profits. The learned counsel for the assessee has not been able to assail this view either on principle or authority.

In the result, we would answer the question referred to us in the negative.

In view of the nature of the points involved, the parties will be left to bear their own costs in this Court.

MEHAR SINGH, J.—I agree.

B.R.T.

Messrs. Raj Woollen Industries
v
The Commissioner of Income-tax, Simla

Grover, J.

Mehar Singh, J

CIVIL MISCELLANEOUS

Before G. D. Khosla, C.J., and S. S. Dulat, J.

P. C. WADHWA,—*Petitioner*

versus

UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Writ No. 752 of 1959.

Indian Police Service (Recruitment) Rules, 1954—Rule 4—Indian Police Service (Cadre) Rules, 1954 and Indian Police Service (Fixation of Cadre Strength) Regulations, 1955—Effect of—Constitution of India (1950)—Article 311—All India Services (Discipline and Appeal) Rules, 1955—Rule 3—Reversion from a higher officiating post to substantive junior post—Whether amounts to reduction in rank.

Held, that what follows from the Indian Police Service (Recruitment) Rules, 1954, Indian Police Service (Cadre) Rules, 1954 and Indian Police Service (Fixation of Cadre Strength) Regulations, 1955, is that only a cadre officer can be posted to a cadre post which means that a member of the Indian Police Service only is eligible for appointment to a post in the senior scale. It does not, however, follow that every officer of the Indian Police Service is entitled, as of right, to be appointed to a cadre post. Persons recruited to the Indian Police Service are given, in the original instance, a post in the junior scale.

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Jan., 20th.

This is the substantive rank of each new entrant He may be chosen for appointment to a cadre post, but he cannot, as of right, claim that he must be given that appointment when he is the seniormost person available. There is nothing in any of these rules to show that a member of the Indian Police Service holding a junior post can, as of right, claim to be promoted to a cadre post. It is not true to say that every cadre officer must be given a cadre post.

Held, that the petitioner did not hold the post of Superintendent of Police as a matter of right. He was promoted to this post and held it in an officiating capacity. He cannot be said to have held this post as a matter of right. It follows that his reversion from that post did not amount to reduction in rank within the meaning of Article 311. The order reverting him said nothing about misconduct or the unsatisfactory nature of his work and no stigma attached to the petitioner as far as that order was concerned, Therefore, his reversion was not by way of punishment or penalty. The case of the petitioner is covered by Explanation (4) of rule 3 of the All-India Services (Discipline and Appeal) Rules, 1955. The fact that persons junior to the petitioner have been promoted, does not for ever debar the petitioner from promotion, nor is there any order which disentitles the petitioner from further promotion in future. He has been held back only because after having been tried to a superior post it was found that there were other persons more suitable for appointment in preference to him and it cannot be held that the petitioner's case is a case of withholding promotion. His case is covered by Explanation (4) and it does not amount to reduction in rank.

Held, that whenever, action is taken in respect of a Government Officer, the reason is that his work is either unsatisfactory or that he has been guilty of some misconduct. A Government servant may be compulsorily retired or he may be debarred from appointment to a post involving selection. Such adverse, action, however, does not necessarily amount to punishment or reduction in rank so as to attract the provisions of Article 311 of the Constitution.

Case referred by Hon'ble Mr. Justice Dulat, on 7th of April, 1960, to a larger Bench for decision of the legal question involved in the case and later on decided by a Division

Bench consisting of Hon'ble Mr. Chief Justice, G. D. Khosla and Hon'ble Mr. Justice Dulat on 20th January, 1961.

Petition under Article 226 of the Constitution of India praying that an appropriate writ order or direction be issued quashing the order of the petitioner's reversion and the petitioner be ordered to be reinstated to the rank of Superintendent of Police with effect from the date of his reversion.

J. N. KAUSHAL, HARBHAGWAN KHUNGAR, AND M. R. SHARMA, ADVOCATES, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

ORDER

G. D. KHOSLA, C. J.—This petition under Article 226 of the Constitution came up in the original instance before my brother, Dulat, J, sitting singly. He was of the opinion that in view of the importance of the point raised in the petition it should be heard by a larger Bench. In this manner it has come before us.

