appellant to reinstate Mr. Banerjee is set aside. In the circumstances of the case, there would be no order as to costs.

Appeal allowed.

RANENDRA CHANDRA BANERJEE

v.

UNION OF INDIA

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA and J. C. SHAH JJ.)

Public Servant—Probationer—Discharge from service for unsatisfactory work—If entitled to protection under the Constitution and the Rules—Civil Services (Classification, Control and Appeal) Rules, rr. 3 (a), 49, 55-B—Constitution of India, Art. 311 (2).

The appellant was appointed on probation for one year as Programme Assistant on May 3, 1949, on condition that his services might be terminated without any notice and cause being assigned during that period. He agreed and joined service on these terms on July 4, 1952, he was called upon to show cause why his services should not be terminated and as the explanation given was not satisfactory, his services were terminated after August 31, 1952. On an application moved under Art. 226 of the Constitution the High Court dismissed the application and held that the appellant was not entitled to the protection of Art. 311 (2) of the Constitution, that rr. 49 and 55-B of the Civil Services Rules did not apply and that he was governed by the contract of his service.

Held, that in the present case the appellant was a probationer and the termination of his service was not by way of punishment and could not amount to dismissal or removal within the meaning of Art. 311. As a probationer he would be liable to be discharged during that period subject to the

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rules in force in that connection and as Explanation 2 to r. 49 had been deleted long before the action was taken, he was not entitled to the protection of Art. 311.

Parshottam Lal Dhingra v. *Union of India*, [1958] S. C. R. 828 and *State of Orissa* v. *Ram Narain Das* [1961] 1 S.C.R. 606, referred to.

Held, further, that r. 55-B would apply to the appellant and was not excluded by r. 3 (a). The purpose of a notice under r. 55-B was to ascertain, after considering the explanation which a probationer may give, whether he should be retained or not and in such a case it would be sufficient compliance with that rule if the grounds on which the probationer is considered unsuitable for retention are communicated to him and any explanation given by him with respect to those grounds was duly considered before an order was passed. In the present case, therefore, the appellant was given the opportunity as envisaged by r. 55-B and the appeal therefore, must be dismissed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 271 of 1962.

Appeal from the Judgment and order dated May 18, 1959 of the Punjab High Court (Circuit Bench) at Delhi in L. P. A. No. 24-D of 1956.

K. B. Mehta, for the appellant.

N. S. Bindra, R. H. Dhebar for *R. N. Sachthey*, for the respondents.

1963. February 18. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO J.—This is an appeal on a certificate granted by the Punjab High Court. The appellant was selected for the post of Programme Assistant on May 3, 1949 and was appointed on probation for one year, and the letter of appointment said that during the said period his services might be terminated without any notice and without any cause being assigned. He was asked to accept the offer on this condition. The appellant accepted the

offer and joined service on June 4, 1949. His period of probation expired on June 3, 1950, but it was extended from time to time. On July 4, 1952, the appellant was informed that his probation period could not be extended and was called upon to show cause why his services should not be terminated. The appellant showed cause. He was finally informed that the explanation given by him was not satisfactory and that his services were to be terminated after August 31, 1952.

The appellant then filed a petition under Art. 226 of the Constitution in the Punjab High Court and his main contention was that he was entitled to the protection of Art. 311 (2) of the Constitution and as this was not afforded to him the order terminating his services was illegal. Besides it was urged on his behalf that he was governed by rr. 49 and 55-B of the Civil Services (Classification, Control and appeal) Rules (hereinafter referred to as the Rules) and therefore he was entitled to the protection of those rules. As however his services had been terminated without compliance with those rules he was in any case entitled to reinstatement.

The High Court held that the appellant was not entitled to the protection of Art. 311 (2) of the Constitution. It further held that rr. 49 and 55-B of the Rules did not apply to the appellant and he was governed by the contract of his service which provided that his services might be terminated without any notice and without any cause being assigned during the period of probation. The High Court further held that rr. 49 and 55 B would not in any case apply to the appellant in the face of the contract under which he was appointed in view of r. 3 (a) of the Rules. The petition was consequently dismissed, but the High Court granted a certificate to the appellant that the case was a fit one for appeal to

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this Court; and that is how the matter has come up before us.

