

Public Service Commission (Consultation) Regulations

12-35 hrs.

MOTION RE: MODIFICATION OF UNION PUBLIC SERVICE COMMISSION (CONSULTATION) REGULATIONS

Mr. Deputy-Speaker: The House will now take up further consideration of the motions for modification of the Union Public Service Commission (Consultation) Regulations, 1958 which were moved on the 27th September, 1958.

The House would recall that for want of time the debate on these motions was held over for discussion during this session.

Under Article 320(5) of the Constitution, these Regulations are subject to amendment only during the session in which they were so laid.

The Minister of Home Affairs had, however, stated on the last occasion that he had no objection to consider any subsequent recommendations made by the House in regard to these regulations.

Therefore, at the time of putting the question on any of these motions, I propose putting to the House only the first part which contains the resolution of the House, since the second part of the motion which is a recommendation to Rajya Sabha is not called for under present circumstances.

Two hours are available for this discussion.

Shri Harish Chandra Mathur (Pali): Mr. Deputy-Speaker, Sir, I had moved my amendments to the Regulations which have been laid on the Table of the House and which were framed and prepared by the President under the proviso to sub-clause (3) of article 320 of the Constitution. You have just mentioned, Sir, the constitutional position. I also mentioned it on the 27th September. I still have certain doubts. I do not know how we will get out of this constitutional difficulty. If it were the rules made by this House the House could have just accorded special sanction for the relaxation of those rules and could

discuss them in the next session. But in this particular matter article 320 makes a binding condition that these Regulations should be discussed during the very session in which they are laid on the Table. I do not know whether by a mere expression of wish of the House we can ignore a specific provision of the Constitution. The constitutional provision is quite clear, and I think the constitutional difficulty does persist. But just now the whole matter is in the possession of the House; I do not know what attitude the Speaker will take and what attitude the House will take in this matter. So far as I am concerned, I do feel that the constitutional difficulty is there and there is possibly no way of getting out of it.

12-37 hrs.

[MR. SPEAKER in the Chair.]

I will now confine myself to the observations which I have to make in respect of my amendments to these Regulations. Sir, as you know, it has taken Government almost more than eight years to frame these Regulations about which, as a matter of fact, a demand had been made on the floor of both the Houses while discussing the U.P.S.C. Report, because this matter has been repeatedly mentioned in the various annual reports of the U.P.S.C. However, now that these Regulations are before us, let us examine them on their merits.

I think it should be clear to everyone in this House that article 320 lays down clearly that all matters referred to in this article in sub-clause (3) are matters which fall within the purview of the U.P.S.C. and, until and unless there are very special reasons and exceptional circumstances, these powers should stay with the U.P.S.C. If there are certain special circumstances, a provision has been made in the proviso to sub-clause (3) which gives the President the power to frame certain rules and regulations exempting certain subjects from the purview of the U.P.S.C. But, as I submitted, there must be certain very good

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[Shri Harish Chandra Mathur] reasons with the Government for making these exceptions, because when the article was framed it was taken into consideration that these particular subjects must be within the jurisdiction of the U.P.S.C.

There is another article, further up, which says that there are certain other matters over which the power of the U.P.S.C. could be extended—that is article 321. What we would ordinarily expect from the Government is to create greater respect and confidence for these institutions which are supposed to be institutions of very great importance for maintaining the moral tone and temper of the services, institutions which are supposed to be there to instil a sense of security among the services. Therefore, it is natural for us to expect that Government would do everything to strengthen the U.P.S.C. to extend its powers and some use would be made of article 321 for that purpose. But, as it happens, the Government seems to have no use for article 321. Now they have come with certain regulations under the proviso to article 320, taking away certain powers of the Union Public Service Commission, and they have laid these regulations on the Table of the House. Even when we had a foreign Government, when the executive wanted to have more power in their hands, even they did not consider it necessary to have so many exemptions as have been resorted to now. I thought at least that the exemptions today will be much lesser, and that the scope would shrink instead of being expanded. I do not know what reasons have prompted the Government to do this. Maybe the hon. Minister has certain very good reasons, but at least I have no such good grounds. They have never been put before this House in any manner and we do not know what the difficulties of the Government are and why they want all these exemptions.

Now, I will take those particular exemptions to which I have tabled my

amendments. The first is:

"This House resolves that in pursuance of clause (5) of article 320 of the Constitution, the following amendment be made in regulation No. 3 of the Union Public Service Commission (Consultation) Regulations, 1958, laid on the Table on the 11th September, 1958, namely:—

in sub-clause (c), omit

"to a Central Service, Class II, or".

The second is:

"This House resolves that in pursuance of clause (5) of article 320 of the Constitution, the following amendment be made in the Schedule to the Union Public Service Commission (Consultation) Regulations, 1958, laid on the Table on the 11th September, 1958, namely:—

omit item No. (5) . . ."

I am first taking the Schedule, and speaking on why I want the exemptions to be done away with. Under item 5, the exemption is:

"Posts of the personal staff attached to the holders of posts mentioned in 1—4 above".

They want that these posts should have nothing to do with the Union Public Service Commission and should lie with the sweet will and the discretion of the holder of the post. I can understand that the Ministers may want sometimes, though I do not see very good reasons, that they should have freedom of choice to have their Private Secretaries appointed, though I think it would have been quite enough to meet the requirements of the situation if the choice had been given freely to the Ministers but the exemption was restricted to those who are already in the service. In that case, anybody they like or anybody whom they consider to be appropriate for the post would be selected. But now, the position is this. They can make any fresh appointment. It is not necessary that they should take anybody from those who are already

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on the permanent cadre. Even if we permit this sort of exemption to the Ministers, I do not see why it is necessary now to extend the scope not only in regard to Private Secretary but to the Deputy Private Secretary, Assistant Private Secretary, Personal Assistant and the Stenographer. Now, what happens is that this creates a sort of domestic atmosphere. I do not understand why they cannot really appoint a stenographer who is already in the service, on the permanent cadre. I do not know why they cannot really appoint some good public servant who is there and who may be very good to be a Personal Assistant or a Deputy Private Secretary. They may at the most have one of these officers chosen from even outside the cadre of the services, but if you permit all these officers who are all the time with the Minister to be persons to be selected from outside the permanent cadre, exclusively by the Minister, of his own choice, then, it does create a sort of domestic atmosphere round the Minister.

The Ministers had some sort of exemption even before. But now, it has been extended almost to everyone who falls within the category 1 to 4, where appointments are made by the President and also the High Court judge. Even the High Court judge likes that his Private Secretary or Stenographer or Personal Assistant should not be one from the services? I do not see why a High Court judge or why a Supreme Court judge or the Chief Justice wants that his Secretary or Private Secretary or Personal Assistant and Stenographer should not be picked up from among the permanent cadre of the services, from the judiciary or from somewhere else. I see absolutely no reason

So also, in regard to other posts, in connection with the Heads of Departments, previously there was an exemption only in case of one individual. Excepting the Ministers, it was only the Comptroller and Auditor-General who could have his Private Secretary appointed by his choice from outside

the services. Now, it extends almost to everyone. As I said, it is extended to the Supreme Court judges, High Court judges, Ambassadors, to Counsellors, to Ministers, Deputy Ministers and all of them. And again, it is restricted not only to Private Secretary. What will happen now is, apart from creating a sort of domestic atmosphere particularly in respect of Ministers, my apprehension is that a political element will enter the field. As you remember, sometimes back, I read that now, in Kerala, the Ministry proposes to have political leaders appointed as Private Secretaries,—political leaders of that particular ruling party to be appointed as Private Secretaries, political leaders to be appointed as Deputy Private Secretaries and political leaders now to be appointed also possibly as Stenographers and Personal Assistants. (Interruption.) If you contradict it, it would be very good.

Shri Braj Raj Singh (Firozabad):
In all other States also

Shri Harish Chandra Mathur: I cannot vouchsafe for the truth of it, but it has appeared with headlines in the papers. It has not been contradicted.

Pandit Thakur Das Bhargava (Hisar): Anyhow, with these provisions, there is a clear possibility of that being done

Shri Harish Chandra Mathur: It has not been contradicted. Firstly, I say that it is absolutely wrong in principle. Now I say that there is a possibility of the extension of it and an extension to such an extent that political leaders are appointed to those posts. That possibility, as I said, is of course there. There is nothing to deny the chance or the likelihood of that, and what I said was that I read in the papers that the Kerala Ministry has already taken a decision that their Private Secretaries,—even names appeared in the papers—such and such persons, are to be appointed and that political leaders are to be appointed as Private Secretaries.

[Shri Harish Chandra Mathur]

Mr. Speaker, just consider, if a Private Secretary is another political leader, what would be the impact which it will have on the Ministry and the Secretariat? He will certainly have a very, very influential impact and effect on the entire Secretariat and even the Secretary to Government. I do not know what the intention of the hon. Minister was when he contemplated such exemptions. I do not think they had any such thing in mind. But I wish to warn the Home Minister that this possibility is there, and this will be resorted to. Further, there would even be a pressure brought upon the Ministers in all the States: that the Private Secretary should be from among the people in the ruling party, from those who have been their colleagues in field work and who have not been able to get any job anywhere. So, I think this sort of exemption is absolutely dangerous. It should be restricted again only to the Ministers for having one Private Secretary at the most. There is no question of extending it to a Deputy Private Secretary; there is no question of extending it to a Personal Assistant or Stenographer. It should not be also for all the other heads of departments or for the judges or, for example, such other sorts of persons. It is not at all necessary.

Passing on to exemption No. 6—“Posts in the Secretariat of the Lok Sabha and the Rajya Sabha”—my first reaction in this case was also the same, namely, that there should be no exemption in this matter also. But a little consideration and a little further thought made me believe that it was a most welcome sort of exemption. It was a welcome exemption because I feel that the Secretariat of the legislatures should not have even a distant influence from the Ministry and the Executive. It should be independent of the Ministry. It should be independent of the executive. Though my first reaction, as I honestly expressed, was that this exemption should not be there, on further consideration, it makes me feel that this exemption is

certainly warranted, so that the secretariat of the Parliament and the judiciary is not even distantly affected by the executive or governmental machinery. At the same time, with great respect to you, Mr. Speaker, I feel that you should evolve certain machinery which will replace this, particularly in the light of this exemption, and which will have a salutary and a very healthy effect on the secretariat recruitment, promotion and independence. In your discretion, in consultation with your secretariat and in consultation with the U.P.S.C. or just as you feel advised, I think some sort of machinery might be evolved, so that there is no abuse of this exemption at all.

I come to exemption No. 7, viz., all technical and administrative posts under the Atomic Energy Commission. I know that the technical staff of the Atomic Energy Commission were exempted even previously. I could understand that exemption for a limited period, say for five years, because it is a growing department and its development should not be hampered in any manner. But I absolutely see no reason why even the administrative posts of that particular department should be exempted. At least to my mind, there appears to be not even a distant justification for having this additional exemption, exempting even the administrative posts from the U.P.S.C. How are the administrative posts of this particular department or branch of administration different from others? If they have been doing it well so far, I would like to know from the hon. Home Minister the practical difficulties which they have faced during these five years of the existence of this Atomic Energy Commission which have made it incumbent on them to come out with this exemption. I have referred to item No. 11. Then comes the item, “Any service or post or class of posts in respect of which the Commission has agreed that it shall not be necessary for it to be consulted”. My first reaction is to item No. 12.

You will realise the implications of this. If you just accept this exemption, Parliament is cut out completely. This is a very fine way of having a sort of mutual agreement between the Ministry and the U.P.S.C. and cutting out the authority and supervision of Parliament, which is given by article 320.

Any exemptions which are made must be laid on the Table of the House, so that Parliament has an opportunity to discuss it. If we grant this exemption, in future all the rights and powers of this Parliament will be abrogated to the Home Ministry and the U.P.S.C. Now they have brought these exemptions before the House and we are criticising them. In future, they can come to any agreement and exempt every damn thing. They can do anything they like and Parliament will never know about it. This is running absolutely counter to the very provisions of the article. I think this is very unfortunate and it should be done away with.

