CIVIL WRIT.

Before Kapur, J.

DR. J. AYA RAM,—*Petitioner.*

versus

GOVERNMENT PUNJAB STATE, ETC.,—*Respondents.*

Civil Writ Application No. 318 of 1953

1954

Dec. 10th

Constitution of India—Articles 19(1), 241, 311 and 320—Withholding of an increment, whether amounts to "reduction in rank" under Article 311—Protection afforded by statute and by rules, difference between—Rules subsequently made, effect of, under Article 241 on the right of appeal or representation—Article 19(1)—Applicability of—Whether permits a Government servant to say whatever he likes—Representation against the order of the Governor, whether has to be sent to the Public Service Commission for advice.

Held, that (i) "withholding of increment" is not in any way a reduction to a lower post or reduction in rank. The petitioner still remains a member of the P.C.M.S. and continues to be an Assistant Surgeon in the Class that he was in before and all that has happened by the withholding of increment is that he will lose a certain amount of money in his salary, but that is not the same thing as reduction in rank. Therefore, Article 311 of the Constitution of India is inapplicable.

(ii) There is no such defect in the inquiry held against the petitioner which would justify the issuing of a writ of *certiorari*.

(iii) A contravention of the rules even if proved does not give to the applicant a ground for action, there being a clear distinction between the protection given by Statute and the protection given by rules as held in *Venkata Rao's case* (1).

(iv) There is no contravention of the rules and whether section 241 of the Government of India Act, 1935, applies or it does not, (a) no appeal was competent against the

(1) I.L.R. 1937 Mad. 532 (P.C.)

order of the Governor and (b) no representation could be allowed because there is no authority to whom the representation can be made.

(v) Article 19(1) of the Constitution of India has no application. It does not give a *carte-blanche* to Government servants to make all kinds of allegations in intemperate language against their superiors and accuse them of communal bias, nepotism and the like. Freedom of speech is liberty and not licence.

(vi) There is no question of consulting the Public Service Commission because it does not sit in appeal against the orders of the Governor and there is nothing in Article 320(3)(c) of the Constitution which requires that any representation which an aggrieved party wishes to send against an order of the Governor has to be sent to the Public Service Commission for advice.

Petition under Article 226 of the Constitution of India, praying as under:—

(a) *That the Hon'ble Court may be pleased to hold that the so-called enquiry held against the petitioner was* ultra vires *and the order, dated 8th February, 1951, by the opposite party made in pursuance of the said enquiry invalid, inoperative, ineffective and that it is contrary to law and a nullity.*

(b) *Pending the decision of this petition the operation of the order in question be stayed.*

R. P. KHOSLA, for Petitioner.

HAR PARSHAD, Assistant Advocate-General, for Respondent.

JUDGMENT.

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KAPUR, J. This is an application by Dr. James Aya Ram, Assistant Surgeon, in charge Civil Hospital, Ludhiana, for the issuing of writs of *certiorari* and *mandamus*.

The petitioner on the 2nd of January, 1937, was appointed an Assistant Demonstrator in Physiology in the Mayo Hospital, Lahore, and on the 24th January, 1941 he was appointed to P.C.M.S. Class II. During the war he joined the Army and on his return in October 1946 he was appointed in various posts in Civil Hospitals. In his petition he has stated that on the 12th May, 1947 he examined a prosecutrix in a rape case (Nathu v. Crown) and his evidence was adversely criticised by the Court and the Civil Surgeon, Karnal, sent to him an extract from the judgment for his remarks and the Inspector-General of Civil Hospitals thereupon placed the following on his personal record,—*vide* Annexure 'A'—

> "After a careful consideration of the whole case, I have come to the conclusion that Dr. James Aya Ram, P.C.M.S., is an argumentative and obstinate officer. He may kindly be informed accordingly and warned about these defects in him. The papers have been placed with his personal file."

