a permanent post is entitled can be curtailed by Rules framed under Art. 309 so as to make the said right either ineffective or illusory. Once the scope of Art. 311(1) and (2) is duly determined, it must be held that no Rule

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framed under Art. 309 can trespass on the rights guaranteed by Art. 311. This position is of basic importance and must be borne in mind in dealing with the controversy in the present appeals.

At this stage, we ought to add that in a modern democratic State the efficiency and incorruptibility of public administration is of such importance that it is essential to afford to civil servants adequate protection against capricious action from their superior authority. If a

permanent civil servant is guilty of misconduct, he should no doubt be proceeded against promptly under the relevant disciplinary rules, subject, of course, to the safeguard prescribed by Art. 311(2); but in regard to honest, straightforward and efficient permanent civil servants, it is of utmost importance even from the point of view of the State that they should enjoy a sense of security which alone can make them independent and truly efficient. In our opinion, the sword of Damocles hanging over the heads of permanent railway servants in the form of R. 148(3) or R. 149(3) would inevitably create a sense of insecurity in the minds of such servants and would invest appropriate authorities with very wide powers which may conceivably be abused.

In this connection, no distinction can be made between pensionable and non-pensionable service. Even if a person is holding a post which does not carry any pension, he has a right to continue in service until he reaches the age of superannuation and the said right is a very valuable right. That is why the invasion of this right must inevitably mean that the termination of his service is, in substance, and in law, removal from service. It appears that after Rule 149 was brought into force in 1957, another provision has been made by Rule 321 which seems to contemplate the award of some kind of pension to the employees whose services are terminated under Rule 149(3). But it is significant that the application of R. 149(3) does not require, as normal rules of compulsory retirement do "that the power conferred by the said Rule can be exercised in respect of servants who have

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put in a prescribed minimum period of service. Therefore, the fact that some kind of proportionate pension is awardable to railway servants whose services are terminated under R. 149(3) would not assimilate the cases dealt with under the' said Rule to cases of compulsory retirement. As we Will presently point out, cases of compulsory retirement which have been considered by this Court were all cases where the rule as to compulsory retirement came into operation before the age of superannuation was reached and after a Prescribed minimum period of service had been put in by the servant.

It is true that the termination of service authorised by R. 148(3) or R. 149(3) contemplates the right to terminate on either side. For all practical purposes, the right conferred on the servant to terminate his services after giving due notice to the employer does not mean much in the present position of unemployment in this country; but apart from it, the fact that a servant has been given a corresponding right cannot detract from the position that the right which is conferred on the railway authorities by the impugned Rules is inconsistent with Art. 311(2), and so, it ha to be struck down in spite of the fact that a simila right is given to the servant concerned.

It has, however, been urged that the railway servants who entered service with the full knowledge of these Rules cannot be allowed to complain that the Rules contravene Art. 311 and are, therefore invalid. It appears that under Rule 144 (which was originally Rule 143), it was obligatory on railway servants to execute a contract in terms of the re-levant Railway Rules. That is how the argument based on the contract and its binding character arise If a person while entering service executes a contract containing the relevant Rule in that behalf with open eyes, how can he be heard to challenge the validity of the said Rule, or the said

contract? In our opinion this approach may be relevant in dealing with purely commercial cases governed by rules of contract but it is wholly inappropriate in dealing with a case
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where the contract or the Rule is alleged to violate a constitutional guarantee afforded by Art. 311(2); land even as to commercial transactions, it is wellknown that if the contract is void, as for instance, under s. 23 of the Indian Contract Act, the plea that it was executed by the party would be of no avail. In any case, we do not think that the argument of contract and its binding character can have validity in dealing with the question about the constitutionality of the impugned Rules.

Let us then test this argument by reference to the provisions of Art. 311(1). Art. 311(1) provides that no person to whom the said article applies shall be dismissed or removed by an authority subordinate to that by which he was appointed. Can it be suggested that the Railway Administration can enter into a contract with its employees by which authority to dismiss or remove the employees can be delegated to persons other than those contemplated by Art. 311 (1)? The answer to this question is obviously in the negative, and the same answer must be given to the contention that as a result of the contract which embodies the impugned Rules, the termination of the railway servant's services would not attract the provisions of Art. 311(2), though, in law, it amounts to removal. If the said termination does not amount to removal, then, of course, Art. 311(2) would be inapplicable and the challenge to the validity of the impugned Rules would fail; but if the termination in question amounts to a removal, the challenge to the validity of the impugned Rules must succeed notwithstanding the fact that the Rule has been included in a contract signed by the railway servant.

There is one more point which still remains to be considered and that is the point of construction. The learned Add1. Solicitor-General argued that in construing the impugned Rule 148(3) as well as R. 149(3), we ought to take into account the fact that the Rule as amended has been so framed as to avoid conflict with, or non-compliance of, the provisions of Art. 311(2), and so, he suggests that we should
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adopt that interpretation of the Rule which would be consistent with Art. 311(2). The argument is that the termination of services permissible under the impugned Rules really proceeds on administrative grounds or considerations of exigencies of service. If, for instance, the post held by a permanent servant is abolished, or the whole of the cadre to which the post belonged is brought to an end and the railway servant's services are terminated in consequence, that cannot amount to his removal because the termination of his services is not based on any consideration personal to the servant. In support' of this argument, the Addl. Solicitor-General wants us to test the provision contained in the latter portion of the impugned Rules. We are not impressed by this argument. What the latter portion of the impugned Rules provides is that in case a railway servant is dealt with under that portion, no notice need be served on him. The first part of the Rules can reason ably and legitimately take in all cases and may be used even in respect of cases falling under the latter category, provided, of course, notice for the specified period or salary in lieu of such notice is give to the

railway servant. There is no doubt that on a fair construction, the impugned Rules authorise the Railway Administration to terminate the services of all the permanent servants to, whom the Rules apply merely on giving notice for the specified period, or on payment of salary in lieu thereof, and that clearly amounts to the removal of the servant in question, we are satisfied that the impugned Rules are invalid in as much as they are inconsistent with the provision contained in Art. 311(2). The termination of the permanent servants" tenure Which is authorised the said Rules is no more and no less than, their removal from service, and so, Art. 311(2) must come into play in respect of such cases, 'That being so. the Rule which does not require compliance with the procedure prescribed by Art. 311(2) must be struck down as invalid.

It is now necessary to examine some of the cases on which the learned Addl. Solicitor-General has

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relied. In fact, as we have already indicated, his main argument was that some of the observations made in some of the decisions to which we will presently refer support his contention and logically lead to the conclusion that the impugned Rules are valid. That naturally makes it necessary for us to examine the said cases very carefully. In Satish Chandra Anand v. The Union of India(1), this Court was dealing with the case of a person who had been employed by the Government of India on a five-year contract in the Resettlement and Employment Directorate of the Ministry of Labour. When his contract was due to expire, a new offer was made to him to continue him in service in his post temporarily for the period of the Resettlement and Employment Organization on the condition that he would be governed by the Central Civil Services (Temporary Service) Rules, 1949. The relevant rule in that behalf authorised the termination of the contract on either side by one month's notice. Subsequently, his services were terminated after giving him one month's notice. He challenged the validity of the said order, but did not succeed for the reason that neither Art. 14 nor Art. 16 on which he relied really applied. This Court held that it is competent to the State to enter into contracts of temporary employment subject to the term that the contract would be terminated on one month's notice on either side. Such a contract was not inconsistent with Art. 311(2). This case, therefore, is of no assistance in the present appeals.

In Gopal Krishna Potnay v. Union of India & Anr. (2) a permanent railway employee who was discharged from service after one month notice brought a suit challenging the validity of the order terminating his services. The point about the validity of the Rule was not agitated before the Court. Questions which were raised for the decision of the Court were, inter alia, whether the agreement in question lad been executed by the servant and whether the

(1) [1953] S.C.R. 655.

(2) A.I.R. 1954 S.C. 632.

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termination of his services amounted to a discharge or not. In that connection, reference was made to Rules 1504 and 1505 and it was held that the conduct of the parties showed that the termination of the servant's services was not more than a discharge in terms of the agreement. This case again is of no assistance.

That takes us to the decision in the case of Shyam Lal v. The State of U.P. and the Union of India(1) Shyam Lal's services were terminated under Art. 465-A of the Civil

Service Regulations and Note I appended thereto. Shyam Lal alleged that his compulsory retirement offended the provisions of Art. 311(2) on the ground that compulsory retirement was in substance removal from service. This Court considered the scheme of the relevant Rule and held that compulsory retirement did not amount to removal within the meaning of Art. 311(2). In dealing with this question, this Court observed that removal was almost synonymous with dismissal and that in the case of removal as in the case of dismissal, some ground personal to the servant which was blameworthy was involved. There was a stigma attached to the servant who was removed and it involved a loss of benefit already earned by him. It is in the light of these tests that this Court held that compulsory retirement did not amount to removal. It is true that in dealing with the argument about the loss of benefit, this Court observed that a distinction must be made between the loss of benefit already earned and the loss of prospect of earning something more, and it proceeded to add that in the first case, it is a present and certain loss and is certainly a punishment, but the loss of future prospect is too uncertain, for the officer may die of be otherwise incapacitated from serving a day long and cannot, therefore, be regarded in the eye of law as a punishment. It appears that in dealing with the point, the attention of the Court was drawn to Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, and presumably the explanation

(1) [1955] 1 S.C.R 26.

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(1) [1955] 1 S.C.R. 26.
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to the said Rule to which we have already referred, was taken into account in rejecting the argument a that a loss of future service cannot be said to be a relevant factor in determining the question as to whether compulsory retirement is removal or not. The judgment does not show that the invasion of the right which a permanent servant has, to remain in service until he reaches the age of superannuation, was pressed before the Court, and naturally the same has not been examined. Confining itself to the special features of compulsory retirement which was effected under Art. 465-A and Note I appended thereto, the Court came to the conclusion that compulsory retirement was not removal, We may add that subsequent decisions show that the same view has been taken in respect of compulsory retirement throughout and so, that branch of the law must be held to be concluded by the series of decisions to which we shall presently refer. We would, however, like to make it clear that the observation made in the judgment that every termination of service does not amount to dismissal or removal should, in the context, be confined to the case of compulsory retirement and should not be read as a decision of the question with which we are directly concerned in the present appeals. That problem did not arise before the Court in that case, was not argued before it, and cannot,therefore, be deemed to have been decided by this decision.

Then we have a batch of four decisions reported in 1958 which are relevant for our purpose. In Hartwell Prescott Singh v. The Uttar Pradesh Government & Ors.(1) a civil servant held a post in a temporary capacity in the Subordinate Agriculture Service, Uttar Pradesh, and was shown in the gradation list as on probation. He was later appointed with the approval of the Public Service Commission of the United Provinces to officiate in Class II of the said Service. After about 10 years, he was reverted to his original temporary appointment and his services were there-after terminated under Rule 25(4) of the Subordinate

1) [1958] S.C.R. 509
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Agriculture Service Rules. Dealing with the said civil servant's objection that the termination of his services contravened Art. 311(2), this Court held that reversion from a temporary post held by a person does not per se amount to reduction in rank. To decide whether the reversion is a reduction in rank, the post held must be of a substantive rank and further it must be established that the order of reversion was by way of penalty. As we have already discussed, the cases of temporary servants, probationers and servants holding posts in officiating capacities stand on a different footing and the principles applicable to them are now firmly established and need not detain us.

The next decision in the same volume is the State of Bombay v. Saubhagchand M. Doshi(1). This was a case of compulsory retirement under Rule 165-A of the Bombay Civil Services Rules as amended by the Saurashtra Government. In I so far as, this case dealt with the compulsory retirement of a civil servant,, it is unnecessary to consider the Rule in question or the facts relating to the compulsory retirement of the civil servant. It is of interest to note that in dealing with the question as to whether compulsory retirement amounted to removal or not the tests which were applied were in regard to the loss of benefit already accrued and stigma attached to the civil servant. It is,

however, significant that in considering the objection based on the contravention of Art. 311(2), Venkatarama Aiyar J. took the precaution of adding that "questions of the said character could arise only when the rules fix both an age of superannuation and an age for compulsory 'retirement and the services of a civil servant are terminated between these two points of time. But where there is no rule fixing the age of compulsory retirement, or if there is one and the servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Art. 311 (2)." It would be noticed that the rule providing

(1) [1958] C.R. 571.

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for compulsory retirement was upheld on the ground that such compulsory retirement does not amount to ,removal under Art. 311(2) because it was another mode of retirement and it could be enforced only between the period of age of superannuation prescribed and after the minimum period of service indicated in the rule had been put in. If, however, no such minimum period is prescribed by the rule of compulsory retirement, that according to the judgment, would violate Art. 311(2) and though the termination of a servant's services may be described as compulsory retirement, it would amount to dismissal or removal within the meaning of Art. 311(2). With respect, we think that this statement correctly represents the true position in law.

The third case in the said volume is the case of parshotam Lal Dhingra v. Union of India.(1) In this case, Das C.J. who spoke for the Bench considered comprehensively the scope and effect of the relevant constitutional provisions, service rules and their impact on the question as to whether reversion of Dhingra offended the provisions of Art. 311(2). Dhingra was appointed as a Signaller in 1924 and promoted to the post of Chief Controller in 1950. Both these posts were in Class III Service. In 1951, he was appointed to officiate in Class 11 Service as Asstt. Superintendent, Railway Telegraphs. On certain adverse remarks having been made against him, he was reverted as a subordinate till he made good the short-comings. Then, Dhingra made a representation. This was followed by a notice issued by the General Manager reverting him to Class III appointment. It was this order of reversion which was challenged by Dhingra by a writ petition. It would thus be seen that the point with which the Court was directly concerned was whether the reversion of an officiating officer to his permanent post constituted reduction in rank or removal under Art. 311(2). The decision of this question was somewhat complicated by the fact that certain defects were noticed in the work of Dhingra

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

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and the argument was that his reversion was in the nature of a penalty, and so, it should be treated as reduction under Art. 311(2). This Court rejected Dhingra's contention and held that the reversion of an officiating officer to his substantive post did not attract the provisions of Art. 311(2). Though the decision of the question which directly arose before this Court thus lay within a very narrow compass, it appears that the matter was elaborately argued before the Court and the learned Chief Justice has exhaustively considered all the points raised by the parties. For our present purpose, it is unnecessary to summaries the reasons given by the learned Chief Justice for holding that the reversion of Dhingra did not amount to

reduction in rank. The only point which has to be considered by us is whether the observations made in the course of this judgment in regard to permanent servants assist the learned Addl. Solicitor-General and if they do, what is their effect? Broadly stated, this decision widened the scope of Art. 311 by including within its purview not only permanent servants, but temporary servants and servants holding officiating posts also. The decision further held that dismissal, removal and reduction represent the three major penalties contemplated by the relevant service rules and it is only where the. impugned orders partake of the character of one or the other of the said penalties that Art. 311(2) can be invoked. In the course of his judgment the learned Chief Justice has referred to Rule 49 and the explanation attached thereto. The explanation to the Rule clearly shows that it refers to persons appointed on probation, or persons holding temporary appointments and contractual posts. It is in the light of this explanation that the learned Chief Justice proceeded to examine the contention raised by Dhingra that his reversion amounted to reduction in rank and so, it became necessary to examine whether any loss of benefit already accrued had been incurred or any stigma had been attached to the servant before he was reverted. It is in that connection that the Court also held that though a kind of enquiry may have
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been held and the short-comings in the work of Dhingra may have weighed in the mind of the authority who reverted him, the said motive could not alter the character of reversion which was not reduction within the meaning of Art. 311(2). All those points have been considered and decided and so far as the temporary servants probationers, or contractual servants are concerned, they are no longer in doubt.

In regard to permanent servants, the learned Chief Justice has made some observations which it is now necessary to consider very carefully. "The appointment of a government servant to a permanent post," observed the learned C.J., "may be substantive or on probation or on an officiating basis. A substantive appointment to a permanent post in public service confers normally on the servant so appointed a substantive right to the post and he becomes entitled to hold a lien on the post."(p. 841) On the same subject, the learned C.J has later added that "in the absence of any special contract, the substantive appointment to a -permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service, or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him." (p. 843). Reading these two observations together, there can be no doubt that with the exception of appointments held under special contract, the Court took the view that wherever a civil servant was appointed to a permanent post substantively, he had a right to hold that post until he reached the age of superannuation -or was compulsorily retired, or the post was abolished. In all other cases, if the services of the said servant were terminated, they would have to be in conformity with the provisions of Art. 311(2), because termination in such cases amounts to removal. The two statements of the law to which we have just
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referred do not leave any room for doubt on this point.