P. C. Wadhwa v. Union of India and another

Khosla, C.J.

The petitioner is P. C. Wadhwa, a member of the Indian Police Service. He joined the Police Service on 3rd October, 1952, and was confirmed in this service on 30th November, 1953. On 27th January, 1958, he was promoted from the junior scale of this service to the senior scale as Officiating Superintendent of Police and was posted as Additional Superintendent of Police, Ferozepore. He was subsequently transferred as Additional Superintendent of Police, Punjab Armed Police, at Ferozepore. This post incidentally involved a special pay of Rs. 100. On 18th July, 1958, a charge-sheet was served upon him and he was

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called upon to make a reply. The reply was submitted by him and an enquiry was ordered by an Enquiry Officer, who was appointed in this behalf. Before the enquiry started, however, the petitioner was ordered to be posted as Assistant Superintendent of Police, which was his substantive rank, on 3rd November, 1958, and was posted at Amritsar. He brought the matter to this Court by means of a petition under Article 226 of the Constitution alleging that his reversion as Assistant Superintendent of Police, amounted to reduction in rank and so the order reverting him attracted the provisions of Article 311 of the Constitution. This writ petition was dismissed as premature as the petitioner had not availed himself of the right of appeal to the Central Government. He thereupon filed an appeal to the Central Government, but this was dismissed on 8th May, 1959. A few weeks later on 21st June, 1959, he presented a second petition which is now before us.

The petitioner's case as submitted before us is that he was holding the officiating rank of the Superintendent of Police, as of right, because a member of the Indian Police Service, is entitled as of right to be promoted to a post in the senior scale whenever a vacancy arises and no one senior to him is available for that post. He could not be reverted from that post unless he was given adequate opportunity to show cause against his reversion as contemplated by Article 311 of the Constitution or unless the procedure prescribed by rule 5 of the All-India Services (Discipline and Appeal) Rules, 1955, was adopted. In as much as no enquiry was held, although one had been ordered, the provisions of rule 5 as also the provisions of Article 311 of the Constitution were violated. In the second place, it was argued that the petitioner's reversion amounted to punishment for misconduct.

The fact that a charge-sheet was framed and delivered to him and that an enquiry into these charges was ordered, made it quite clear that the petitioner's reversion was by way of punishment and not for "administrative reasons" as contemplated by Explanation (4) to rule 3 of the above-mentioned Rules. Although the reversion was in anticipation of the finding of the Enquiry Officer, the reversion was really a kind of punishment.

The main contention of the learned counsel for the petitioner is that the conditions of service which govern members of the Indian Police Service ensure that all persons, who are recruited directly to the Indian Police Service, will be promoted to a senior scale post as soon as their turn comes unless there are grounds for withholding promotion, and promotion can only be withheld by way of penalty and this penalty can only be inflicted after following the procedure laid down in rule 5. Our attention was drawn to the Indian Police Service (Recruitment) Rules, 1954. Rule 4 of these Rules sets out the methods of recruitment to the service. Recruitment is made (a) by a competitive examination and (b) by promotion of members of the State Police Service. Recruitment by promotion is limited to 25 per cent of the number of senior duty posts borne on the cadre of any particular State. Therefore, the remaining 75 per cent of these posts must go to those persons, who are recruited on the result of a competitive examination. The petitioner comes under category (a) and he is one of those persons, who are entitled to 75 per cent of the senior duty posts. Again, the Indian Police Service (Cadre) Rules, 1954, define a 'cadre officer' as a member of the Indian Police Service and a 'cadre post' as any of the posts specified as such in the regulations made under sub-rule (1) of rule 4 of these Rules. From this it was sought to be argued that because the petitioner

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is a cadre officer, he is entitled as of right to a cadre post. The Indian Police Service (Fixation of Cadre Strength) Regulations, 1955, drawn up under sub-rule (1) of rule 4 of the Indian Police Service (Cadre) Rules, 1954, show that the cadre posts are the senior posts.