In the case of certain security measures, Government has powers to give exemptions. I feel any Government, which has got to carry out its responsibility, must have that power that without reference to the U.P.S.C., they can discharge the services of anyone they like on security considerations. That is absolutely an understandable proposition. I will remember that on the floor of this House, many times questions have been put, particularly in respect of certain railway employees, and an assurance was given that each and every case would be examined and some satisfactory solution would be found. While agreeing to the necessity of such an exemption, we also feel that we should be told what machinery is being evolved by the Government, which would create a sort of confidence at least in the representatives of the people that this power is properly exercised. I concede that it is absolutely necessary for the discharge of its responsibility by any Government. But as in the case of preventive detention, they must evolve

certain formula or procedure that the case will be referred to such and such committee and something will be decided within a year or 6 months. We cannot feel happy if the case is kept pending endlessly for years together and if some good account of it is not given to Parliament. So I think that some light must be thrown on the subject and I repeat that this power is certainly necessary for the Government

I would like to refer to one or two other small points. They have stated certain punishments and they have said, for instance, that when if an officer is censured, reference would be made to the U.P.S.C. All other punishments—dismissal and so on—are there. But I cannot understand one thing; it appears to have been done in an almost surreptitious manner. There must be some good explanation why the efficiency bar has been excluded. If any officer is deprived of crossing the efficiency bar, I consider it to be a very great punishment, because it adversely affects all his future career. Even a censure has got to be referred to the U.P.S.C. But if an officer is not permitted to go beyond the efficiency bar, no reference appears to be necessary, because the catalogue does not include that particular type of punishment. To this day, it has not been so. I do not know what reasons have prompted the Government to make this exemption. I think there must be very good reasons for it.

I think I have hardly anything to add to what I have said.

Shri Kodliyan (Quilon—Reserved—Sch. Castes): Mr. Speaker, Sir, these regulations have been brought before the House in accordance with the proviso to clause (3) of article 320 of the Constitution. This was long overdue and there has been strong criticism in both the Houses about the delay in placing these regulations before Parliament. I am glad at least now these regulations have been framed by the Government and placed before the House. Looking to the provisions of

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these regulations one cannot rest content with the line taken by Government in this regard. By these regulations what the Government intend to do is to take away the jurisdiction of the Union Public Service Commission from a large number of appointments in the different categories. One can, of course, understand Government's intention of not consulting the Union Public Service Commission in the matter of appointments to posts like Heads of diplomatic, consular and other Indian Missions in countries abroad, and also to posts in respect of which the authority of appointment is specifically conferred on the President by the Constitution, or to posts like Chairman and Members of tribunals, boards, commissions or committees or any other similar bodies created either by or under the provision of a statute or by a resolution of either House of Parliament. But looking to the provisions of these regulations I cannot understand the inclusion of item 5 in the Schedule.

13 hrs.

This item relates to posts in the personal staff attached to holders of posts mentioned in items 1 to 4 of the Schedule, that is to say, personal staff attached to Chairman, Members of boards, tribunals, commissions or committees or other bodies created by a statute or by a resolution of Parliament. There is no justification for excluding these appointments from the purview of the Commission, because the persons who hold these posts are only ordinary staff; therefore, they do not deserve any particular consideration.

Similarly in item No. 7 even the administrative posts in the Atomic Energy Commission are being exempted from the purview of the Commission. Even for selecting people for appointment to Central Services in Class 2 and Class 3 cadres it is not necessary to consult the Commission. Further the Commission need not be consulted in regard to any order made under the Central Services (Safeguarding of National Security) Rules

or the Railway Service Rules of 1954. A considerable number of posts come under the category of temporary appointments and with regard to these temporary appointments if they are not to exceed a period of one year, the Commission need not be consulted. Thus it will be seen that a large number of appointments have been taken away from the jurisdiction of the Commission. This is a very wrong step on the part of Government.

The Public Service Commissions have been created by the Constitution as independent and impartial bodies to recruit suitable and honest men to the Central and State services; therefore, in order to create confidence among the people and also create an atmosphere of justice and complete impartiality in the matter of recruitment to different services, it is necessary to strengthen the Union Public Service Commission and to extend its jurisdiction over more appointments. The number of appointments to be taken away from the jurisdiction of the Commission should be reduced to the minimum. In Kerala the Government have handed over a large number of appointments to the Public Service Commission. Even the appointment of teachers is now entrusted to the Commission. The hon. Member who preceded me said that in Kerala the Government are trying to appoint part-timers to the posts of Private Secretaries, Deputy Secretaries, Under Secretaries and similar other posts.

Shri Harish Chandra Mathur: I said only Private Secretaries; the likelihood is for all.

Shri Kодиан: He mentioned Deputy Secretaries and Under Secretaries as well.

Shri V. P. Nayar (Quilon): That is at the Centre, not in Kerala.

Shri Harish Chandra Mathur: Anywhere there is a possibility of its taking place.

Shri V. P. Nayar: Who is the Prime Minister's Private Secretary? Does he come from the services?

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Shri Kodiyam: In Kerala not a single partyman has been appointed to departmental posts, or to any other posts in the Secretariat. Only some Private Secretaries and Personal Assistants have been appointed to Ministers. It is necessary, in my opinion. During previous Congress regimes there had been instances of partymen being appointed directly to posts of departmental heads. Even partymen have been appointed on the Service Commission previously.

One can see how these powers are being withdrawn from the Commissions. It is being done in the name of autonomous institutions. The Seventh Report of the Commission says that it is not easy to recruit persons for posts in the Indian Institute of Technology, Kharagpur and Government managed steel projects, as they were constituted as autonomous bodies like a university. Sir, we are expanding our activities in the public sector and more and more autonomous institutions are likely to come up.

The Minister of State in the Ministry of Home Affairs (Shri Datar): Is this a general discussion on the Report of the U.P.S.C.?

Mr. Speaker: It has to be confined to these Rules.

Shri Kodiyam: I am only pointing out the exemptions—how a number of appointments are being withdrawn from the purview of the Commission.

Mr. Speaker: The general report of the Commission is not before us. So far as these exemptions are concerned, the hon. Member may say whether the power has been abused in regard to any of them.

Shri V. P. Nayar: Unfortunately, although these Regulations are called Union Public Service Commission (Consultation) Regulations, what it contains is of cases where consultation need not be made. What are we to discuss? The Regulations are called U.P.S.C. Consultation Regulations;

but in actual fact they refer to classes of appointments in which there need be no consultation at all.

Shri Harish Chandra Mathur: This is the phraseology of the Constitution.

Mr. Speaker: Hon. Members forget that under the Constitution the Commission shall be consulted; exemptions shall be regulated by the rules made by the President. All the other appointments require consultation with the U.P.S.C.

Shri V. P. Nayar: Non-consultation Rules would have been more appropriate!

Shri Kodiyam: Therefore, if the appointments in the autonomous institutions are taken away from the purview of the Commission it is likely that appointments made to companies and other organisations in the public sector would be corrupted. An explanation is being given that for highly technical posts, the Public Service Commission may not be able to recruit the right type of persons. They can do it with the help of experts. Let there be some experts in the Commission so that they may have a strong machinery to recruit persons to all kinds of posts, including technical posts.

As I have already pointed out, Government are not prepared to give more powers to the Commission. On the contrary there are instances of Government utilising temporary appointments to have persons appointed permanently in some posts.

Mr. Speaker: Has he got any statistics of these powers being abused—of persons being brought in temporarily and made permanent?

Shri Kodiyam: Yes. One Shri Krishna Dayal Bhargava has been appointed Director of Archives. He is an M.A. in History of the Allahabad University. He was appointed Senior Technical Assistant in the National Archives in 1942. He applied for

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the post of Assistant Director of Archives in 1945, but it was rejected by the U.P.S.C. In 1946 he was appointed as archivist temporarily by the department. Then, in 1948 he went to the Defence Ministry as narrator. In 1949 and 1950 he applied for the post of archivist but was rejected by the U.P.S.C. Then he was appointed as research officer in the Press Information Bureau in 1950. Some time later he was promoted as Deputy Director of Publicity Division temporarily. Then he was made permanent in the post of Under Secretary and was included in the approved list of Deputy Secretaries, though he has not even once acted as Deputy Secretary. He again applied for the post of Director of Archives in 1957. Again he was rejected by the U.P.S.C. There were some other people who were first, second and third in the selection by the U.P.S.C. But none of them were appointed. This shows how sometimes the Commission is being overlooked and how temporary appointments are being utilized for making persons permanent over the head of the Commission. I would like to know what explanation the hon. Minister would like to give regarding this kind of practice.

Then I will point out another instance as to how even after the selection by the U.P.S.C. people are not appointed to the posts to which they have been selected. The Union Home Ministry is following a novel practice of enquiring the character and back history of candidates selected by the U.P.S.C. They conduct these enquiries through the Police Department. Whatever be the qualifications and merits of a particular candidate, if a police constable or officer reports that his character is not good, and that he has connection with the communist party or other parties....

Mr. Speaker: This, I am afraid, relates to the general report of the Union Public Service Commission. We are now dealing with exceptions and exemptions for which the rules

have been framed. If the advice that has been given by the U.P.S.C. has not been accepted in a particular case, or treated indifferently by the Government that should not be discussed here.

Shri Braj Raj Singh: That shows the mind of the Government. Under exemption they want more power.

Mr. Speaker: The mind of the Government need not be brought in at every stage. Let us apply our mind, so far as the exemptions are concerned. The mind is large. Therefore, let us confine it to this matter—exemptions should be given or should not be given. If there are abuses, they may be mentioned.

Shri Kadiyan: I do not want to enlarge the point. What I wish to bring to the notice of the House is how this practice is denying the right of our people to be appointed to certain posts in the Central Services through the U.P.S.C. Therefore, I would request the hon. Minister to bring forward certain modifications in the Consultation Regulations that have been laid on the Table of the House. If the hon. Minister is not prepared to accept my suggestion, then at least he may accept the motions moved by my hon. friend, Shri Harish Chandra Mathur. I very strongly support his motions.

Shri Naushir Bharucha (East Khandedh): Mr. Speaker, in the first place I must invite the attention of the House to the manner in which the rules were placed before the House and very little time was left to the House to pass within fourteen days this particular regulation. In this connection, the Chair was pleased to find a way out as a result of which we are in a position now to discuss them though, in my view, having regard to the language of article 320, it would be out of order for any amendment to be passed by the House.

Mr. Speaker: I will ask the hon. Member one question. If perchance

no amendments are moved within fourteen days of the time the rules are placed on the Table of the House, does it prevent this House at any later stage from passing any resolution that steps ought to be taken to modify these rules?

Shri Naushir Bharucha: The amendments must be moved within fourteen days.

Mr. Speaker: Is it not open to this House to do that at any time after the rules are framed? Hon Members may not have had an opportunity to find out how the rules work. Then, should they wait on indefinitely and leave it to the Government to modify the rules? Can they not pass a resolution, thereby asking the Government to modify the rules?

Shri Naushir Bharucha: The resolution only recommends. It has not the same effect as an amendment.

Mr. Speaker: That is true. Just as an amendment is carried through, a resolution is also carried through. I am not saying that amendments ought not to be moved. I said the other day, and still I say, that sufficient time ought to be given in future when these matters are brought up for discussion in the House. Otherwise, that provision will become useless. This is an extraordinary case. I suggested, and the hon Home Minister agreed, that if a resolution is passed, he will try not to stick to the technical objection that within fourteen days the amendments have not been passed. I am sure that he would adopt whatever resolutions are passed by the House and then try to modify the rules. So far as the present case is concerned, there is no other alternative. In future, sufficient time will be given to the House to consider the regulations.