Later during the course of the judgment, learned C.J. proceeded to examine Rule 49 and the explanations added to it, and then reverting to the question of permanent servants once again, he observed that "it has already been said that where a person is appointed substantively to a permanent 'post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311(2). Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment." (pp. 857-58). With respect we ought to point out that though the learned C. J at this place purports to reproduce what had already been stated in the judgment, he has made two significant additions because in the present statement he refers to a contract or service rules which may permit the authority to terminate the services of a permanent servant without taking the case under Art. 311(2), though such termination may not amount to ordinary or compulsory retirement. The absence of contract, express or implied, or a service rule, which has been introduced in the present statement are not to be found in the earlier statements to which we have already referred, and addition of these two Clauses apparently is due to the fact that the learned C.J. considered Rule 49 and the explanations attached thereto and brought them into the discussion of a permanent servant, and that, we venture to think is not strictly correct. As we have already seen Explanation No. 1 to R. 49 is confined to the through categories of officers specified by it in its clauses (a)
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(b) and (c), and it has no relevance or application to the cases of permanent servants.

Similarly, the same statement is repeated with the observation "as already stated, if the servant has got a right to continue in the post, then, unless ,the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Art. 31 1, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances." (p. 862). With respect, we wish to make the same comment about this statement which we have already made about the statement just cited. In this connection, it may be relevant to add that in the paragraph where this statement occurs, the learned C.J. was summing up the position and the cases there considered are cases of Satish Chandra Anand, (1) and Shyam Lal(2). These two cases were concerned with the termination of a temporary servant's services and the compulsory retirement of a permanent servant respectively, and strictly speaking, they do not justify the broader proposition enunciated at the end of the paragraph.

At the conclusion of his judgment, the learned C.J. has observed that "in every case, the Court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind

hereinbefore referred to." (p. 863) It would be noticed that the two tests are not cumulative, but are alternative, so that if the first test is satisfied, termination of a permanent servant's services would amount to removal because his right to the post has been prematurely invaded. The learned C.J. himself makes it clear by adding

(1) [1953] S.C.R. 655.
(2) [1955] 1 S.C.R. 26.
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that if the case satisfies either of the two tests, the it must be held that the servant had been punished and the termination of his services must be held to be wrongful and in violation of the constitutional rights of the servant. It would thus be noticed that the first test would be applicable to the cases of permanent servants, whereas the second test would be relevant in the cases of temporary servants, probationers and the like. Therefore, we do not think the learned Addl. Solicitor-General is justified in contending that all the observations made in the course of this judgment in regard to permanent servant considered together support his contention. Besides if we may say so, with respect, these observations are in the nature of obiter dicta and the learned Add1 Solicitor-General cannot rely solely upon them for the purpose of showing that R. 148(3) or R. 149(3) should be held to be valid as a result of the said observations.

The last decision on this point rendered by this Court in 1958 (vide P. Balakotaiah v. The Union of India & Others(1) dealt with the case of Balakotaiah who was a permanent railway servant and whose services had been terminated for reasons of national security under s. 3 of the Railway Services (Safe guarding of National Security) Rules, 1949.It appears that in this case, Balakotaiah who challenged the order terminating his services before the High Court of Nagpur, failed because the High Court held that the said order was justified under Rule 148(3) of the Railway Rules. In his appeal before this Court, it was urged on his behalf that the High Court was in error in sustaining the impugned order under the said Rule when the Union of India had not attempted to rely on the said Rule, and the impugned order did not purport to have been passed under it. The argument was that the impugned order had been passed under R. 3 of the Security Rules and the High Court should have considered the matter by reference to the said Rule and not to R. 148(3). This plea was

(1) [1958] S.C.R. 1052.
1/SCI/64 46
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upheld by this Court, and so, Balakotaiah's challenge to the validity of the impugned order was examined by reference to security rule 3. The scheme of the relevant Security Rules was then considered by this Court and it was held that the said Rules did not contravene either Art. 14 or Art. 19(1)(c) of the Constitution as contended by the appellant. Having held that the impugned rule was not unconstitutional, this Court proceeded to examine the further contention that the procedure prescribed by the said rules for hearing of the charges does not satisfy the requirement of Art. 311 and as such, the said Rules are invalid.

Rules, 3, 4 and 5 of the Security Rules which dealt with this point do contemplate some kind of an enquiry at which an opportunity is given to the railway servant concerned to show cause against the action proposed to be taken against him. Rule 7 also provides that a person who is compulsorily retired or whose service is terminated under Rule 3, shall

be entitled to such compensation, pension, gratuity and/or Provident Fund benefits as would have been admissible to him under the Rules applicable to his service if he had been discharged from service due to the abolition of his post without any alternative suitable employment being provided. The contention was that the nature of the enquiry contemplated by the relevant Rules did not satisfy the requirements of Art. 311(2), and so, the Rules should be struck down as being invalid and the order terminating the services of Balakotaiah should therefore, be held to be invalid. This argument was rejected by this Court, and relying upon the earlier decisions in the cases of Satish Chandra Anand(1), Shyam Lal(2) Saubhagchand M. Doshi(3) and Parshotam Lal Dhingra (4) it was held that the order terminating the services of the railway, employee which can be

(1) [1953] S.C.R. 655.
(3) [1958] S.C.R. 571.
(2) [1955] 1 S.C.R. 26.
(4) [1958] S.C.R. 828.

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passed under R. 3 is not an order of dismissal or removal, and so, Art. 311(2) is inapplicable. On that view, the validity of R. 3 was sustained. In recording its conclusion on this point, this Court observed that the order terminating the services under R. 3 stands on the same footing as an order of discharge under Rule 148 and it is neither one of dismissal nor of removal within the meaning of Art 311. Naturally, the learned Addl. Solicitor-General relies on this statement of the law.

In appreciating the effect of this observation, it is necessary to bear in mind that in the earlier portion of the Judgment, this Court has specifically referred to the argument that the Security Rules had an independent operation of their own quite apart from Rule 148, and has observed that the Court did not desire to express any final opinion on that question "as Mr. Ganapathy Iyer is willing that the validity of the orders in question might be determined on the footing that they were passed under R. 3 of the Security Rules without reference to R. 148. That renders it necessary to decide whether the Security Rules are unconstitutional as contended by the appellant." It would thus be noticed that having upheld the contention of the appellant Balakotaiah that the High Court was in error in referring to and relying upon R. 148(3) for the purpose of sustaining the impugned order terminating his services, this Court had naturally no occasion to consider the validity, the effect or the applicability of the said Rule to the case before it, and so, the attention of the Court centered round the question as to whether the relevant security rule was valid and whether it justified the order passed against the appellant. In dealing with this aspect of the matter, this Court no doubt came to the conclusion that the termination of Balakotaiah's services under R. 3 did not amount to his removal or dismissal; but since no argument was urged before the Court in respect of R. 148(3), the reference to the said Rule made by the judgment is purely in the nature of an obiter, and so, we are not prepared to

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read that statement as a decision that R. 148(3) is valid. To read the said statement in that manner would be to ignore the fact that this Court had reversed the conclusion of the High Court that the impugned order was valid under R. 148(3) specifically on the ground that case had not been made out

by the Union of India and should not have been adopted by the High Court. It is thus clear that as, the case was argued before this Court and considered, R. 148(3) was outside the controversy between the parties. That is why it would be unreasonable to rely on the reference to R. 148 in the statement made in the judgment on which the learned Addl. Solicitor-General relies.

There is another aspect of this question to which we may incidentally refer before we part with this case. We have already quoted the observation of Veinkatarama Aiyar J.; in the case of Subhagchand M. Doshi (1) to the' effect that if compulsory retirement is permitted by any service rule without fixing the minimum period of service after which the Rule can be invoked, termination of the services of a permanent civil servant by the application of such a Rule would be dismissal or removal under Art. 311(2), and we have indicated that we regard that statement as correctly representing the true legal position in the matter. It appears that when this Court decided the case of Balakotaiah, this aspect of the matter 'was not argued before the Court and the observation to which we have just referred was not brought to its notice.

One more case which still remains to be considered in this context is the decision in Dalip Singh v. The State of Punjab (2). In this case, Dalip Singh was compulsorily retired from service by the Rajpramukh of Pepsu exercising his power under Rule 278 of the Patiala State Regulations, 1931. In the quit from which the appeal before this Court arose he alleged that the order of retirement passed against him amoun-

(1) [1958] S.C.R. 571.

(2) [1961] 1 S.C.R. 88.

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ted to his dismissal, and so, he claimed to recover Rs. 26,699-13-0 on that basis. The validity of R. 278 was not put in issue in the proceedings at any stage. The only point raised, 'was that the said Rule was not applicable to his case, and it was urged that in the circumstances, the order was an' order of dismissal. This Court. held that R. 278 applied to the case, And so, the preliminary objection against the applicability of the Rule was rejected. Dealing with the main contention raised before this Court that the compulsory retirement of Dalip Singh was removal from service within the meaning of Art. 311(2), this Court applied the tests laid down in the case of Shyam Lal(1) and Saubhagchand Doshi(2) and held that the said retirement did not amount to removal. Dalip Singh had not lost the benefit which he earned and though considerations of alleged misconduct or inefficiency may have weighed with the Government in compulsorily retiring him that did not affect the character of the order;in fact full pension had been paid to the officer, and so, it was held that the order of retirement is clearly not by way of punishment.

At the end of this judgment, this Court added that the observations made in the case of Doshi(2) which we have already cited, should not be read as laying down the law that retirement under R. 278 would be invalid for the reason that a minimum period of service had not been prescribed before the said Rule could be enforced against the civil servant. It would be recalled that in the case of Doshi(2) Venkatarama Aiyar J. had observed that if the two periods are not prescribed one for superannuation and the other for enforcing the rule of compulsory retirement, compulsory retirement of the officer would amount to dismissal or removal under Art. 311(2). In Dalip Singh's case (2), it was

stated that the said observation should not be taken to have laid down any rule of universal application in that behalf. The

(1) (1955] 1 S.C.R. 26 (2) (1958] 1 S.C.R.
(3) [1961] 1 S.C.R. 88
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learned Addl. Solicitor-General has naturally relied on these observations.

It is however, necessary to point out that the said observations were made on the assumption that the Patiala Rules did not lay down any minimum period of service which had to be put in by civil servant 'before he could be compulsorily retired under Rule 278. We have already seen that the validity of R. 278 was not challenged before the Court in Dalip Singh's case; besides, we have now been referred to the relevant Patiala Rules, and it appears that the combined operation of Rules 53, 54, 125, 236, 239, 240, 243 and 278 would tend to show that no officer ,could have been compulsorily retired under R. 278 unless he had put in at least 12 years' service. We are referring to this aspect of the matter for the purpose of showing that the assumption made by this Court in making the observations to which we have just referred may not be well-founded in fact. Apart from that, we think that if any Rule permits the appropriate authority to retire compulsorily a civil servant without imposing a limitation in that behalf that such civil servant should have put in a minimum period of service, that Rule would be invalid and the so-called retirement ordered under the said Rule would amount to removal of the civil servant within the meaning of Art. 311(2).

At this stage, we ought to make it clear that in the present appeals, we are not called upon to consider whether a rule of compulsory retirement would be valid, if, having fixed a proper age of superannuation,, it permits a permanent servant to be retired at a very early stage of his career. We have referred to the decisions dealing with cases of compulsory retirement only for the purpose of ascertaining the effect of the obiter observations made in some of those decisions in relation to the question with which we are directly concerned. The question raised by the orders of compulsory retirement so far as it is covered by the said decisions must be deemed to be concluded. Our conclusion, therefore, is that rules
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148(3) and 149(3) which permit the termination of a permanent railway servant's services in the manner provided by them, are invalid because the termination of services which the said Rules authorise is removal of the said railway permanent servant and it contravenes the constitutional safeguard provided by Art. 311(2).

After this Court pronounced its decision in the case of Shyam Lal(1) the question about the validity of Rule 148(3) has been considered by several High Courts and it must be conceded that with the exception of two decisions of the Calcutta High Court in Union of India v. Someswar Banerjee(2) and Fakir Chandra Chiki v. S. Chakravarti & Ors(3) which have held that R. 1709 and R. 148(3) of the Railway Rules are respectively invalid, the consensus of judicial opinion is in favour of the contention raised by the learned Add1. Solicitor-General. These decision have held that R. 148(3) is constitutionally valid (vide Biswanath Singh v. District Traffic Supdt., N.E Railway, Sonepur(4), The Union of India v. Askaran (5) Hardwari Lal v. General Manager, North Eastern Railway, Gorakhpur(6) and Anr., Kishan Prasad v. The Union of India (7) and D.S.

Srinath v. General Manager Southern Railway, Madras(8). In fairness, we ought to add that all these decisions proceeded on the basis that the observations made by this Court either in the case of Shyam Lal (1) or in the case of Dhingra(9) in respect of permanent servants amounted to a decision on that point and were, therefore, binding on the High Courts. Some decisions purport to adopt the said observations and extend them logically in dealing with the question about the validity of Rule 148(3). With respect, we must hold that these decisions do not correctly represent the true legal position in regard to the character of R. 148(3).

(1) [1955] 1 S.C.R. 26.
(3) A.I.R. 1954 Cal. 566.
(5) A.I.R. 1957 Rajastban 836.
(7) A.I.R. 1960 Cal. 264.
(2) A.I.R. 1954 Cal. 399.
(4) A.I.R. 1956 Patna 221
(6) A.I.R. 1959 All. 439.
(8) A.I.R. 1962 Mad 379.
(9) [1958] S.C.R. 828.

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There is still one more point which must be considered and that is the challenge to the validity of Rules 148(3) and 149(3 on the ground that they contravene Art. 14 of the Constitution. The pleadings on this part of the case filed by both the parties are not very satisfactory; but as to the broad features '.of the Rules on which the challenge rests, there is no serious dispute. We have already seen the Rules; it is urged that they purport to give no guidance to the authority which would operate the said Rules. No principle is laid down which should guide the decision of the authority in exercising its power under the said Rules. Discretion is left in the authority completely unguided in the matter and the Rules are so worded that the power conferred by them can be capriciously exercised without offending the Rules. It is also not disputed by the learned Addl. Solicitor-General that no other branch of public services either under the States or under the Union contains any rule which corresponds to the impugned Rules. Therefore, basing themselves on these two features of the impugned Rules it is argued by the Railway employees before us that the Rules offend Art. 14.

In support of the first argument, it is suggested that though the impugned Rule may not in terms enact a discriminatory rule and in that sense may not patently infringe Art. 14, it may, nevertheless, contravene the said Art. if it is so framed as to enable an unequal or discriminatory treatment to be meted out to persons or things similarly situated; and in support of this point, reliance is placed on the decision of this Court in Jyoti Pershad v. The Administrator for the Union Territory of Delhi(1). Such a result, it is said, would inevitably follow where the rule vests a discretion in an authority as an executive officer and does not lay down any policy and fails to disclose any tangible, intelligible, or rational purpose which the power conferred by it is intended to serve.

(1) [1962] 2 S.C.R. 125 at P. 137.

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On the other hand, the Addl. Solicitor-General has contended that the very purpose of the Rule gives guidance to the appropriate authority exercising its power under it; in exercising the said power the appropriate authority will have to take into account all the relevant circumstances in regard to the nature and quality of the work of the railway

servant in question and will have to decide whether there are circumstances which require that the services of the said servant should be terminated. In dealing with such a question, it is plain that the appropriate authority would naturally have regard for consideration of public interest and the interest of the Railway Administration. Therefore, it is suggested that the Rule cannot be struck down on the ground that it confers absolute, unguided and uncanalised power on the appropriate authority. Since we have come to the conclusion that the second attack made against the validity of the Rule under Art. 14 ought to be sustained we do not propose to express any opinion on this part of the controversy between the parties.