What follows from these rules is that only a cadre officer can be posted to a cadre post which means that a member of the Indian Police Service only is eligible for appointment to a post in the senior scale. It does not, however, follow that every officer of the Indian Police Service is entitled, as of right, to be appointed to a cadre post. Persons recruited to the Indian Police Service are given, in the original instance, a post in the junior scale. This is the substantive rank of each new entrant. He may be chosen for appointment to a cadre post, but he cannot, as of right, claim that he must be given that appointment when he is the senior-most person available. There is nothing in any of the rules which were cited before us to show that a member of the Indian Police Service holding a junior post can, as of right, claim to be promoted to a cadre post. In other words, the converse of what is laid down in rule 8 of the Indian Police Service (Cadre) Rules, 1954, is not correct. Rule 8 says—

> "Save as otherwise provided in these rules, every cadre post shall be filled by a cadre officer."

It is not true to say that every cadre officer must be given a cadre post.

The Supreme Court in *Parshotam Lal Dhingra* v. *Union of India* (1), considered the question of when a Government servant can be said to hold a

(1) A.I.R. 1958 S.C. 36.

post in his own right. Das C.J., in paragraph 26 of the report gave three instances of when a Government servant acquires a right to hold a post. The first is an instance—when a person is substantively appointed 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. The second case occurs when a person is appointed to a temporary post for a fixed term. The third case occurs when a person having been appointed temporarily to a post has been in continuous service for more than three years or has been certified by the appointing authority as fit for appointment in a quasi-permanent capacity. In all these three instances the learned Chief Justice observed that the Government servant is said to have a right to that post; he cannot be reduced from that post without attracting the provisions of Article 311. The learned Chief Justice went on to say—

> "Except in the three cases just mentioned a Government servant has no right to his post and the termination of service of a Government servant does not, except in those cases, amount to a dismissal or removal by way of punishment."

Dhingra, who was a member of All-India Service, was appointed Superintendent Railway Telegraphs Class II. His substantive post was a class III appointment and he was reverted to that post. There was an allegation that his work was unsatisfactory, but in the order reverting him to a post in class III, there was no reference to the reason which had prompted the reversion. There was no doubt at all that it was the unsatisfactory nature of Dhingra's work that had led to his reversion to the substantive post. The Supreme Court held

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that this reversion did not amount to punishment, because Dhingra had no right to hold the grade II post and the order reverting him being silent on the reasons for his reversion could not be said to entail a penalty or punishment for misconduct or unsatisfactory work. A somewhat similar matter was considered by the Supreme Court in *Dalip Singh* v. *State of Punjab* (1) Dalip Singh was holding the post of the Inspector-General of Police, Pepsu, and the Rajpramukh made an order retiring him from service for "administrative reasons". He made a representation and asked for the reasons which had led to his retirement. Government mentioned some charges, and upon this Dalip Singh brought a suit for a declaration that he had been wrongly retired from service and he also claimed a sum of money on account of his salary. The suit was decreed, but the Pepsu High Court allowed the appeal holding that this was not a case of punishment or wrongful retirement. The decision of the High Court was upheld by the Supreme Court and it was pointed out that as the order retiring him made no mention of misconduct, the retirement was for administrative reasons and, therefore, did not attract the provisions of Article 311 of the Constitution. In *the State of Orissa* v. *Ram Narayan Das*, Civil Appeal No. 61 of 1959, the Supreme Court considered the case of a sub-Inspector of Police on probation, who was discharged for gross neglect of duty and unsatisfactory work. The Supreme Court held that the Sub-Inspector did not hold his post as a matter of right because he was merely a person on probation. They drew attention to the observation of Das C.J., in *Parshotam Lal Dhingra's case.*

I, therefore, find that the petitioner did not hold the post of Superintendent of Police as a

(1) A.I.R. 1960 S.C. 1305.

