

CONSTITUTION (SCHEDULED CASTES)
ORDER (AMENDMENT) BILL*

INDIAN TELEGRAPH (AMENDMENT)
BILL*

[English]

SHRI SYED SHAHABUDDIN (Kishanganj): Sir, I beg to move for leave to introduced a Bill further to amend the Constitution (Scheduled Castes) Order, 1950.

MR. DEPUTY SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution (Scheduled Castes) Order, 1950."

The motion was adopted

SHRI SYED SHAHABUDDIN: I introduce the Bill.

COMMISSIONS OF INQUIRY (AMENDMENT) BILL*

(Amendment of Section 5)

[English]

PROF. MADHU DANDAVATE (Rajapur): Sir, I beg to move for leave to introduce a Bill further to amend the Commissions of Inquiry Act, 1952.

MR. DEPUTY SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Commissions of Inquiry Act, 1952."

The motion was adopted

PROF. MADHU DANDAVATE: I introduce the Bill.

(Amendment of Section 5)

[English]

SHRI SYED SHAHABUDDIN (Kishanganj): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Telegraph Act, 1885.

MR. DEPUTY SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Telegraph Act, 1885."

The motion was adopted

SHRI SYED SHAHABUDDIN: I introduce the Bill.

CONSTITUTION (AMENDMENT)
BILL—CONTD.

(Amendment of article 311)

[English]

MR. DEPUTY SPEAKER: Now, Bills for consideration and passing. Further consideration of the following motion moved by Shri Suresh Kurup on the 12th August, 1988, namely:-

"That the Bill further to amend the Constitution of India, be taken into consideration."

Shri Suresh Kurup.

SHRI SURESH KURUP (Kottayam): Sir, my Bill is for a limited purpose to amend the Article 311(2)(b) and Article 311(3). Sir, Article 311(2)(b) is giving unlimited powers to the authority to dismiss or remove from service a Government servant without conducting a proper enquiry. The Article 311(3) says:

"(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such a person or to reduce him to rank shall be final."

15.41 hrs.

[SHRI VAKKOM PURUSHOTTAM *in the Chair*]

These are the two clauses which my Bill envisages to amend. Sir, already there is a big demand from various Government Department employees' organisations all over the country that Article 310, Article 311(2)(a)(b) and (c) should be amended. But I am mentioning only about two clauses because. I only expect that this Government should be magnanimous to accept at least this much and delete from our Constitution an important lacuna and will give job security to the Government employees. Sir, as everybody knows, in 1975, in Mr. Chellappa's case, the hon. judges of the Supreme Court gave a clear-cut verdict that an employee should be heard as to the quantum of punishment to be given to him before giving that punishment. So, the Article which I mentioned in my Bill is practically not in operation from 1975 onwards after the judgement of Chellappa's case. But recently in Shri Tulsiram Patel's case, the Division Bench of the Supreme Court over-ruled the judgement on the Chellappa's case and with only one judge, Justice Thakkar gave dissenting opinion. The remaining 4 judges gave the verdict that principles of natural justice do not apply to Article 311(2)(a)(b) & (c) and a Government

servant can be removed from service *ex parte*.

Sir quite naturally this judgement had caused great concern among the State and the Central Government employees. From that date onwards, cutting across all party affiliations all political parties, Members of Parliament, trade Union activists, all the organisations of the Government employees various Central Trade unions, all of them have been consistently demanding that this particular article giving unlimited powers to the executive, unlimited power to the bureaucrats should be removed from our Constitution. In all these months, the attitude of the Government was not at all helpful. Earlier also, this demand was raised in this House and my colleague, Mr. Janga Reddy had earlier brought a Bill like this. My senior colleague Prof. Madhu Dandavate's Bill is pending before this House. All these concern with this particular Article of the Constitution on and this shows the genuineness of this demand. (*Interruptions*) Shri Thampan Thomas' Bill is also there.

I am not mentioning about Article 30 and all that. All these came into our Constitution from our colonial powers. And this Article 311 was taken *in toto* from the Government of India Act of 1935. Even the words are the same except sub-clause (c) and clause 3. This article was taken verbatim and the clauses were taken from the Government of India Act of 1935.

I would like to draw the attention of this House to the fact that when the Government of India Act of 1935 was enacted, the Indian National Congress opposed it right from the beginning. Each and every clause of this Act was opposed by the Indian National Congress at that time, by our freedom movement at that time, and in the Government of India Act it was Article 240 and now in our Constitution it is Article 311.

Sir, each and every accused in this country gets an opportunity to be heard and to prove his innocence. Then only the verdict is given. And strangely enough our Govern-

ment somehow or other thinks that this should not be applicable in the case of Government employees. Sir, this Supreme Court verdict and the provisions in this Constitution are clearly against the principles of natural justice. The principles of natural justice clearly mean that no one should be punished before he is heard by the authority. That is the law of the country, that is the law everywhere in any civilised country.

MR. CHAIRMAN: Before he is heard.

SHRISURESH KURUP: Yes, before he is heard.

Another thing is that nobody can be a judge in his own case. These are the two cardinal principles of natural justice. This most fundamental of the Fundamental Right is violated by this particular Article and the sub-clause of our Constitution. And when we go to the Judgment on Tulsi Ram Patel's case, it was only Justice Thakkar who dissented and in his dissenting note he has made it very clear that the cardinal principle of judicial collectivism was not upheld while delivering this judgment. Sir, one group of Judges cannot express their opinion ignoring other Judges. This is the essence of the principle of judicial collectivism, but this cardinal principle was violated in the Judgment on Tulsi Ram Patel's case. Justice Thakkar has alleged that there was no serious deliberation between the Judges regarding this important Judgment to come to a common understanding and the Judgment was delivered on July 11, and the honourable Judges were so particular to give that Judgment on that particular date because on that day Chief Justice Chandrachud was about to retire. So, before his retirement they wanted to deliver this Judgment and Justice Thakkar has alleged at page 237 that the majority Judgment was not at all circulated, it was circulated only three hours before. I quote from his Judgment as follows:

"If only there had been a meeting in order to have a dialogue there might have been a meeting of minds, and we

might have spoken in one voice. Failing which, the holders of the dissenting view point could have prepared their dissenting opinions. That was not to be. On the other hand, it has so transpired that the full draft judgement running into 237 pages has come to be circulated in the morning of July 11, 1985 less than 3 hours before the deadline for pronouncing the judgement. There is a time compulsion to pronounce the judgement on 11th July, 1985 as the learned Chief Justice who has presided over the Constitution Bench is deemed to retire on that day and the judge-time invested by the 5 judges would be wasted if it is not pronounced before his retirement..."

This is what Justice Thakkar mentioned in his dissenting judgement. What I want to say is, on this sort of very important point which affects somewhat 12 million Government employees of our country, even the hon. Judges of the Supreme Court were so callous in giving the judgement.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): So "what"?

SHRI SURESH KURUP: The hon. judges were not so serious in delivering the judgement. (*Interruptions.*)

MR. CHAIRMAN: You can criticise the judgement. But you cannot criticise the judges.

SHRI SURESH KURUP: Because of this judgement, because of this sub-clause in article 311, ultimately the Government is going to suffer because if the Government wants efficiency from their employees, if they want their employees work quite efficiently, they should be given job security. They cannot ensure efficiency by retaining this atrocious clause in the Constitution of India. That is one important point.

[Sh. Suresh Kurup]

There have been so many examples in independent India where the Government blatantly misused this power of dismissal of employees without giving them proper hearing. During 1971, when the President's rule was there in West Bengal, some of the major leaders of the West Bengal State Government Employees Federation were unceremoniously dismissed from the Government service including Comrade Sukomal Sen who is an M.P. in the other House. Even Mr. P.N. Sukul who represents the ruling party in the Upper House was dismissed from the U.P. Government Service by using this provision. In 1974, after the railway workers' agitation, hundreds of railway employees were thrown out of service using rule 14 of the Railwaymen Rules which is similar to article 311. After this judgement also, so many actions were taken all over the country. This shows the genuineness in the demand of the workers of this country and the Government employees. The Government of India which is the largest employer in this country takes this sort of attitude towards its workers, its employees, what will be the attitude of the private industrialists? How can the Government arbitrate in their labour disputes?

So, as the largest employer in our country, Government should be courteous enough to delete this Article from the Constitution. It is quite strange that whenever any communal group or religious fundamentalists ask for Government's intervention in over-ruling the Supreme Court judgment or any other court's judgement, Government immediately succumbs to their pressure and brings forth atrocious legislation in this House. This House has witnessed it. The Government was forced to bring forth the Muslim Women's Bill to over-ride the judgment given by Supreme Court in Shahbanu case. They succumb to such pressures and they bring forth legislations to over-ride the judgment given by the Supreme Court. But in this case when 12 million Government employees and their organisations and their national trade unions and Members of Parliament belonging to both

the sides, unanimously demand that this Clause and this judgment is against the democratic principles of our country, against natural justice, the Government is keeping mum. This is putting the Government in a very poor light. Already they are in very poor light.