It is not in dispute that the appellant was never confirmed in his appointment. It is also not in dispute that though the letter of appointment said that the appellant will be on probation for a period of one year, his probation period was extended from time to time. We agree with the High Court that though the letter of appointment did not say in so many words that the probation was likely to be extended, it was implicit therein that the probation would continue till such time as the appellant was confirmed or discharged and so would the term in the appointment letter that his services were liable to be terminated without any notice and without any cause being assigned, during the period of probation.

The first question that falls for determination is whether the appellant is entitled to the protection of Art. 311 (2); for if he is entitled to that protection it is not disputed that that provision was not complied with in this case before his services were terminated. It is now well settled that the protection of Art. 311 of the Constitution applies to temporary government servants also where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment. But it is equally well settled that where the services of a temporary government servant are terminated not by way of punishment, Art. 311 will not apply and the services of such a servant can be terminated under the terms of the contract or by giving him the usual one month's notice. [see, *Parshotam Lal Dhingra* v. *Union of India*(1)]. Further it is equally well settled that a government servant who is on probation can be discharged and such discharge would not amount to dismissal or removal within the meaning of Art. 311 (2) and would not attract the protection of that Article where the services of a probationer are terminated in accordance with the rules and not by way of punishment.

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

A probationer has no right to the post held by him and under the terms of his appointment he is liable to be discharged at any time during the period of his probation subject to the rules governing such cases : [see *The State of Orissa* v. *Ram Narain Das* (1)]. The appellant in the present case was undoubtedly a probationer. There is also no doubt that the termination of his service was not by way of punishment and cannot therefore amount to dismissal or removal within the meaning of Art. 311. As a probationer he would be liable to be discharged during the period of probation subject to the rules in force in that connection. The High Court therefore was right in holding that the appellant was not entitled to the protection of Art. 311 (2) of the Constitution.

It is however urged on behalf of the appellant that the rules themselves made it obligatory that Art. 311 (2) should be complied with before the services of a probationer were terminated. In this connection reliance is placed on *Explanation* 2 to r. 49 of the Rules, as amended on October 10, 1947. That *Explanation* read as follows :—

> "The discharge of a probationer whether during or at the end of the period of probation, for some specific fault or on account of his unsuitability for the service, amounts to removal or dismissal within the meaning of this rule."

Now if this *Explanation* were in force in 1952 when action was taken against the appellant, his contention that Art. 311 (2) applied to him would be correct. But we find that r. 49 was further amended in November 1949 and by that amendment *Explanation* 2 was deleted, and a new *Explanation*, which took the place of *Explanations* 1 and 2 of the rule as it stood after the amendment of October 10, 1947

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was substituted. This new *Explanation* which was in force at the relevant time, is in these terms :—

> "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) * * * * * *
>
> (c) * * * * * *
>
> does not amount to removal or dismissal within the meaning of this rule or of rule 55."

Therefore when action was taken against the appellant in 1952, it was this *Explanation* which governed the appellant and accordingly if his services were terminated in accordance with the terms of his appointment and the rules governing his probationary service and not as a measure of punishment, the appellant cannot claim the protection of Art. 311 (2). His contention based on *Explanation* 2 to r. 49 as it existed after the amendment of October, 1947 must therefore fail as that *Explanation* had been deleted long before action was taken against the appellant. The main contention of the appellant therefore that he was entitled to the protection of Art. 311 must fail.

In the alternative, it has been urged on behalf of the appellant that he was entitled to the protection of r. 55-B and as that rule was not complied with, the termination of his service was illegal. The High Court held that r. 55-B would not apply to the appellant because in the letter of appointment issued to him it was said that his services were liable to be

terminated without any notice and without any cause being assigned. The reason why the High Court held that that term in the letter of appointment would prevail over r. 55-B is that where there is conflict between the terms of contract and the rules, the former must prevail, under r. 3 (a).

Two questions thus arise in this connection : the first is whether in view of r. 3 (a) the appellant will not be entitled to the protection of r. 55-B, and the second is whether he was afforded the protection of r. 55-B before action was taken to terminate his service if that rule applies. Rule 55-B was inserted in the Rules in November, 1949 and reads thus :—

> "Where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment."