The other aspect of the matter arises from the fact that no other branch of public service contains such a rule for its civil servants. The true scope and effect of Art. 14 has been considered by this Court on several occasions. It may, however, be sufficient to refer to the decision of this Court in Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolker & Ors.(1) After examining the Article and the relevant decisions of this Court bearing on it, Das C.J. who spoke for the Court stated the position in the form of propositions, (a) to (f). Propositions (a) and are relevant for our purpose. "The decisions of this Court establish," said Das C.J., "(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or: reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself; and (f) that while good faith and knowledge of the existing conditions on the part

(1) [1959] S.C.R. 279 at P. 297.

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of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on Which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation." Applying these two principles, it is difficult to understand on what ground employment by the Railways alone can be said to constitute a class by itself for the purpose of framing the impugned Rules. If considerations of administrative efficiency or exigencies of service justify the making of such a rule, why should such a Rule not have been framed in the Posts & Telegraph Department to take only one instance. The learned Additional Solicitor-Generaf frankly conceded that the' affidavits filed by the Railway Administration or the Union of India afforded no material on which the framing of the Rule only in respect of one sector of public service can be -justified. We appreciate the argument that the nature of services rendered by employees in different sectors of public service may differ and the terms and conditions governing employment in all public sectors may not necessarily be the same or uniform; but in regard to the question of terminating the services of a civil servant after serving him with a notice for a specified period, we are unable to see how the Railways can be regarded as constituting a separate and distinct class by reference to which the impugned Rule can be justified in the light of Art. 14. If there is any rational connection between the making of such a Rule and the object intended to be achieved by it, that connection would clearly be in existence in several other sectors of public service. What has happened

is that a provision like R. 148(3) pr R. 149(3) was first made by the Railway Companies when employment with the Railways was a purely commercial matter governed by the ordinary rules of contract. After the Railways were taken over by the State, that position has essen-
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tially altered, and so, the validity of the Rule is now exposed to the challenge under Art. 14. Therefore we are satisfied that the challenge to the validity of the impugned Rules on the ground that they contravene Art. 14 must also succeed.

There is one more point which we ought to mention before we part with these appeals. In dealing with the validity of R. 149, Nayudu J. of the Assam High Court who has delivered the minority judgment in the case of Shyam Behari Tewari & Ors V. Union of India & Anr.(1), has observed that the Rule would be invalid for the additional reason that it purports to give power to the Railway Administration to terminate the services of any person in permanent employment in railway service on notice at the sweetwill and pleasure of the Railway Administration Such a power, said the learned Judge, can only be exercised by the President in the instant cases where the service is under the Union and not by any other whereas the Rule in question purports to give that power to the Railway Administration. In support of this conclusion, the learned Judge has relied on the observations made in the majority judgment delivered by this Court in The State of Uttar Pradesh and ors (2) v. Babu Ram Upadhya. We ought to point out that the learned Judge has misconstrued the effect of the observations on which he relies. What the said Judgment has held is that while Art. 310 provides for a tenure at pleasure of the President or the Governor, Art. 309 enables the legislature or the executive as the case may be, to make any law or rule in regard inter alia, to conditions of service without impinging upon the overriding power recognised under Art. 310. In other words, in exercising the power conferred by Art. 309, the extent of the pleasure recognised by Art. 310 cannot be affected, or impaired In fact, while stating the conclusions in the form of propositions, the said judgment has observed that the Parliament or the Legislature can make a law regulating the conditions of service without affecting

(1) A.I.R. 1963 Assam 94
(2) [1961] 2 S.C.R. 6
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the powers of the President or the Governor under Art. 310 read with Art. 311. It has also been stated at the same place that the power to dismiss a public servant at pleasure is outside the scope of Art. 154 and, therefore, cannot be delegated by the Governor to- a subordinate officer and can be exercised by him only in the manner prescribed by the Constitution. In the context, it would be clear that this latter observation is not intended to lay down that a law cannot be made under Art. 309 or a Rule cannot be framed under the proviso to the said Article prescribing the procedure by which, and the authority by whom, the said pleasure can be exercised. This observation which is mentioned as proposition number (2) must be read along with the subsequent propositions specified as (3), (4), (5) & (6). The only point made is that whatever is done under Art. 309 must be subject to the pleasure prescribed by Art. 310. Naidu J. was, therefore, in error in holding that the majority decision of this Court in the case of Babu Ram Upadhya(1) supported his broad and unqualified conclusion that R. 149(3) was invalid for the sole reason that the

power to terminate the services had been delegated to the Railway Administration.

In the result, the four appeals in the first group succeed and are allowed. The writ petitions filed by the four appellants in the three High Courts are granted and orders directed to be issued in terms of the prayers made by them. The appellants would be entitled to their costs from the respondents. The three appeals in the second group fail and are dismissed with costs. One set of hearing fees in each group.

SUBBA RAO J--I agree that the impugned rules infringe both Art. 14 and Art. 311(2) of the Constitution and are, therefore, void. On 1 Art. 14, 1 have nothing more to say. But on the impact of the said rules on Art. 311 of the Constitution, I would prefer to give my own reasons.

The short but difficult question is whether 148 of the Indian Railway Establishment Code,

(1) [1961] 2 S.C.R. 679.

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Vol. 1 (1951) and r. 149 of the revised edition of the said Code of the year 1959 replacing r. 148 of the Code of 1951 edition impinge upon the constitutional safeguard given to a person holding a civil post under the Union Government under Art. 311(2) of the Constitution. While Art. 311(2) of the Constitution prohibits the State from dismissing or removing or reducing in rank a civil servant until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, rr. 148 and 149 of the said Code in effect enable the Government to terminate his services after issuing the prescribed notice thereunder' Prima facie the said rules are in conflict with Art. 311(2) of the Constitution. Broadly stated, the contention of the State is that a Union civil servant holds his office during the pleasure, of the President, that Art. 311 is not really a limitation on the exercise,of that pleasure, that it only prescribes safeguards against the imposition on him of three unmerited specified penalties, viz., dismissal, removal and reduction in rank, and that the termination of his services for a reason other than misconduct personal to the civil servant is not comprehended by any of the said penalties. The further argument is that the "doctrine of pleasure" implies that a civil servant has no right to an office even in a case where he has a substantive lien on a post and that in any event he has none when there is a specific rule that his services can be terminated after the prescribed notice.

This Bench of seven Judges has been constituted to steer clear of conflicting observations, if any, found in the judgments of this Court and to arrive at a conclusion of its own unhampered by such observations. I would, therefore, proceed to consider the relevant provisions in accordance with the natural tenor of the expressions used therein and then to scrutinize whether any of my conclusions would be in conflict with any of the decisions of this Court. At the outset I must make it clear that I propose to confine my discussion only to the question of termi-

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nation of services of a permanent civil servant. None of the observations I may make is intended to have any bearing on the question of termination of the services of other categories of servants.

As the argument of the learned Additional Soli citor-General is based upon the doctrine of pleasure, it would be convenient at the outset to ascertain the precise scope of the doctrine in the context of the Indian Constitution.

Article 309 is subject to the provisions of the Constitution

and, therefore, is subject to Art. 310 thereof Article 311 imposes two limitations on the doctrine of pleasure declared in Art. 310. The gist of the said provisions is this: Under Art. 309 of the Constitution the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State; and until provision in that behalf is made, the President or such person as he may direct may make rules regulating the recruitment and conditions of service of persons appointed to the said services and posts in connection with the affairs of the Union. In its ordinary meaning the expression "conditions of service" takes in also the tenure of a civil servant. Under Art. 310, such a civil servant holds office during the pleasure of the President; but Art. 311 imposes two conditions to be satisfied before a civil servant can be dismissed, or removed or reduced in rank, namely, (i) he shall not be dismissed, removed or reduced in rank by an authority subordinate to that by which he was appointed, and (ii) he shall be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. A combined reading of these provisions indicates that the rules made under Art. 309 are subject to the doctrine of pleasure; and that the doctrine of pleasure is itself subject to two limitations imposed thereon under Art. 31 1. This tenure at pleasure is a concept borrowed from English law, though it has been modified to suit the Indian conditions.

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The English law on the doctrine of tenure at pleasure has now become fairly crystallized. Under the English law, all servants of the Crown. hold office during the pleasure of the Crown. The right to dismiss at pleasure is an implied term in every contract of employment under the Crown. This doctrine is not based upon any prerogative of the Crown but on public policy. If the terms of appointment definitely prescribe a tenure for good behavior or expressly provide for a power to determine for a cause, such an implication of a power to dismiss at pleasure is excluded, and an Act of Parliament can abrogate or amend the said doctrine of public policy in the same way as it can do in respect of any other part of common law. (see The State of U.P. v. Babu Ram Upadhya (1).

Section 96-B of the Government of India Act, 1915, for the first time in 1919, by an amendment, statutorily recognized this doctrine, but it was made subject to a condition that no person in the service might be dismissed by an authority subordinate to that by which he was appointed. Section 240 of the Government of India Act, 1935, imposed another limitation, namely, that a reasonable opportunity of showing cause against the action proposed to be taken in regard to a person must be given to him. But neither of the two Acts empowered the appropriate Legislature to make a law abolishing or amending the said doctrine. The Constitution of India practically incorporated the provisions of s. 240 and s. 241 of the Government of India Act, 1935, in Arts. 309 and 310. The English doctrine has been enlarged in one direction and restricted in another: while Parliament has no power to deprive the President of his pleasure, the said pleasure is made subject to two limitations embodied in Art. 311. The English concept is considerably modified to suit the conditions of our country. It is, therefore, not correct to say that Art. 311 is not a limitation on the power of the President to terminate the services of a Union civil servant at his pleasure. To accept the

argument that the
(1) [1961] 2 S.C.R. 679, 696.
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relevant expression in Art. 311 shall be so construed as to give full sway to the doctrine is to ignore the limitations on that doctrine. Both Art. 310 and Art. 311 shall be read together and, if so read, it is manifest that the said doctrine is subject to the said two conditions.
What is the scope of the relevant words, "dismissed" and "removed' in Art. 311 of the Constitution? The general rule of interpretation which is common to statutory provisions as well as to constitutional provisions is to find out the expressed intention of the makers of the said provisions from the words of the provisions themselves. It is also equally well-settled that, without doing violence to the language used, a constitutional provision shall receive a fair, liberal and progressive construction, so that its true objects might be promoted. Article 311 uses two well-known expressions, "dismissed" and "removed". The Article does not, expressly or by necessary implication, indicate that the dismissal or removal of a Government servant must be of a particular category. As the said Article gives protection and safeguard to a Government servant who will otherwise be at the mercy of the Government, the said words shall ordinarily be given a liberal or at any rate their natural meaning, unless the said Article or other Articles of the Constitution, expressly or by necessary implication, restrict their meaning. I do not see any indication anywhere in the Constitution which compels the Court to reduce the scope of the protection. The dictionary meaning, of the word "dismiss" is "to let go; to relieve from duty". The word " remove' " means "to discharge, to get rid off, to dismiss". In their ordinary parlance, therefore, the said words mean nothing more or less than the termination of a person's office. The effect of dismissal or removal of one from his office is to discharge him from that office. In that sense, the said words comprehend every termination of the services of a Government servant. Article 311(2) in effect lays down that before the services of a Government servant are so terminated,
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he must be given a reasonable opportunity of showing cause against such a termination. There is no justification for placing any limitation on the said expressions, such as that the dismissal or removal should have been the result of an enquiry in regard to the Government servant's misconduct. The attempt to imply the said limitation is neither warranted by the expressions used in the Article or by the reason given, namely, that otherwise there would be no point in giving him an opportunity to defend himself If this argument the correct, it would lead to an extraordinary result, namely, that a Government servant who has been guilty of misconduct would be entitled to a "reasonable opportunity" whereas an honest Government servant could be dismissed without any such protection. In one sense the conduct of a party may be relevant to punishment; ordinarily punishment is meted out for misconduct, and if there is no misconduct there could not be punishment. Punishment is, therefore, correlated to misconduct, both in its positive and negative aspects. That is to say punishment could be sustained if there was misconduct and could not be meted out if there was no misconduct. Reasonable opportunity given to a Government servant enables him to establish that he does not deserve the punishment, because he has not been guilty of misconduct. That apart, a Government servant may be

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

Now let me see whether the history of this constitutional provision countenances any such limitation on the meaning of the said expressions. As we have already noticed, the concept of tenure at pleasure was first introduced in the Government of India Act, 1919. Under s. 96-B of that Act,

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> "(1) Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed..."

It will be seen that under this section the said concept was introduced subject to a condition; it may also be noticed that the section used only one word "dismissed". In England, under that doctrine, services of a Government servant, whether he is a permanent or a temporary servant, can be terminated without any cause whether he is guilty of misconduct or not. Therefore, when the word "dismissed" is used in s. 96-B of the Act in the context of the exercise of His Majesty's pleasure, that word must have been used in the natural meaning it bears, i.e. terminated. But that section was subject to the provisions of the rules 'made under that Act. In exercise of the power conferred under the Act on the Secretary of State for India in Council, he framed certain rules in December 1920 and with subsequent modifications they were published on May 27, 1930. The said rules were designated as the Civil Services (Classification, Control and Appeal) Rules. Rule 49 of those Rules provided for certain penalties and cl. (6) thereof dealt with "Removal from the civil service of the Crown, which does not disqualify from future employment", and cl. (7) provided for dismissal from the civil service of the Crown, "which ordinarily disqualified from future employment". The explanation to that rule read thus:

> 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

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> (b) of a temporary Government servant appointed otherwise than under contract, in accordance with rule 5 of the Central Civil Services (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."

The explanation makes it clear that the three specified categories of termination covered by the explanation would amount to dismissal or removal but for the explanation. That is to say, the expression "termination" is synonymous

with the term "dismissal" or "removal". Rule 55 of the Rules provided a machinery for dismissing or removing or reducing in rank a Government servant; he should be given thereunder an adequate opportunity to defend himself. Then came the Government of India Act, 1935. In s. 240 thereof, the expression used was "dismissed" and that term, in the context of the exercise of His Majesty's pleasure, could have meant only "termination" of services, though in view of the explanation to r. 49 of the Rules quoted above, the three specified categories of termination mentioned in the explanation might, by construction, be excluded from the natural meaning of the word "dismissal". Then we come to Art. 311 of the Constitution, which with certain modifications incorporated the provisions of s. 240 of the Government of India Act, 1935. It introduced the expression "removed" in addition to the word "dismissed" presumably inspired by rr. 49 and 55 of the Rules. The natural meaning of the said terms takes in every act of termination of service; but, if construed with the help of r. 49 of the Rules, their meaning may be cut down by excluding the three categories of termination covered by the explanation in the manner prescribed therein. If the termination was otherwise than that prescribed therein, it would still be dismissal or removal. If so, the history of the constitutional provisions may
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lead to the conclusion that though the words "dismissed" and "removed" are words of widest connotation, namely "termination" of service of any category held under the Union, they were used in the limited sense they bear in r. 49 of the Rules, that is to say termination of employment excluding the three categories mentioned in the explanation. So far the words "removed" and "dismissed" are concerned, r. 49 shows that there is no appreciable difference between the two except in the matter of future employment; and Art. 31 1, presumably, copied the two words from r. 49.

Therefore, whether the natural and dictionary meanings of the words "dismissal" and "removal" were adopted or the limited meanings given to those words by r. 49 were accepted, the result, so far as a permanent employee was concerned, would be the same, namely that in the case of termination of services of a Government servant outside the three categories mentioned in the explanation, it would be dismissal or removal within the meaning of Art. 311 of the Constitution with the difference that in the former the dismissed servant would not be disqualified from future employment and in the latter ordinarily he would be disqualified from such employment.

If so, it follows that if the services of a permanent Government servant, which fall outside the three categories mentioned in the explanation, were terminated, he would be entitled to protection under Art. 311(2) of the Constitution.

With this background let me now scrutinise the leading judgment of this Court on the subject, namely, Parshotam Lai Dhingra v. Union of India (1). That was a case of reversion of a Government servant who was officiating in Class 11 Service as Assistant Superintendent, Railway Telegraphs, to his substantive post in Class III Service. This Court, speaking through Das C.J., gave an exhaustive treatment to the scope of Art. 311(2) of the Constitution, parti-

(1)[1958] S.C.R. 828.
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cularly with reference to the meaning of the expressions "dismissed", "removed" or "reduced in rank" found therein.