So, I request the Minister concerned and the concerned authorities to be good enough to reconsider their stand on this and bring forth constitutional amendment to delete the sub-Clause.

MR. CHAIRMAN: When an hon. Member is speaking, the other Members should not divert the attention of the Minister in charge of that subject. You must hear what the hon. Member says.

PROF. MADHU DANDAVATE (Rajapur): He is seeking expert opinion.

SHRI SURESH KURUP: So, I request the Minister to seriously to consider the bringing of an amendment to the Constitution and safeguarding the Government employees all over the country.

SHRI VIJAY N. PATIL (Erandol): Mr. Chairman, sir, I rise to oppose the Amendment brought forth by my friend Mr. Suresh Kurup. When we got independence, we adopted one political system which was of our own choice. But the bureaucracy is a legacy of the British. There are many lacunae in the Indian context that over the years now we find that it is tending to become white elephant. The expenditure over the administration and management is increasing on percentage basis over the expenditure on developmental works. What we find is that right from the beginning, superior officers were not taking small disciplinary action right in time to warn the employee for his conduct and his negligence. There are provisions of fine of Rs. 10/- or Rs. 50/- or to force him to go on leave without pay. But, all these things we seldom see being adopted and the measures for punishing the employees are not being properly worked.

Now-a-days, the tendency is just to transfer him if he is unwanted, if he is not doing proper work at one place. Transfer is considered as punishment. Of course, it may be a punishment in the present-day context because of the difficulties experienced by the employee when he is transferred from one place to another to get housing facility or to get admission to his children in a school in the new place. But that is not the type of punishment we seek for. When a Government employee is given a permanent order, he is very much relaxed. Whatever he used to do when he was working as a daily wager in the Government Department, after confirmation he starts doing less work. That is the thing we observe.

My friend has mentioned about the Supreme Court judgement regarding removal of one or two Government officials. But he ignores the fact that there are lakhs and lakhs of cases which deserve some kind of a punishment or the other considering the vast number of State Government and Central Government servants. The Supreme Court also gives judgement which we see. We have seen in the recent past such judgements in favour of the employees. In the case of Civil Aviation Ministry, one senior officer was sacked. He approached the Supreme Court. Orders were issued for his reinstatement. Some remarks were passed against the Minister and there were some people who had the audacity of demanding the resignation of the Minister even. Over the years, we have seen one thing. Earlier, the Minister of Railways could directly order an inquiry against the TTR. Now, it has become difficult. It is seen in the Central Government Departments that there is a lot of protection, a cluster of protection evolved by the different methods adopted. If you want to punish an officer, depending upon his appointing authority, depending upon his cadre, you have to refer to the Department of Personnel, Ministry of Law and get the opinion from them. Many times, the employee gets opinion in his favour and punishment is not there. We have seen that there are different rules in various Departments. For example, if somebody comes late for one hour or so, far

example in the Department of Post, & Telegraphs, continuously for three days, he will be marked absent for half-a-day. But that is even not being observed. Such small petty punishments are not being given. If you give punishment of transfer, there are so many Government servants who approach the Court and immediately the court grants stay for them even on transfer matter. They remain in one station life-long. This is the other side of the picture. We have to bring discipline with a heavy hand, if we want increase the efficiency of the Government servants. Of course, all Government servants are not like that. But there is a sizable percentage of such people.

My hon. friend Shri Kurup referred to Article 311 (2) (b), I think. But that is not being invoked and taken help of by The Central and State Governments in many cases. May be in a very few cases it might have been just taken help of. Not only that. Under the present-day circumstances, what we see is that if some inquiry is instituted for some alleged act or negligence against the Government official, nothing much comes out of it. If you suspend a Government employee, invariably after six months or one year or two-years, he is reinstated with full back wages. It will call it as a suspension and the compulsory rest. If a Government employee is cunning enough and if he wants to start some business or to take some rest, he can do that prima face to get suspended and again get back in the service. That is what is happening unfortunately.

When the Central Government started five day week, time and again, in this House, I had requested that this decision should be reviewed. But it is not being done. What is happening is that with the five day week and with the holidays which we grant to the office bearers of the various unions, and the office bearers at the district level also enjoy these holidays under the garb of taking meetings, the total number of holidays go even to 165 days in a year. That means these office bearers are absent for fifty per cent of their time in a year. That is a very big loss to the Government. These are very sad things, as

[Sh. Vijay Patil]

far as discipline is concerned, as far as efficiency is concerned. To keep the fear in the minds of the people, this small provision is there in the Constitution which is not being invoked, which is not being taken help of many times, But smaller punishments are given and they are lift off with warning.

We see that if we try to impose discipline in some wings of the various departments there is immediately a very strong reaction. If some statement is made in good faith, the unions come forward and try to protect the negligence, the blunder, the mistakes of the employees. I would like to cite an example. There was a rail accident in Bombay between Siddheswari Express and Minar Express. It was alleged that the driver ignored the yellow signal. It was alleged by the senior railway officers. Next day, the Railway Drivers Union came forward with a statement charging the railway officers of high-handedness in making a statement and they accused them. They said: "it is not the fault of the railway driver." But a common man like me can judge that the system is so foolproof there, that if the signal is not red or green, it turns yellow immediately. And it was definitely the fault of the railway driver. But because the union said it, senior officers of the railways had to withdraw this allegation. Even such blunders are being ignored and they go without punishment. I would like to suggest to my friend. Mr. Kurup that now time has come to evolve some method, to take some steps to bring discipline among the Central Government and State Government employees who do not do the proper work which is required. Many times we see that some people consider only to attend the office as their duty and to work is over-time for them. They won't work during office hours. Whatever is required to be done, in the evening, they start the work and take over-time. That is the thing which we are seeing in many wings. When it was stated that in the railway mail vans a person was taking 24 hours over time for all the seven days in a week, we had to stop that overtime because it is obvious that it is not possible for any human being to work for 24 hours a day

for a week continuously. Such things are happening. We have to prevent these things, and to stop such things and to improve the efficiency, we have to bring in new legal measures and impose discipline.

The Department of Personnel I hope will look into this because there is already a trend to protect the officers of the same cadre. We have seen—forgive me for saying this - that many IAS officers, if they are appointed as inquiry officers against other IAS officers, try to protect their colleagues in whatever manner possible. This protection of a junior colleague by the person of the same cadre is not a proper thing. It does damage to the Government machinery. Many times we have to institute an inquiry. The Inquiry Officer is appointed and we find that a proper inquiry is not held and again we have to appoint another inquiry officer.

What my friend Mr Kurup has cited is the example of a very few cases in which this article was involved in punishing them and in removing them. Otherwise the Governments both at the State level and at the central level has given a lot of protection to the employees. We see that in the Labour Courts for many decisions there is no appeal. The Labour Court is the final authority. The employer many times is not allowed to appoint an advocate. The Labour Union can appoint advocates but the employer finds it difficult to appoint an advocate because he is seen as accused and he has to prove that the employee was at fault. There are Labour Courts at the State levels, there are tribunals and arbitrations in which sufficient protection is given to the Government employees—no matter whether he is a Class IV employee or a senior super class I officer.

So, my friend Shri Kurup need not fear about the provisions which are there in the Article 311, 2(b) and demand for its amendment. With these words I oppose the Bill.

SHRI THAMPAN THOMAS (Mavelikara): I congratulate my friend for bringing this Constitution (Amendment) Bill. It is a

very important in the present context. There is a fear in the minds of the Government employees about the arbitrary use of the power given under the Article 311,2(b) and (c). To give an assurance for the employees who work for the country that their services are protected is the duty of the Government. Instead of a Private Member's Bill, it would have been much appreciated if the Central Govt. had brought forth an amendment since the Supreme Court has given the pronouncement. It was still in practice upto the judgement was given by the Five Member larger Bench of the Supreme Court of India.

The Supreme Court gave earlier in Challappa's case which is mentioned by my friend "that the right of a person to be heard is very fundamental, and no person can be dismissed or reduced in rank or punished without giving an opportunity for the Government servant to be heard." This is also the right not only of the civil servant but of any worker,. Even our laws in India, such as, Industrial Disputes Act or other labour laws which govern workers give a mandatory provision that there should be an opportunity, for a person who is charge-sheeted to be heard. This is very basic to Indian jurisprudence. It is well accepted over the years. If Government is employing somebody and when Government is terminating or reducing a rank of the employee it means Government themselves decide their cause. It is not permitted. A person cannot be a judge of his cause. This is fundamental to the jurisprudence of our country.

MR. CHAIRMAN : What is the cause of the Government?