This rule would clearly apply to the appellant who was a probationer as it was in force at the relevant time, unless r. 3 (a) makes it inapplicable in view of the term mentioned above in the letter of appointment issued to him. Rule 3 (a) lays down—

> "These rules shall apply to every person in the whole-time civil employment of a Government in India (other than a person so employed only occasionally or subject to discharge at less than one month's notice) except—
>
> (a) persons for whose appointment and conditions of employment special provision is made by or under any law for the time being in force ;

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(b) x x x x x x x

x x x x x x x"

Rule 3 (a) thus excludes the application of the Rules only in case of persons for whose appointment and conditions of employment special provision is made by or under any law for the time being in force. It has not been shown to us that any special provision has been made as to the appointment and conditions of employment of persons in the all-India Radio service by or under any law for the time being in force. It cannot be said therefore that the term already mentioned, which appears in the letter of appointment issued to the appellant, is a special provision by virtue of any law or was inserted under any law for the time being in force. That term is nothing more than the usual term one finds in letters of appointment issued to persons appointed on probation. The High Court was therefore in our opinion not right in holding that r. 55-B will not apply to the appellant because of this term in the letter of appointment issued to him. We hold that r. 55-B will apply to the appellant and is not excluded by r. 3 (a).

The next question is whether r. 55-B was complied with. The facts in that connection are these. On December 6, 1951 soon after the appellant's probation was extended up to June 3, 1952, he was informed that during the period he had been employed his work had been found to be much below the standard required for the post. The main defects that were found were also pointed out to him, namely, "(i) immature taste, (ii) cannot be entrusted to work without supervision, and (iii) has few ideas but cannot think logically and plan systematically." He was therefore given an opportunity to remedy the defects and to make attempts to bring himself up to the standard at least of an average Programme Assistant. He was further informed that he should

do so by systematic concentration on his subjects, application to his job and by making wider studies and contacts. He was told to seek guidance and help of his senior officers wherever required in effecting the necessary improvement. Finally he was told that it would not be possible to give him any further extention of probation after the present one and that if his work during that period did not come up to the required standard, his services might have to be terminated. The appellant thus had been warned to improve his work as far back as December, 1951. On July 4, 1952, the appellant was given a notice by which he was afforded an opportunity to show cause why his services should not be terminated and was informed that any representation made by him in this regard would be duly considered. The notice said that the appellant's work had not come up to the average standard of a Programme Assistant and four defects were pointed out, namely, (i) immaturity in taste, and want of tact and discretion, (ii) inability to think logically and plan systematically, (iii) want of programme sense and background necessary for an average programme man, and (iv) he could not be entrusted to work without supervision. The appellant gave his explanation in reply to this notice which was duly considered and on July 31, 1962, he was informed that his explanation had not been considered satisfactory and therefore his service would be terminated after August 31, 1952.

It has been contended on behalf of the appellant that this was not sufficient compliance with r. 55-B. That rule lays down that the probationer shall be apprised of the grounds on which it was proposed to terminate his services and given an opportunity to show cause against it. We are of opinion that the appellant's contention must be rejected. The appellant was apprised of the grounds on which it was proposed to discharge him. But what is urged is that the elaborate procedure provided

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in r. 55 should have been gone through under r. 55-B also. Rule 55 however deals with cases of removal, dismissal or reduction in rank, which are specifically covered by Art. 311 (2) of the Constitution and the procedure prescribed therein is meant for these three major punishments. That procedure is not meant to be applicable under r. 55-B which deals with the discharge of a probationer which is not a punishment at all. Therefore in a case covered by r. 55-B all that is required is that the defects noticed in the work which make a probationer unsuitable for retention in the service should be pointed out to him and he should be given an opportunity to show cause against the notice, enabling him to give an explanation as to the faults pointed out to him and show any reason why the proposal to terminate his services because of his unsuitability should not be given effect to. If such an opportunity is given to a probationer and his explanation in reply thereto is given due consideration, there is in our opinion sufficient compliance with r. 55-B. Generally speaking the purpose of a notice under r. 55-B is to ascertain, after considering the explanation which a probationer may give, whether he should be retained or not and in such a case it would be sufficient compliance with that rule if the grounds on which the probationer is considered unsuitable for retention are communicated to him and any explanation given by him with respect to those grounds is duly considered before an order is passed. This is what was done in the present case and it cannot therefore be said that the appellant was not given the opportunity envisaged by r. 55-B. We therefore dismiss the appeal, though for slightly different reasons. In the circumstances there will be no order as to costs.

Appeal dismissed.