In March, 1948, Inspector-General of Civil Hospitals, East Punjab, transferred the petitioner to Civil Hospital, Ferozepore, and the petitioner submits that it was for the purpose of making room for Dr. Jagjit Singh, P.C.M.S., a brother of lady Datar Singh, Sir Datar Singh being a friend of the Inspector-General.

On the 30th April 1948, in the absence of the Assistant Surgeon, the petitioner examined four "private medico-legal cases" which, he submits, was in accordance with the practice then prevailing. But without being called upon, he was censured and this again, according to the petitioner, was wholly unwarranted. A representation, dated 13th December, 1948, Annexure 'B', was made to the Honourable Minister of Education and Health, East Punjab, in regard to this

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examination. In this the petitioner accused the Inspector-General of "communal discrimination." The petitioner was "reprimanded, warned and asked to desist from such communications."

On the 14th December, 1948, the petitioner was transferred to Fatehabad in the district of Hissar and he contends that it was by way of punishment. He represented to Government that his transfer was unjustified and "it was a glaring example of nepotism." The representation is marked as Annexure 'C' which ends as follows—

> "*Prima facie* it is a case of clear nepotism which the Government is pledged to root out."

A copy of this was sent to the Honourable the Chief Minister of the Punjab, Mr. Bhim Sen Sachar. On the 8th July, 1949 an enquiry was ordered into the conduct of the petitioner on the following two charges—

> (i) You addressed Government direct which is subversive of all discipline; and
>
> (ii) You, without any valid cause, made allegations against Lt. Colonel B. S. Nat, M.D., F.R.C.S. (Eng.), Inspector-General of Civil Hospitals, East Punjab (now Director of Health Services, East Punjab) of having taken a personal dislike to you suggesting communal bias."

In the reply the Government have stated that on receipt of the petitioner's representation, dated the 7th June, 1949, the matter was considered and a supplementary charge was framed against the petitioner for

his accusing the Director of Health Services of Punjab of nepotism and addressing the Government direct in violation of the orders conveyed to the petitioner. On the 8th February, 1951, His Excellency the Governor made an order (copy of which is marked Annexure 'D') and I give relevant portion of the same—

> "2. The Governor of Punjab observes from the inquiry held against the conduct of Dr. James Aya Ram, P.C.M.S. II, Assistant Surgeon, in charge Civil Hospital Fatehabad, District Hissar, that he violated the warning issued to him conveying the strong disapproval of his conduct in making frivolous allegations against the Head of Department and addressing Government direct in the matter. In violation of the warning he again addressed Government direct making further allegations against the late Lt. Col. Nat of a charge of nepotism which, as a result of the inquiry against him, shows that he had no justification for doing so. He, therefore, infringed rules 34-A and 37 contained in circular No. 5 of the Punjab Government Consolidated Circulars relating to correspondence. The Governor of the Punjab is, therefore, pleased to decide that the next increment of Dr. James Aya Ram P.C.M.S. II, Assistant Surgeon, in charge Civil Hospital, Fatehabad, District Hissar, should be stopped with permanent effect for a period of one year.
>
> This order should be conveyed to Dr. James Aya Ram for his information."

The petitioner submits that this order is void because it contravenes the mandatory procedure laid down

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for holding inquiries and is contrary to natural justice because—

(a) The inquiry was not in accordance with Civil Service Regulations and Punjab Civil Services (Punishment and Appeal) Rules;

(b) The inquiry was not legal as the appointing authority alone could have ordered this inquiry;

(c) The inquiry was "an eye-wash" because the petitioner was not allowed access to records, he was made to pay expenses for the witnesses and his defence was materially hampered;

(d) At the inquiry the rules of evidence and procedure were not followed and before the evidence began on the 7th November, 1949, Col. Nat, the Director of Medical Services, sent for the petitioner and told him that if he withdrew the allegations of nepotism, the inquiry would be stopped. This inquiry terminated on the 25th May, 1950 and the order was made on the 8th February, 1951.