SHRI THAMPAN THOMAS : I will come to that. Under Article 311(2) (b) and (c) especially (c) this gives the power to the Governor and the President. The Governor or the President acts on the basis of the advice of the Council of Ministers and the Council of Ministers consist of political representatives. Mr. Chairman, you know now-a-days even the Government employees are politically organised. There are politically led

Government servants organisations. If the Chief Minister of Kerala thinks somebody is in service who is politically inconvenient to him and if he can advise the Governor to terminate his service and the Governor terminates his service ultimately it has political motive.

MR. CHAIRMAN: Will it happen?

SHRI THAMPAN THOMAS : It is possible. That is why we want to give a safeguard in the Constitution and create confidence in the minds of the civil servants that their interests are safeguarded.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM) : Under which clause it is possible?

SHRI THAMPAN THOMAS : It has to be under Article 311(2) (c).

SHRI P. CHIDAMBARAM : We are discussing 311(2) (b). That is why I suggested we should discuss both Bills together.

SHRI THAMPAN THOMAS: Prof. Dandavate is coming forward with that amendment but I am on the basic question. I would like you to answer those things at the end. This is a basic question. Two clauses are there (b) and (c). One is without giving an opportunity to terminate and the other is to record the reason as to why an inquiry could not be conducted. Clause (c) says a person can be terminated at the pleasure of the President and the Governor and President on the basis of advice of the Council of Ministers and the Council of Ministers are politically controlled. So political malafide or interference is possible in the matter of Government servants' service conditions.

Secondly, when it is said under Article 311(2)(b) inquiry could not be conducted the reason is only to be stated by the superior officer. That situation can be utilised by the

[Sh. Thampan Thomas]
 authority superior to him to harm the cause of the worker who is working under him. This correlates to the doctrine of pleasure. In a democratic country like ours where we have achieved Independence since 40 years ago this doctrine of pleasure of someone has to be changed. I believe that worker has got an equal right. Government servant is as equal as anybody else. Why you want to impose the thinking of master and servant relations? Or more than that, is it somebody's pleasure to continue? It may be a thing with the Crown. Are the British Crown and the Indian Crown one and the same?

What are the things happening and taking place there? When the Supreme Court delivered this judgment, its immediate reaction was that the civil servants were insecure. And the Government is bound to remove that insecurity which originated in the minds of the civil servants for a healthy civil service relationship. Instead of Mr. Kurup having to bring an amendment, the Government themselves should have brought an amendment to this extent safeguarding the interests of the workers.

Then, giving an opportunity for hearing was there even in 1850 when the Britishers, the East India company, came here. They had what is called the Public Services Enquiry Act, 1850.

The statutory provision of holding an enquiry or giving a chance to explain to the government before an employee is removed from service was provided under Public Services Enquiry Act 1850. The provision gained further strength with its inclusion in the Government of India Act, 1935.

So, this is a right which is explained there and is now abrogated. Now the Supreme Court has given a different interpretation. Earlier, this interpretation was not there and the interpretation was in our favour, in the workers' favour, and in the civil servants' favour. That was by three judges and again four judges said so. But giving thought to the entire situation, whether a three Judges

Bench decision is good or the four judges Bench decision is to be followed is the primary consideration for the Parliament when it makes a law. And the Government which governs the country in totality is required. In this particular case, I do remember that when the judgement came, I was one of the persons who went to meet the Prime Minister because an apprehension was expressed by the workers from various sides. When this was explained to the Prime Minister, he said: what is it? It is only an apprehension.

MR. CHAIRMAN : Mr. Thampan Thomas, being a lawyer, it is not fair on your part to say, it is three-judges judgement and four-judges judgement.

SHRI THAMPAN THOMAS : No, no; three-judges and four-judges judgement is as far as the legal things are concerned. Of course, I say that it is four-judges judgement. (Interruptions).

I would like to submit that they say that Crown and the doctrine of pleasure is to be followed. But in that country, the Parliament is supreme and Parliament makes a law. When the supremacy of the Parliament is accepted, they make the law. Therefore, the same is my contention here. Here also, you accept the supremacy of the Parliament and let Parliament come forward with a legislation in the light of the Supreme Court Judgment in the interest of of the nation safeguarding the interests of the workers. That is the question.

When we met the Prime Minister, he told us You see, one interpretation was given. Earlier, there was another interpretation. The Supreme Court gave it. It is for the Government's side." According to me, it should not be the look-out of a Prime Minister or a Government. The Supreme Court gave a Judgment in favour of the Government. That is the way in which the Government looks at the problem. That is not fair.

I would like to submit that the Government should look at the problem in its totality

and when Government looks at a problem in totality, the first thing is, whether it infringes Article 14. Of course, Government can argue that Constitution is a compact thing; Article 14 and Article 311 are part of the same Constitution. Article 14 cannot override Article 311 and Article 311 cannot override Article 14. But when we analyse the question, is there equality before law? Is it there for a Government servant in this matter? If it is not there, on a technical ground saying, whether Article 14 violates or not, Article 311 has got an independent standing and, therefore, there need not be an amendment, is not a correct stand. That means that Government is not looking at the problems of the workers and employees and not giving security to them.

The Government, specially the Parliament, has to look at it impartially. The position is that the Judgement of the three Judges Constitution Bench of the Supreme Court in Chellappa case was favourable to the workers and in their interest, but the other judgement has created certain apprehensions in the minds of the workers and, therefore, an amendment in the Constitution has become imperative. My submission is that instead of a Private Member's Bill, the Government should come forward with an amendment in the Constitution which would be in consonance with the democratic principles of our country, and for which we all stand.

Here is a lengthy judgement of the Supreme Court and I would like to go into the details of it. Justice Thakkar's point of view was narrated by hon. friend already. If you look at the opinion of the individual judges, there opinion is divided. Who has to bring a clarity in that? Only the Government by a legislation. In the present context, we fear that the provisions will only be misused. When the railway workers went on strike, there were used against their interest. That is the problem. For what causes are the provisions in Article 311 (2)(b) and (c) going to be utilised. One is where the authority empowered to dismiss or remove a person etc. is satisfied that it is not reasonably

practicable to hold such inquiry and, two where in the interest of the security of the State it is not expedient to hold such inquiry. These two contingencies may be mostly available not on individual's indiscipline, but these two provisions will be used in the case of struggle or agitation by the workers, or when the members of the civil service demand more wages or they join some agitation. These are going to be used in their cases only. According to the present interpretation by the Supreme Court, as I said, these provisions will be used only against those agitationists and workers who demand betterment of their living conditions.

I am not going to criticise the Supreme Court judges for their judgement, but I would like to mention that they made a remark in the judgement that now-a-days there is a talk everywhere of struggle and the workers may held the society to ransom and, therefore, some restraint should be there and these provisions are meant to take care of that. These two provisions in the Constitution have, however, to be interpreted in the present context.

When thousands of railway workers went on strike, they were given termination notice summarily. And as we know, they went on strike for a genuine cause. If such a thing happens again, these two provisions will be used. These will not be used against some individual for his dereliction of duty, indiscipline or for his dirty actions. These provisions will be utilized against the civil servants for their collective bargaining, for their joining together and making demands. In the name of Governor or the President, these provisions will be used for political purposes.

According to Article 311(1),(a), if person is convicted on a criminal charge, his services can be terminated. The other two clauses are more draconian ones and they are more dangerous ones and they very seriously affect the right of the workers to take a stand for their collective and genuine demands. Therefore, in this way these two clauses of Article 311(2)(b) and (c) infringe

[Sh. Thampan Thomas] the right of the workers. Now, has the Government got any sympathy for the workers and other officers who are working under them? The Government just thought to bring a law. It is not for the first time that they have behaved like this, whenever the Supreme Court or the High Court gives a judgement, there is no hesitation on the part of the Government to bring the law. Even Mr. Chidambaram has brought such laws in this House. I have also participated in one of the discussions when in Bombay some firm was taken over by Burmah Shell or an Oil Company was taken over, a few workers were to get some more salary as per the Judgement of the court but immediately a law was made in this House restricting their pay. It is a quite common feature of the Government to bring legislation to over ride the court's decision.

SHRI A. CHARLES (Trivandrum) : In Kerala your own Government is doing it.

SHRI THAMPAN THOMAS : Everywhere the Government in power is doing it. But my question is that when the whole workers, the Civil Servants in the country were suspicious and were feeling insecure, why did you not bring an amendment to this enactment? A Government which loves its servants who are working for the country, at least should have filed a revision petition before the Supreme Court to get the clarification. But the Prime Minister said, "I have won." He told us, when we went to him, "There was a dispute and it was in your favour earlier but now the Government has won and the Supreme Court has given a judgement in the Government's favour, Therefore, why should we change it? "That attitude is not good. The attitude that the Government has won something in the Supreme Court and, therefore, it wants to retain it, should not be there and I would say at whose cost they are doing this; It is at the cost of the Civil Servants of this country.