Shri Harish Chandra Mathur: I think there is some confusion. As a matter of fact, even the Order Paper which we have in our hand refers only to the motion moved on the 27th

September 1958, namely, the text of the motion. Then there were the amendments on that day. If you kindly look at the Order Paper which has been circulated, when I just opened it I found....

Mr. Speaker: What is the motion?

Shri Harish Chandra Mathur: I find myself in the same position as my hon friend, Shri Bharucha. I do not know how to get out of this constitutional difficulty. So far as the hon Minister is concerned, I am afraid, his explanation is not at all satisfactory. It is definitely stated that they should publish such regulations sufficiently in time. In this case, they are published in time. As a matter of fact, the amendments could not be moved and the discussion could not take place on the 23rd or 24th because this item on the agenda was pushed away day by day. It was the responsibility of the Government to see that it was discussed. But, apart from that, on that day I moved the amendments. The Order Paper refers to "further consideration of motions for modification". These are in the form of amendments.

Mr. Speaker: What is the difficulty? I know what exactly happened on that day. I recollect it. Does the hon Member want me to rule out his own amendments? That is exactly the technical position. If the hon Member wants me to rule them out I have no objection. That difficulty occurred last time because we were in the last day and we could not complete it. Therefore, the hon Home Minister suggested that even though technically the time is over because the session has come to an end, he will treat whatever resolutions are passed by this House as amendments. As a matter of fact, this is an amendment with the addition of the words "This House resolves" except the other portion. I believe the hon. Deputy Speaker ruled that with respect to recommendations they must go to the other

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House. But if it is an original resolution here the hon. Minister said that he will give as much effect to these resolutions, if they are carried, as to any amendments that are carried. Now, except for this, there is no other technical difficulty if these are treated as resolutions. I am going to treat everyone of these recommendations as resolutions and if the resolutions are carried, the hon. Minister will certainly stand by his assurance. So far as that is concerned, there is no difficulty. In future I will certainly see that sufficient time is given. When once it is placed on the Table of the House, I will ask the Secretariat to put it as quickly as possible on the agenda and bring it before the House.

Shri Braj Raj Singh: As a matter of fact within fourteen days of their being laid on the Table of the House we moved the amendments. If they are not discussed within fourteen days then the legal position arises that there are no regulations passed as a matter of fact. So, the Government should come forward afresh, lay the regulations on the Table of the House and then they should be discussed.

Mr. Speaker: The regulations stand unless they are modified.

Shri Braj Raj Singh: Amendments were moved to them.

Mr. Speaker: That does not mean that the amendments were carried.

Shri Braj Raj Singh: They were not discussed.

Mr. Speaker: Hon. Member should read the Constitution. There are certain provisions in some Acts that the rules will not become rules unless approved by the House, in which case if the rules are made they will not be valid. Now, this is a different case. The President is entitled to make rules and regulations and place them on the Table of the House. If

the House so desired, it might amend them in that Session itself. Mere notice of a particular amendment is no good, unless it is carried. If it is not carried the rules stand. The rules are in operation from the date on which they are passed. They can be modified by any Resolution or any amendment within that Session. It is not that that is not being done. The rules are there. Now, it is open to the House at any time, even without the fourteen days period, to pass any Resolution to modify them. That is what we are doing. Let us not spend any more time on this.

Shri Harish Chandra Mathur rose—

Mr. Speaker: I have given my ruling. I will treat all these amendments as original Resolutions if they are carried. The Government has agreed to carry them out.

Shri Naushir Bharucha: I was only making a passing reference.

Mr. Speaker: That has been done. Now let us go to the substance.

Shri Naushir Bharucha: Now, coming to the Regulation itself, the original intention in appointing the Public Service Commission was to take away from the purview of the Government the patronage of certain appointments so that the public at large may not feel that any sort of nepotism was exercised by the Government. In Bombay we went to the extent of entrusting to the Public Service Commission even municipal appointments because we felt that it was desirable that an independent body should make appointments on merits. The regulations placed before this House completely undermine that main objective.

If we look to the language of article 320, sub-clause (5), we will find that the exemption should be of such a nature that they are of a rare occurrence and each of these exemptions has as its basis certain defined reason

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as to why the Public Service Commission should not be consulted. Several items of this schedule have already been criticized. I desire to invite attention, for instance, to item No. 7. Here, all technical and administrative posts in or under the Atomic Energy Commission are exempted. One could understand something about the technical posts being exempted though I am sure that some representative of the Atomic Energy Commission would be there when appointments are made, but what is exceptional there in administrative posts? Even this category of posts is sought to be removed from the purview of the Commission. May I know whether, when these exemptions were drawn up the Government proceeded on certain principles or whether they proceeded taking department after department saying that let the Atomic Energy Commission not be involved in consultation or let this or that particular body not be involved in further consultation? There must be some sort of a principle laid down on which exemptions must be made. If you look at the schedule, you will find that there is no such principle underlying it.

Then, take the question of appointment of judicial commissioners and district and additional district judges in Union territories. What is extraordinary in Union territories and in the appointment of district judges in the Union territories so that the Public Service Commission must not be consulted? At least judiciary is one service where appointments should not only be on merits, but appointments of such a character should be left in the hands of such a body that the public feels confident that an independent judiciary exists. If appointments of district judges in Union territories are made by the Government, it is obvious that the judiciary in the Union territories more or less will look up to the Government for the sake of their daily bread and this is what we want to avoid. That is why a reference to the Public Service

Commission is necessary. I ask the hon. Home Minister to tell us the principle underlying this. What is the great reason for this Government to take away from the purview of the Public Service Commission even appointments like district judges? Then, what is left to it?

Then, again, if you come to subordinate judges and munsifs in Union territories of Manipur, Tripura and Himachal Pradesh, is there anything particularly in those Union territories of Manipur, Tripura and Himachal Pradesh whereby even sub-judges and munsifs must be directly appointed by the Union Government and the Public Service Commission must not have any say? Is it suggested that the Public Service Commission is incompetent in making selections of munsifs even when they are to be posted in Manipur or Tripura? What is the underlying rationale with regard to this exemption? Did the Government have any principle in its mind while making exemptions or is it that they have just made them because it struck their fancy and imagination? Is that the way of doing it? Is that the scant courtesy that the Government is showing to the Public Service Commission?

Then, take for instance No. 11. Any service or post in the N.E.F.A. area is exempt. What is extraordinary about the administration of N.E.F.A.?

Mr. Speaker: In framing these Regulations, they must, I suppose all have been notified in the official gazette. Now, may I ask the hon. Minister to show in the statement of objects as to why a particular category of posts is sought to be exempted so as to give an opportunity to hon. Members of Parliament to find out the basis on which the exemptions are sought to be made and if the exemptions are sought to be made, as Shri Bharucha says, what is the other agency indicated that will make the appointments.

Shri Datar: I will explain this.

Mr. Speaker. Just as a statement of objects and reasons is appended to a Bill, in the case of such Regulations if the reasons therefor clause by clause could be given, hon Members then need not ask these questions. They may know beforehand and then discuss.

Shri Nausbir Bharucha: Now, with regard to exemptions, this is not all. If you turn to Regulation No 2, it says

"It shall not be necessary to consult the Commission in regard to any of the matters mentioned in sub-clauses (a) and (b) of clause (3) of article 320 of the Constitution in the case of the services and posts specified in the Schedule to these Regulations."

Regulation 3 says

"Save as otherwise expressly provided in the rules governing recruitment to the civil service or civil post concerned, it shall not be necessary to consult the Commission in regard to the selection for appointment—

- (a) to a post included in an all-India service, of any officer who is already a member of an all-India Service."

Therefore, practically every officer in an all-India service is exempted if he is shifted from one department to another. That is the meaning of it. An officer may be a very good officer in one department but he may be useless in another department. What does this Government do? It wants the freedom to transfer a Class I officer from one department to another without consulting the Commission. Surely, favours can be shown by the Government in such transfers. May I ask whether it is the intention of the Government to retain within its power the patronage of this type of

transfers? What is the basis underlying this regulation? If entire categories of officers have been exempted, then what is left for the Public Service Commission, may I ask, in the matter of consultation?

Then, the Commission need not be consulted in regard to the selection or appointment to a post included in Central Service Class I, of any officer in the Armed Forces. So, all the officers in the Armed Forces are also exempted so far as their appointment to a Central or an all-India service is concerned.

In other words, the Government have retained the completest freedom to make whatever changes they like by way of transfer from one department to another irrespective of an examination of the qualifications of such an officer. They have deprived the Union Public Service Commission of the most important task on which the UPSC had a right to have its say.

Then coming to Regulation 5 It says

"It shall not be necessary to consult the Commission in regard to the making of any order in any disciplinary case other than etc."

A large category of cases is taken away from the purview of the Commission. This Government owes an explanation to this House in respect of every Regulation and I hope the hon Home Minister will give his explanation with regard to them.

My impression after looking into all these things is that the UPSC is reduced in its functioning and its scope to such an extent that it has become virtually an ineffective body when it comes to the question of appointment of officers of the All India Services. Secondly, the Government have made these Regulations with the object of acquiring greater patronage so that they can distribute it to whomsoever they liked. If these Regulations are accepted, the Govern-

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ment will be open to the charge of nepotism because there is no independent body to make these appointments. Thirdly, when the purview of the Commission is destroyed in the matter of judicial appointments, the charge will be that the judiciary is sought to be made subservient to the executive and an independent judiciary is being taken away. Why was it that we accepted in the Constitution the appointment of the Public Service Commission? So that, there may be an independent body of officers appointed who may know that they cannot be removed simply because a Minister frowns upon them. All these powers are being taken away and these powers are going to be abused as an instance has been shown how a small privilege obtained by the Government has been abused; then, the question arises whether it is worth while to have the Public Service Commission after all these major Government appointments are taken away. My hon friend pointed out that already a large section of appointments has been taken away because they are statutory bodies. It is true that we are not concerned with it at the moment. But, it goes to show that day by day the Government withdraws from the purview of the Union Public Service Commission most important appointments which it has a right to make. I, therefore, submit that I strongly object to the Regulations as they are made and in the public interest as well as in the interest of the reputation of the Government, this Government must modify these Regulations substantially.

पंडित ठाकुर दास भार्गव जनाब
स्पीकर साहब, इन रेगुलेशंस को देख कर
फिलवाका मुझे बहुत हैरानी हुई है। जिस
वक्त

बी बें. १० नाबर : कृपा करके धड़ेजी
में बोलिए। बी वांट टू फालो।

पंडित ठाकुर दास भार्गव : यह दू. पी०
एल० सी० बनी थी उस वक्त उसके टर्म

इतने वाइड थे इतने वाइड थे कि गवर्नमेंट
किमी काम में

Mr. Speaker: The hon Member wants him to speak in English. If possible he may speak in English.

Pandit Thakur Das Bhargava: When the provisions of article 320 were enacted in the Constitution, their entire tenor shows that, as a matter of fact, the power of the Government was going to be restricted by the appointment of the Union Public Service Commission, so much so that even in regard to principles of appointment, in regard to methods of appointment and in every other matter, powers were given to the Union Public Service Commission and they were given the right to be consulted. Government could not get out of it except under this proviso which the framers of the Constitution must have in their wisdom put in only for rare and the rarest of cases. After all, when general rules are made and exception also is provided, it is incumbent on those who want to take advantage of the exception to justify every exception. In this case, I find that large inroads have been made on the rights of the Union Public Service Commission and Government want to take authority to themselves so that they may in their wisdom do what they like. My humble submission is, we have seen the same trend in regard to the other Bill which is coming, the Parliament (Prevention of Disqualification) Bill in which also the Ministers want to keep to themselves all the powers of nepotism and favouritism which they can possibly show to Members of Parliament. I say that so far as this House is concerned, so far as the public is concerned, I should say, the greatest amount of complaint in the public is about this *bhrashtachar*, they say that appointments go by nepotism and not by merit. That is the real difficulty. The entire country has nothing on its lips except this talk of nepotism, etc. In an atmosphere like this, when we come to the exceptions, after having waited for eight years, Government

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have come now to make these exceptions and these exceptions are of a very exceptional nature. As a matter of fact, though the law had not provided for this and if the Government had given the public an opportunity to discuss these exceptions it would have been better. After all, so far as the Houses are concerned, though they are representative of the public, still the public is desirous that in matters like this, the public should know what is happening.