The petitioner then alleges that a copy of the Inquiring Officer's report was not made available to him although he made two representations (Annexures 'E' and 'F') to the Government. The petitioner wanted to appeal against the order and therefore requested that a copy of the report be supplied to him, but the matter could not be taken to the Central Government. On the 3rd April, 1951, the petitioner made a representation to the Government against the order of the 8th February, 1951, and asked that it be considered by the State Public Service Commission, but this also was not allowed and on the

7th July, 1951, he sent a revision or a representation to the President of the Union of India which was withheld by the Punjab Government without assigning any reason.

The petitioner submits that he has been passed over several times on account of the punishment given to him on the 8th February, 1951 and on this allegation he has come to this Court.

It is admitted by Government that various orders posting the petitioner in different places were made but they plead that after considering the explanation submitted by the petitioner, the Inspector-General of Civil Hospitals conveyed the remarks to the petitioner he complained of and ordered that they be placed on his personal file. They denied that the order of the Inspector-General was actuated in any manner by communal or personal consideration. They also plead that the petitioner was not censured but was merely warned.

It is denied that any explanation, as is mentioned in paragraph 8 of the petition, was sent to Government, nor has a copy of that representation been placed on the record nor has the date of the representation been given.

In paragraph 10 of their reply the Government state that the communication to the Government against the action taken by the Inspector-General of Civil Hospitals in regard to the examination of the four medico-legal cases was sent to the Honourable Minister of Education and Health direct though it was stated to be "through proper channel" and he also sent two more representations direct to the Minister and he was reprimanded for making frivolous allegations against the Inspector-General of Civil Hospitals and addressing direct and was warned that serious notice would be taken if this was repeated in future.

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The allegations in regard to the representation dated 7th June, 1949 are admitted and it is pleaded that the Government, after considering the whole case, decided to hold an inquiry into the conduct of the petitioner and served him with two charges and also with a supplementary charge. It is denied that the inquiry was perfunctory or that any rules of procedure were violated. In accordance with the provisions of Chapter XIV of the Civil Services Rules (Punjab), Volume I, Part I, and after consultation with the Public Service Commission the increment of the petitioner was stopped for a period of one year. The other allegations are denied.

It was then pleaded that the petitioner was supplied with a copy of the report of the Inquiring Officer and that no appeal lies against the order of His Excellency the Governor and that no representation could be sent to the Public Service Commission as they had already been consulted. It is also admitted that the representation to the President of India was withheld. It is on these facts that the matter has to be decided.

Whether the Civil Services (Classification, Control and Appeal) Rules, which were made under section 96B (2) of the Government of India Act of 1919 and which came into force on the 21st June, 1930, apply or any other rules apply the penalties which can be imposed against a civil servant are the same. In the rules made in 1930 they are contained in rule 49 and the relevant ones are—

(i) Censure.

(ii) Withholding of increments or promotion including stoppage at an efficiency bar.

(iii) Reduction to a lower post or time-scale or to a lower stage in a time-scale.

In the Civil Services Rules (Punjab) which were made in 1941 and which came into force in the Punjab on the 1st April 1941 punishments and penalties are contained in Chapter XIV. Penalties are given in rule 10 and the first three penalties provided are the same as those which were in the rules of 1930. It is not necessary to give the other penalties which are contained in the two sets of rules because they are not relevant to the case before me. In the revised rules which are contained in the Punjab Civil Services Rules, Volume I, Part II, Appendix 24, the first three penalties mentioned in rule 4 are those that are given in the rules of 1930 and of 1941. The penalties of 'removal' and 'dismissal' from service are entirely separate in all the three sets of rules.