Therefore, my appeal is that the amendments which Mr. Kurup has brought and also other amendments which Prof. Dandavate

has brought -of course, they are not on record as being discussed these amendments should be brought together as the official amendments by the Government, This will give some guarantee to the Civil Servants of this country that their services are respected and what they do for this nation is very well taken care of. With these words I support this Bill.

SHRI SHANTARAM NAIK (Panaji) : Mr. Chairman, Sir, as far as the Bill of Mr. Suresh Kurup is concerned, I partly support the Bill with respect to one particular Clause. If you look at the Article 311, you will find that it is not something new that the Supreme Court has said all of a sudden. The Supreme Court or any court for that matter is expected to interpret the law and, therefore, the Supreme Court has laid down the law under Article 311.

As far as giving opportunity to the dismissed Civil Servants is concerned, Article 311 provides that on these occasions or in three cases such opportunity need not be given. One is where criminal charges are already proved with respect to the matter under which a man is suspended. Suppose a Civil Servant is suspended on certain charges and a departmental inquiry is pending; Suppose it involves some financial fraud, etc. and the criminal proceeding is also pending, Now, if the charges are proved as a result of criminal prosecution, then there is absolutely no need to give that person an opportunity under the departmental inquiry. This exception under part (a) is, therefore, very well understood.

Now (c) reads as follows:

" Where the President or Governor as the case may be, is satisfied that in the interest of the State it is not expedient to give to that person such an opportunity".

When the interest or security of the nation is concerned, I do not think, Mr. Suresh Kurup or Mr. Thampan Thomas would overlook this very important aspect of

national security and expect that even in such sensitive matters, a full-fledged inquiry resulting in the exposure of the entire evidence should be held. Therefore, this part (c) of Clause 311 (2) of the Constitution, according to me is quite justified and it has stood the test of the time and it should be there. I say this because interest of the nation is above everything.

Now, I only feel that the Government should have a fresh look at sub-clause(b), where it is said:

"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..."

This wording is very vague and it is bound to be interpreted by different officials or authorities in different ways. These words are being interpreted in different ways. I do not say that these should be removed or deleted altogether. But we should have a fresh look at it and see to it that this visible lacuna which is apparent here should be removed so that no authority takes undue advantage of this provision.

Security of the country of the interest of the nation is protected under (c). Other things are also protected by necessary provisions in the Constitution. But these words, 'where an authority is satisfied that for some reasons to be recorded by that authority in writing, it is not reasonably practicable to hold such an inquiry' are something one cannot understand. I say this with all respect to our Constitution makers and we must have a look at this provision. Therefore, to that limited extent, I support this Bill of Shri Kurup.

Now, I come to the next point. We have to accept and honour the principle of natural justice. It is only in very rare exceptions that we can discard or overlook the principle of natural justice. Therefore, I am in agreement

with Shri Kurup that the principle of natural justice is sacrosanct. But while considering this aspect, if we are to just overlook all the other aspects mentioned in Article 311, it also will not be fair.

We also have to have a look at the laws declared by the Supreme Court from time to time. Sometimes, we are carried away by the decisions given by various courts. Even if we do not like a judgement even we do not like to have a law laid down by the Supreme Court under Article 141, we do not go and amend that provision just because the Supreme Court of India has laid down a law in its judgement. And many a time, we as common men do not even know what exactly is the law laid down.

Therefore, out of the four constitutional amendments which I have introduced today, I would like to mention one very small but rare amendment. In this amendment, I have proposed that Article 141 regarding the law declared by the Supreme Court should be amended to the extent that provided that when the Supreme Court through a judgement proposes to declare a law, it shall distinctly pronounce the same as such at the end of the judgment and a law so declared through the judgment and not any other part of the judgement shall be read as the law of the Supreme Court. This is what I have stated. Otherwise it may run into thousands of pages and no common man will be able to understand as to what a law is. Therefore, when the Supreme Court proposes to discuss a law, it should be specifically at the end of the judgement. This is the law which is declared to be followed under Article 141 of the Constitution. This is what I have done in order to avoid any sort of lacuna or something like that.

Although the courts are supposed to interpret a law and in a way create some sort of law, we have to from time to time, assess and scrutinise the law pronounced by them. Otherwise what will happen? If we see the law as a whole according to my personal assessment - 60 per cent of the law today which is existing or which is in force, is the

[Sh. Shantaram Naik]
 one declared by the judiciary and only 40 per cent of the law is enacted here. I am saying this because our Articles are very scanty. They are very small Articles. The entire elaboration is done by the courts from time to time and even a major part is done by the courts. Therefore, it may happen in course of time that a major part is the one which is laid down by the courts and the minor part of the law may take the form of statutes. To avoid all these things, it has been suggested.

I would like to submit that from the Government's side, a submission should be made to the Supreme Court and various other courts regarding all these things. Today a tendency has arisen whereby the functions of the executive are encroached upon by the judiciary. It happens many times that the courts in writ petition or other petitions ask the Government to take a particular project. Recently in my State — Gca — there were plot holes in the National Highways caused due to monsoon and you will be surprised to know that in a writ petition filed by citizens, the Court has directed the Government to fill up those pot holes. You can imagine how it is being done. This is only a beginning. In the judiciary in this manner starts encroaching upon the functions of the executive, it will become still worse. Therefore one should remain in its own respective compartment.

Since we are dealing with Article 311 which relates to service matters, the Ministry of Personnel of the Central Government should give directions to the various State Governments to have their recruitment rules properly framed. Many litigations are now pending before the Administrative Tribunal. Our recruitment rules are not quite clear. They are amended from time to time. Amendment sheets are not available to anybody. If anybody gets hold of that document, he thinks as if it is a rare piece of document. So, if our recruitment rules regulating various Services are properly framed, Government servants entitled to promotion and to other benefits will know well as to where they stand. When they look at the

recruitment rules, Government servants will know whether an injustice has been done against them by Government when X, Y or Z is promoted — or not.

Today, one does not know where he stands. The same thing about Character Rolls. As far as maintenance of Character Rolls of Government servants is concerned, we have loose circulars issued by various State Governments, except with respect to IAS where there is a Statute. In respect of all others, State Governments are having some loose circulars. So, a difference between various remarks in Character Rolls are made, causing injustice to the other persons. For instance, in respect of remarks Good and Very Good, many a time Very Good is selected, and Good is not selected.

Mr. CHAIRMAN : In some cases, Goods is bad .

SHRI SHANTARAM NAIK : In such cases, Good becomes an adverse remark. One has to understand this. If it is so, a Show-Cause Notice has to be issued to him. The remark has to be conveyed to him saying: "Why should this remark not be retained in your character Rolls?"

I give only a small example. Therefore, the suggested language for writing character Rolls, provisions for appeal, revision petitions to various authorities—their time and duration etc.— everything should be mentioned in a law enacted by various State Governments, as far as the States' Services are concerned, and as far as Central Services are concerned, by a Central legislation passed by Parliament. If these two things are adopted, viz. proper recruitment rules, and a law to regulate Character Rolls—or writing of Confidential Rolls as we commonly call them— most of the litigations in various courts can be done away with.

I would only make a request to Mr. Kurup, at the end . No doubt he has expressed the sentiments of several employees who may be affected by the judgements of courts. But point-blank he should not hold

an opinion that the judgement in its entirety is bad, or that the Article, as it stands, is bad totally. He should come out with suggestions to make this Article a little better, or make it serve the interests of the employees.

Considering all these aspects, I suggest that he should withdraw his Bill.