A careful reading of the judgment shows that this Court has heavily relied upon r. 49 of the Civil Services (Classification, Control and Appeal) Rules, and its explanation, and attempted to give a legal basis for the said provisions. On that basis, having considered the different aspects of the problem, the Court has laid down the following two tests at p. 863, to ascertain whether a person is dismissed or removed within the meaning of Art. 311 of the Constitution; (1) Whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore reference to i.e., loss of pay and allowances, loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion If an officer had a right to a post or rank and if the termination of his services deprived him of that right the said termination would be dismissal or removal as punishment. So too, if the termination had the effect of the officer being visited with evil consequences then whatever may be the phraseology used for putting an end to his services, it would be dismissal as punishment. The motive operating on the mind of the authority concerned or the machinery evolved or the method adopted to put an end to his services are not relevant in considering the question whether he was dismissed, if he had a right to the office or if he had been visted with evil consequences, though the said circumstances may have some relevance as other decisions of this Court disclose, in ascertaining whether he was discharged with a stigma attached to him. While conceding that this decision does not in terms specifically lay down that even in the case of a person holding a permanent post, if there was an appropriate term in the conditions of service that his services could be terminated by notice, Art. 311 of the Constitution would not be attracted, it is contended that raison d'etre of the decision and some passages therein lead to that conclusion. Some of the passages relied upon may be extracted:

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At pp. 857-858:

> "It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation o r is com- pulsorily retired and in the absence of a contract express or implied, or a service rule he cannot be turned out of his post unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311(2)."

At p. 862:

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

These passages certainly lend support to the argument of the learned counsel, but the qualifying clauses on which reliance is placed are only incidental observations. The main principles relevant to the present enquiry were laid down by the Court clearly and precisely at p. 860, thus:

> "Shortly put, the principle is that when a

servant has right to a post or to a rank either under the terms of the contract of employment; express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto."

The following observation further pinpoints the principle;

"One test for determining whether the termination of the service of a government servant

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is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post."

This decision, therefore, clearly lays down, without any ambiguity, that if a person has a right to hold office under the service rules or under a contract the termination of his services would attract Art 311 of the Constitution. It also lays down that a person holding a substantive lien on a permanent post has a right to such office. It does not say, expressly or by necessary implication, that even if a person is deprived of such a right, it will not be punishment unless it is inflicted for misconduct in the manner prescribed by the service rules.

Learned Additional Solicitor-General further relied upon the decisions of this Court holding that a rule empowering the Government to compulsorily retire a permanent Government servant before that age of superannuation did not violate Art. 311 of the Constitution and contended that, on parity of reasoning, the impugned rules should likewise be valid. It was asked, with considerable force, what relevant distinction there could be between the said two categories of rules in the context of the question whether the termination of services was dismissal or not within the meaning of Art. 311 of the Constitution? In the case of a Government servant, the argument proceeded, in either case he was deprived of his title to office and, therefore, both cases were equally covered by the principle laid down in Dhingra's case(1). This argument certainly deserves serious consideration.

The relevant rules pertaining to compulsory retirement of a permanent Government servant considered by this Court in the various decisions relied upon by learned counsel may now be noticed. In Shyam Lal's case (2) which is the sheet-anchor of the appellants' argument, the rule under consideration was Note 1 to Art. 465-A of the Civil Services Regulations. The said Note read:

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

(2) [1955] 1 S.C.R, 26

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"Government retains an absolute right to retire any officer after he has completed twenty-five years qualifying service without giving any reasons, and no claim to special compensation on this account will be' entertained. This right will not be exercised except when it is in the public interest to dispense with the further services of an officer."

The rule considered in The State of Bombay v. Saubhagchand M. Doshi (1) was r. 165-A of the Bombay Civil Services

Rules, applicable to the State of Saurashtra, and it read:

> "Government retains an absolute right to retire any Government servant after he has completed 25 years qualifying service or 50 years of age, whatever the service, without giving any reason, and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is in the public interest to dispense with the further services of a Government servant such as on account of inefficiency or dishonesty."

Rule 3 of the Railway Services (Safeguarding of National Security) Rules, 1949, was under consideration in Balakotaiah v. The Union of India(2) and it read:

"A member of the Railway Service who, in the opinion of the competent authority is engaged in or is reasonably suspected to be engaged in subversive activities, or is associated with others in subversive activities in such manner as to raise doubts about his reliability, may be compulsorily retired from service, or have his service terminated by the competent authority after he has been given due notice or pay in lieu of such notice in accordance with the terms of his service agreement:

Provided that a member of the Railway Service shall not be retired or have his service so terminated unless the competent authority is satisfied that his retention in public service is prejudicial to national security, and unless,

(1) [1958] S.C.R. 571.

(2) [1958] S.C.R. 1052.

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where the competent authority is the Head of a Department, the prior approval of the Governor-General has been obtained."

In Union of India v. Jeewan Ram(1) this Court had to consider sub-rr. (3) and (4) of r. 148 of the Indian Railway Establishment Code, Vol. 1. The rule which was under scrutiny in Dalip Singh v. The State Punjab(2) was r. 278 of the Patiala State Regulations, which read:

> "For all classes of pensions the person who desires to obtain the pension is required to submit his application before any pension is granted to him.
>
> The State reserves to itself the right to retire any of its employees on pension on political or on other reasons."

The cases of Shyam Lal and Doshi were decided before Dhingra's case and the cases of Dalip Singh and Balakotaiah, after Dhingra's. In all the cases, under the relevant rules the age of superannuation was fixed but the order of compulsory retirement was made before the Government servant reached the age of superannuation. The rule in Shyam Lal's case ex facie declares that the right will not be exercised except when it is in the public interest to dispensed with the further services of an officer indicating thereby that the compulsory retirement is imposed as punishment for some sort of dereliction of duty on his part and, therefore, the termination of service under that rule necessarily carries a stigma with it. The rule in Doshi's case(3) iS more emphatic than that in Shyam Lal's case: the rule in Doshi's case elaborate what is implicit in the rule considered in Shyam Lal's case and declares that the right there under

shall be exercised by the Government only in the case of inefficiency or dishonesty of the Government servant Rule 3 of the Railway Services (Safeguarding of National Security) Rules considered in Balakotaiah case (4) expressly says that the order of compulsory retirement will be made for misconduct defined therein.

(1) A.I.R. 1958 S. C. 905. (2) [1961] 1 S.C.R. 8
(3) [1958] S.C.R. 571. (4) [1958] S.C.R. 105
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The rule in Dalip Singh's case(1) gives a very wide power to the State to retire any of its employees on pension on political or other reasons before the age of superannuation. In short the rules dealt with in the first three decisions expressly conferred an absolute power on the appropriate authority to terminate the services of a Government servant for misconduct, and the rule in the fourth decision went further and enabled the appropriate authority to dismiss the servant for any reason. It may also be noticed that in Doshi's cases(2) this Court expressed the view that "when there is no rule fixing the age of compulsory retirement or if there is one and the servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Art. 311(2) of the Constitution". The emphasis appears to be more on the existence of a rule of compulsory retirement than on the character of the termination itself. But this reservation was not accepted by the Court in Dalip Singh's case(1), that is to say, the emphasis is shifted to the existence of a rule of termination detracting from the permanency of the post.

Pausing here a moment, I ask myself the question whether these decisions can be reconciled with the aforesaid principles laid down in Dhingra's case(3). In Dhingra's case this Court held that a termination of the services of a Government servant, who has substantive lien on a permanent post, that is to say a title to his office, is dismissal or removal within the meaning of Art. 311(2) of the Constitution. In the aforesaid three decisions the Government servant concerned had substantive lien on a permanent post, but he was compulsorily retired before the age of superannuation depriving him of his title to the post. it is neither the phraseology used in respect of nor the nomenclature given to the act of termination of service that is material but the legal effect of the action taken that is decisive in considering the question whether a Government servant is dismissed or not. Whether the services of a permanent Government servant are

(1) [1961] 1 S. C. R. 88
(3) [1958] S.C.R. 828.
(2) [1958] S. C. R. 571
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terminated by giving him 15 days' notice or whether his services are dispensed with before the age of superannuation by way of compulsory retirement under or outside a rule of compulsory retirement, the termination deprives him of his title to the permanent post. If in the former case it amounts to dismissal, in the latter case it must be equally so. I would, prefer the principle laid down in Dhingra's case (1) in the matter of termination of the services of a permanent Government servant to that laid down in the said other decisions.

Rule 148 of the Railway Establishment Code, Vol. 1, was considered both in Balakotaiah's case (2) and in Jeewan Ram's case(3): in the former, though there were some observations in support of the appellants' contention, the

question of construction of the rule was expressly left open, and in the latter though the Government servant concerned was discharged under that rule, the decision proceeded on the basis that he was expressly removed for misconduct.

A number of decisions of the High Courts are cited. I have gone through them carefully. I am not referring to them in detail, as, though some of the judgments contain instructive discussion on though subject, they practically extended the principle of Shyam Lal's case(4) and held that the termination of service, such as under r. 148(3), was not dismissal within the meaning of Art. 311 of the constitution As, in my view, Shyam Lal's case must yield to Dhingra's case, a further discussion of the said decisions is not called for.

The effect of the two rules is the same; the difference is only superficial, which lies more in clever drafting than in their content. Take for instance the following two rules: (i) the Government may terminate the services of a permanent Government servant at any time, or after a specified period but before the normal superannuation age, by way of compulsory retirement; and (ii) the Government may terminate

(1) [1958] S. C. R. 828
(3) A. 1. R. 1958 S. C. 905
(2) [1958] S. C. R. 1052
(4) [1955] S. C. R. 26

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the services of a permanent civil servant by giving him 15 days' notice. Arbitrariness is writ large on both the rules: both the rules enable the Government to deprive a permanent civil servant of his office without enquiry. Both violate Art. 311(2) of the Constitution. Both must be bad or none at all.

The following principles emerge from the aforesaid discussion. A title to an office must be distinguished from the mode of its termination. It a person has title to an office, 'he will continue to have it till he is dismissed or removed therefrom. Terms of statutory rules may provide for conferment of a title to an office and also-for the mode of terminating it. If under such rules a person acquires title to an office, whatever mode of termination is prescribed, whatever phraseology is used to describe it, the termination is neither more nor less than a dismissal or removal from service; and that situation inevitably attracts the provisions of Art. 311 of the Constitution. The argument that the mode of termination prescribed derogates from the title that otherwise would have been conferred on the employee mixes up two clear concepts of conferment of title and the mode of its deprivation. Article 311 is a constitutional protection given to Government servants, who have title to office, against arbitrary and summary dismissal. It follows that Government cannot by rule evade the provisions of the said Article. The parties cannot also contract themselves out of the constitutional provision.

Once that principle is accepted the cases dealing with compulsory retirement before the age of superannuation cannot also fall outside the scope of Art. 311 of the Constitution. Age of superannuation is common to all permanent civil servants: it depends upon an event that inevitably happens by passage of time, unless the employee dies earlier or resigns from the post. It does not depend on the discretion of the employer or the employee; it is for the benefit of the employee who earns a well-earned rest with or without pensionary benefits for the rest of his life; it has, by custom and by convention, become

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an inextricable incident of Government service; and it is an incident of a permanent post. Notwithstanding the rule fixing an age of superannuation, a person appointed to such a post acquires title to it. The same cannot be said of a compulsory retirement before the age of superannuation. It is not an incident of the tenure; it does not work automatically it is not conceived in the interest of the employee it is a mode of terminating his employment at the discretion of the appointing authority. In effect whatever may be the phraseology used in terminating the services of a Government employee, it is punishment imposed on him, for it not only destroys his title but also inevitably carries with it a stigma such a. termination is only dismissal or removal within the meaning of Art. 311 of the Constitution.

I would, therefore, with greatest respect, follow the principle laid down in Dhingra's case(1) in respect of permanent servants in preference to that accepted by Shyam Lal's case(2) and the subsequent decisions following it.

Now let me turn to the relevant rules of the Indian Railway Establishment Code, hereinafter called that Code. The Code is in two volumes. The first volume embodies all rules governing the service conditions of railway servants with the exception of those rules which correspond to the Fundamental Rules, Supplementary Rules, Pension Rules and the Civil Service Regulations applicable generally to all civil servants under the Government of India. The excepted rules are included in Vol. 11 of the Code. Fundamental Rules embodied in Vol. 11 of the Code describe, inter alia the cadre-strength, the different posts in the cadre and the nature of the appointments made in respect of such posts. Broadly the posts are divided as permanent, officiating, temporary and for definite periods. Rule 2003 (14) defines lien to mean th title of a railway servant to hold substantively either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substan-

(1) [1958] S.C.R. 828.
(2) [1955] 1 S.C.R. 2

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tively. Under r. 2006, "Unless in any case it be otherwise provided in these Rules, a railway servant. on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post". Under r. 2009, "A railway servant's lien on a post may, in no circumstances, be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post." Rule 2042 provides that the pay and allowances of a railway servant who is removed or dismissed from service ceases from the date of the order of removal or dismissal. Rule 2046, under the heading "Compulsory Retirement", fixes the age of superannuation for different categories of service. These rules clearly lay down that a. railway servant on a substantive appointment to a permanent post acquires a lien on that post and he does not lose it till he attains the age of superannuation or is dismissed or removed in the manner prescribed; that is, he acquires a title to hold substantively a permanent post. It is not of much relevance to give any particular nomenclature to that post. It may not be a life tenure. It may not also be a permanent post in the literal sense of the term, but it confers a title to that post with all the advantages appertaining to that post and ordinarily it comes to an end only on the incumbent attaining the age of superannuation, with or without

pensionary benefits. Briefly stated, the aforesaid Fundamental Rules embodied in Vol. 11 of the Code create offices of stability and security which for all practical purposes are permanent posts. If so, the termination of services of such a servant can only be dismissal or removal, for he will be deprived of his title to the said office. If that was the legal position, for the reasons already given, the said r. 148(3) And r. 149, conferring a power on the appointing authority to remove such a permanent servant on notice would infringe the constitutional protection given to a Government servant under Art. 311 of the Constitution. A permanent post and such rules cannot stand together: the latter must inevitably yield to the former.

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I therefore, hold that r. 148(3) and r. 149 of the Railway Establishment Code, being violative of the provisions of Arts. 14 and 311 of the Constitution are void and unenforceable.

In the result, I agree that Civil Appeals Nos 711 to 713 of 1962 and Civil Appeal No. 714 of 196 should be allowed with costs and that Civil Appeal Nos. 837 to 839 of 1963 should be dismissed wit costs.

DAS GUPTA J.-The principal question raised in the four appeals which have been numbered 711 to 714 of 1962 is as regards the validity of Rule 148 (3) of the Indian Railway Establishment Code in respect of certain non-pensionable railway servants that their services shall be liable to termination on notice for the period as prescribed therein. The appellants-all railway employees-whose services had been terminated on notice in accordance with the above provision and who have failed to obtain relief against the orders of termination challenge the validity of this provision on two grounds. Their first contention is that this Rule in providing for termination of service on mere notice contravenes the provisions of Art 311(2) of the Constitution; secondly, it is contended that the Rule violates Art. 14 of the Constitution It will be necessary to examine these two grounds separately.

Is the termination as provided for in the above provision, in Rule 148 (3) 'removal' or 'dismissal within the meaning of Art. 311(2) of the Constitution? That is the question that falls to be answered for deciding the first grounds. To answer this against we have to determine first the connotation of the two words 'removal' and 'dismissal' as used in Art. 311(2). In my opinion, this matter is completely covered by numerous decisions of this Court.

Before turning to the decisions however it will be convenient to examine the matter in the context in which Art. 311 (2) appears in the Constitution and also the historical background of the protection afforded thereby. For this purpose it is necessary first to consider the three Articles of the Constitu-

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tion, viz., Arts. 309, 310 and 311. They are in these words:-

> "309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State : -
> Provided that it shall be a competent for the President or such persons as he may direct in the case of services and posts in connection with the affairs of the Union and for the

Governor or Rajpramukh of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provisions in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect, subject to the provisions of any such Act.