Before the introduction of section 240 (3) in the Government of India Act of 1935, the efficacy of the rules made under section 96-B of the Government of India Act of 1919 was decided by the Privy Council in *Venkata Rao's case* (1) where it was held that civil servants hold office during pleasure of the Crown and although the terms of that section contain statutory and solemn assurance that the service will not be subject to capricious or arbitrary action and will be regulated by rules they do not import a special kind of employment with an added contractual term that the rules are to be observed. In that case the dismissal of a civil servant in disregard of procedure prescribed by the rules was held not to give a right of action for wrongful dismissal. By the introduction of section 240 (3) in the Government of India Act, civil servants were given an added protection and a limitation was placed on the right of the Crown to dismiss "at pleasure" *vide I. M. Lall's case* (2), where it was held that the provisions of that section were mandatory and sub-section (3) was prohibitory

(1) I.L.R. 1937 Mad. 532
(2) A.I.R. 1948 P.C. 121

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in form and therefore if opportunity was not given as provided for in that section, the dismissal of a civil servant would be void and inoperative. This protection which was given by the Act of 1935 has been replaced by Article 311 in the Constitution of India the effect of which is similar as was held in *Shyam Lal's case,* (1), where it was observed that section 240 (3) of the Government of India Act of 1935 gives statutory protection to the rights conferred by rule 55 of the Civil Services (Classification, Control and Appeal) Rules. But prior to the Act of 1935, as was held by the Privy Council in *Rangachari's case,* (2) and in *Venkata Rao's case,* (3), these rules were ineffective against the Crown's plenary power of dismissal.

Mr. Khosla submits that the punishment of withholding an increment amounts to reduction in rank and is therefore covered by Article 311 of the Constitution of India. With this I am unable to agree. Counsel for the petitioner relied on a Division Bench judgment of the Nagpur High Court in *M. V. Vichoray* v. *The State of Madhya Pradesh* (4), where it was held that reversion of a person holding a higher post in an officiating capacity is covered by Article 311 if it is by way of penalty, and the same was held in *Jatindra Nath Biswas* v. *R. Gupta* (5), but neither of these cases has any application to the facts of the present case. The rules, as I have said, have prescribed seven kinds of penalties, and "withholding of increments" and "reduction in rank" are two different penalties and it cannot be said, therefore, that one is the same as the other. In my opinion, if the two penalties were the same, the framers of the rules would not have mentioned them separately.

(1) 1954 S.C.A. 476
(2) I.L.R. 1937 Mad. 517 (P.C.)
(3) I.L.R. 1937 Mad. 532 (P.C.)
(4) A.I.R. 1952 Nag. 288
(5) A.I.R. 1954 Cal. 383

Nor am I prepared to say that "withholding of increments" is in any way a reduction to a lower post or reduction in rank. The petitioner still remains a member of the P.C.M.S. and continues to be an Assistant Surgeon in the Class that he was in before and all that has happened by the withholding of increment is that he will lose a certain amount of money in his salary, but that is not the same thing as reduction in rank.

On this finding the position of the petitioner is really that which all other Government servants had before the enactment of 1935 and any punishment given which has not the statutory and constitutional protection of Article 311 cannot form the basis of action in a civil Court. Mr. Khosla, however, argued that the proceedings which he had taken were under the supervisory jurisdiction of this Court and he is entitled to get the order quashed on the ground that there had been a violation of the rules which were almost similar in language as that of Article 311 of the Constitution of India. As was pointed out by their Lordships of the Privy Council in *Rangachari's case* (1) and *Venkata Rao's case* (2), there is a distinction between the protection given by the statute and the protection given by rules. As a matter of fact the complaint of the plaintiff in *Venkata Rao's case* (2), was that there was a contravention of procedural rules in the matter of his dismissal, but the Privy Council relying on *Shenton* v. *Smith* (3) and *Gould* v. *Stuart* (4), held that these rules did not constitute a contract between the Crown and its servants and they were merely directions given by the Crown to the Government of Crown Colonies

(1) I.L.R. 1937 Mad. 517
(2) I.L.R. 1937 Mad. 532
(3) (1895) A.C. 229
(4) (1896) A.C. 575

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for general guidance and Lord Roche at page 542 observed—

> "Control by the Courts over Government in the most detailed work of managing its services would cause not merely inconvenience but confusion."