I may submit that I am very thankful to you for finding out a solution for the difficulty in which we were placed. These Regulations were brought here in time. But, at the same time, the Government is responsible to see that they are discussed. I do not want to question your ruling since you have been pleased to give a ruling that these Regulations will be regarded as good Regulations unless and until the Government choose to modify them. You have really solved the difficulty. Otherwise, the difficulty would have been that, without these discussions also, these Regulations would have been taken to be passed.

Mr. Speaker: Quite so.

Pandit Thakur Das Bhargava: At the same time, there is another view also which, now, is not relevant, but which I must submit for your consideration. When the law provides that a certain thing should take place in a particular way, the thing can only take place in that way and in no other. You know the ruling of the old Privy Council in which confessions were recorded by the very pen of the confessor, yet the Privy Council held that since they were not orally made as provided by law to the magistrate, the confessions were ruled out. The law provided for it and the President is able to make the

Regulations. At the same time, the Regulations must pass through a cauldron and that cauldron is examination by both Houses. If both the Houses in their wisdom want to make any amendments by way of repeal, then, they will be regarded as *pro tanto* repealed. That stage is gone. It means, if proper opportunity for discussion is not given, it is a fraud upon the legislature. The Regulations cannot be treated to have been passed. If the matter is taken to the court, the court will say, since there was no occasion for discussion, since the House had no opportunity for examination, these Regulations will not be taken to be good. That is one aspect. To that aspect, I need not refer because the Government has accepted

Mr. Speaker: The Government can easily say, the House agreed. We could have sat the whole night that day or even extended it or adjourned it to the next day and next day. The President did not prorogue it. The House was not willing.

Shri Braj Raj Singh: In the Supreme Court, it may be stated that it was submitted that fourteen days were passing and these Regulations ought to be passed within 14 days. The Government suggested that they have got certain other important business

Mr. Speaker: Why did the hon Member agree to it? He may have insisted

Shri Braj Raj Singh: We are in your hands

Mr. Speaker: I was willing to sit. As a matter of fact, I would have sat on till 12 o'clock that day and given enough opportunity. Hon. Members in the earlier period of the day, are very anxious and full of energy. As the day declines, I am not able to get sufficient quorum here. Therefore, it is not one-sided. We must also see to it. I could have sat till 12 o'clock if required. If the Government had

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prorogued the other House, we can take the Government to task for proroguing it without allowing these amendments to be carried in that House. Therefore, hon. Members also must see to that. Anyhow, so far as the present situation is concerned, there is nothing lost. If the House accepts any of these Resolutions, they will be treated as proper amendments. Though technically they will not be amendments, they will be incorporated and the Government will take steps to see that the rules are modified. That is the present case. Hereafter, hon. Members will take care to see and I shall see that this matter is included in the agenda as quickly as possible. That is the way in which we can get over the difficulty.

Pandit Thakur Das Bhargava: I was only making a remark in passing. I am even now submitting that the Government, perhaps, may not be competent to modify these Regulations. According to the Constitution, they can make Regulations. According to the Constitution, these Regulations can be repealed or amended in a certain way and in no other way. Supposing a Resolution is passed, the question will be, how can the Government give effect to that Resolution. The right of the Government is that they can make Regulations. The question is whether they can modify these Regulations at pleasure. This will be another question to which we need not at this stage address ourselves.

Mr. Speaker: Whoever passes a law can modify it. These Regulations are not passed by this House. The Regulations are passed by the Government. Therefore, whoever passes a Regulation is entitled to modify it. If it is an Act of Parliament, the Parliament alone can modify it. The Regulations are valid. Of course, the House is entitled to modify the Regulations. All this is hypothetical.

Shri Braj Raj Singh: Then they will have to be laid before the House.

Pandit Thakur Das Bhargava: I will not go into that question any further which is needless when the Government have accepted the situation. You have been pleased to order the difficulty to be solved in a particular manner and we are quite content. If the Government accept these resolutions, the same thing can be brought about by the consent of the parties, though the other House is out of the picture now in such a situation.

Mr. Speaker: Government will accept a resolution that is passed by the House

Pandit Thakur Das Bhargava: I beg to point out that when these regulations were placed on the Table, Government should have circulated a note to us and given reasons as to why it feels that in regard to these matters consultation with the Commission is not necessary.

First of all, they have appended a schedule. Apparently it is difficult to criticise the Government in regard to all the items of the schedule. So far as items 1 to 4 are concerned, perhaps it is justifiable not to consult the Commission in regard to these, though nothing would have been lost if they were consulted, because in these matters it is very seldom that the Commission will make any remarks or give an opinion opposed to that of the Government.

Anyhow, in regard to other matters, especially items 12, 5, 10 and 11 it is very difficult to justify the exceptions. In the first instance, as has been remarked by those who preceded me, item 12 is very objectionable. It means that the legislature goes out of the picture, and between the Government and the Commission they can do what they like. I am very much opposed to this, and it should be taken away. It is meant for the future. It does not relate to any present appointment. It relates to a principle the effect of which will be that the legislature will have no say in the matter

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at all. So, I wish that item 12 were taken away. I hope Government will be pleased to take it away considering the fact that the Members of the legislature do not like their powers of intervention in a matter of such importance being taken away.

As regards item 5, I can understand the post of the personal secretary to be one in which perfect confidence must be there between the officer and the person appointed, but in regard to the rest, I do not feel that it is justified that the whole matter dealt with in the office must be kept so secret. After all, it is a public office and public work, and therefore there is no reason why this exemption should be made applicable to all the members of the staff.

In regard to the posts in the Secretariats of the Lok Sabha and the Rajya Sabha, I am glad that this exception has been made, and I have got good reasons for it. I have been here in this legislature for a long number of years, and I can say without hesitation that so far as these posts are concerned, we have seen that nothing but merit has been the criterion, and there has been no nepotism, nothing of the sort, so far as these posts are concerned. This is my own experience; I do not know about the experience of other Members, but I am convinced that so far as the legislature is concerned, all these posts should not be subject to consultation with the Commission on the basis of two principles. Firstly, the past practice justifies it. Secondly, we are anxious that the legislatures should be a law unto themselves in the sense that even our arrangements for watch and ward keeping the peace etc., are quite different; we have got control over them, and it is but fair that this department should be free from the inhibitions which may apply to other departments.

In regard to item 7, I should think that the objection taken by my hon. friend in regard to administrative

posts is perfectly justifiable. There is no reason why an administrative post in this department alone should be excepted from the purview of the Commission.

Similarly, I can understand exemptions being made in the case of Judicial Commissioners but so far as District Judges and Additional District Judges in Union Territories are concerned, I feel that these are exactly the posts where the Commission should be consulted. Similarly, in regard to subordinate Judges and Munsifs of the Union Territories of Manipur, Tripura and Himachal Pradesh as well as any service or post concerned with the administration of the North-Eastern Frontier agency, I feel that the expression "any service or post" is too general. If any specific service was mentioned, we could consider that, but otherwise, in regard to these posts, consultation must take place between the Commission and the Government.

Then I come to the notification itself. The notification is perhaps not in consonance with the spirit and words of the exception provided in the Constitution. After all, the exception reads thus

"Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

So, there are three categories: general, particular class of cases and particular circumstances. It does not relate to any particular post, or a particular individual or a particular appointment. Now we find that officers

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belonging to Class I in one department can be transferred to a similar post in another department without consulting the Commission. I am afraid that is not covered by the exception, and I do not think any principle is also involved in it. If there is a particular officer good for a particular department, it does not follow he is good for all departments. For instance, an engineer should not be made a civil surgeon. If a person is good for one post and he is appointed to another post, it is but natural that the Commission should be consulted. A general rule of this nature is not justifiable even according to the proviso to article 320(3).

In regard to paragraph 5 of the notification, I think almost all the disciplinary punishments have been provided here, but there might be some which have not come to my notice. I should have liked the hon. Home Minister who produced this document to have given us specifically the particular disciplinary actions which he wanted to see were not taken to the Commission. He has, on the contrary, said the negative of it. He says these things will go, the others will not go. We do not know what the other things are. Will he kindly explain what they are? Then we will be able to say whether they should be taken to the Commission or not. The wording is peculiar; the other things should have been specifically mentioned here.

Shri Mathur has referred to one particular aspect—*withholding or barring of promotions*. Here also the words are “*withholding of increment or promotion*”. I do not know whether they would be included.

I do not know why any other disciplinary action which can be taken is being excepted. As I said, it would have been much better if these had been given specifically so that we could express our opinion as to which of them should go to the Commission and which not.

I should think that on the whole this is a matter in which the entire public is very much interested. I would be glad if the hon. Home Minister agrees to take back these regulations and circulate them for eliciting public opinion so that the public also may have a say in the matter. It is a matter of very great importance to the public also, not only to the officers. The officers are meant only for the benefit of the public, and the public do not know what is being done behind their back.

I would, therefore, like to avoid all difficulties and to avoid all legalities and to see that even the other House is given its full role which is prescribed by article 320 (5), it would be better if the hon. Minister is pleased to withdraw these regulations, because, if he is entitled to modify them, he is certainly entitled to withdraw them and bring them afresh before the country and before this House, so that public opinion may also have an opportunity to express itself in these matters.

श्री ब्रजराज सिंह : अध्यक्ष महोदय, सब से पहली मुझे आपत्ति यह है कि श्रीमन् द्वारा दो गई रूलिंग के बावजूद यदि इन रेगुलेशंस को पास भी कर दिया जाये तो भी इसका कोई कानूनी महत्व नहीं होगा। इसलिए इनको दुबारा सदन की मेज पर रखा जाना चाहिए और सदन को मेज पर रखे जाने के बाद सदन के सदस्यों को अक्सर दिया जाना चाहिए कि अगर वे चाहें तो इनमें संशोधन कर सकें तथा उन पर बहस कर सकें। इस तरह से जो रेगुलेशंस पास किये जायेंगे वे ही कानूनी हो सकेंगे। इस बात को कहने से मेरा तात्पर्य यह है कि जहां तक आर्टिकल ३२० के सब-आर्टिकल ५ का सम्बन्ध है उसमें यह कहा गया है कि जिस पार्लियामेंट के अधिवेशन में इन रेगुलेशंस को सभा की मेज पर रखा जाता है उसी में उन पर डिसकशन हो जानी चाहिए, बहस

[श्री ब्रजराज सिंह]

हो जानी चाहिए और अगर उस अधिवेशन में बहस नहीं होती है तो उसका मतलब यह नहीं लगाया जायेगा कि वे कानून का रूढ़ धारण कर लेते हैं बल्कि यह लगाया जायेगा कि उन पर बहस नहीं हो सकी और वे एग्जिस्टेंस में नहीं हैं। इसलिए मैं यह कहूंगा कि इनको पुनः सभा की मेज पर रखा जाना चाहिए और सदन को अवसर दिया जाना चाहिए कि वह उन पर फिर से बहस करे, चाहे तो संशोधन पेश करे और तब जा कर इनको पास हुआ समझा जाये।