[Translation]

DR. G.S. RAJHANS (Jharjharpur) : Mr. Chairman, Sir, the Bill presented by Shri Kurup is a very important one in many ways. A debate has been going on in the press on this subject and also it has been discussed in this House many times. I am not an advocate to speak in favour or against the judgement of the Supreme Court, but I would like to make two-three points. The Supreme Court must have given this decision after due consideration. The fear of the people that the Government employees will be dismissed without any reason, is quite reasonable. I would like to tell you about Bihar. There is a kind of feudalism in the Government upper hierarchy. An I.A.S. or I.P.S. officer has 25-30 employees at his command for his personal work which is an illegal thing. As many as 30 to 40 Government servants are deputed at collector's bungalow. Similarly, 25 to 30 constables are posted at the residence of Superintendent of Police for doing household work. As many as three Government vehicles are kept at the disposal of a collector for taking his children to schools. A hoard of 10 peons is attached with him. A feudal system has been in practice and it is on the rise at a massive scale. No one dare raise voice against that system. It is not likely to be given up and it is most unfortunate that knowingly or unknowingly we have vested all powers in the collector. In every sphere, be it N.R.E.P., R.L.E.G.P. or 20 point programme or work relating to small irrigation or construction of dams, the final authority is the collector. What does a collector do? You can know about it from any Lok Sabha Members from Bihar. There is a rule of tyranny and no one dare raise voice against him. The strong hold of I.A.S. lobby in this country can be seen in Bihar. Within a period

of three to four years, an I.A.S. officer becomes collector and within five to six years of service, he constructs a house at a cost of Rs 50-60 lakhs and it is shown that he has taken loan from his parents or in-laws to construct the house. This system has been going on and there is no one to check it. All the rules are for those subordinate employees who are always in fear of getting sacked. Some sort of justice should be there. Although the Supreme Courts judgement is right, but the people should also get justice. People are not getting justice. So they should be protected in some or other way. Today, position of a Government employees have been virtually reduced to a slave of senior government officials. With a full sense of responsibility, I would like to submit that if you send a study team comprising five to six Members of this House hailing not from Bihar, you will be surprised to know the sorts of slavery practised there. Openly, as many as fifty employees are forward to be at the disposal of an I.A.S. officer for doing his personal work. No development work is being done. To whom will you lodge complaint? Even I wrote to the Chief Minister, of course I am not referring to the present incumbent, the same reply is given that the matter is being looked into. Most of them will not even reply, because they know that they have to take work from those district magistrates. A vicious circle has been formed which cannot be broken easily, no matter how many times it is discussed in the Parliament. Unless this vicious circle is broken, this country cannot make progress. But we have to break that vicious circle by making clear to them that the Government means governance by the representatives elected by the people. The Government does not mean governance by bureaucracy but today in own country there is hundred percent bureaucratic governance. One of my friends who happens to be a collector, I don't want to disclose his name here, says that unless a collector amassed wealth valued at least Rs. 80-90 lakhs within three years of his tenure, he is not a sort of collector. His own colleagues started condemning him if he did not do so. So the time has come to protect smaller fishes from the big sharks. Lower rank employees think that

[Dr. G.S. Rajhans]

if a collector or an S.D.O can earn 10 to 20 lakhs rupees in one year what is harm in earning a small amount of 5 to 10 or 20 thousand rupees by them. More over, when a person earning 10 lakhs of rupees are not being jailed, rather he leads a luxurious life, no harm can be done to them. So, at some point, justice should be done. I am not in favour of the strike of the non-gazetted employees of Bihar Government. As a result of it, Government work has been stopped in Bihar for the last two months, but still there is no end in sight. All the development programmes have been stopped. to whom one could complain. Time is running fast. Recently, relief aids were given by the Central Government and the voluntary agencies for the people affected by the earthquake in some districts in Bihar, but those have not reached to the people, because non-gazetted employees are on strike. No one is there to give information about the villages suffered from earthquake and damages done to the life and properties due to it. I am saying on the basis of my much considered opinion and I would like to request the Central Government to intervene in the matter to resolve the issue. The people of Bihar are being crushed and no solution is in sight.

There is not very much to say about this Bill, but I would like to say that low paid employees should get justice. They should not be left in tarter hooks of being sacked on their not becoming domestic servants of top brasses. Hundred of pretensions can be made for removing from the service and any one can be sacked Ideological changes are taking place quite often in the world. Why can't we follow the path of liberalisation that is taking place in Russia. Democratic system does not mean that a person once secured a good position like I.A.S. is allowed to lead life luxuriously for ever. There is nothing wrong if an experienced Professor of a University is appointed as a secretary of a Department or an experienced school teacher is appointed as a joint secretary in any Government Department. This is done in the foreign countries, like U.S.A Brilliant persons get chance there. The Collectors

having poor records should be sent to the innocuous departments. Once a policy of hire and fire is adopted, good results are bound to follow. In private sector, such policy has yielded results. I have worked in private sector. You should bring efficient persons from private sector and appoint them as managers in public sector and then see the results. This work cannot be done without bringing ideological revolution. You have taken it for granted that I.A.S. is the solution to everything. But he does not know anything about engineering, forestry or medical science. If you want to bring this country at par with China and Japan in the matter of development, you have to bring ideological revolution. You have to recruit bare footed bureaucrats in place of those who sit in air condition rooms.

17.01 hrs

[SHRI SHARAD DIGHE *in the Chair*]

I would like to say to the persons sitting on the top in the Government to go to Bihar and the Western part of U.P. Only then you will find the high handedness of these I.A.S. officers. Unless things are changed, no amount of our speeches is going to make any effect. Our real population lives in the villages and it is they who are feeling the pinch. This thing cannot be felt sitting here in Delhi. For this, you have to go to villages. People have to drink water of dirty ponds, but the funds given for installing hand pumps are shared between the I.A.S. officer and Executive Engineer and no body dare make complaints against them. When the situation has assumed such a serious proportion, how could you provide justice to the people. For the heaven sake, do something for the people who have elected us. If you allow to continue this state of affairs, the day is not far when these bureaucracy will put obstacle in every work relating to development. Now a days, bribes are taken under the table, but a time will come, when these bureaucrats will openly say that this much is their share, so first put it on their table, then they will do the work. Sir, although there is a tribunal for this, but a machinery should be set-up, so that the

lower rank employees are not crushed and big officials do have some sort of fear of being sacked for not performing their duties properly. This fear of God should be imposed on their minds, only then results can be achieved.

In private sector, employees have the fear of being sacked from their jobs if they do not do their duties properly. He always has this thing in mind that if he fails to achieve results, he will lose all facilities and will not be able to give good education to his children in good school or nor will he be able to take well furnished house on rent and live life luxuriously. In order to maintain his standard of living, he labours hard, due to which he achieves good results. In private sectors also, there are strikes. It is the same thing there, as it is in the Government. But how the manager in private sector gets the work done and in public sector nothing can be done.

About one and half years ago, the house of an M.D. of the Cement Corporation was raided and an asset near about an and half course of rupees was recovered from his house, whereas C.C.I. was incurring losses. In A.I.C.C. meeting, Shri Rajiv Gandhi said a very good thing that when Shri Nehru envisaged an idea of public sector, he never thought that middlemen would pocketed everything. The time has come that a we should change our views and the officers and senior officers of this country be made development minded. The principle of hire and fire should be applied on their jobs. It is not so that once a person becomes an I.A.S. officer he will be allowed to lead a luxurious life without any fear of hire and fire. Smaller employees should be provided job security. They should have some sort of faith that the justice will be done to them.

With these words, I conclude.

[English]

SHRIN. TOMBI SINGH (Inner Manipur)
: I give my qualified support to Mr. Kurup's Bill. There is not much politics in this be-

cause the theory of punishment, the theory of discipline is more or less universal.

The same person who is a victim of punishment, may even become another architect of amou serous atrocious act against another victim. So, human possibilities are involved in it. I am not a lawyer. Therefore, I would like to give my own general view of this very important Bill.

I have been very much interested as also other hon. Members when a Government employee or an employee becomes vulnerable to whimsical, atrocious actions from the senior officer. The Government or the law makers, particularly, this Parliament has a responsibility, as Dr. Rajhans has said, to save a small fish from the clutches of a bigger fish.

The officer who writes a character rolls holds much power in his hands so far as the interest of the subordinate officers is concerned because he can dismiss, demote and transfer another officer. I recall, when my State was a Union Territory in the late '60s I was a very poor Minister because a Minister in a Union territory has not much power. Beyond certain amount in the matter of sanctions or in the matter of punishment beyond certain things, the Chief Commissioner, who is not even of the rank of Lt. Governor sat in judgment over the decisions of the Ministers or the entire Government. During that time we did not have much funds; we did not have much power. Nevertheless, we wanted to do something for the people. We called our officers, Secretaries and Development Commissioners to make certain notes, certain proposals so that we can get approval from the Central Government. The Chief Commissioner called all the Secretaries and Development officers and instructed them not to help the Ministers by submitting them or helping them in making elaborate notes, because he was looking from his own angle. Perhaps, he might be right. But then one of the officers told me that this was a very reasonable thing. You wanted a university for Manipur. We could not put up a note for this because the Chief

[Sh. N. Tombi Singh]

Commissioner had instructed us not to do it. He is the person who writes our character roles. He can just punish or demote or transfer us anywhere. So, we have to respect him and not the Minister. So it is not merely official or political element that is misused. The officers may be thinking rightly or wrongly but who can ensure that everybody has the right thinking? Therefore, the two provisions that have been quoted here, section 311(1)(b), that is a long rope and I do not suggest that this can be omitted, as has been suggested. But I would suggest that when there can be dismissals, demotions and also transfer actions, may be for sufficient cause, there may also be whimsical actions taken under this provision. So, in order to prevent that kind of whimsical or capricious action against a poor officer who does not enjoy the confidence or pleasure or affection of the senior officer who can demote him or who can dismiss him, I think the Government of India should come forward with some proposal to amend the Constitution. That is why I said in the beginning that I give a qualified support to Mr. Kurup's Bill

Similarly, as regards article 311(3), again the provision of the previous clause has been strengthened. There may be cases where such action is appropriate and called for but then my only suggestion in this connection is that adequate amendment should be made to this clause also to protect them so that there may be no whimsical misuse of this power by senior officers in the case of their subordinate officials.