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 of an all-India service or holds and 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 Raj-pramukh 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 civil service of, the

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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 perso
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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.

311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil. post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Provided that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing it is not reasonably practicable to give to that person

an opportunity of showing cause; or
(c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.
(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered
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to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

It has to be noticed that both Articles 309 and 310 are subject to Art. 31 1. In other words, if any rule is made under Art. 309 as regards the conditions of service of a government servant in the matter of his dismissal or removal or reduction in rank it has to comply with the requirements of Art. 31 1. Again, before any order dismissing or removing or reducing a government servant in rank is made by the President or the Governor in exercise of his pleasure, the President or the Governor has to comply with the requirements of Art. 311(2) of the Constitution. Under Art. 310 all servants of the State hold office at pleasure --of the President or the Governor as the case may be. That by itself means that the officer has no right to be heard before his services are terminated. To this Art. 311 provides an exception in the case of removal or dismissal. It is easy to see that if every termination of service amounted to dismissal or removal the resultant position will be that every officer would have the right to be heard before any action could be taken under Art. 310. That would leave no field in which Art. 310 could operate. This by itself is sufficient to show that not all kinds of termination of service were intended to come within Art. 311. Reading Articles 310 and 311 together it will be reasonable to understand them to say that the officer will have the right to be heard before his services were terminated by dismissal or removal but in all other cases of termination of his service he will not have any such right.

I have therefore no hesitation in rejecting the extreme proposition urged on behalf of the appellants that the words dismissal or removal in Art. 311 include every kind of termination of service.

This brings us to the question : what kinds of termination of service come within the words dismissal or removal and what kinds are not. Taking the second Dart of the question first, it is not difficult to mention at least two kinds of termination which
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cannot reasonably be included within the words dismissal or removal. Take for instance the case where a government servant resigns his post but the resignation is not under the rules effective before it has been accepted by his superiors. Here termination results only when the superior officer accepts the resignation. It may be correct to say that thereby he terminates the service. But it could not reasonably be said that the superior officer has removed the servant from service or dismissed him from service. Such removal or dismissal was not necessary at all because of the resignation. Take again the case of a servant who has been appointed to an office for a period of three years. When

the three-year period ends he is asked to go. There is termination of service. But nobody would said that the superior officer by asking him to go at the end of the period had dismissed him or removed him from service. The real question however is not so much as what in common parlance would be understood to be the dismissal or removal but what the Constitution intended by these words.

In this connection it will be helpful to examine the use of the words dismissal and removal in the earlier Constitution Acts. The Charter Act of 1793 mentions in s. 36 that nothing in this Act contained shall extend, or be construed to extend to preclude or take away the power of the Court of Directors of the said Company from removing or recalling any of the officers or servants of the said Company, but that the said Court shall and may at all times have full liberty , to remove, recall, or dismiss any of such officers or servants, at their will and pleasure in the like manner as if this Act had not been passed Section 35 made it lawful to and for the King's Majesty his heirs and successors, by any writing or instrument under him or their sign manual, countersigned by the President of the Board of Commissioners for the affairs of India, to remove or recall any person or person holding any office, employment, or commission, civil or military, under the said United Company

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in India for the time being. In the Charter Act of 1833, similar provisions were enacted in ss. 74 and 75. Section 74 make it lawful "for His Majesty by any Writing under His Sign Manual,countersigned by the President of the said Board of Commissioners, to remove or dismiss any person holding any office, employment or commission, civil or military, under the said Company in India, and to vacate any Appointment or Commission of any person to any such office or employment."

Section 75 ran thus:-

> "Provided always, and be it enacted, that nothing in this Act contained shall take away the Power of the said Court of Directors to remove or dismiss any of the officers or servants of the said Company but that the said Court shall and may at all Times have full Liberty to remove or dismiss any of such officers or servants at their will and pleasure.....

When the Act of 1,858 transferred the government of India to Her Majesty the Queen of England section 38 of the Act provided that.

> "Any writing under the Royal Sign Manual removing or dismissing any person holding any office employment or commission, civil or military in India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the Chairman or Deputy Chairman of the Court of Directors, shall, in lieu thereof, be communicated within the time aforesaid to the Secretary of State in Council."

It seems to me that in making these statutory provisions as regards dismissal or removal of public servants the British Parliament had in mind those servants only who had acquired such a right to the post under their conditions of service that but for such statutory provisions their dismissal or removal would have been unlawful. If their service was terminable by the ordinary law of the land there

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would have been no need in s. 36 of the 1793 Act or s. 75 of the 1833 Act to speak of the right of the Court of Directors of the Company to remove or dismiss the Company's officers or servants at their will and pleasure. It is clear that by these provisions the British Parliament was emphasizing the right of the Court of Directors of the Company to remove, or dismiss such servants whose services would not have been terminable under the ordinary law of master and servant. It is also legitimate to read the provisions making it lawful for the King of England to remove or dismiss the Company's servants (s). 35 in the Charter Act of 1793 and s. 75 of the Charter Act of 1833) as intended to terminate the service of the same class of servants, viz., those whose services were not terminable under the ordinary law of the land.

In the light of this legislative history, the words removal and dismissal in s. 38 :of the Act of 1858 and thereafter in the Government of India Act, 1915 (Section 95 and s. 96B) cannot but be read also to mean termination of service of such servants only who would not have been liable to termination under the ordinary law of master and servant. In other words, only those servants who by their terms and conditions of their appointment to the service bad acquired a right to continue for a particular period which could not under the ordinary law be put an end to were intended to get the benefit of these provisions as regards dismissal or removal.

By the time the Government of India Act., 1935, came to be enacted by Parliament rules had been framed by the Secretary of State in Council under s. 96B of the Government of India Act, in which these words, removal and dismissal, were used. Among the rules framed under this section in 1924 was Rule XIII, which was in these words:-

> "Without prejudice to the provisions of any law for the time being in force, the Local Government may for good and sufficient reasons:
> (1) Censure
> (2) Withhold promotion from
> 758
> (3) Reduce to a lower post
> (4) Suspend
> (5) Remove, or
> (6) Dismiss

any officer holding a post in a provincial or subordinate service or a special appointment."

In the fresh set of rules framed in 1930 Rule 49 took the place of Rule XIII of the earlier Rules and was in these words:-

"R. 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 classes (1) to (5) specified in Rule XIV namely:-

> (i) Censure,
> (ii) withholding of increments or promotion
> (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 discharge-

(a) of a person appointed on probation, during the period of probation,

(b) of a person appointed otherwise than under contract to hold a temporary appointment, on the expiration of the period of the appointment,

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(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 Rules show that the Secretary of State in Council considered removal and dismissal from the service of the Crown only as penalties. Explanation to Rule 49 of the 1930 Rules also shows that discharge from service of a person who had not acquired a right to the post was not considered to be removal or dismissal.

When the British Parliament made special provision in the Government of India Act, 1935 as regards removal or dismissal of persons in the civil service of the Crown it had before it not only the history of these words-removal and dismissal--in the Charter Act 1793, Charter Act of 1833, Government of India Act, 1858, the Government of India Act, 1915 but also these Rules framed by the Secretary of State in Council.

It is reasonable to think therefore that in making these special provisions in the 1935 Act the British Parliament proceeded on the basis that only terminations of service by way of punishment which could not have been inflicted under the ordinary law of master and servant would come within these words--removal and dismissal. Primarily such terminations by way of punishment could be made only in respect of those servants who had not acquired a right to continue in service. It might however be said that even where there was no such right and termination could have been effected therefore under the ordinary law of contract between master and servant any termination which carried with it loss of benefits already acquired, say, forfeiture of pension or of provident fund was also contemplated to come within these words. Termination in no other case could be said to be by way of punishment and in the light of the previous history of the use of the words-removal and dismissal-in connection with the civil servants of the crown it appears to be abundantly clear that

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in the Government of India Act, 1935 the words removal and dismissal were not intended to include such other terminations.

When the Constitution was framed the provisions as regards removal and dismissal as contained in s. 240 of the Government of India Act were embodied 'in Arts. 310 and 311 with practically little change. Nothing has been shown to us to indicate that the Constitution makers could have meant by these words-removal and dismissal-in Art. 31 1, anything different from what the British Parliament had intended to include under those words in the Government of India Act, 1935.

The above consideration of the context an previous legislative history leads to the conclusion that the words 'removal' or 'dismissal' in Art. 311 meant only such terminations of service where the servant had acquired a right to continue in the post which right was cut short by

the termination and such other terminations even where there was no such right, as resulted in loss of acquired benefits. Turning now to the decided cases we find that the question now under consideration was fully discussed in this Court's decision in Parshotam Lal Dhingra v. Union of India(1). After an exhaustive discussion of appointments of Government servants to a permanent or temporary post, substantively or on probation or on an officiating basis, and numerous rules of service in connection with such appointments, Das C.J. speaking for the majority of the Court recorded the conclusion thus:-

> "It follows therefore that if the termination of service is sought to be brought about otherwise than by way of punishment, then the government servant whose service is so terminated cannot claim the protection of Art. 311(2)."
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> The learned Chief Justice went on to say:-
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> "The foregoing conclusion however does not solve the entire problem, for it has yet to
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> (1) [1958] S.C.R 829
>
> 761
>
> be ascertained as to when an order for the termination of service is inflicted as and by way of punishment and when it is not. It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired, and in the absence of a contract express or implied or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311(2). Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a pre-
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> mature end of his employment. Again, where a person is appointed to a temporary post for a fixed term of say five years his service cannot, in the absence of a contract or a service rule permitting its premature termination be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence inefficiency or other disqualifications and appropriate proceedings are taken under the rules read with Art. 311(2). The premature termination of the service of a servant so appointed will prima facie be a dismissal or removal from service by way of punishment and so within the purview of Art. 311(2).
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> At page 862, the learned Chief Justice again observed:-
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> In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted But even if the Government

has, by contract or under the rules, the right to terminate the
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employment without going through the procedure prescribed for inflicting the punishment of dismissal, or removal or reducing in rank, the Government may nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with."

At page 863, the learned Chief Justice observed thus:-

"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 as and by way of penalty."

Several years before this the question : what is meant by the words 'removal' or 'dismissal.' had been considered by this Court in Shyam Lal v. The State of Uttar Pradesh(1). Shyam Lai, the appellant, had been ordered to retire compulsorily under the provisions of Art. 465A of the Civil Service Regulations. On behalf of the appellant it was urged inter alia that this order was invalid as the provisions of Art. 311(2) of the Constitution had not been complied with. In deciding that the compulsory retirement did not amount to dismissal or removal within the meaning of Art. 311(2) of the Constitution the Court laid down that (1) every termination of service does not amount to removal or dismissal and (2) that dismissal or removal is a punishment imposed on an officer as a penalty which involves loss of benefit already earned

(1) [1955] (1) S.C.R. 26.

It was pointed out that on compulsory retirement an officer would not suffer any diminution of the accrued benefit and though in a wide sense the officer might consider himself punished by the deprivation of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get an enhanced pension, there is clearly a distinction between the loss of benefit already earned and the loss of prospect of earning something more; where the officer did not lose the benefit already earned the same was not dismissal or removal. At page 42 of the Report the Court said:

"Finally, Rule 49 of the Civil Service (Classification, Control and Appeal) Rules clearly indicates that dismissal or removal is a punishment. This is imposed on an officer as a penalty
It involves loss of benefit already earned."

In Doshi's Case( ) the Court had to consider an order of compulsory retirement made under Ruled 165A of the Bombay Civil Service Rules as amended by the Saurashtra Government which gave the Government an absolute right to retire any government servant after he had completed 25 years of

qualifying service or 50 years of age whatever his service without giving any reason. It was held that such an order was not 'removal' or 'dismissal' under Art. 311 of the Constitution. Speaking for the Court Venkatarama Aiyar J. said:-

> "Now the policy underlying Art. 311(2) is that when it is proposed to take action against a servant by way of punishment and that will entail forfeiture of benefits already earned by him, he should be heard and given an opportunity to show cause against the order. But that consideration can have no application where the 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
> (1) [1958] S.C.R. 571.
> 764
> be given effect to. Thus, the real criterion for deciding whether an order terminating the services of a servant is one of dismissal or removal is to ascertain whether it involves any loss or benefits previously earned. Applying this test, an order under R. 165A cannot be held to be one of dismissal or removal, as it does not entail forfeiture of the proportionate pension due for past services."

Hartwell's Case I was one of termination of a temporary servant under the U.P. Subordinate Agricultural Service, who for some time served in a temporary capacity in the U.P. Agricultural Service. He was first reverted to his original appointment in the Subordinate Agricultural Service by an order dated May 3, 1954 and later a notice dated September 13, 1954 was served on him terminating his services in the Subordinate Agricultural Service. The notice purported to be under Rule 25 Cl. 4 of the Subordinate Agricultural Service Rules. The Court held that the termination of the appellant's services under this rule did not amount to dismissal or removal within the meaning. of Art. 311 as it was in accordance with the terms of the conditions of service applicable to the appellant. Imam J. speaking for the Court observed:

> "In principle, we cannot see any clear distinction between the termination of the services 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 Art. 311 and was therefore a valid order."

The proposition that it is not every termination of service of an employee that falls within the operation of Art. 31 1 and that it is only when the order is by way of punishment that it is one of dismissal or removal was reaffirmed by this Court in Balakotich v. The Union of India (3). Reaffirming also the criteria indicated in Dhingar's Case(3) as to what amounted

(1) [1958] S.C.R. 509. (2) [1958] S.C.R. 1052.
(3) [1958] S. C. R. 829.
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to punishment for the purpose of Art. 311, Venkatarama Aiyar J. speaking for the Court observed:-

> "The question as to what would amount to

punishment for the purposes of Art. 311 was also fully considered in Parshotam Lal Dhingra's. Case(1) It was therein held that if a person had a right to continue in office either under the service rules or under a special agreement, a premature termination of his service would result in loss of benefits already earned and accrued, that would also be punishment."

Proceeding to apply this proposition to the facts of the case before it the Court said:-

"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. Rule 7 of the Security Rules preserves the rights of the employee to all the benefits of pension, gratuities and the like, to which they would be entitled under the rules. Thus, there is no forfeiture of benefits already acquired. It was stated for the appellants that a person who was discharged under the rules was not eligible for reemployment, and that was punishment. But the appellants are unable to point to any rule imposing that disability. The order terminating services under R. 3 of the Security Rules stands on the same footing as an order of discharge under R. 148, and it is neither one of dismissal nor of removal within the meaning of Art. 311."

The law as thus settled by this Court was again applied in Dalip Singh v. State of Punjab. (2) Dalip Singh who had been Inspector-General of Police, PEPSU, was compulsorily retired from service by the Rajpramukh by an order dated August 18, 1950 which ran as follows--

"His Highness the Rajpramukh is pleased to retire from service Sardar Dalip Singh, Inspector-

(1) [1958] S. C. R. 829.

(2) [1961] 1 S.C.R. 88.

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General of Police, PEPSU, (on leave) for administrative reasons with effect from the 18th August, 1950."

The appellant brought his suit asking for a declaration that the order by which he was removed from the post of Inspector-General of Police was unconstitutional, illegal, void, ultra vires and inoperative. Among the grounds on which this declaration was sought was that the compulsory retirement of the appellant which had been made under Regulation 278 of the Patiala State Regulations, was removal from service within the meaning of Art. 31 1 of the Constitution. Admittedly the requirements of Art. 311(2) had not been complied with in this case and so the question had to be decided whether such a retirement was removal or dismissal within the meaning of Art. 31 1. The question was answered by this Court in the negative for the reasons that the order did not amount to punishment because though an enquiry had been held against him the charges or imputations against him had not been made the condition of the exercise of the power of retirement and further because the officer was not losing the benefits he had already earned, as full pension was ordered to be paid. To emphasis the point that where compulsory retirement was in accordance with the rules of service it could not ordinarily be said to be by way of

punishment, the Court pointed out that where a rule of service provided for compulsory retirement at any age whatsoever irrespective of the length of service put in, a retirement understand a rule would not be regarded as dismissal or removal. An observation in Doshi's Case(1) which might appear to indicate otherwise was not followed it being pointed out that in Doshi's Case this matter did not fall to be considered. Under Rule 278 he State reserved to itself the right to retire any of its employees on pension on political or on other reasons. It did not mention any particular age for retirement under this Rule. Care was taken in this case to mention that if the rule would result in loss

(1) [1958] S. C. R. 571.