If therefore sitting on its original jurisdiction, if this Court had one, it could not give relief because of a contravention of the rules, it cannot in its extraordinary jurisdiction under Article 226 of the Constitution of India order enforcement of the rules as if they were a part of the contract. That would be contrary to the rule laid down in Privy Council cases that I have quoted above. In *Dr. M. Krishnamoorthy* v. *The State of Madras,* (1), a Division Bench of the Madras High Court has taken a similar view and it was held that the fact that the rules are made to safeguard the rights of civil servants in matters of disciplinary action does not mean that the High Court has jurisdiction to quash orders of Government dismissing a civil servant because one or other of the rules has been contravened. So long as the provisions of Article 311 are not contravened the Court has no jurisdiction to quash an order of dismissal passed by Government. In a somewhat similar case *Des Raj-Kirpa Ram* v. *State of Punjab* (2), it was held in this Court following Privy Council case which I have quoted above that a failure to observe service rules does not give to the aggrieved party a cause of action in regard to promotions, and the following observation of Lord Roche in the *Venkata Rao's case* (3), was followed—

> "Their Lordships are unable as a matter of law to hold that redress is obtainable

(1) A.I.R. 1951 Mad. 882
(2) A.I.R. 1954 Punjab 134
(3) I.L.R. 1937 Mad. 532 at p. 543

from the Courts by action. To give redress is the responsibility, and their Lordships can only trust will be the pleasure, of the executive Government."

I shall now consider whether there has been any contravention of the rules, whether in the inquiry which was held against the petitioner or in regard to his complaints contained in paragraphs 19, 20, 21 and 22 of the petitioner's affidavit. Mr. Khosla has submitted that the enquiry was not in accordance with the regulations made by the Civil Services Rules, but I have been unable to find any ground on which this objection can be successsfully sustained. The inquiry was, as has been pleaded by the Government, instituted by the Punjab Government who are the appointing authority. It has not been shown that what records were not made available and what facilities were not afforded to the petitioner, nor does the affidavit contain any list of documents which the petitioner was entitled to inspect but was not allowed to inspect. Counsel emphasised that the petitioner was made to pay some expenses for his witnesses. The Government has stated in their affidavit that the expenses of the witnesses who were considered by the Inquiry Officer to be material were paid to the petitioner after he had incurred the expenses which is in accordance with the standing instructions of the Government. Researches of counsel have not shown that there is any law by which in an inquiry such as this the Government is bound to pay for expenses of all the witnesses whom person complained against may want to produce. The other allegations contained in paragraph No. 15 were denied by the State and they have not been substantiated. I am of the opinion therefore that it has not been shown that the inquiry was vitiated by any such defect as would be absolutely contrary to natural justice. But, as I have said before, any breach of procedure in rules

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does not give to the petitioner a right of action; see *Punjab State* v. *Bhagat Singh,* (1), decided on the 29th November, 1954.

Besides, when a matter is brought before a Court under Article 226 of the Constitution of India, the Court can only examine the order and cannot consider the evidence to show that the conclusion was arrived at by some erroneous reasoning or by admission of inadmissible evidence (*Munna Lal Tewari* v. *Scott* (2)).

A great deal of emphasis was laid by Mr. Khosla that his client is governed by the rules of 1930 and the rules subsequently made cannot affect his rights. He relied in the first instance on section 241 (3) of the Government of India Act. Sub-section (1) of that section deals with appointments, sub-section (2) with conditions of service and sub-section (3) provides for the framing of the rules and may be quoted as follows—

> "241 (3) The said rules shall be so framed as to secure—
>
> (a) that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect;

(1) R.S.A. 891 of 1951
(2) 57 C.W.N. 157

(b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him; or

(ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation, as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect;

(c) that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor."