इसके अतिरिक्त मुझ से पूर्व वक्ता पंडित ठाकुर दास भार्गव जी ने जो अपना विचार प्रस्तुत किया है, उसका भी मैं समर्थन करता हूँ। यह इतना महत्वपूर्ण विषय है कि सारे देश के लोग चिन्तित हो उठते हैं। आजकल हमारे शासन में खास तौर से हमारी प्रशासकीय सेवाओं में पक्षात्, कुनबापरस्ती भाई-भतीजावाद इत्यादि चलता है। विधान के अनुसार सूबों में और केन्द्र में पब्लिक सर्विस कमिश्नस मौजूद हैं लेकिन उनके एग्जिस्टेंस में होने के बावजूद भी यह सब कुछ हो रहा है। अब अगर हम ने और एग्जिम्पशंस दे दीं और राव लेना भी बन्द कर दिया तो इन सेवाओं की उसके बाद क्या हालत होगी, इसका अंदाजा आप ही लगा सकते हैं। मैं समझता हूँ कि अगर इन रेगुलेशंस को पास कर दिया गया तो गवर्नमेंट को पूरा अधिकार मिल जायेगा कि वह जो कुछ भी चाहे कर सकती है। उससे भी दुर्भाग्यपूर्ण बात यह है कि शैड्यूल की आइटम ८ में कहा गया है :—

Judicial commissioners and additional judicial commissioners, district judges and additional district judges in Union Territories;

अगर मनीपुर और त्रिपुरा का ही नाम लिया जाता या ऐसी ही स्टेट्स का नाम लिया जाता जहां पर कि कोई गड़बड़ चल रही है,

जहां पर कि अशान्ति है, तब भी बात समझ में आ सकती थी। उनके बारे में यह कहा जा सकता था कि वहां पर शांति बनाये रखने के लिए, शासन को शुद्ध रखने के लिए ज्युडिशल कमिश्नर्स आवि को नियुक्तियों को अपने हाथ में लेना पड़ रहा है और कमिशन के अधिकार से बाहर करना पड़ रहा है। लेकिन यूनियन टैरिटरी में दिल्ली भी आ जाती है और हिमाचल प्रदेश भी। इस तरह से आप हिमाचल और दिल्ली को भी कमिशन के अधिकारक्षेत्र से बाहर कर रहे हैं। मैं समझता हूँ कि इस तरह के अधिकार आपको देना ठीक नहीं है। इस अधिकार को लेने का मतलब यह होगा कि जो कुछ हम अब तक या १९४७ से पहले करते रहे हैं, उससे भी पीछे हटते जा रहे हैं।

हम ने अपने देश में जनतंत्र लागू किया है। हम ने अपने देश में इस तरह की व्यवस्था लागू की है जिस में अधिक से अधिक अपनी बात कहने का सब को अधिकार है। हमने अपने विधान में यह व्यवस्था की है कि जो नियुक्तियां करनी होती हैं वे नियुक्तियां जो भी उस वक्त की सरकार हो, उसको यह अधिकार न हो कि जिन्हें चाहे नियुक्त कर ले लेकिन अब हम इन रेगुलेशंस को पास करके इस तरह की व्यवस्था करना चाहते हैं कि सरकार जिस को चाहे—न केवल प्रशासकीय सेवाओं के लिए ही, एग्जिक्टिव पोस्ट्स के लिए ही बल्कि न्याय सेवाओं के लिए भी—नियुक्त कर ले। मैं निवेदन करूंगा कि यह तरीका ऐसा नहीं है कि जिस से हमारे देश के नागरिकों में कोई विश्वास की भावना पैदा हो। इससे तो उस भावना को और भी दब मिलेगा जो पहले से ही मौजूद है कि सरकारी नौकरियों में पक्षात्, भाईभतीजावाद और कुनबापरस्ती चलती है। जो भी व्यक्ति किसी अधिकारपूर्ण पद पर पहुंच जाता है वह अपने आदर्शों को ज्यादा से ज्यादा तादाद में नौकरी में लगाना चाहता है।

Public Service Com-
mission (Consulta-
tion) Regulations

घाइटम ५ में कहा गया है .—

posts on the personal staff attached to holders of posts mentioned in items (1) to (4) above.

भागे बल कर कहा गया है

posts of heads of diplomatic, consular and other similar Indian missions.

posts of chairman or members of any board, tribunal, commission, committee or other similar authority.

बे जो सब पोस्ट्स है इनके बारे में आपका यह कहना है कि पब्लिक सर्विस कमिशन को कंसल्ट करने की जरूरत नहीं होगी। इसका मतलब तो यह हुआ कि आप पुराने जमाने में जिस तरह का राज हुआ करता था उस तरह का ही राज्य आज कायम करना चाहते हैं। आप किसी बादशाह के राज की तरह यहा भी राज स्थापित करना चाहते हैं, जिसे खुशी हुई रख लिया और जिस पर खुश हुए उसको रख लिया। इस तरह कोई बात हम देश में नहीं होनी चाहिए। यहा पर बड़े में बे पद पर भी अगर कोई पहुच जाता है, चाहे वह मिनिस्टर ही क्यों न हो, उसको भी यह अधिकार नहीं होना चाहिए कि वह इस सब को अपनी व्यक्तिगत सम्पत्ति बना ले। इस तरह का रेजोल्यूशन पास करके आप अधिकार लेना चाहते हैं कि किमी चीज को व्यक्तिगत सम्पत्ति बना लिया जाये।

आज इस तरह की घटनायें होती हैं कि रेलवे सर्विस कमिशन में या दूसरी जगहों पर कि लोगों की दरखास्तें जाती हैं, दरखास्तों की कापियां उनके पास मौजूद होती हैं और सबूत होता है कि बे भेजी गई है लेकिन कमिशन के दफ्तर में दरखास्तें नहीं मिलती हैं, उनको जला कर उन पर चाय बना कर पी ली जाती है। जिन के सोई होते हैं उन्हीं को कमिशन के दफ्तर से लैटर आते हैं दूसरों को नहीं

The Deputy Minister of Railways (Shri Shah Nawaz Khan): May I submit that it is entirely wrong? Anybody who submits an application for service, to the Railway Service Commission, is called. That is the order. Everybody who submits an application must be called.

Shri Braj Raj Singh: I could give you cases in which people have not been called. They submitted applications, and they have got the acknowledgement receipt of the applications having been received in the Public Service Commission, but they have not been called.

Pandit Thakur Das Bhargava: May I submit that I know of cases where even orders are changed by the highest of officers at the back of those persons against whom the orders are passed? This is a matter which cannot be proved, but it has come to my notice. District magistrates have changed orders, district judges have changed orders. This sort of thing must be avoided. It is a public matter. We must have public servant in whom the public can confide, and not their near relations or those who are just like their domestic servants.

Shri Datar: The hon. Member should be careful in making allegations about district judges and other officers. They are judicial officers.

Pandit Thakur Das Bhargava: I can show files to the hon. Minister, if he wants to see them testifying what I have alleged. The files are there. I have brought this matter to the notice of courts.

Shri Datar: If there are any specific instances, let him mention them. It would be entirely wrong and it would be unfair to make such . . .

Pandit Thakur Das Bhargava: It is not unfair at all. This has come within my experience.

Shri Datar: But what is the experience? Has he got himself an experience? Or is he hearing only something stated by others?

Pandit Thakur Das Bhargava: If such is the experience of hon. Mem-

[Pandit Thakur Das Bhargava.]

bers, they are entitled to place it before the House.

Shri Datar: But they are not entitled to make such allegations disparaging especially the judiciary.

Mr. Speaker: I agree. All that the hon. Member says, is that in his experience, he has come across a few cases. I do not think he ever meant that the whole judicial service was wrong, or that all the collectors were wrong.

Pandit Thakur Das Bhargava: No.

Mr. Speaker: He only says that here and there this is the position.

Pandit Thakur Das Bhargava: This is a rare thing.

Mr. Speaker: All that he meant was that there were cases within his knowledge of judgments having been changed; possibly, they have been changed on reconsideration, or, as the other clients would suspect, on account of various other considerations; it may be either the one or the other. But there are cases where judgments have been changed, according to the experience of the hon. Member. I do not think it need be understood that he has cast a general aspersion on the judiciary.

Pandit Thakur Das Bhargava: This is not general.

Mr. Speaker: Here and there, there may be a few cases.

That is what he is saying.

Shri Harish Chandra Mathur: He paid the highest tribute to the judiciary only yesterday. So, why should the Minister be worried about it?

14 hrs.

श्री जगराज सिंह : अध्यक्ष महोदय, श्री मंत्री महोदय ने जुडिशिएरी के सम्बन्ध में बहुत अच्छी और पवित्र भावनाएँ व्यक्त कीं। हम भी श्री मंत्री का हर सदस्य हिन्दुस्तान की जुडिशिएरी के सम्बन्ध में बहुत पवित्र भावना रखता है उसको व्यक्त करता है। कहीं कहीं जो अपवाद होते हैं उनके बारे में

जुद्ध ध्यान दिलाया जाता है और वह इस तरह से कि हम अपनी जुडिशिएरी को ऊँचा बनाये रखें। लेकिन मुझे यह बेशक ब्रफ़सोस होता है कि एक तरफ़ तो हमारे मंत्री महोदय हमें यह कहते हैं कि जुडिशिएरी के सम्बन्ध में कोई ऐसी वैसे बात न कही जाय और दूसरी तरफ़ यूनियन टैरीटोरीज में जजेज को मुक़रर करण का अधिकार खुद अपने हाथ में लेना चाहते हैं। उदाहरणार्थ दिल्ली में जो कि यूनियन टैरीटोरी है गवर्नमेंट बग़ैर यूनियन पब्लिक सर्विस कमिशन को कंसल्ट किये ऐडिशनल जुडिशिएल कमिश्नर्स मुक़रर करने का अधिकार इन रेगुलेशंस के जरिये ले रही है। एक तरफ़ तो आपकी यह स्वाहिशा कि डिस्ट्रिक्ट जजेज के बारे में और जुडिशिएरी के बारे में कोई ऐसी बात न कही जाय जिसमें उनके चरित्र पर प्रश्न होता हो और दूसरी तरफ़ इस तरह का अधिकार अपने हाथ में लेना, कु उचित और न्यायसंगत नहीं जान पड़ता। आपको इस तरीके की व्यवस्था करनी होगी जिससे कि हर एक व्यक्ति के दिमाग में और दिल में इस बात का विश्वास पैदा हो जाय कि इस तरह की बात ही नहीं सकती और गवर्नमेंट की हरगिज यह मंशा नहीं है कि वह यह अधिकार स्वयं हड़पना चाहती है। इसलिए मेरा निवेदन है कि गवर्नमेंट इन रेगुलेशंस के जरिये जो अधिकार लेना चाहती है उनको लेने की कोई आवश्यकता नहीं है।

जैसा कि अन्य माननीय सदस्यों ने भी कहा है कि भारतीय संविधान के आर्टिकल 320 के सबसेक्शन 3 के जो प्राविजंस हैं उनमें जिन तीन कंडिशंस की व्यवस्था की गई है उनमें मुतालिक कहीं इसमें जिक्र नहीं है। कांस्टीट्यूशन में यह प्राविजन दिया हुआ है कि प्रेसीडेंट या गवर्नर यूनियन या स्टेट्स

may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

समें आपने यह नहीं बतसाया है कि जनरली कर रहे हैं या पटिकुलर सरकमस्टान्सेज में कर रहे हैं। धामतीर से आप चाहते हैं कि इन रेगुलेशंस को बना दें। निवेदन कर्णा कि जब तक आप इस तरह के सरकमस्टान्सेज, पटिकुलर क्लास आफ केस एंड पटिकुलर सरकमस्टान्सेज का जिक्र नहीं करेंगे तब तक स तरह के रेगुलेशंस बनाना बिलकुल गैर-काननी बात होगी। मुझे तो धारणा है कि अगर ये रेगुलेशंस अपने वर्तमान रूप में ही पास कर दिये गये तो भागे चल कर सुप्रीम कोर्ट और हाईकोर्ट्स में इनकी वैधानिकता को चुनौती दी जा सकती है। मैं यह कहे बगैर नहीं रह सकता कि इन नियमों को बनाते वकत जिम सावधानी से काम लेना चाहिये था, नहीं लिया गया और मुझे यह भ्रमसोस वः साथ कहना पडता है कि इन रेगुलेशंस के बनाने में और इनके पास करने में इतिहाई दर्जे की लापरवाही बरती गई है। यह रेगुलेशंस १ सितम्बर १९५८ को बनाये गये और इनको पेश करने में दस दिन लग गये और ११ सितम्बर को यह पेश किये गये और २७ सितम्बर को मूव किये गये। यह रेगुलेशंस क्या २, ३ या ५ सितम्बर को पानियामेंट वः सामने पेश नहीं किये जा सकते थे और उस हालत में इन पर खुलकर बहस की जा सकती थी और विचार किया जा सकता था। लेकिन ऐसा नहीं किया गया और दस दिन तक इंतजार करने रहे और उसको तब पेश किया जब कि उन पर बहस होना सम्भव नहीं था और कहा गया कि चूकि १४ रोज का प्रसां गुजर रहा था इसलिए इनको पास किया जाना जरूरी था। उस समय यहा पर सदन में इस चीज को लेकर आपत्ति की गई थी कि इन पर बहस करने और विचार करने का समय सदन को नहीं मिल रहा है और सरकार की ओर से कहा गया था कि कोई हर्ज नहीं है हम इस पर बाद में बहस कर लेंगे क्योंकि यह बहुत महत्वपूर्ण विषय है। इस सम्बन्ध में श्री भसावधानी और लापरवाही