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of pension already earned, the termination would amount to removal or dismissal.

It is thus clear both on principle and on authority that the words removal and dismissal in Art. 311 of the Constitution mean and include only those terminations of service, where a servant had acquired a right to continue in the post on the basis of terms and conditions of service, and such other terminations, where though there were no such right, the order has resulted in loss of accrued benefits; and that terminations of service which did not satisfy either of these two tests do not come within any of these words.

Applying these tests to the termination of service under the provision of Rule 148 (3) of the Railway Code that "the service of other (non-pensionable) railway servants shall be liable to termination on notice on either side." I am of opinion that neither of these is satisfied. There is no doubt that this Rule applies not only to temporary railway servants but also to those railway servants who have been substantively appointed to permanent posts in the railways. A "permanent post", under the Fundamental Rules applicable to the railways means a post carrying a definite rate of pay sanctioned without limit of time. On substantive appointment the government servant has a lien on such post, i.e., the right to hold it substantively The right however is limited by all the terms and conditions of service. One of such conditions is in the provision in the Rule for compulsory retirement Rule 2046 of the Railway Code which corresponds to Fundamental Rule 56 provides that generally the date of compulsory retirement of a railway servant, other than a ministerial servant, is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the competent authority on public grounds, which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances. Clause 2 of Rule 2046 provides the rule of compulsory retirement for ministerial servants. Those government servants

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who have entered government service on or after the 1st April, 1938, and those who being in government service on the 31st March, 1938 did not hold a lien or a suspended lien on a permanent post on that date, shall ordinarily be required to retire at the age of 55 years, but if he continues to be efficient, should ordinarily be retained in service upto the age of 60 years but that he must not be retained after that age except in very special circumstances, which must be recorded in writing, and with the sanction of the competent authority.

These rules have been modified from time to time but

generally speaking a rule has always existed fixing the age beyond which a railway servant will not be allowed to be retained in service. If such a rule of compulsory retirement had not existed, the servant would have had the right to continue in the service till his death. The rule however limits that right, by providing in effect that the service would be terminated at a certain age. Rule 148(3) is just another rule, limiting the servant's right to continue in' service. It is as much a condition of service as Rule 2046 and in deciding the nature and extent of the right of a railway servant to whom Rule 148(3) applies to continue in service, Rule 148(3) is of as much importance as Rule 2046. A railway servant to whom Rule 148(3) applies has two limitations put on his right to continue-(1) termination on attaining a certain age and (2) termination on service of a notice under Rule 148(3). Where the service is terminated by the order of retirement under Rule 2046, the termination is of a service where the servant has not the right to continue. So, it is not 'removal' or 'dismissal'. Equally clearly and for the same reason, when the service is terminated by notice under Rule 148(3), the termination is not &removal' or 'dismissal'.

It has not been suggested that the second test of loss of accrued benefits is satisfied in terminations under Rule 148(3). If in any particular instance the order of termination entails loss of accrued benefits that will happen not because of anything in R. 148(3)

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but for some extraneous action. Where that happens it will be right to consider such terminations as removal or dismissal. But that consideration is foreign to the provisions of Rule 148(3).

1 have therefore come to the conclusion that the first ground raised by the appellants in challenging the validity of Rule 148(3)., viz., that it contravenes the provisions of Art. 311 of the Constitution must be rejected.

It is necessary now to consider the second ground urged by the appellants, viz., that Rule 148(3) contravenes Art. 14 of the Constitution. Two contentions are urged in support of this ground. First, it is urged that the Rule gives no guidance to the authority who would take action on it as regards the principle to be followed in exercising the power. Secondly, it is urged that the Rule discriminates between railway servants and other public servants. In my opinion, there is considerable force in the first contention. Classifying the statutes which may come up for consideration on a question of its validity under Art. 14 of the Constitution in Ram Krishna Dalmia v. Justice S.R. Tendolkar & Ors. "I this Court observed under the third class of such statutes thus:-

> "A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the government in

the matter of the selection or classification."

(1) [1959] S.C.R. 279.

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Applying the principle laid down in the above case to the present rule 1 find on scrutiny of the Rule that it does not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The Rule thus enables the authority concerned to discriminate between two railway servants to both of whom Rule 148(3) equally applied by taking action in one case and not taking it in the other. In the absence of any guiding principle in the exercise of the discretion by the authority the Rule has therefore to be struck down as contravening the requirements of Art. 14 of the Constitution.

It is unnecessary for me to consider the other contention as mentioned above, which has been urged in support of this ground.

My conclusion therefore is that though the provisions of Rule 148(3) in respect of certain non-pensionable railway servants that their services shall be liable to termination on notice for the period prescribed therein does not contravene Art. 311(2) of the Constitution, it contravenes Art. 14 of the Constitution and consequently is void.

I would accordingly allow with costs the four appeals (C.A. Nos. 711-713/62 and C.A. No. 714/62) set aside the order of the High Court and order that appropriate writs be issued in favour of the appellant as prayed for.

The other three appeals (C.A. Nos. 837-839 of 1963) challenge the decision of the Assam High Court in favour of three railway servants whose services had been terminated under Rule 149 of the Railway Code, that these terminations were invalid. Rule 149(3) is in practically the same terms as Rule 148(3) and provides for the termination of certain railway servants on notice on either side for the period prescribed. As, however, before November 1957 non-

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pensionable service had been brought to an end, and option was given to non-pensionable servants either to opt for pensionable service or to continue under their previous terms and conditions of service, Rule 149(3) mentions permanent railway servants generally without any reference to their being nonpensionable. The validity of his Rule was attacked on behalf of railway servants on the same ground as have been considered with regard to Rule 148(3). For the reasons already given when discussing Rule 148(3) I am of opinion that Rule 149(3) does not contravene Art. 311(2) of the Constitution but contravenes Art. 14 of the Constitution. The terminations of service under Rule 149(3) of the Railway Code were therefore rightly held by the High Court to be invalid. I would accordingly dismiss these appeals with costs.

SHAH J.-Except as expressly provided by the Constitution, every member of the defence services or of a civil service of the Union or an all-India service holds office during the pleasure of the President and every member of a civil service of a State holds office during the pleasure of the Governor of the State: Art. 310(1). This is the normal tenure of office of persons serving the Union or the State. The doctrine of holding office at pleasure applies even to a person with special qualifications employed under a

contract, with the reservation that compensation may be paid to such person if before the expiry of the agreed period the office is abolished, or for reasons not connected with misconduct on his part, he is required to vacate that post: Art. 310(2). The power to terminate at pleasure vested by the Constitution in the President or the Governor, as the case may be, is not liable to be restricted by any enactment of the Parliament or the State Legislature: it may be exercised only in the manner prescribed by the Constitution and being outside the scope of Arts. 53 and 154 of the Constitution cannot be delegated : State of Uttar Pradesh v. Babu Ram Upadhya(1) It is open to the

(1) [1961] 2 S.C.R. 679.

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Parliament and the State Legislatures to enact Acts subject to the provisions of the Constitution to regulate recruitment and conditions of services and posts in connection with the affairs of the Union or a State (Art. 309), and until such legislation is enacted,-it may be observed that the Union Parliament has not enacted any general legislation governing public servants employed by the Union-the President or the Governor or such person as may be directed in that behalf may make rules regulating the recruitment and conditions of service of persons appointed to such services and posts, and the rules so made by the President or the Governor shall have effect, subject to the provisions of any such Acts. The power of the President or the Governor under Art. 310 (which is wholly independent of the power conferred by the rules or legislation under Art. 309), and the power conferred by legislation enacted or rules made or continued by virtue of Art. 309 are subject to certain restrictions contained in Arts. 311 & 314. Article 314 grants certain special protections to members appointed by the Secretary of State or the Secretary of State in Council to a civil service of the Crown in India and who continue on and after the commencement of the Constitution to serve under the Government of India or a State. Article 311 provides, subject to the proviso to cl. (2), two safeguards to all public servants who are members of the civil service of the Union or an all-India service or a civil service of

a State who hold civil posts under the Union or the States. These safeguards are-

> "(1) that such members of the service shall not be dismissed or removed by an authority subordinate to that by which he was appointed; and
>
> (2) that he shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

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The proviso to cl. (2) of Art. 311 excludes three specific classes of cases from the protection of the second guarantee.

Guarantees under Art. 311 are, except to the extent specifically provided, absolute and are not subject to the exercise of power, legislative or executive. Accordingly the pleasure of the President or of the Governor cannot be exercised in a manner inconsistent with cl. (2) of Art. 311. Article 310 must therefore be read subject to Art. 311(2), and the rules made or legislation enacted under Art. 309 must also be read subject to Art. 31 1. It must be emphasized that the guarantees protect all servants, whether

appointed to substantive posts, or employed temporarily or on probation, or for limited duration under contracts, but they do not encompass all penalties or terminations of employment. The guarantee under cl. (1) is against dismissal or removal by an authority subordinate to that by which the public servant was appointed, and under cl. (2) against dismissal, removal or reduction in rank without being afforded a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The guarantee under cl. (2) does not affect the investment of power to dismiss, remove or reduce in rank a member of the civil service; it merely places restrictions upon the exercise of the power. Temporary servants on probation, officiating servants and even those holding posts under contracts-all have the protection of Art. 31 1. But the consequences of mere determination of employment in the very nature of things must vary according to the conditions or terms of employment. Mere determination of employment of temporary servants, or probationers, and of servants whose tenure is governed by contracts, will not ordinarily amount to dismissal or removal, for, dismissal or removal according to the rules implies determination as a disciplinary measure.

The appellants in appeals Nos. 711 to 714 of 1962 are public servants employed in the Railways under the management of the Government of India

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and were governed by the rules made under Art. 309, and their services were terminated in purported exercise of powers under Rule 148(3). Rule 148, the validity of which is challenged by the appellants in these appeals, was originally framed in 1951 in exercise of the authority conferred by Art. 309, and was later modified so as. to exclude from its operation determination of employment operating as dismissal or removal as a disciplinary measure. The first clause deals with a temporary railway servant who holds no lien on a permanent post under the Union. Such a person need be given no notice of termination of employment, if the termination is due to the expiry of sanction to the post, or of the officiating vacancy or is due to mental or physical incapacity, or where it amounts to removal or dismissal as a disciplinary measure. Clause (2) deals with apprentices. Clause (3) deals with (non-pensionable) railway servants, who are substantively appointed to permanent posts. Clauses (3) & (4) provide:

> "(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 dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution, 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 those in the Medical Department 3 months' notice
>
> (b) Officers on probation in the Medical Department 'month's notice
>
> (c) Permanent Gazetted Officers 6 months' notice
>
> (d) Permanent Non-gazetted employees 'month's notice.

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"(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 this group of appeals (Nos. 711-714 of 1962) the principal question raised by the appellants is that the third clause of Rule 148 is invalid. The clause declares that the service of any railway servant who holds non-pensionable employment is liable to be terminated on notice on either side of the periods set out in the Rule, but notice terminating employment by the Railway Administration is not a condition of dismissal or removal or of retirement on attaining the age of superannuation and of termination of service due to mental or physical incapacity. The clause prescribes the mode of determination of employment of non-pensionable railway servants by notice and proceeds to state that in the specified cases no notice for termination of employment by the Railway Administration shall be necessary. It,' however, does not follow that in the excepted classes of cases of the right of the Railway Administration to terminate employment is absolute or unrestricted: it is merely intended to be enacted by cl. (3) that notice will be necessary where on compliance with other appropriate conditions, there is retirement on attaining the age of superannuation, or determination of employment in compliance with the provisions of the Constitution, or for mental or physical incapacity.

Clause (3) of Rule 148 is impugned by the appellants on two principal grounds:

(1) that it is inconsistent with the protection which is guaranteed to all public servants by Art. 311(2); and

(2) that it contravenes the fundamental freedom under Art. 14 of the Constitution in that certain classes of railway servants are selected for special prejudicial treatment when no such conditions of service are applicable in any other public employment and that in

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any event an arbitrary power is conferred upon the authority competent in that behalf under the rules to terminate employment without any principle to guide him.

Under the first head it is urged that termination by ,.notice of employment of non-pensionable servants under Rule 148(3) being removal from service, in the absence of rules prescribing machinery for affording a reasonable opportunity of showing cause against the action proposed to be taken in regard to such employees, the Rule infringes the constitutional guarantee under Art. 311 and is void. This plea assumes that every termination of employment by notice under Rule 148(3) amounts to removal. But on the plain text of cl. (3) it is evident that the right to determine employ-ment by notice cannot be exercised in the excepted cases and since dismissal or removal as a disciplinary measure falls within those excepted cases, the President has, by framing cl. (3) of Rule 148, clearly 1 expressed the intention that determination of employment which amounts to dismissal or removal cannot be effected by notice. In terms the clause makes a distinction between determination of employment by notice and determination of employment as a disciplinary

measure, retirement on superannuation, and termination for reasons of physical or mental incapacity: it does not confer authority upon the Railway Administration to terminate employment of a public servant holding a substantive post, as a disciplinary measure.

The Rule is framed under Art. 309, and undoubtedly makes the tenure of a public servant appointed even substantively to hold a permanent post precarious. Ordinarily a railway servant appointed substantively to a permanent post would, under the rules governing employment, continue in service till he attains the age of superannuation but that tenure is made subject to compulsory retirement after he attains the prescribed age if the railway servant belongs to certain specified classes: vide Rule 2046(2) & (3) of the Railway Code, 1958, and to discharge from employment under Rule 148(3) if his service is non-pensionable. Inci-

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dents relating to termination of employment on superannuation, on orders of compulsory retirement and on discharge from service under Rule 148(3) are parts. of an organic scheme of rules governing the tenure of office of railway servants which also includes provisions relating to dismissal, removal or reduction in rank as a disciplinary measure. By being appointed to a post a railway servant becomes entitled to the pay and allowances, increments subject to efficiencybar, leave, gratuity, pension etc. These are also incidents of employment of the same character as the incident of determination of employment by compulsory retirement, discharge by notice and dismissal or removal.