Civil Service is a colossus. After the attainment of our independence and after the functioning of the Constitution since 1950, we see that in the Centre, in the States, in public undertakings, in police department, in railways and in other departments, there are different systems, there are different disciplines. We have to go by certain general norms whereby we provide at least the minimum sense of justice to our citizens. As my friend Dr. Rajhans has just pointed out, the junior officers have been

enslaved by the fear from their seniors. Now very few people go with complaints to the courts. Those who go may or may not succeed. But they stand in a different category. By and large, 99 per cent of the employees do not go to courts. Those of the employees who are protected by trade unions, also stand somehow protected. But there are categories of officers who do not enjoy the facility of trade unions and these people suffer silently and they have no way out. In order to provide protection to these categories of officers, I think it is time that the Government comes out with an appropriate amendment and with that I think Mr. Kurup also may be satisfied. We cannot say that the whole Bill and the amendment proposal is acceptable. It is not.

Another aspect to which I would like to make a reference, as has been mentioned by my hon. friend also, is the possibility of political misuse by the President or the Governor—President in the Centre and the Governor in the State. Here also I am speaking from my experience. In small States like in the North-East, where the societies are very well-knit, everybody knows one another. There the norm of functioning of the services and relations between senior officer and the junior officer are very peculiar. When the change in the government takes place or when there is instability, the repercussion is invariably on the officers. During the seventies, particularly my State of Manipur was subjected to continuous political instability. Government changed every six months or at least every year. So, naturally it was the officers, even very good officers, who suffered. May be our own Government. I am not ruling out that the Congress Government might not be committing this thing also. But then there are different Governments coming up. The local regional party governments come, the National Party governments come and different Governments are coming up and a number of engineers, doctors and IAS and IPS officers had to suffer because of the change of the Governments. So, in this case, invariably in one or two cases, engineers are being dismissed or compulsorily retired.

I am not pointing out what was the Government, what was the party—but I am just generalizing, it could be our own Government also. The Government had to act on the advice of the Council of Ministers and the good officers had to suffer. As I said, a few officers can go to court but generally many officers who do not like to go to court just suffer silently. So, in order to provide protection to this category of officers, whether at the Centre or in the State or in different departments, the Government could have a look at this provision and bring adequate amendments. With these few words I conclude my observations and I offer my qualified support if Mr. Kurup withdraws his Bill and also if the Minister assures that adequate amendment will be brought in this regard, I shall be very happy.

[*Translation*]

SHRI RAMASHRAY PRASAD SINGH (Jahanabad) : Mr. Chairman Sir, I thank you for giving me the opportunity to speak.

The Bill presented by the hon. Member, Mr. Kurup is an important one and all the members have accepted its importance. Both the ruling as well as the opposition should support and get this Bill passed because it involves a question of powers.

The powers given to the Officers Under Article 311 and 311(B) are being misused by them against their sub-ordinates which has created a feeling of terror among them. Today the entire country is being run by these employees as the maximum of work is being done by them. But when they apprehend some threat to their services by the Government, how can they work properly? The Government must think over it. Today everybody talks about discipline. As regards, discipline it cannot be imposed on them by force. In fact, discipline springs from justice itself or people themselves become disciplined when they get justice. Thus justice is a natural corollary to make the people disciplined. No discipline is possible when people do not get justice. A feeling of dissatisfaction prevails among them, so the Gov-

ernment shall have to look to this aspect also. Your contention is that the Supreme Court has given such decision. That is right but I don't want to go into them. The decisions of the Supreme Court have their own significance but yours is a democratically elected Government. You say that the Government works for the welfare of the people but I want to tell you that the employees are also a part of the public, they do not belong to some other country. If you are a democratically elected Government, leave apart the Supreme Court. I want to present before you the ordinary case of Shah Bano. The Supreme Court gave their judgement in favour of Shahbano by which the entire Muslim women community of the country could be benefited but you have brought the party politics in it and the Government concluded the matter in the House only for winning votes. You may see that the Government gained nothing out of it but this has done a great harm. Our assertion is that in case of matter of public welfare, the supreme court has given its decision, the Government should not be very serious about it here. The Government is vested with powers to alleviate the fear of the employees. Criminal Procedure code is there in our country and if anybody commits an offence, he will be punished accordingly. The Government should see that such incidents are taking place in all the departments. Recently, our hon. Member Dr. Rajhans referred to several such incidents. We will also say that Hon. Prime Minister spoke some words about Jahanabad only on 15th August, when a number of such incidents have been taking place under your party regime in that State. The Government came to know about it on that very day that Jahanabad is also a place in India but what have the Government done for Jahanabad? We are giving a challenge to you as you are the Home Minister of the country. A number of untoward incidents have been taking place there. Crores of rupees have been spent there but I want to know from the Government whether some step will be taken to provide more relief to the poor and to weaken the extremists because only then, the people will be able to work there wholeheartedly. The Government

[Sh. Ramashray Prasad Singh] have built these houses worth crores of rupees in the name of shops but I want to know whether there is somebody to purchase these houses which have been there for the last two years. There is nobody to purchase these houses. There is no farmer or labourer or a businessmen to purchase these houses. After all why these houses were constructed? Why these were got built by an officer or a collector. Why the elected representatives of the people were not consulted regarding the site of the construction of these houses so that the maximum number of people could be benefited with it. Then even a son of a labourer or a farmer or a businessman could have opened a shop there. The Government would have also earned huge profits. Thus the Government could have faced and bring an end to the extremists' activities to a great extent. But who was responsible for furthering the cause of extremists' activities there. I have made a mention of it because the Government talks of extremism.

Secondly, the powers given to the officers are being greatly misused by them. I had gone to the Ministry of Railways to discuss some points with Mr. Mahavir Babu. I told him that some such activities are going on that some people were dismissed from service for no reason simply on the charge of raising discussions with their officers. This is the group of five persons, which belongs to Railway Protection Force but out of these five, three have been promoted and remaining two have been terminated because both of them were weak. Thus you will have to look to it that such practices are in vogue and causing great harm. If the employees live in a state of fear, they wouldn't be able to perform their duties with due concentration.

There is strike since last two months in Jahanabad. Is it not the duty of the Government to interfere in it? The State has been incurring heavy losses due to these strikes, whose loss is this? You talk of the development but for the last two months, all the files of developmental works are lying pending.

Should the Government not interfere in it? The Government of your party is working there. If the strikes had continued for such long a period during the regime of some other party, you would have also alleged that the Government is inactive and its employees and officers are not happy with it, hence it should be removed from power. What is the cause of such a long strike? Only due to that strike and 'Bundh' observed in Bihar, the programme of our Hon. Prime Minister had to be cancelled. In view of all these things, you are required to see to it whether it is necessary to continue with the present law or make amendments in it. Unless and until you make amendments in it, you cannot be popular. Hence the Government should do that.

Today in Bihar such things are happening which are causing great trouble to the people. Whether it is a political maneuvering. For example, there are 250 colleges with a strength of twenty thousand professors, lecturers and other employees who are in such a situation which is worse than that of the bonded labour. An enquiry should be got conducted in this regard as they are not being paid their salaries for the last twelve and fourteen years. You should find out, after all what is the reason and who is the Secretary there and to which party he belongs. In fact these people have become millionaires and multi-millionaires because of their corrupt practices as the Government have given them a free hand. Thirty thousand educated, learned people blessed with reasoning have been thrown into hands of poverty and made to starve. The members of their family think that in spite of their high education, they have been facing this sort of adversity. Therefore, the Government must look to all this and enquire into the matter. The Central Government must have a uniform policy to protect these 30 thousand people against such atrocities. I, therefore, want to submit that if the Government wants to maintain discipline, it will have to amend clause 3 of Article 311 of the constitution which will have to be adopted and should not be resisted. With these words I conclude my speech.

[English]

MR. CHAIRMAN : Before I call Shri Y.P. Yogesh to speak, I want to put one thing. At 5.30 p.m. the time allotted for this Bill is expiring. Is it the pleasure of the House that the time should be extended further?

THE DEPUTY MINISTER IN THE MINISTRY OF SURFACE TRANSPORT AND THE DEPUTY MINISTER IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI P.NAMGYAL) : Another Bill on the same subject is coming. Let them discuss. There is no new subject involved. Others can speak on the next Bill also, i.e. amendment to article 311.

MR. CHAIRMAN : Would you like to speak on the next Bill or do you want to extend the time?

SOME HON. MEMBERS : Time may be extended.

MR. CHAIRMAN : All right. It is extended by one hour, for the present. Let us see.

Shri Y.P. Yogesh.