बर्ती जा रही है और पालियामेंट को जो उसका उचित महत्व नहीं दिया जा रहा है वह भ्रमसोस की बात है। स तरह की भावना सरकार की नहीं होनी चाहिए कि जो रेगुलेशंस सरकार ने बना दिये सदन में उसी रूप में जरूर ही पास हो जायेंगे और सरकार को सदन के इस अधिकार को हड़प नहीं करना चाहिए। सरकार के लिए इस तरह की भावना रखना उचित नहीं है। आपने ऐसा करने से आज जनता के हृदय में जुडिशिएरी के लिए जो निष्पक्ष होने की भावना है उसको ठेस लगेगी। आप इसको यूनियन पबलिक सर्विस कमिशन (कंसल्टेशन) रेगुलेशन, १९५८ का नाम दे रहे हैं में न रेगुलेशन नम्बर १ कः सम्बन्ध में ५ नम्बर का एक सशोधन पेश किया है जिममें कि मैंने चाहा है कि "कंसल्टेशन शब्द के पहले "एग्जम्पशन फ्रीम" कर दिया जाय। मैं समझता हू कि इसको स्वीकार करने में मंत्री महोदय को कोई दिक्कत नहीं होगी।

Shri Datar: I am accepting that amendment.

Shri Braj Raj Singh: At least wisdom has dawned on Government. Is the hon Minister accepting all my amendments?

Shri Datar: I am accepting his amendment to the effect that the words "Exemption from Consultation" be put in brackets in (1).

Mr. Speaker: That is all. I thought it was a substantive amendment that was being accepted. Anyway, the hon. Member seems to be more than satisfied with that.

Shri Braj Raj Singh: No, Sir I am not at all satisfied. I will be satisfied if all my amendments are accepted.

अध्यक्ष यहीद्वय में अपने ८ नम्बर के प्रमंडमेंट को जिसमें कि मैंने प्राइमट नम्बर ८ को प्रोमित करने के लिये कहा है प्रेश करता हूँ और मैं चाहता हू कि यह अवश्य निकाल दिया जाना चाहिए।

Public Service Commission (Consultation) Regulations

[श्री बजराम सिंह]

इसी तरह शेड्यूल के आइटम नम्बर १२ जिसके कि मातहत प्राय एक ऐसा एकाधिपत्य क्रायम करना चाहते हैं कि जिसमें सरकार सदन को हमेशा के लिए बाईपास कर दे, उसका भी मैं मोमिशन चाहता हूँ। आइटम नम्बर ६२ इस प्रकार है :

"Any service or post or class of posts in respect of which the Commission has agreed that it shall not be necessary for it to be consulted"

पंडित ठाकुर दास भार्गव दिस इज प्रनकास्टीयूशनल ।

श्री बजराम सिंह : मैं भी उनसे इसमें सहमत हूँ कि यह अवैधानिक है। मैं यूनियन पबलिक सर्विस कमिशन की बात नहीं कह रहा हूँ लेकिन कुछ राज्यों में तो यहाँ तक हुआ है कि किसी एक खास राजनैतिक पार्टी के व्यक्ति जो कि प्रसेम्बली के मेम्बर होने थे उनको बहा से इस्तीफा दिलवाया गया और उनको यूनियन सर्विस कमिशन का मेम्बर बना दिया गया। मेरी मंशा कोई इस बारे में प्रालेप करने की नहीं है। मैं यूनियन पबलिक सर्विस कमिशन को एक बहुत ही प्रादर की दृष्टि से देखना चाहता हूँ जो कि ड्यू है लेकिन ऐसा हो सकता है कि एक खास पार्टी के किसी व्यक्ति को प्रसेम्बली में स्तीफा दिलवा कर राज्य के पबलिक सर्विस कमिशन का मेम्बर बना दिया जाय और यही चीज यूनियन पबलिक सर्विस कमिशन के लिए भी की जाय और इसलिए मैं इस एग्जम्पशन को जो इसमें दिया गया है कुछ उचित नहीं समझता।

अन्त में मैं और अधिक न कह कर यही कहना चाहूँगा कि प्राय नम्बर ८ और १२ को अवश्य ही निकाल दीजिये। साथ ही मैं चाहता हूँ कि आ टम नम्बर ६ और ११ स तरह के हैं कि जिनके निकल जाने से प्रायके न रैगुलेशंस की सुव्यवस्था और पवित्रता

बहुत बढ़ जायेगी लेकिन यदि मंत्री महोदय और सरकार स बात के लिए राजी न हों तो मैं कहूँगा कि ८ और १२ को तो अवश्य ही निकाल दिया जाय। इन शब्दों के साथ मैं अपने इन संशोधनों को पेश करता हूँ।

Mr. Speaker: I would like to know how the provision regarding exemption of all those posts in respect of which the Public Service Commission says that it need not be consulted is within the scope of the proviso.

Shri Datar: You are referring to Judicial Commissioners and Additional Judicial Commissioners?

Mr. Speaker: I am referring to the general provision in (12) of the Schedule.

"Any service or post or class of posts in respect of which the Commission has agreed that it shall not be necessary for it to be consulted"

I would like to know whether it comes under the proviso or whether it is beyond the scope of the proviso.

Shri Datar: It comes under the proviso. I shall explain the whole matter.

Mr. Speaker: If someone is taken for the time being in a Ministry and then it is said, "No, no, we do not want the Commission; let the Commission be scrapped", the object of the Constitution itself will be frustrated. What is contemplated under the proviso relates to other exemptions. Wherever the Public Service Commission comes in, it is its duty to discharge its functions. I have my own doubts regarding the validity of this provision.

Shri Datar: In the course of the debate we had today, a number of points were raised based more or less on a misapprehension of the correct position regarding consultation with the UPSC. May I point out that the suggestion of an hon. Member that the rules which we have made are

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enlarged rules, especially when they are compared with the earlier rules that we had, is not correct at all. We had already such non-consultation regulations so far as the earlier position before the Constitution was concerned. We had the rules and in some respects, the rules were not as they ought to have been in the present conditions. Therefore, what was done was that after the inauguration of the Constitution, the whole position was re-considered.

Before I proceed further with my reply, may I point out that in respect of the Schedule or the Regulations we have the fullest support or the consent of the U.P.S.C.? We had to take the matter to them; we consulted them, not only as regards the principle but also as regards the language. And, that was one of the reasons why there has been such delay. So, if we start with this position, if we accept this position that these Regulations have been made not by the Government unilaterally but with the consent of the U.P.S.C., much of the criticism that has been levelled would have been naturally removed or would be found to be not well founded. This is the first point.

Secondly, as has been laid down in article 320, the Commission have to be generally consulted except where such a consultation is either inappropriate or impracticable. Let the House kindly understand that and I would explain how this particular principle has to be accepted.

Certain principles have been laid down in article 320. For example, if there is to be consultation in every case, it might become absolutely impracticable, in some cases, and in others it might be inappropriate. If this point is noted by the House, then, hon. Members would find that what I have stated is quite correct and the exemptions are only up to the minimum, not more than what are necessary.

Take, for example, the Schedule. In the Schedule, we have mentioned

items 1, 2, 3 and 4. So far as these are concerned, it was suggested by one of the hon. Members that even there we might consult the U.P.S.C. It is entirely a matter of a special nature. You will find that in item 1 are posts in respect of which the authority to appoint is specially conferred on the President by the Constitution. If there is an authority, naturally, it is the President who has to exercise his authority; and he cannot share his obligation with any other body.

Similarly also you will find that under items 2, 3 and 4, whenever posts of Chairmen or Members of Boards etc. created under the provisions of this Act are to be filled or whenever any investigation or enquiry has to be conducted and Government have to be advised on special matters, naturally, consultation with the U.P.S.C. would not be appropriate. That is the reason why in item 4 we have put the posts of Diplomatic, Consular and other similar Indian Missions in countries abroad.

Do the hon. Members believe that such appointments also should be made only after consultation with the U.P.S.C.? That is why I pointed out that in respect of some posts it would be inappropriate to consult any other body. It must be the obligation as well as the responsibility of the Government to make such appointments.

With regard to item 5, considerable criticism was offered regarding the personal staff. One of the hon. Members was candid enough to concede that so far as personal posts are concerned—and as Pandit Thakur Das Bhargava rightly pointed out—there are certain posts which require the greatest confidence and not the ordinary measure of confidence. Under these circumstances, certain officers have been allowed this concession.

Ordinarily, what is done is this. The Private Secretary is appointed at the discretion of the Minister. We have made it clear that so far as the Personal assistant or others are concern-

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ed, generally, they should be appointed from the services already under Government. Still, it might be open, in a proper case, to a Minister or a Deputy Minister or to any of these persons to make special appointments giving reasons why so far as these other posts are concerned they desire to have a man of their own confidence.

May I point out that even in respect of Private Secretaries—though it is open to the Ministers and Deputy Ministers—only a few Ministers and Deputy Ministers have appointed Private Secretaries from outside the Government cadre. The number is less as we go down. But, in exceptional cases, it might be absolutely essential. But, only in a very small number of cases is such a discretion exercised.

There is also another point that has to be noted. So far as such appointments outside the encadred posts are concerned, they are coterminous with the Minister or the Deputy Minister. So, they come with the Ministers and go with the Ministers. Under these circumstances, all possible care has been taken to see that only in exceptional cases, only when it becomes absolutely essential are such persons outside the government services appointed. Therefore, it would not be proper to say that nepotism would be there, that persons would be brought in only for the purpose of helping them or obliging them. That is not the position at all. Generally we have to depend and we do depend upon the encadred services and, only in exceptional cases, in a very small number of cases, is any resort had to the exercise of the discretionary power.

For example, there is an Ambassador. The Ambassador's post is a very difficult and a very delicate post. It requires very tactful handling of the situation. Naturally, the Ambassador has to depend upon his Private Secretaries, upon his Staff. Would it or would it not be proper to give him the advantage of special discretion in this

matter? That is another reason why item No. 5 has been included with the consent of the U.P.S.C.

Item 7 deals with the Atomic Energy Commission. When we are dealing with such an important body where the largest measure of privacy has to be maintained, would it or would it not be proper to have persons in the fullest confidence of the authorities? They have to carry on the work on behalf of such a Commission. We have to be extremely careful to see that so far as this work of the atomic Commission is concerned. The House is aware of the kind of work that they have to carry on. Therefore, it was conceded advisable that not merely the technical staff but also the administrative staff ought to be fully in the complete confidence of the officers and the persons who are responsible for carrying on the work of the Commission.