In considering what the expression "dismissed or removed" used in Art. 311 means, a brief review of the relevant legislative history dealing with the tenure of office of civil servants in the employment of the Government of India may be useful. It is sufficient to note that since the earliest time\all persons holding office--civil or military-under the East India Company were liable to be removed at the pleasure of the King of England: see s. 35 Charter Act 1793 (33 Geo. III Ch. 2): and 74 Charter Act 1833 (3 & 4 will IV Ch. 85). These provisions however did not take away the power of the Court of Directors to remove or dismiss any of its officers or servants not appointed by the Crown in England. The same tenure of service prevailed after the British Crown took over the governance of India, the power to make regulations in relation to appointments and admission to services and matters connected therewith being vested in the Secretary of State in Council: s. 37 Govern-ment of India Act 1858 (21 & 22 Vict. Ch. 106). For the first time under the Government of India Act, 1919 (9 & 10 Geo. V. Ch. 101) some protection was conferred upon the civil servants. By the first clause of s. 96-B the tenure of office of every employee under the civil service of the Crown was during pleasure of His Majesty, but dismissal from service by an authority subordinate to that by which the officer

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was appointed was prohibited. The power of the Secretary of State for India in Council to make rules regulating classification of civil services, method of recruitment, conditions of service, pay, allowances, discipline and conduct was reaffirmed. This was followed by ss. 240 to 243 of the Government of India -Act, 1935 (26 Geo. V. & 1 Ed. 8 Ch. 2) which made detailed provisions relating to the tenure of office of persons employed in civil capacities, recruitment and conditions of service and rules to be made in that behalf including rules applicable to railway,

custom, postal and telegraph services, and special provisions relating to the police. By s. 240, a guarantee against dismissal without being afforded an opportunity of showing cause to persons employed in civil capacities was provided. By cl. (1) except as provided by the Act, every member of a civil service held office during His Majesty's pleasure: by cl. (2) it was enacted that "no such person shall be dismissed from service, by any authority subordinate to that by which he was appointed" and by cl. (3) it was enacted that "No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him". This was the guarantee of protection conferred by the Government of India Act 1935 upon members of the civil services and has since been affirmed by the Constitution in Art. 311 in almost the same terms-the slight verbal alteration substituting "dismissed or removed" for "dismissed" having made no variation in the content of the guarantee. In 1930 Rules were promulgated by the Secretary of State for India in Council under. 96-B(2) of the Government of India Act, 1919,called the Classification, Control and Appeal Rules. These Rules did not in terms apply to railway servants, who were governed by a set of rules published as the Railway Establishment Code, but these were for all practical purposes in terms similar to the Civil Services (Classification, Control and Appeal) Rules, which may be called 'the General Rules'. Under cl. 49 of the General Rules penalties which could be imposed

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upon civil servants were enumerated and cl. 55 provided that no order of dismissal, removal or reduction shall be passed upon a civil servant unless he has been informed in writing of the grounds on which it is proposed to take action and he has been afforded adequate opportunity of showing cause against the action proposed to be taken. These Rules remained in force after the Government of India Act, 1935, was brought into operation. Even after the Constitution was brought into force, the rules continued to remain in operation till 1955, when a new set of rules were promulgated, but thereby in Rules 49 & 55 no substantial variation was made It is clear that, under the scheme of rules governing the employment of civil servants which obtained prior to the Constitution dismissal. or removal had acquired a definite connotation, and when the Constitution-makers adopted the scheme of protection of public servants in the same form in which it prevailed earlier, an intention to attribute to the expression "dismissed and removed" the same content may be assumed in the absence of any expressed intention to the contrary. Since the constitutional guarantee of protection to public servants is couched in the same terms, the expression "removal" in the Service Rules having the same meaning as "dismissal" i.e., determination of employment as a disciplinary measure for misconduct, subject to the slight variation that an employee removed from service is not disqualified from future employment in public service, whereas a dismissed employee is so disqualified, it may reasonably be held that in the context of this development under the Constitution the expression "dismissed or removed" has not acquired a wider signification to include all terminations of public employment, whatever be the cause.

Apart from the historical evolution of the guarantee, there is inherent indication in the constitutional provisions that it was not the intention of the Constitution-makers to

include in the expression "dismissed or removed" all -terminations of employ-
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ment. Guarantee of reasonable opportunity of showing cause against the action proposed to be taken in regard to a public servant, would, be wholly inappropriate in cases of superannuation, expiry of the contractual priod of employment, expiry of the priod of probation or temporary employment, and resignations. It would be futile in such cases to provide for "showing cause". The use of the expression "action proposed to be taken in regard to him" also suggests that termination of employment is of the nature of penal action.

There is yet another ground which must be taken into account. For nearly two centuries prior to the Constitution tenure of public servants has been expressly declared to be during the pleasure of the British Crown and that tenure has been repeated in the Constitution in Art. 310(1) with appropriate variations entrusting the power to the President or the Governor, as the case may be. Vitality of this declaration is emphasized in cl. (2) of Art. 310 so as to enable the President or the Governor to terminate even contractual employments at their respective pleasure. If the Constitution-makers intended that every termination of employment amounted to dismissal or removal within Art. 311, the provision of Art. 310, solemnly declaring that members of the services civil and defence hold office during the pleasure of the President is reduced to a meaningless formula having no practical content. The argument that it continues to apply to probationers and temporary employees ignores the plain words of the Constitution, beside unduly minimising the content of the guarantee in Art. 311 which protects all public servants--temporary, probationers, contractual as well as those holding substantive posts.

There is also a consistent body of authority which has taken the view that the expression "dismissed or removed" within the meaning of Art. 311 of the Constitution involves determination of employment as a disciplinary measure-that is termination of employment on some ground personal to the officer concerned, such as incapacity or imputation
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of charge against him which renders it inexpedient undesirable that he should continue in public employment: Satish Chandra Anand v. Union of India(1) Shyam Lal v. State of Uttar Pradesh & The Union of India(2); and Parshotam Lal Dhingra v. Union of India (3).

In considering whether termination of employment of a. public servant amounts to dismissal or removal, the primary test settled by a uniform course of authority is: does the termination amount to punishment of the public servant, i.e., has it the effect of depriving the public servant concerned of the right which he has already acquired as a public servant, or does it involve evil consequences such as forfeiture of pay or allowances or other benefits which by the rules governing the tenure he has earned, or impute a stigma? A public servant appointed substantively to a post normally acquires a right to hold the post until he attains the age of superannuation, and in the absence of a contract or service rules governing the tenure, discharge from service would deprive him of the right he has to the post. Such deprivation of rights already accrued, or involving evil consequences, must in all cases amount to dismissal or removal, for, it amounts to imposing. punishment. But mere termination of the right to hold a post not as a disciplinary measure, but according to the contract or rules

governing his appointment and tenure, cannot be so regarded, because the rules which govern his right to the post make determination in the manner provided inherent in the right. By appointment to an office a public servant does not acquire a right to hold it for his natural life time or even during good behaviour His right to hold it is during the pleasure of the President or the Governor, according as his employment is under the Union or the State: the right is also subject to the contract or rules governing the employment. Rules framed under Art. 309 relating to superannuation, to compulsory retirement on attaining

(1) [1953] S.C.R. 655. (2) (1955] 1 S.C.R.
(3) [1958] S.C.R. 828.

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a certain age, or completing a specified period of service, or to determination of employment of temporary or quasi-permanent servants, or those on probation, form conditions of service, and govern the tenure, and it is difficult to perceive any distinction between those conditions of service, and the condition which expressly provides for determination of employment otherwise than as a matter of disciplinary measure. The title of a railway servant holding a non pensionable office is subject to the condition of determination by notice under Rule 148(3) which as the clause expressly provides is not according to its terms exercisable as a disciplinary measure. It cannot be assumed that on acquisition of the office, a railway servant becomes entitled to a right to the post free from the conditions attaching thereto by the rules governing his employment. He is liable to' vacate the office on superannuation, on compulsory retirement, on notice of determination, and on dismissal or removal alike, i.e., on the supervention of the prescribed conditions determination of employment of the prescribed class results, and not otherwise. Terminations resulting from causes other than dismissal or removal are solely governed by the rules, but in the matter of dismissal or removal, beside the conditions prescribed by the appropriate rules, the overriding provisions of the Constitution must be complied with.

Under the Indian Railway Establishment Code, Vol. 11, "lien" is defined in Rule 2003(14) as meaning the title of a railway servant to hold substantively, either immediately or on the termination of a priod or periods of absence, a permanent post, including a tenure post to which he has been appointed substantively.

Evidently lien is the title which the railway servant has to a post, and a public servant appointed substantively must always till he is superannuated have lien on a specific post. On substantive promotion his lien would attach to another post, his earlier lien being superseded. While a railway servant appoin-

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ted to another post substantively must have a lien to that post, it cannot be assumed that his lien continues to attach to any particular post. The lien is however subject to the rules: it does not in any manner confer a right to hold a post indefinitely.

Counsel for the appellants contended that all the appellants in this group of appeals were permanent employees, and even superannuation did not put an end to employment, since under the rules the superannuated employees had a right to pension. it is impossible to hold that a superannuated employee continues to remain employed. His employment is at an end: he is under no obligation to serve and earns no remuneration. The pension is but a payment made by the

State for services already rendered and not in lieu of services being rendered, or which the public servant may be called upon to render There can therefore be no distinction in principle between termination of employment of the employee attaining the prescribed age of superannuation, and termination of services in the manner prescribed by the rules, by notice, or by an order of compulsory retirement. In all cases employment comes to an end Though the causes which result in termination are different, the effect is the same, viz., the public servant ceases to be employed.

The argument that on being appointed to a public service, the employee acquires right to continue in employment, proceeds upon a misconception of the nature of appointment to a public post. Appointment to a public post is always subject to the pleasure of the President, the exercise of such pleasure being restricted in the manner provided by the Constitution A person appointed substantively to a post does not acquire a right to hold the post till he dies, he acquires thereby merely a right to hold the post subject to the rules i.e., so long as under the rules the employment is not terminated. If the employment is validly terminated, the right to hold the post is determined even apart from the exercise of the pleasure of the President or the Governor. There is in truth no permanent

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appointment of a public servant under the Union or the State. Nor is the appointment to a public post during good behaviour, i.e., a public servant cannot claim to continue in office so long as he is of a good behaviour. Such a concept of the tenure of a public servant's office is inconsistent with Arts. 309 and 310 of the Constitution.

It may be recalled that the guarantee under Art. 311 protects a public servant against dismissal or removal or reduction in rank as a disciplinary measure. But if the determination of service does not amount to dismissal or removal as a disciplinary measure, there is nothing in the Constitution which prohibits such determination provided it is consistent with Art. 309 of the Constitution. The tenure of office is subject to Art. 310, prescribed by Art. 309 that is the governing code. The rules cannot undoubtedly provide for dismissal or removal otherwise than in a manner consistent with Art. 311. Nor can an authority acting under the rules validly terminate an appointment to a post in a manner contrary to the Constitution or the rules. Article 311 however covers only a part of the field governing the tenure of employment and in substance provides for a procedure for exercising the right to determine employment in certain specified classes of cases. To hold that this determination of employment must in all cases, whatever may be the source or the power in the exercise of which it is determined, is to attribute to it a more exalted effect than is warranted by the scheme of the Constitution disclosed by Arts. 309 and 310.

The view which I have expressed is consistent with an overwhelming body of uniform authority dealing with different classes of cases in this Court, and we are asked to ignore the principle derived from that body of authority not on the ground of any demonstrable error but on the sole ground of a possible misuse of the powers entrusted to the Railway Administration and that was, as I understood, practically the only argument advanced at the Bar to justify a

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departure from the settled course of authority. But in considering whether cl. (3) of Rule 148 infringes, the

constitutional guarantee under Art. 311(2), the Court will not assume that in exercising the power to determine employment the authority competent in that. behalf may not act honestly. The presumption always is that the high officials in whom the power is vested Will perform the duties of their office honestly. A mere possibility that the power may in some cases be misused or abused, will not per se induce the Court to deny validity to the entrustment of the power. The impact of Art. 311 upon Rule 148(3), must be adjudged in the light of action which may be taken bona fide under the Rule. If in a given case the order is not bona fide, and is intended to camouflage an order of removal from service as a disciplinary measure, the protection of Art. 311(2) would undoubtedly be attracted, for such an order cannot be regarded as made in exercise of authority conferred by Rule 148(3). But the Court will not adjudge the rule invalid on the assumption that the rule may possibly be abused and may be made a cloak for imposing a punishment on a public servant or that the provision might be utilised for a collateral purpose.

I will briefly refer to some of the illustrative decisions of this Court. In Satish Chandra Anand's case(1) discharge from service by notice of a public servant employed under a contract for the duration of the Resettlement and Employment Organisation of the Union was held not to attract the protection of Art. 311 of the Constitution. The public servant in Satish Chandra Anand's case(1) was continued in service after expiry of the period of his original employment, under a contract for the duration of the Organisation on condition that he was to be governed by the Central Civil Services (Temporary Service) Rules, 1949, which provided, inter alia, for termination of the contract by a month's notice on either side. This Court held that to termination of his service

(1) [1953] S.C.R. 655.

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by notice according to the 'rules governing his employment, Art. 311 had no application. In the view of the court the case was not of dismissal or removal from service, because the State has power to enter into contracts of temporary employment and impose special terms not inconsistent with the Constitution, and those who chose to accept the terms and entered into the contract were bound by them, even as the State was bound. This was a case of a premature termination of a contractual employment in exercise of a power reserved by Rules. The view expressed in Satish Chandra Anand's case(1) was approved in Parshotam Lal Dhingra's case(2) .

Several cases dealing with termination of employment of temporary employees or employees on probation have since arisen, and it has consistently been held that mere termination of employment of these employees not on the ground of any misconduct did not amount to dismissal or removal within the meaning of Art. 311. In Hartwell Prescott Singh v. The Uttar Pradesh Government and others(3) an order discharging a temporary employee from service by giving him a month's notice as prescribed by Rule 25(4) of the U.P. Subordinate Agriculture Service Rules, by which he was governed, was held not to amount to dismissal or removal within the meaning of Art. 31 1. It was observed in that case that in principle there was no distinction between the termination of service under the "terms of a contract" and that in accordance with the "terms of conditions of service".

In Parshotam Lal Dhingra's case (2), Das, C.J., who entered upon an exhaustive review of the Rules governing service conditions of public servants of different classes (and with him all other members of the Bench except Bose J., agreed) observed at p. 842:

> ". . . in the case of an appointment to permanent post in a Government service on
> (1) [19531 S.C.R. 6 5. (2) [1958] S.C.R. 828.
> (3) [19581 S. C. R. 509.
> 787
> probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time. Likewise an appointment to a temporary post in a Govern-ment service may be substantive or on probation or on an officiating basis. Here also, in the absence of any special stipulation or any specific service rule, the servant so appointed acquires no right to the post and his service can be terminate
> d at any
> time except in one case, namely when the appointment to a temporary post is for a definite period."

In The State of Bihar v. Gopi Kishore Prasad(1) Sinha C.J., speaking for the Court summarised certain propositions governing the tenure of temporary public servants of which the following two are material:

> "(1) Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated, without any taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant or removing him from service.
> (2) The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment. "

In The State of Orissa and another v. Ram Narayan das (2) this Court held that a probationer may be discharged in the manner provided by Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules, and to such discharge from service Art. 311(2) did not apply, for mere termination of employment does not carry with it any evil consequences and an order discharging a public servant, even if he is a

(1) [1961] 2 S. C. R. 590.
(2) [1961] 1 S. C. R. 606
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probationer, on the result of an enquiry on charges of misconduct, negligence, inefficiency or other dis-qualification, may appropriately be regarded as one by way of punishment, but an order discharging a probationer after an enquiry to ascertain whether he was fit to be confirmed, is not of that nature.

In S. Sukhbans Singh v. The State of Punjab(1) it was held that the protection of Art. 311 is available only where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment, and one of the tests for ascertaining whether the termination of service was by way

of punishment is whether under the Service Rules, but for such termination, the servant has the right to hold the post. The same view. was expressed in Union Territory, Tripura v. Gopal Chandra Datta(2) and in Ranendra Chandra Bannerjee v. The Union of India(3).

Two cases on the other side of the line, which emphasize the distinction between a mere order of discharge of a temporary servant, and an order dismissing a public servant as a disciplinary measure may be noticed. In Madan Gopal v. The State of Punjab and others(4), this Court pointed out that where the employment of a temporary government servant, even though liable to be terminated by notice of one month without assigning any reason, is not so terminated, and the appointing authority holds an enquiry into his alleged misconduct, the termination of service is by way of punishment, because it casts a stigma on his competence and thus affects his career. In such a case the public servant is entitled to the protection of Art. 311(2) of the Constitution. In Jagdish Mitter v. The Union of India (5) it was held that an order discharging a temporary servant from employment b notice after recording that he was "found undesirable to be retained in Government service" was one casting a stigma, and

(1) [1963] 1 S.C.R. 416. (2) [1963] Supp. 1 S.C.R. 266.
(3) [1964] 2 S.C.R. 135. (4) [1963] 3 S.C.R. 716.
(5) A. I. R. 1964 S. C. 449.

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was therefore an order of dismissal attracting the application of Art. 311 (2) of the Constitution.

There is still another class of cases which illustrate the rule that termination of employment otherwise as a disciplinary measure does not amount to dismissal or removal. This Court has held that rules providing for compulsorily retiring public servants holding posts substantively are valid, and that termination of employment consequent upon such compulsory retirement does not amount to dismissal or removal from service so as to attract the protection of Art. 311(2).

In Shyam Lal's case(1) challenge to the validity of termination of employment of a member of the Indian Service of Engineers compulsorily retired after be completed service for 25 years was discountenanced by this Court on the ground that compulsory retirement under the Civil Services (Classification, Control and Appeal) Rules, after a public servant had served for 25 years, did not amount to dismissal or removal within the meaning of Art. 311 of the Constitution. It was observed that the word "removal" used synonymously with the term "dismissal" generally implied that the officer was regarded as in some manner blameworthy or deficient, the action of removal being founded on some ground personal to the officer involving leveling of some imputation or charge against him. But there was no such element of charge or imputation in the case of compulsory retirement which did not involve any stigma or implication of misbehavior or incapacity, for, by the compulsory retirement the person concerned did not lose any benefit he had earned and loss of future prospects of earning could not be taken into account in considering whether the order of compulsory retirement amounted to imposing punishment.