[Translation]

SHRI YOGESHWAR PRASAD YOGESH (Chatra) : Mr. Chairman, Sir, I thank you for giving me the opportunity to speak on this Bill. I think that the Constitution amendment Bill which has been presented in the House by Mr. Suresh Kurup deals with a very significant matter which is worth consideration. From this point of view, this subject should be discussed quite seriously.

Article 311 of the constitution gives substantial power to the bureaucrats in regard to the service matters of the Government employees and its results are coming before us. Thus it is making it clear that this law has been so framed that even the Supreme Court has reversed judgements. Any movement whether it is a labour movement or any other movement is in fact, not a

healthy thing. It is neither in the interest of the administration nor it is justified.

Mr. Chairman, Sir, whenever an employee is charged with an allegation, it becomes his right to know the charges levelled against him. He should be given an opportunity to present his case to counter those charges. It is a general law and also the requirement of the natural justice but it is not known what has prompted the learned judges of the Supreme Court to reverse the decisions given in regard to the powers conferred under article 311 from which it can be easily discerned what should be the form of a trade union or a labour organisation or a trade union movement. It causes a setback to the trade union activities. proviso (b) of Article 311 (2) of the constitution provides that :

[English]

"Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for reason, to be recorded by that authority in writing it is not reasonably practicable to hold such inquiry;"

[Translation]

It has been provided that anyone could be straightaway dismissed, charge sheeted, punished or demoted without any enquiry. All this is not just. This proviso (b) has been unnecessarily attached to Article 311(2) of the constitution. This should be removed because it has no significance.

In this connection the case of Shri Tulsiram Patel came to light and was discussed. When he did not get his allowance for one year he went to talk to the concerned officer and attacked him. A case was then filed against him. As I have been associated with the Trade Union Movement for long, I know that a person can be exonerated by the tribunal, for every lapse except assault, rowdyism and theft. No one has any right to do so. We feel that the demand made by Shri Kurup and others regarding the Tulsiram

[Sh. Yogeshwar Prasad Yogesh]
Patel case for having beaten an official is not a strong one. Therefore it is not right on the part of those judges to have left it on the discretion of our bureaucracy to be just with the employees feeling that they are mature and responsible persons looking after high offices. It can not be overlooked that injustice is being made with the people.

We found such a case in the Water Resources Department where an official was kept on probation for 14 years. The period of probation is normally 2 years and it can be extended maximum upto 4 year. It is a conspiracy to keep someone on probation for 14 years. It is not a healthy administration to dismiss a person after keeping him on probation for so many years and making him do all kinds of work.

We want to know as to why there is such a wide rift between the officials and the needy. Such a gap cheates misunderstanding. There should be such a system which could bring close harmony and coordination between the officials and needy and both sides may work at an equal level in the society and the society may find a new direction. The administration should be such that no one is victimized.

I would like to submit that the supreme Court has scraped the decision of the earlier bench regarding article 311(2) (b) of the Constitution in its recent judgement. This is a retrograde step. Bureaucracy, which is already quite defamed has been provided full powers to dismiss the workers of the Union from job. In this connection I quote the remark made by the Times of India " It is a ridicule of the Fundamental Rights that a person should not get a chance to say anything in his defence"

Mr. Chairman, Sir, Shri Kurup has submitted that the proviso of Article 311(2)(b) should be deleted. I feel that such an amendment should be made in it so that it becomes miled. So far as the present proviso is concerned, it is a dangerous weapon in the hands of bureaucracy against the employ-

ees. This should certainly be made ineffective.

I do not want to take much time of the House because it is a constitutional subject But some points have been raised regarding Bihar which do not have much relation to this subject. Such things normally keep happening in some or the other part of the country. It is not right on the part of the employees to go on strike for 2 months when Bihar was hit by such a severe earthquake and other natural calamities. You can see the number of occassions when agitations have been launched Bihar and the number of times when their demands have fulfilled. But how far is it appropriate to indulge in such an activity at this time ? It is not appropriate that the Government bones in front of bargaining agencies at the cost of ignoring the suppressed sections in all the States, to whom we can not even provide food, and who are living below poverty line. Therefore my submission is that our approach should be that of reconciliation rather than resorting to strikes. With these words I support the amendment Bill presented by Shri Kurup.

SHRI HARISH RAWAT (Almora) : Mr. Chairman, Sir, it is a good Bill but it has been brought forward with bad intention.

Some safeguards have been provided to the Government employees under articles 311 and 312 of the constitution. But the Supreme Court in its 1983 judgement brought a basic change in the position in respect of protection provided to the Government servants. The Supreme Court has pronounced that a senior officer or the appointing authority can dismiss a Government servant or ward penalty to him without assigning any reason simply on the ground of public interest. I do not think it would be appropriate to permit such a thing in a democratic state under a democratic constitution. It is not at all justifiable that a senior officer, however, big authority he may be, should maybe should allowed to terminate the services of an employees on the simple ground of public interest. When the employees brought this shortcoming to the

notice of the Government and expressed their discontentment, to the Government clarified the point through a circular for which I am grateful that an authority under whose order such dismissals are made, will have to justify his action, if not at the time of dismissal but at a later date, and if his justification is not found to be proper, action would be taken against him. This provided some protection to the employees. But there are still some departments where senior officers are removing the employees from service in an arbitrary manner. The railways is a living example of this. In the railways, employees are being removed from service by stating simply that they are inefficient and not working properly. If an employee ventures to express even a mild protest to his senior officer and he has no support of a union or bigwigs in the administration or the fails to please his officer, he is bound to be removed from service by stating simply that he is inefficient and the action is being taken in the public interest. I would like to submit in this connection that a political review should be made and the Ministry of Home Affairs should call for the details as to how many persons have been removed from service on this ground after the judgement. There could have been some justification if one or two persons were removed from service in a department on this ground. But there are instances that hundreds of persons are being removed from service on this ground. I request the hon. Minister of Home Affairs to hold an enquiry into it, because a sense of insecurity is being developed in the minds of employees which is more harmful to the Government than the employees. The constitution makers had framed the constitution after a careful considerations. That is why it was provided in the constitutions the conditions under which a Government servant could be removed from service. At the same time, the constitution provided a number of protections to the Government servants. I fail to understand why the Supreme Court gave a ruling that a Senior Officer could terminate the services of any employee in the public interest. I, therefore, urge the Government to bring forward such an amendment which could restore the pro-

tections to the Government servants again which had been provided by the constitution makers. I am of the view that Shri Kurup said the things in a political tone. I have nothing to do with that. I am concerned for the discontentment which was created in the minds of the employees following the 1983 judgement. It concerns our country and this august House as well. I, therefore, urge the Government that there is no need to go into the matter superficially and there is a need to go deep into it and restore the protection earlier available to the Government servants. The cases of those employees who were removed from service after the Judgement may be reviewed by a committee. The cases where excesses were committed may please be reviewed in detail, and justice done to affected persons.

KUMARI MAMATA BANERJEE (Jadavpur) : Mr. Chairman Sir, I congratulate Shri Kurup for bringing forward such a significant Bill. I also support the views expressed by Shri Harish Rawat., It is true that a minor amendment should be made in article 311(b). We are concerned with the employees at grass root. The workers feeling and our feeling is identical. An enquiry must be held before dismissing a person from service. At least, the Government servant should be given protection. The Government employees have been provided constitutional rights. If we will not give protection to these right who else will give. Shri Harish Rawat, Shri Dandavate and Shri Kurup are distressed only because of summary dismissal of the Government servant. There is no difference of opinion about it. The Government should bring forward an amendment to article 311(b) so that the Government officers may not work against the interest of the Country. The Government should find some way out so that nobody could misuse the provision enshrined in article 39(b) of the constitution. I am saying out of my personal experience that in the banks, railways and P & T. an employees is being transferred, demoted and suspended from service when his relations are estranged with his senior officers. In genuine cases, an enquiry should be held to ascertain the facts.

[Kumari Mamata Banerjee]

It will not be appropriate that an officer gets angry with an employees and takes action against him. At least democratic rights must be given. The Government should pay due attention to those officials who are misusing the power. As regards article 311(b), I have already said that it should be amended. You are the Minister in the Ministry of Home Affairs. I had raised this issue in the morning. Now with the support and blessings of Madhu Dandavateji also, I would like to say that at the time of G.N.L.F agitation in Darjeeling, big I.A. S. officers who are posted in the States on transfer from the Central Government were there. But they had delegated their powers to C.P.I. (M). You should hold an enquiry into it. No. Government official or State Government employee can support the ruling party in this manner and supply arms. It is totally against the Arms Act and the Constitution. You should hold an enquiry by a Central agency to ensure that no I.A.S officer is involved in it. It is not proper that some officer will work in the interest of the agitation and take part in it. It is a threat to democracy and to the security of the country. I shall be grateful to you if you pay attention to this aspect.