You will see that some times the work is not necessarily confined to the technical side. It has to pass through the administrative side also. Therefore, you cannot make a distinction between the administrative side as such and the technical side as such. Both come into operation, perhaps, simultaneously on a number of occasions; and, sometimes, they overlap. Under these circumstances, it would be advisable, in the interests of the great work that the Atomic Energy Commission itself is doing—it is an extremely delicate and confidential work—and also essential that they have a staff of their own complete confidence.....

Shri Naushir Bharucha: There is nothing secret or confidential.

Shri Harish Chandra Mathur: It is an open book.

Shri Datar: Let us not talk on this matter in the way in which my hon. friend Shri Mathur talked.

These are very important, and, as I have stated, very delicate matters

and one has to be extremely careful—if necessary extra careful. That is the reason why, in this case, we have exempted the administrative posts from the purview of the U.P.S.C. There was considerable misapprehension about the appointments referred to in items 8 and 9. They relate to judicial posts. With regard to them, let the hon. Member understand, we have article 233 of the Constitution which deals with the appointment of district judges.

"Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

So, appointment of district judges could not be made by the UPSC. So far as the Territories are concerned, may I point out the procedure that we follow—a procedure that has been laid down for the purpose of safeguarding the interests. In Delhi we have the Punjab High Court and so this question does not arise. In the other Territories we have judicial Commissioners. The judicial Commissioner is under the rules and also in practice the High Court for that territory. When such a judicial Commissioner is appointed, we consult the Chief justice of India; we do not make arbitrary appointments solely at our pleasure. We adopt a similar procedure for the appointment of the additional judicial Commissioner. Whenever any appointment of a district judge is made, we consult the Judicial Commissioner who corresponds to a High Court in the other States. So, in the appointment of District judges and other subordinate judges, district munsifs and others—whatever they may be called—we always consult the Judicial Commissioner.

I am confident that when this is pointed out much of the sharp criticism that was addressed to us will have disappeared.

Now, let us see the class 3 and 4 services and posts. The rule says: "Save as otherwise expressly provided in the relevant rules....." You will agree that the number of classes 8 and class 4 posts is extremely large; it runs into thousands and sometimes into lakhs also. Under these circumstances, consultation becomes impracticable. The House will remember that I pointed out two criteria: that it is inappropriate and the other, that it is impracticable. We have done this with the consent of the UPSC.

The House knows how the administration in the North-East Frontier Agency area is being carried on and it is considered essential that the appointments there should be made by the Government. There a number of considerations have to be taken into account and so the UPSC agreed that there need be no consultation so far as this is concerned.

Now, I shall deal with item No. 12. You also, Sir, have suggested that some light should be thrown in this connection. Often times it becomes difficult for the UPSC to give advice immediately, when an appointment has to be made forthwith. Therefore, in all such cases, with the consent of the UPSC, the particular consultation will be dispensed with. A misapprehension was given expression to by some hon. Members that the UPSC and the Government might agree together and thereby the scope of the UPSC might be brought down. In this connection, I may say that the UPSC is an important authority. That authority has been brought into existence by the Constitution for the purpose of seeing that there is proper recruitment and that the conditions of service etc. are properly made. Under these circumstances, I can understand the hon. Member making a criticism of Government's actions or omissions. But the UPSC is an independent body that is entitled to advise us and we have accepted the advice in a large number of cases. The reports of the UPSC during the last five or six years have also been debated on the floor of this

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House and we shall be placing their recent reports on the Table of the House as early as possible. Generally our attitude has been to accept the advice of the UPSC and there are hardly five or six cases where we acted otherwise. The number is brought down. There are 10,000 or more cases in which reference had to be made to the UPSC. In some years we have not at all departed from their advice and in some others, there are hardly one or two cases. Wherever we have departed from their advice—the number is extremely small—we have done so on certain grounds which have to be explained to the House by a separate memorandum, which has to be submitted to the House along with a copy of the report. In these circumstances, the UPSC need not be considered a body regarding which criticism can be offered.

It is not possible to mention all the grounds. Sometimes a new department has to be opened, a new appointment has to be made. Then, we consult the UPSC. Often times it becomes difficult for the UPSC also. There are cases where the UPSC asks us to make an appointment because of certain difficulties in finding out suitable people. They follow a particular procedure but they could not come to any conclusion about the suitability of a candidate, in some cases there are no suitable candidates at all, when new departments are opened and when a reference is made to the UPSC, in some cases, they ask us to make our own appointments because they are not in a position to advise us for a variety of reasons including the non-availability of suitable candidates. It is only under such exceptional circumstances that this residuary rule has been used. It does not depend upon the pleasure of the Government because consultation is made and if the UPSC also agreed that in the particular case there need be no consultation, then naturally we make the appointment. Therefore, I

would ask the hon. Members not to see anything of a suspicious nature in rule No. 12. I point this out against the background of our conduct. We accept the advice of the UPSC whatever that might be. Only in exceptional cases—in five or six cases, during the last five or six years—have we departed from the advice but we have also placed very strong and unanswerable reasons for this. Both the Houses have agreed that there were exceptional cases. Therefore, you will find that what we have stated as a residuary rule depends upon the agreement of the UPSC and that agreement is in these terms that so far as certain service or class of posts is concerned, there need be no consultation at all. So, Parliament is not in any way surrendering its right nor does the UPSC do so. There should be no question of any agreement other than legitimate, between the UPSC and the Government.

I would make a reference to the schedule itself.

Shri Braj Raj Singh: What about the constitutionality of item No. 12?

Shri Datar: Even now it is there. I think there is no difficulty. Take for instance this point. All class 3 and class 4 service posts have been exempted. Why should they be exempted at all? Under the Constitution as it is, we shall have to consult the UPSC but as I have said it becomes impracticable to consult them and it becomes difficult for them to go on answering all these references.

Therefore, I may point out that the proviso to article 320(3) is very clear. It says

“Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make re-

gulations specifying the matters in which....."

Mr. Speaker: My difficulty is this. There are two things here. It is not that anybody doubts the integrity of the Public Service Commission. But when they say that it is not possible for them to get through and that the Government itself may do so—that may be from the practical point of view—if it is opposed to the Constitution I am sure the hon. Minister will agree that the Public Service Commission, even if it should be willing in particular matters, ought not to act against the Constitution. When the Public Service Commission can absolve itself from this, what are the things which can be exempted. There it is said: "and posts in connection with the affairs of a State may make regulations specifying the matters in which...." It is not the posts, it is 'matters' with respect to which the posts arise. We can specify the matters. We can say matters relating to atomic energy where secrecy is required. Let us see further. It is further said: "matters in which either generally, or in any particular class of case or in any particular circumstances." After the word "matters" you can have a bracket "(in which either generally, or in any particular class of cases)" What I mean to say is, that particular class of cases must relate to a matter, and any particular circumstance also must relate to a matter. Therefore, what can be exempted is only particular matters and in relation to a particular matter any particular class of cases. You cannot exempt a particular class of cases first. You can exempt a particular matter like atomic energy and then a particular class of cases relating to that. Even in the case of atomic energy, it is all right if it is useful for defence purposes. If it is not useful for defence purposes and it is only useful for legitimate commercial purposes, that need not be exempted. Therefore, to me it does not appear that posts can be exempted. Matters can be exempted and then posts in relation to those matters.

If that is not the case, what will happen is that it may not be possible for this House to express its opinion at all in respect of these rules and regulations. There will be a sort of a blank agreement between the Government on the one side and the Public Service Commission on the other. I am sure hon. Members are not making any accusations against Government or the Public Service Commission. But it would appear that the power of the House to find out whether a thing is right or wrong is taken away once for all, and thereafter it becomes a business practically between the Government on the one side and the Public Service Commission on the other. I think in that way Parliament goes out of the picture. Today we might exempt atomic energy, but tomorrow we may find that atomic energy is only used for civil purposes and therefore no secrecy is required. We may then like to bring it under the jurisdiction of the Public Service Commission.

My difficulty is, firstly, from the constitutional point of view and, secondly, I feel that it will be a *carte blanche* and the power of Parliament will be taken away.

Shri Datar: Surely, Sir, I shall examine the constitutional aspect of this case. But I may add for your information that it is very difficult to make a distinction between matters and the actual cases. The words here are very clear: "in which either generally, or in any particular class of cases". I would like to deal with the earlier expression "generally". Is it not open to make a general exception or exemption?

Mr. Speaker: There must be a matter first. There is the Sputnik or some such other thing with respect to which knowledge has to be withheld.

Shri Datar: About the other point, Sir, you were very kind to state that

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Government motives are not suspected nor was anything said against the U.P.S.C.

Mr. Speaker: I am sure no hon. Member who took part in the debate or has tabled a resolution ever wants to cast any aspersion by saying that there has been any conspiracy.

Shri Datar: But arguments were used by some hon. Members which lend weight to a supposition that possibly they fear.... (Interruption.)

Mr. Speaker: Let us assume that in their anxiety they quoted some cases where there was some abuse.

Shri Datar: To use an uncharitable expression, I would say, they wanted to see that there is no collusion between the Government and the U.P.S.C.

Mr. Speaker: As I said, they are actually anxious to maintain the power of the House. From what they said I could gather two things. Let us not give power of exemption. U.P.S.C. shall be consulted in exceptional matters. But exception ought not to be the rule. They are very anxious to see that this House does not lose its hold upon any matter of exemption that may be coming up from time to time. If an arrangement is made, however good the arrangement may be, when it comes before the House the House may or may not agree.

Shri Datar: I shall have the matter fully examined from the constitutional point of view.

Shri Harish Chandra Mathur: Sir, the provision is already there in the Constitution. You can do so in consultation with the U.P.S.C. That power is already there in the Constitution. Why do you want it here?

Mr. Speaker: He says that he will get the matter examined.

Shri Datar: We want these powers because it is not necessary in every

case to go to the U.P.S.C. If the U.P.S.C. agrees that we need not go to it, we can immediately start the work.

Mr. Speaker: As it stands even Class III and Class IV cannot be exempted. It does not appear under any provision that Class III and Class IV as a whole can be exempted. They also come under the U.P.S.C. That is rather a practical difficulty.

Shri Datar: Coming back to the Notification, my hon. friend, Shri Mathur made a reference to sub-clause (c) of clause 3. He said that it should not apply to Central Service Class II. So far as this is concerned, it is a question of selection from one class to the other class or promotion. Let it be understood very clearly that so far as the functions of the U.P.S.C. are concerned they have made it very clear in article 320. In article 320 it is said:

"(a) on all matters relating to methods of recruitment to civil services and for civil posts.

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers...."

So far as recruitment is concerned, it is always the duty of Government to seek the advice of the U.P.S.C. With regard to transfers or promotions, it is a matter within the jurisdiction of Government itself. It is open to Government to make proper transfers. The U.P.S.C. need not be consulted in that respect. Even their transfers are not subject to any revision. But the principles that have to be followed are to be taken into account. That is why the phraseology used in article 320 is different so far as recruitment is concerned. Even in respect of promotions we follow the policy of making them on the suggestion of what are known as "Departmental Promotion Committees". There, generally, as you are aware, a member of the Union Public Service Commission is invited and he presides over them and then we

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have their advice and generally we follow their advice. So far as transfers and promotions are concerned, it is not a matter which is directly governed by the Constitution, but recruitment is directly governed and when once a recruitment has been made, say, in the case of Class II officers, you will find that there cannot be an appointment in that class except with the consent of the Union Public Service Commission or according to the methods laid down by them. Then, if we have once the consultation of the U.P.S.C. and an appointment based thereon, then, it would not be practicable to expect the Government to go to the U.P.S.C. even for selection. The selection is entirely an independent matter in which the Government ought to have the largest measure of discretion because they know a number of matters. Therefore, there can be no doubt that all appointments or transfers would be made only if the person is suitable to the post. For example, an engineer will not be appointed to a post which is more administrative than technical. So, to that extent, I would request the hon. Members to trust the Government, because, the Government must have powers to make proper transfers in proper cases, and that is a matter which is not within the jurisdiction of the U.P.S.C., though we follow the general principle laid down by them so far as such transfers are concerned.