matter of right. He was promoted to this post and held it in an officiating capacity. His was not one of the three cases described in *Parshotam Lal Dhingra's case* and that being so, he cannot be said to have held his post as a matter of right. It follows that his reversion from that post did not amount to reduction in rank within the meaning of Article 311. The order reverting him said nothing about misconduct or the unsatisfactory nature of his work and no stigma attached to the petitioner as far as that order was concerned. Therefore, his reversion was not by way of punishment or penalty. In this view of the matter, the case of the petitioner is covered by Explanation (4) of rule 3 of the All-India Services (Discipline and Appeal) Rules, 1955, which reads as follows :—

> "(4) The reversion to a lower post of a member of the service, who is officiating in a higher post, after a trial in the higher post or for administrative reasons (such as the return of the permanent incumbent from leave or deputation, availability of a more suitable officer, and the like) does not amount to reduction in rank within the meaning of this rule."

It was argued before us that persons junior to the petitioner had been promoted as Superintendents of Police and that, therefore, it could not be said that the petitioner's reversion was for administrative reasons. Explanation (4) quoted above, however, contemplates the case of a reversion after trial in a higher post and also when a more suitable officer is available. The instances given are not exhaustive and the phrase "and the like" is intended to cover other instances of reversion when reversion is not intended to be by way of punishment or penalty.

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In the present case there is no doubt that charges were framed and an Enquiry Officer was appointed. We are informed that the enquiry is now complete, but the order reverting the petitioner said nothing whatsoever about these charges or the facts upon which these charges were based. That being so, the order *per se* does not inflict any stigma or stain upon the petitioner and the reversion can only be interpreted as being reversion for administrative reasons. The fact that persons junior to the petitioner have been promoted, does not for ever debar the petitioner from promotion, nor is there any order which disentitles the petitioner from further promotion in future. He has been held back only because after having been tried on a superior post it was found that there were other persons more suitable for appointment in preference to him, and in this view of the matter, it cannot be held that the petitioner's case is a case of withholding promotion. His case is covered by Explanation (4) and it does not amount to reduction in rank.

The second point that in the present case the reversion was, in substance, a punishment inflicted upon the petitioner, has scarcely any force in view of what has been said above. Whenever action is taken in respect of a Government Officer, the reason is that his work is either unsatisfactory or that he has been guilty of some misconduct. A Government servant may be compulsorily retired or he may be debarred from appointment to a post involving selection. Such adverse action, however, does not necessarily amount to punishment or reduction in rank so as to attract the provisions of Article 311 of the Constitution In *Shyam Lal* v. *The State of Uttar Pradesh the Union of India* (1), the Supreme Court dealt with the case

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

of a Government servant, who was compulsorily retired after 25 years' service. Retirement in that case was ordered because of three specific items of misdemeanour, but as the order of retirement said nothing about his misconduct, it was held that the retirement was not by way of punishment. The cases of *Dhingra* and *Ram Narayan Das*, to which a reference has already been made above, are similar in this respect. I cannot, therefore, hold that the reversion of the petitioner to the rank of Assistant Superintendent of Police was by way of punishment. Nor is there any force in the argument that the petitioner's further promotion has for ever been barred. We were asked to examine the personal file of the petitioner, and on examining it we found that the reasons which prompted his reversion in the present instance were not the reasons which led to the framing of a charge-sheet against him. But even if the framing of the charge-sheet and the order of reversion had proceeded from the same set of circumstances, it would have made no difference to the case, because the order reverting him cannot *per se* be interpreted as an order inflicting punishment upon the petitioner.

In this view of the matter, this petition must be dismissed and I would dismiss it, but make no order as to costs.

S. S. DULAT, J.—I agree. Dulat, J.

B.R.T.

REVISIONAL CIVIL

Before G. D. Khosla, C.J.

M/s RAM SARAN DASS-TARA CHAND,—*Petitioner*

versus

RAM RICHHPAL AND ANOTHER,—*Respondent*

Civil Revision No. 121-D of 1957.

Code of Civil Procedure (V of 1908)—Order 22—Whether applies to revision petitions—Provincial Small-Cause Courts