In The State of Bombay v. Subhagchand M. Doshi(2) it was held that Rule 165-A of the Bombay Civil Services (Conduct, Discipline and Appeal) Rules adopted by the State of Saurashtra, subject to amendment, authorising the State Government to compulsorily

(1) [1955] 1 S.C.R. 26.

(2) [1958] S.C.R. 571.
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retire any public servant who had completed 25 years of qualifying service or had attained the age of 50 'years, without giving any reason was not violative of Art. 311(2) of the Constitution, as the order made under Rule 165-A was not one of dismissal or removal. Venkatarama Aiyar, J., observed at p. 579 (obiter as was pointed out in a later case):

> "It should be added that questions of the above character could arise only when the rules fix both an age of superannuation and an age for compulsory retirement and the services of a civil servant are terminated between these two points of time. But where there is no rule fixing the age of compulsory retirement, or if there is one and the servant is retired before the age prescribed therein, then that can be reregistration only as dismissal or removal within Art. 311(2)."

In P. Balakottaiah v. The Union of India and others(1) an order for compulsory retirement under Rule 3 of the Railway Services (Safeguarding of National Security) Rules, 1949, was challenged as contravening Art. 311(2). The public servants concerned in those appeals were railway servants and their services were terminated on the ground that the General Manager of the Railways had reason to believe that they were guilty of "subversive activities". Notices were issued to them under s. 3 of the Rules to show cause against certain charges. The Committee of Advisers enquired into the charges and the explanations furnished by the public servants found the charges true. The General Manager acting on the report of the Committee terminated the services of the railway servants concerned giving them a month's salary in lieu of notice. It was held by this Court that it is not every termination of the services of an employee that falls within the operation of Art. 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. It was further observed at p. 1065:

(1) [1958] S.C.R. 1052.
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> "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. Rule 7 of the Security Rules preserves the rights of the employees to all the benefits of' pension, gratuities and the like, to which they would be entitled under the rules. Thus, there is no forfeiture of benefits already acquired. The order terminating the services under R. 3 of the Security Rules stands on the same footing as an order of discharge under R. 148, and it is neither one of dismissal nor of removal within the meaning of Art. 311. "

The Court in that case appeared to express the opinion, though it was not necessary for deciding the case, that an order of discharge under Rule 148(3) was neither one of dismissal nor removal within the meaning of Art. 311(2).

In Parshotam Lal Dhingra's case (1) the Court also considered the question whether an order of compulsory retirement of a public servant under the appropriate rules governing him amounts to dismissal or removal from service. At p. 861, Das C.J., speaking for the majority of the Court

observed:

" . . . every termination of service is not dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal,

Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2), as has also been held by this Court in Shyam Lal v. The State of Uttar Pradesh. In either of the two above-mentioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under r. 52 of the Fundamental Rules."

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

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In a still more recent case-Dalip Singh v. State of Punjab(1) it was held by this Court that an order of compulsory retirement of a public servant for administrative reasons under R. 278 of the Patiala State Regulations-which Regulations did not fix the minimum age or length of service after which an order of compulsory retirement could be made,was not one of dismissal or removal from service within the meaning of Art. 311(2) of the Constitution, because retirement under a Service Rule which provided for compulsory retirement at any age irrespective of the length of service put in, cannot necessarily be regarded as dismissal or removal within the meaning of Art. 311, and the observations (hereinbefore quoted) made by Venkatarama Aiyar, J., in Saubhagchand Doshi's case(2) were for the purposes of deciding that case obiter, and that it was not a general rule that an order of compulsory retirement not amounting to dismissal or removal can take place only under a rule fixing the age of compulsory retirement.

These decisions which examine diverse facets of the tenure of employment of public servants, establish beyond doubt that mere determination of employment of a public servant whether he be a temporary employee, a probationer, a contractual appointee or substantively holding a permanent post will not attract the provisions of Art. 311 (2) of the Constitution, unless the determination is imposed as a matter of punishment. All these decisions weave a clear pattern of employment of public servants who are governed by Rules providing for premature determination of employment. Such determination of service, founded on a right flowing from contract or the service rules, is not punishment and carries with it no evil consequences. It does not deprive the public servant of his right to the post, it does not forfeit benefits already acquired., and casts no stigma upon him.

A railway employee who has accepted employment

on the conditions contained in the rules cannot after having obtained employment, claim that the

(1) [1958] S.C.R. 571.(3)[1961]S.C.R. 88
(4) [1953] S.C.R. 655 (2) [1958] S.C.R. 1052.

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conditions which were offered to him and which he accepted, are not binding upon him. The sole exception to that rule is in cases where the condition prescribed by contract or statutory regulations is void as inconsistent with the constitutional safeguard, the exception being founded not on any right in the public servant to elect, but on the invalidity of the covenant or regulation. If the principle of the binding nature of the rules as condition of employment is valid, I am unable to see any distinction between cases of termination of employment resulting from attaining the age of superannuation or from orders of compulsory retirement, terminating contracts, terminating temporary employment, or employments on probation, and orders terminating employment after notice under Rule 148(3). If Rule 165-A of the Bombay Civil Services (Classification, Control and Appeal) Rules, as amended, which fell to be considered in Saubh Chand Doshi's case (1) was not invalid, if Rule of the Railway Services (Safeguarding of National Security) Rules, 1949, which fell to be considered in P. Balakottaiah's case(2) was not invalid, if Rule 278 of the Patiala State Regulations which fell to be considered in Dalip Singli's case (3) was not invalid, if Rule 5(a) of the Central Government Services (Temporary Service) Rules, 1949, which fell to be considered in Satish Chandra Anand's case (4) was also not invalid, it is difficult to appreciate any ground either of logic or of law on which the vice of invalidity as infringing Art. 311(2) may be attributed to Rule 148(3). The termination of employment under Rule 148(3) does not involve the public servant concerned in loss of any right which he has already acquired, it does not amount to loss of a post to which he is entitled under the terms of his employment, because the right to the post is necessarily circumscribed by the conditions of employment which include Rule 148(3) and does not cast any stigma upon him. In the result I am unable to agree that

(1) [1958] S.C.R. 571. (2) [1958] S.C.R. 1052.
(3) [1961] S.C.R. 88. (4) (1953] S.C.R. 655.

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Rule 148(3) was invalid as infringing the guarantee of constitutional protection under Art. 311(2).

In appeals Nos. 837-839 of 1963 the question as to the validity of the Rule 149(3) falls to be determined. That Rule was substituted for the original Rule 148(3) some time in year 1959. Rule 149 deals, by its first clause, with temporary railway servants and cl. (2)

deals with apprentices. We are not concerned in these appeals either with temporary railway servants or with apprentices. In this Rule cl. (3) deals with the other railway servants. It provides:

"The service of other 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 dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation and termination of service due to mental or phvsical incapacity.

The Rule then proceeds to set out the different periods for which notice may be given terminating employment. Clause (4) of the Rule provides for payment in lieu of notice. Rule 149(3) makes a departure from Rule 148(3). The latter Rule applied only to members of the non-pensionable service, whereas Rule 149(3) applies to all members of the railway service holding substantive appointments, and brings within its fold all employees--even those who have entered employ-ment before the date on which the Rule was framed. But if by the terms of his appointment a railway servant who was not governed by Rule 148(3) is brought within Rule 149(3) so as to make his employment precarious by exposing him to liability to termination of employment, different considerations may apply. For reasons which I have already set out the conditions of service validly made under Art. 309 of the Constitution and in existence on the date when a public servant enters service would be binding upon him. There is nothing in Rule 149(3) which renders determination of employment in the

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manner provided therein per se inconsistent with Art. 311. But exercise of the power by the Railway Administration to determine employment of persons who were otherwise not subject to the new condition of service would, in my judgment, amount to imposing a penalty of dismissal or removal. Therefore termination of services of a person who held appointment to a substantive post and was entitled under the previous rules to continue until he attained the age of superannuation, or till compulsory retirement, Rule 149(3) made applicable to him after he entered service would per se amount to dismissal or removal and it would be inconsistent with Art. 311. This is not because the Rule is invalid, but because it would expose the public servant concerned to forfeiture, by amendment of the rules which were in existence at the time when he entered service, o rights which he had already acquired.

The alternative ground of invalidity that the rule infringes the fundamental right of equal protection of the laws under Art. 14 of the Constitution may now be considered. This ground was set up under two broad heads.

(1) There is no other public employment under the Government of India in which conditions similar to these contained in Rule 148(3) or Rule 149(3) exist, and therefore discrimination between public servants employed in Railways and public servants employed in other branches of public undertakings or Administrative Services without any rational basis to support it, infringing the equal protection of laws

guaranteed by Art. 14 of the Constitution, results.

The argument posed in this form does not appear to have been raised before the High Court and no investigation has been made whether similar conditions of service do or do not exist in other public employments. In any event, employment in the Railways is in a vitally important establishment of the Union in which the employees are entrusted with

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valuable equipment and a large measure of confidence has to be reposed in them and on the due discharge of the duties the safety of the public and the efficient functioning of the governmental duties depend. Not only the travelling public, but the Union and the States have in a considerable measure to depend upon rail transport for the functioning of the governmental machinery and its welfare activities. It would be possible even for one or a few employees of the Railway to paralyse communications and movement of essential supplies leading to disorder and confusion. The Railway service has therefore a special responsibility in the smooth functioning of our body politic and a doctrinaire approach to equality of conditions of service in different branches of public employment, irrespective of the nature of the duties performed, irrespective of the possibility of harm to the community which misguided members or units may be capable of doing, and irrespective of the necessity to entrust special powers to terminate employment in deserving cases may not be permitted. If for the purpose of ensuring the interests and safety of the public and the State, the President has reserved to the Railway Administration power to terminate employment under the Railways, it cannot be assumed that such vesting of authority singles out the railway servants for a special or discriminatory treatment so as to expose the Rule which authorises termination of employment to the liability to be struck off as infringing Art. 14. Article 14 undeniably forbids class legislation, but it does not forbid reasonable classification for the purpose of legislation. Legislation satisfying the test of classification founded on an intelligible differential distinguishing persons, objects or things grouped together from others left out of the. group, such differentia having a rational relation to the object sought to be achieved by the statute, has consistently been regarded as not open to challenge on the ground of infringing the equality clause of the constitution. The special conditions in which the Railways have to operate and the interests

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of the nation which they serve justify the classification, assuming the argument of classification to be factually correct. It need hardly be pointed out that the basis of classification need not be expressly mentioned by the impugned statute: it may be gathered from the surrounding circumstances known to or brought to the notice of the Court.

(2) Rules 148(3) and Rule 149(3) are so framed as to lead to discriminatory treatment of Railway servants, because by the exercise of the arbitrary and uncontrolled power thereby conferred, exercise of which is not to be tested by any objective standard, service of any public servant falling within the classes to which they apply may be terminated Conferment of such a power leads to denial of the equal protection of the laws.

Rule 148(3) as it stood applied only to non-pensionable

services and not to pensionable services, and Rule 149(3) applies to all railway servants holding posts pensionable and non-pensionable. In dealing with a similar argument in Satish Chandra Anand's case(1) in the context of termination of employment of a servant employed on a contract for the duration of an Organisation but whose tenure was governed by the Central Civil Services (Temporary Service) Rules, 1949, Bose, J., observed at p. 659:

> "There was no compulsion on the petitioner to enter into the contract he did. He was as free under the law as any other person to accept or to reject the offer which was made to him. Having accepted, he still has open to him all the right and remedies available to other persons similarly situated to enforce any rights under his contract which have been denied to him, assuming there are any, and to pursue in the ordinary courts of the land such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection
> (1) [1953] S.C.R. 655.
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> of any laws which others similarly situated could claim."

These observations in my judgment would, with appropriate variations, be applicable in considering the validity of Rules 148(3) & 149(3). In adjudging 'whether there is by the impugned rules a denial of the equal protection of the laws, no rational ground of distinction can be found between an employee who is but for the rule for termination of employment by notice, by the contract entitled to continue in employment for a specified duration, and one who is appointed to a substantive post till superannuation. In one case the employment is. for a period defined or definable, in the other there is employment till superannuation, and in both cases liable to be terminated by notice. If with his eyes open, a candidate for employment accepts a post permanent or temporary, tenure of which is governed by Rules, he cannot after accepting the post seek to avoid the onerous terms of employment. This is not to say that acceptance of covenants or rules which are inconsistent with the Constitution is binding upon the public servant by virtue of his employment. Such covenants or rules which in law be regarded as void, would not affect the tenure of his office.

The law which applies to railway servants falling within the class to which Rules 148(3) and 149(3) apply is the same. There are no different laws applicable to members of the same class. The applicability of the law is also not governed by different considerations. It is open to the appointing authority to terminate appointment of any person who falls within the class. There is therefore neither denial of equality before the law, nor denial of equal protection of the laws. All persons in non-pensionable services were subject to Rule 148(3). There was no discrimination between them: the same law which protected other servants in the same group non-pensionable servants-protected the appellants in appeals Nos. 711-714 of 1962, and also provided for determination of their employment.

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The Rule, it is true, does not expressly provide for

guidance to the authority exercising the power conferred by Rule 148, but on that account the Rule, cannot be said to confer an arbitrary power and be unreasonable, or be in its operation unequal. The power is exercisable by the appointing authority who normally is, if not the General Manager, a senior officer of the Railways. In considering the validity of an order of determination of employment under Rule 148, an assumption that the power may be exercised mala fide and on that ground discrimination may be practised is wholly out of place. Because of the absence of specific directions in Rule 148 governing the exercise of authority conferred thereby, the power to terminate employment cannot be regarded as an arbitrary power exercisable at the sweet will of the authority, when having regard to the nature of the employment and the service to be rendered, the importance of the efficient functioning of the rail transport in the scheme of our public economy, and the status of the authority invested with the exercise of the power, it may reasonably be assumed that the exercise of the power would appropriately be exercised for the protection of public interest on grounds of administrative convenience. Power to exercise discretion is not necessarily to be assumed to be a power to discriminate unlawfully, and possibility of abuse of power will not invalidate the conferment of power. Conferment of power has necessarily to be coupled with the duty to exercise it bona fide and for effectuating the purpose and policy underlying the rules which provide for the exercise of the power. If in the scheme of the rules, a clear policy relating to the circumstances in which the power is to be exercised is discernible, the conferment of power must be regarded as made in furtherance of the scheme, and is not open to attack as infringing the equality clause. It may be remembered that the rules relating to termination of employment of temporary servants and those on probation, and even those relating to compulsory retirement generally do not lay down any specific directions governing the exercise of the powers
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conferred thereby. The reason is obvious: the appointing authority must in all these cases be left with discretion to determine employment having regard to the exigencies of the service, suitability of the employee for absorption or continuance in the cadre, and the larger interests of the public being served by retaining the public servant concerned in service. In my view Rule 148(3) cannot, therefore, be regarded as invalid either as infringing Art. 311(2) of the Constitution or as infringing Art. 14 of the Constitution. For the same reasons Rule 149(3) cannot also be regarded as invalid.

But the orders imposing upon the public servants determination of employment in exercise of the powers under Rule 149(3) made applicable to them when prior to the date on which the Rule was framed they were not applicable to them would be void as infringing Art. 311(2) of the constitution As, however, on this part of the case there has been no investigation by the High Court, I would remand appeals Nos. 837-839 of 1963 to the High Court and dismiss appeals Nos. 711-714 of 1962.

ORDER BY COURT

In accordance with the opinion of the majority Civil Appeals Nos. 711-713 of 1962 and Civil Appeal No. 714 of 1962 are allowed with costs. The writ petitions filed by the four appellants in the three High Courts are granted and Orders directed to be issued in terms of the prayers made by them. Civil Appeals Nos. 837-839 of 1963 are dismissed with costs.

One set of hearing fees in each group.
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