In respect of sub-clause (c), may I point out what is stated there? It is stated:

"who is already a member of the Central Service Class II".

So, when he is already a member of the Central Service Class II, after the consultation of the U.P.S.C., and when a further procedure has to be followed for selecting him, then, it is not necessary at all. It would not be proper, when once we have a consultation with the U.P.S.C., to consult them further; it would be impracticable; it would be inconvenient; it would be

harassing to the U.P.S.C. to flood them with numerous cases of transfer or of selection.

I believe I have replied to all the points and I have nothing more to add.

Shri Harish Chandra Mathur: Now that it has been drafted as a resolution, I think I have a right and the opportunity to reply. I think when a Member opened the speech on the resolution, he has the right to reply.

Pandit Thakur Das Bhargava: May I put one or two questions?

Mr. Speaker: So far as the resolutions are concerned, there are three resolutions. Am I to allow every hon. Member who has tabled an amendment, to speak now? I have read the amendments and there is no meaning in again replying. But if one or two questions to clear a doubt are to be put, I will allow one or two questions.

Pandit Thakur Das Bhargava: I would respectfully refer the hon. Minister to article 234. There, there is the question of appointment of judicial officers other than district judges, etc., and as far as that is concerned, there is the provision that the Governor shall appoint them in consultation with the State Public Service Commission and the High Court. In regard to clause 9 of the Schedule, the hon. Minister will be pleased to see that he has referred to subordinate judges, munsiffs, etc. Now, in the Union territories such as Manipur, Tripura and Himachal Pradesh, there is no State Public Service Commission. Also, there is no Governor as such. In that case, where is the question of a district judge coming in? Only there is the question of subordinate judges and munsiffs etc., though in regard to district judges, he has been pleased to point out the provisions in article 233, which stands by itself. I should think that when there is no State Public Service Commission and no Governor in regard to these three Union territories, it is desirable that

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all the appointments are made in consultation with the Union Public Service Commission. This is one point to which I respectfully invite the attention of the hon. Minister.

Mr. Speaker: Does not the Union Public Service Commission have jurisdiction over those States?

Pandit Thakur Das Bhargava: It is stated "no State Public Service Commission".

Mr. Speaker: There are territories under the Union.

Pandit Thakur Das Bhargava: Therefore, who will be consulted. Will the Government themselves directly appoint?

Mr. Speaker: As Parliament has got jurisdiction over certain subjects in all States, likewise, in respect of the States—there are fourteen States—the jurisdiction of the U.P.S.C. is there in relation to certain things. So far as the States mentioned by the hon. Member are concerned, they are Union territories, and therefore, he enquires whether the Union Public Service Commission should not have jurisdiction over them.

Pandit Thakur Das Bhargava: In accordance with the principle given in article 234, it is very desirable that the Union Public Service Commission

Mr. Speaker: They are not States; they are only territories belonging to the Union; territories of the Union

Pandit Thakur Das Bhargava: So, it is all the more desirable.

Shri Datar: It was stated that the district judges' appointments were made directly and exempted from the U.P.S.C. I pointed out that analogy in relation to article 233 which deals with the States and with the appointment of district judges is made by the

Governor in consultation with the High Court. I have pointed out only that analogy. It does not apply to the Union territories at all.

Pandit Thakur Das Bhargava: I am only submitting that, because there is a provision here in regard to subordinate posts in the States which do not have a body which can be consulted. In that case, it is only the Union Public Service Commission which can be consulted. There is no corresponding body in those territories. Therefore, it is desirable that you consult the Union Public Service Commission in regard to such appointments.

My second point to which I would respectfully call the attention of the hon. Minister is this. In article 320 (3) (b), the words are:

"On the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability..." etc.

Now, I may submit that, for instance, you cannot appoint an engineer as a civil surgeon, when you make a transfer from one service to another. In these Regulations, you say that the Public Service Commission need not be consulted if you make a transfer from one place to another of the same man, we do not say that you should ask for the opinion of the Union Public Service Commission, but in regard to appointments in which a person is already in service, as in clause (i), if the person has to be transferred from one department to another, then the opinion of the Union Public Service Commission has to be sought; the Commission has to be consulted.

Shri Datar: Only the principles have to be settled; not that the Commission has to be consulted. That is why I drew a distinction and a difference between the phraseology in article 320 (3) (a) and (b) on all matters relating to methods of recruitment.

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Mr. Speaker: I did not want to take part in this, but the hon. Minister will kindly read the last two lines. It is not only the principles; the principles are set out in the earlier portion and "on the suitability of candidates for such appointments," etc. come later.

Shri Datar: The word "principles" applies to "suitability"; not the "suitability of candidates".

Mr. Speaker: Otherwise, the Public Service Commission has no right to appoint except under this.

Shri Datar: With due apology —

Mr. Speaker: Under what article or right does the Public Service Commission make the appointment?

Shri Datar: Let us read the sentence:

"On the principles to be followed".... firstly, in making appointments, etc., and secondly, on the desirability or suitability of candidates for such appointments, promotions or transfers.

Mr. Speaker: The one relates to the principles and the other to individual appointments.

Shri Datar: No, Sir.

Mr. Speaker: "On the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another". That is one thing. And then, "on the suitability of candidates for such appointments, promotions or transfers".

Shri Datar: This clause deals only with the question of principle: "on the principles to be followed", and "on the suitability of candidates for such appointments," etc.

Mr. Speaker: Yes, "to be followed in making appointments" etc. The word "principles" occurs in the earlier portion and the actual "appointment"

occurs in the latter portion. That is my reading.

Shri Datar: May I point out the practice? All along we did not consult them, as far as the actual transfers are concerned.

Mr. Speaker: The interpretation of Pandit Thakur Das Bhargava seems to be quite right for this reason that "suitability of candidates for such appointments, promotions or transfers" is one thing, and making promotions in the same service and "transfers from one service to another" is another thing. Therefore, so far as the promotion in the same service is concerned, the Public Service Commission has to be consulted. So far as the transfer from one service to the other is concerned, it has to be consulted; it might be that it has not been done, but strictly, looking at this, I think it has to be done.

Shri Datar: It might be difficult and impracticable. Suppose we have to transfer a man....

Pandit Thakur Das Bhargava: Only impracticable for you.

Shri Datar: What is impracticable cannot be brought into question.

Mr. Speaker: Normally, we have also seen that a Defence Secretary, who was appointed as Defence Secretary, suddenly becomes Secretary of the Agriculture Ministry, and later on he is posted to the Finance Ministry and is also posted to some other Corporation. Now, that seems to be against the spirit of the Constitution. That is what Pandit Thakur Das Bhargava says. All right. If the hon. Minister does not agree, he will consult. I will now put the amendments to the vote.

Shri Braj Raj Singh: Article 234 says:

"Appointments of persons other than district judges to the judicial service of a State shall be made

[Shri Braj Raj Singh]

by the Governor of the State in accordance with reference made by him in that behalf after consultation with State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."

There is no State Public Service Commission in the Union territories. So, the Union Public Service Commission must be consulted. This is a mandatory provision. The hon. Minister has said that it is not necessary to consult the UPSC in this respect. My point is that since the State Public Service Commission is not there in the Union territories, so the UPSC shall come into operation in the Union territories. So, in regard to the recruitment of munsiffs and other posts, article 234 shall be imperative.

Mr. Speaker: That is why he wants exemption and has included it in the schedule. Knowing full well that article 234 does not apply and that the UPSC has jurisdiction, he has come here invoking the aid of the proviso to have this portion exempted.

Shri Braj Raj Singh: That means amendment of the Constitution.

Mr. Speaker: It does not come under the proviso and he wants an exemption. Hon. Members might or might not accept it. Which of these motions shall I put to the vote of the House.

Shri Braj Raj Singh: Motion No. 5.

Mr. Speaker: I shall put motion No. 5 standing in the name of Shri Braj Raj Singh, omitting the second paragraph of the motion saying, "This House recommends to Rajya Sabha that Rajya Sabha do concur in the said resolution."

The question is:

"This House resolves that in pursuance of clause (5) of article

320 of the Constitution the following amendment be made in Regulation No. 1 of the Union Public Service Commission (Consultation) Regulations, 1958, laid on the Table on the 11th September, 1958 namely:—

before "Consultation" insert
"Exemption from"

The motion was adopted.

Shri Harish Chandra Mathur: Except motion No. 1, I press the other motions.

Pandit Thakur Das Bhargava: They are treated as resolutions, but there was no occasion for us to table amendments to these resolutions. If you do not mind, I would like to suggest that, 'except the Personal Secretary, other members of the staff should not be so exempted,' may be put to the House by way of amendment.

Mr. Speaker: He could have tabled it earlier. I will put motion No. 2 without the second part:

The question is:

"This House resolves that in pursuance of clause (5) of article 320 of the Constitution, the following amendment be made in the Schedule to the Union Public Service Commission (Consultation) Regulations, 1958, laid on the Table on the 11th September, 1958, namely:—

omit item No. (5)."

The motion was negatived.

Shri Braj Raj Singh: My motion No. 8 may be put.

Mr. Speaker: The question is:

"This House resolves that in pursuance of clause (5) of article 320 of the Constitution, the following amendment be made in the Schedule to the Union Public Service Commission (Consultation)

Regulations, 1958, laid on the table on the 11th September, 1958, namely:—

omit item No. (8)."

The motion was negatived.

Shri Harish Chandra Mathur: Motion No. 4 regarding item No. (12) may be put.

Mr. Speaker: It is a general one relating to the agreement between Government and the Public Service Commission. The hon. Minister has said he will examine and if it is constitutional, he would have it; otherwise he would not. In view of this, I do not think the hon. Member will press it.

Shri Harish Chandra Mathur: My mind is quite clear about it.

Mr. Speaker: I take it that the other motions are not being pressed.

*The motions were, by leave,
withdrawn*

Mr. Speaker: One motion has been carried. I need not put the original rules, because these are not amendments, but they are treated as resolutions.

The House will now proceed with the next item on the agenda.

14.56 hrs.

CONVICTION OF A MEMBER

Mr. Speaker: I have to inform the House that I have received the following communication dated the 15th November, 1958, from the Judicial Magistrate, First Class, Belgaum City:—

"I have the honour to inform you that Shri Balasaheb Patil, Member, Lok Sabha, was arrested by the Police Sub-Inspector, Belgaum city, on the 3rd November, 1958, at 17.00 hrs. at Belgaum for offences under sections

135(iii) and 149 of the Bombay Police Act, 1951, for contravention of the orders issued by the District Magistrate, Belgaum, under section 37(3) of the said Act and was convicted by me for the said charge and sentenced to undergo one month's rigorous imprisonment and to pay a fine of Rs. 100, in default to suffer rigorous imprisonment for 15 days under section 149 of the Bombay Police Act. He was also held guilty under section 135(iii) of the Bombay Police Act and was sentenced to pay a fine of Rs. 50/-, in default to suffer simple imprisonment for 15 days. The conviction was accorded on the 8th November, 1958 and the prisoner was forwarded in custody to the Central Prison, Belgaum for undergoing his sentence. He was given Class I."

Shri Braj Raj Singh (Firozabad): When was the conviction made?

Mr. Speaker: Conviction was made on the 8th November. Parliament was not in session then. The House met only yesterday and today it has been brought up.

14.58 hrs.

DISCUSSION RE: INSECURITY OF LIFE IN RAILWAY TRAVEL—contd.

Mr. Speaker: The House will now resume further discussion on the insecurity of and danger to life and property in Railway travel and protection of Railway staff against Police and other officials who violate Railway rules raised by Pandit Dwarka Nath Tiwari on the 27th September, 1958. Pandit D. N. Tiwari may continue his speech.

Shri Braj Raj Singh: What is the time allotted?

Mr. Speaker: Two hours.