But this sub-section applies to persons who were serving in a civil capacity in India before the commencement of Part III of the Government of India Act and it is not shown that the petitioner was a member of the P.C.M.S. before that date. Clause (b) also refers to "such person as aforesaid" which means a person mentioned in clause (a), i.e. that who was serving in a civil capacity before the commencement of Part III of the Act. Clause (c) deals with other persons serving in a civil capacity in India and it provides that everyone shall at least have a right of one appeal against any order made against him other than

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an order made by the Governor-General or a Governor. The right of appeal in the case of the petitioner therefore is regulated by sub-section (3), clause (c) of section 241 and not by the other clauses of sub-section (3).

Mr. Khosla contended that his client had a right of appeal against the order of the 8th February, 1951, but that is an order of the Governor and I cannot see to whom the appeal could lie. My attention is drawn to rule 14 of the Civil Services (Classification, Control and Appeal) Rules, 1930, where public services in India are classified into six categories, the fourth being the Provincial Services. Under the Government of India Act of 1935, Seventh Schedule, List II, Item 14, public health and sanitation, and hospitals and dispensaries came under the jurisdiction of the Provincial Governments and under section 100 (3) of that Act power to make laws for a province in regard to matters enumerated in List II was exclusively placed in the Provincial Legislatures and the Provincial Governments and therefore no appeal, even if it was provided under the rules of 1930, could be taken to the Governor-General and, after the coming into force of the Constitution, to the President of India. Rule 56 of the rules of 1930 deals with appeals and, as I have said, as a federal form of Government was introduced by the Act of 1935, the appeals, in regard to matters which came under List II could not be taken to the Governor-General but at any rate no such appeal would lie to the President. Under section 276 of the Government of India Act of 1935 rules which had been previously made were to continue in force and a similar provision has been made in the Constitution in Article 372.

The complaint of the petitioner based on these rules is contained in paragraphs Nos. 19 to 21. In paragraphs Nos. 19 and 20 the complaint of the

petitioner is that his appeal was not forwarded to the Central Government. As I have said above, in a federal form of Government the power of a Provincial or State Government in regard to matters contained in List II is plenary and except as otherwise provided in the Constitution the State Government is not subordinate to the Central Government and therefore after the Government of India Act of 1935 or the Constitution of India of 1950 no appeal lies against an order of the Governor and as the order withholding increment was made by the Governor, no appeal was competent and in my opinion the Government rightly withheld the appeal of the petitioner.

In paragraphs Nos. 22 and 23 the petitioner complains against the withholding of his representation to the President. Objection with regard to this is the same as I have given in the previous paragraph and I do not think that there is any substance in this complaint either.

Under section 241 of the Government of India Act of 1935 rules were made called the Punjab Civil Medical Service, Class II (Recruitment and Conditions of Service) Rules 1943. They were made on the 23rd March, 1944 and in Part B it is provided that they are applicable to all Civil Assistant Surgeons who entered the Punjab Civil Medical Service on or after the 1st April, 1934. By rule 16 of these rules contained in Part B the members of this service are governed by the rules contained in Section III of Chapter XIV of the Civil Services Rules (Punjab), Volume I, Part I, and Appendix E which is made under rule 16 shows that withholding of increment or promotion is a penalty which the Government is empowered to impose and in the case of the persons appointed before the 1st April, 1937, an appeal lies to the Governor exercising his individual

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judgment and in the cases as this no appeal lies. But under the present set-up of the Executive, action is to be taken in the name of the Governor and these rules even when an appeal is provided to the Governor would not be applicable because there cannot be an appeal from the order of the Governor to the Governor himself.