[English]

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM) : Mr. Chairman Sir, I am grateful to Mr. Suresh Kurup who has initiated this debate and to the other Hon. Members who participated in the discussion. It has given the Government an opportunity to clarify that legal position as well as to state its side of the case.

I looked at the date on which Mr. Kurup moved this Bill. It is 17th April 1986. I also looked at the date on which Prof. Madhu Dandavate introduced his Bill. That is 23rd August 1985. Both Hon. Members apparently exercised by the judgement of the Supreme Court delivered on the 11th July

1985-I am sure motivated by the best of intentions to safeguard the rights of the Government employees have moved these Bills.

I concede that the judgement caused a lot of apprehension in the minds of Government employees. In fact, I was faced with the situation immediately after I became Minister in the Ministry of Personnel. One of the first things that I did was to issue a very elaborate, carefully worded and I believe thoroughly researched order on the 11th November 1985 which was supplemented by another order on the 4th April 1986 and I may say that these two orders have set at rest all apprehensions and all fears among the Government servants. I have just asked for data. To the best of my recollection there has not been a single case under Article 311(2)(b) which has come to me either as a grievance or in the matter of an appeal for review of the decision. I may be wrong. There may have been an isolated case here and there but I am not able to recall a single case.

In this Bill we are dealing with Article 311 (2) (b) and I will, therefore, confine my reply to Article 311(2) (b). Sir, in the first place the judgement of the Supreme Court has not established any new principle of law. It has only clarified the Constitutional provisions as embodied in Article 311(2) of the Constitution. The judgement does not take away the Constitutional protection granted to Government employees by the Said Article under which no Government employee can be dismissed, removed or reduced in rank without an inquiry in which he has been informed of the charges against him and given a reasonable opportunity to defend himself. The judgement is a declaratory judgement. It does not add to the law. It does not establish a new principle of law. Nor does it change the principle established in Chellappan's case because Chellappan's case arose under a separate rule and they were dealing with the rule which used the word 'consider'. Chellappan's case was not a case under Article 311(2) at all and therefore, wherever another rule has been made

by the executive or by the employer which goes beyond the guarantee under Article 311(2) that rule will still continue to be honoured by that organisation or that employer. However, the Judgement notes that there are three exceptional circumstances. They are not new circumstances. They are circumstances which were there when the Constitution was made. They are contained in clauses (a), (b) and (c) to the second proviso of Article 311. Fortunately there is no controversy about clause (a). The present controversy is about clause (b) and let me for the sake of brevity read to portion of the order which I had the privilege of approving and which was issued and after reading this order if there still remains any doubt I will certainly try to clarify it.

PROF. MADHU DANDAVATE : Between the judgement and administrative order which will be supreme.

SHRI P. CHIDAMBARAM : The judgement does not lay down any principle and the judgement has been summarised, explained and instructions have been issued how the clause and how the judgement have to be applied in individual cases.

I quote;

"Coming to clause (b) of the second proviso to Art. 311(2), there are two conditions precedent which must be satisfied before action under this clause is taken against a government servant. These conditions are :

- (i) There must exist a situation which makes the holding of an inquiry contemplated by Art. 311(2) not reasonably practicable. What is required is that holding of inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be :-

(a) where a civil servant, through or together with his associates, terrorises, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

(b) where the civil servant by himself or with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or

"(c) where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made."

These are illustrations which are given by the Judges themselves.

"The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

- (ii) Another important condition precedent to the application of clause (b) of the second proviso to Art. 311(2), or rule 19 (ii) of the CCS(CC&A) Rules, 1965 or any other similar rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art. 311(2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it

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would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should be recorded separately in the relevant file. In spite of this legal position, it would be of advantage to incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order of penalty. While the reasons so given may be brief, they should not be vague or they should not be just a repetition of the language of the relevant rules.

It is true that the Art. 311(3) of the Constitution provides that the decision of the competent authority under clause (b) of the second proviso to Art. 311 (2) shall be final. Consequently, the decision of the competent authority cannot be questioned in appeal, revision or review. This is, however, not binding on a Court (or Tribunal having the powers of a Court) so far as its power of judicial review is concerned, and the court is competent to strike down the order dispensing with the inquiry as also the order imposing penalty, should such a course of action be considered necessary by the court in the circumstances of the case. All disciplinary authorities should keep this factor in mind while forming the opinion that it is not reasonably practicable to hold an inquiry.

Another important guideline with regard to this clause which needs to be kept in mind is that a civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (b) of the second proviso to Art. 311 (2) or an analogous

service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him, unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application. Even in such a case the hearing of the appeal revision should be postponed for a reasonable length of time for the situation to return to normal.

This is also incorporated in the judgement. Therefore, there are any number of precautions. The first pre-condition is that a reasonable man taking a reasonable view must come to the conclusion: It is not possible to hold an inquiry.

The second condition is: He shall record its reasons for dispensing with the inquiry. We have directed that it would be of advantage to indicate the reasons in the order communicated to the officer while imposing the penalty. We have pointed out that this will not bind the Court or the Tribunal in exercise of its powers for judicial review and it can set aside both the orders dispensing with the inquiry and the consequential order imposing a penalty. The most important safeguard is that there is right of appeal under the rules.

18.00 hrs

There is a right of revision and review under the rules. The situation which compelled a reasonable man to take a reasonable view that no enquiry is possible is not likely to last for all times to come. By the time an appeal is filed, the situation may return to normal, by the time the revision is filed, the situation may return to normal. In the appeal and in the revision, the delinquent officer is entitled to ask for an inquiry and the appellate authority and the revisional authority is obliged to give him an inquiry if at that stage the normal situation prevails. In fact, the court has gone to the extent of saying that if the situation continues to be abnormal, you will be perfectly within your right to postpone the appeal or the revision. After this order was passed, since apprehensions were

expressed in the event of dispensing with serving a charge memo, we issued another order on the 4th April, 1986, and after that I have not come across any case where anybody has complained to me that Article 311(2) (b) has been misused.

Let me read this order and conclude:

" A question has been raised whether, in a case where clause (b) of the second proviso to Article 311(2) of the Constitution is invoked, the disciplinary authority may dispense with the issuing of charge memo listing the charges. Clause (b) is attracted in a case where the disciplinary authority concludes, 'that it is not reasonably practicable to hold such an inquiry'. The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under:

It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word 'inquiry' in that clause includes part of an inquiry."

Then our guidelines:

" Article 311(2) of the Constitution concerns itself with the punishment of dismissal, removal or reduction in rank, which comes in the category of major punishment under the service rules providing the procedure for disciplinary

action against Government servants. The first step in that procedure is the service of a memorandum of charges or a charge sheet as popularly known, on the Government servant, listing the charges against him and calling upon him, by a specified date, to furnish a reply either denying or accepting all or any of the charges. An inquiry hence commences under the service rules with the service of the charge sheet. Obviously in the circumstances even before the commencement of an inquiry are such that the disciplinary authority holds that it is not reasonably practicable to hold an inquiry, no action by way of service of charge sheet would be necessary. On the other hand, if such circumstances develop in the course of inquiry, a charge sheet would already have been served on the Government servant concerned.

In para 6 (1) of this Departments O.M. dated 11.11.1985 certain illustrative cases have been enumerated where the disciplinary authority may conclude that it is not reasonably practicable to hold the inquiry. It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to anticipate such circumstances as these that are likely to arise, possibly later in time, as grounds for holding that it is not reasonably practicable to hold the inquiry and, on that basis dispense with serving a charge sheet on the Government servant."

We have gone into it very carefully. We

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have understood the apprehensions of the Government servants. We have issued two orders and after the issue of these two orders, to the best of my recollection, unless I am given any information that there was a case, there has been no case which has come to me saying that an inquiry has been dispensed with unreasonably or without recording any reasons or arbitrarily, and that he has not been given an inquiry. In fact none of the Hon. members, to the best of my understanding of their submissions, was able to cite a concrete case where Tulsiram Patel's case has been mis-applied or these guidelines have been ignored or violated. If there is any such case certainly I shall look into it and I shall ensure that the Government Servant gets a fair inquiry before the disciplinary action is concluded against him. I think, these apprehensions were valid when the Bill was moved. These apprehensions are no longer valid since the last two years. I

have been in this Ministry for a little over three years. The judgement was delivered three years and three months ago. These orders have been in force now for about three years. I don't think these apprehensions are any longer valid. The Government is, as much as the Hon Members are, interested in defending the rights of the Government servants and we are second to none in doing so. I don't think these apprehensions are any longer valid. So, I would appeal Shri Suresh Kurup to withdraw this Bill.

MR CHAIRMAN : We will continue this Bill next time.

18.06 hrs

*The Lok Sabha then adjourned till Eleven
of the
Clock on Tuesday, November 15, 1988/
Kartika, 24, 1910 (Saka)*