It is, then, submitted that under Article 320(3) of the Constitution of India the representation of the petitioner should have been sent to the Public Service Commission. The function of the Public Service Commission is to give advice and the Government is bound to consult the Public Service Commission in disciplinary matter, which includes memorials and representations, but after action has been taken by the Governor (and in this case the Public Service Commission was consulted before the order against the petitioner was passed on the 8th February, 1951), there is no question of consultation of the Public Service Commission because it does not sit in appeal against the orders of the Governor and I find nothing in Article 320 (3) (c) of the Constitution which requires that any representation which an aggrieved party wishes to send against an order of the Governor has to be sent to the Public Service Commission for advice. This submission of the petitioner is also without force and must be rejected.

Counsel then relied on rules 8 and 18 at pages 172 and 175 of Volume I, Part II, of the new Punjab Civil Services Rules. Rule 8 I have already dealt with and I was of the opinion that it does not impose a restriction on the powers of the Governor and does not introduce the provisions of Article 311 of the Constitution into the rules and the rule laid down by the Privy Council in *Venkata Rao's Case,* (1), still

(1) I.L.R. 1937 Mad. 532 (P.C.)

applies. Rules 10, 11 and 12 deal with appeals, second appeals and what orders can be made in appeals. But they do not carry the matter any further and if no appeal is competent against an order of the Governor, and rule 13 which deals with the right of revision also is inapplicable because the order was made by the Governor. Rule 18 saves the "existing rights of appeal" but I find nothing to support the contention that an appeal lay from the order of a Governor and whether existing rights were saved or not, this rule can be of very little assistance in deciding the present case.

Counsel then relied on Article 19 (1) of the Constitution and submitted that no disciplinary action can be taken against a Government servant in consequence of anything which he says. I am unable to agree that the effect of Article 19(1) is to give a *carte-blanche* to Government servants to make all kinds of allegations in intemperate language against their superiors and accuse them of communal bias, nepotism and the like. Freedom of speech is liberty and not licence.

I would, therefore, hold that—

(1) Article 311 of the Constitution of India is inapplicable because withholding of increment is not reduction in rank;

(2) There is no such defect in the inquiry held against the petitioner which would justify the issuing of a writ of *certiorari*;

(3) A contravention of the rules even if proved does not give to the applicant a ground for action as was held in *Venkata Rao's case* (1);

(4) There is no contravention of the rules and whether section 241 of the Government of India Act, 1935, applies or it does not

(1) I.L.R. 1937 Mad. 532 (P.C.)

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(a) no appeal was competent against the order of the Governor and (b) no representation could be allowed because there is no authority to whom the representation can be made;

(5) Article 19 (1) of the Constitution of India has no application; and

(6) Article 320 (3) (a) of the Constitution also has not been contravened.

I would therefore dismiss this petition with costs.

APPELLATE CIVIL.

Before Khosla and Falshaw, JJ.

STATE OF PUNJAB,—*Appellant.*

versus

BACHAN SINGH AND OTHERS,—*Respondents.*

Civil Regular Second Appeal No. 432 of 1949.

1955.

Oct. 4th.

Evidence Act (I of 1872)—Sections 107 and 108—Absconder not interested in disclosing his whereabouts—Whether can be presumed to be dead after seven years—Presumption under section 108, whether can be raised in such circumstances.

M. S. who was charged with murder absconded. His property was attached and taken possession of by Government under sections 87 and 88 of the Criminal Procedure Code. In 1946 next reversioners of M. S. brought a suit for possession of the attached property on the ground that M. S. must be presumed to be dead and the plaintiffs being the next reversioners were entitled to succeed to his property. T. C. decreed the suit and its decision was affirmed in appeal. Government moved the High Court in Second Appeal.

Held, that section 108 of the Evidence Act is nothing more than a proviso to section 107 and the two sections, therefore, must be read together. In the circumstances of this case there would be no communication with the relations or the people of the village in the natural course of events and no presumption, therefore, can arise because it is section 107 and not section 108 which would apply.