

**Disciplinary Action Against Public Servants.**

Two connected cases *State of U.P.* (Appellant) v. *Manbodhan Lal Srivastava* (Respondent), and *Manbodhan Lal Srivastava* (Appellant) v. *The State of U.P.*, (Respondent)¹, which are of considerable importance to civil public servants point out to them that all that glitters is not gold. The main question in the cases was whether the provisions of Art. 320 (3) (c) of the Constitution of India are mandatory or not. Art. 320(3) (c) runs thus :—

320(3)—“The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted

(a)

(b)

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters.”

Apparently these provisions seem to be mandatory in the eyes of civil public servants, but the Supreme Court held otherwise. In 1920, the respondent, Manbodhan Lal Srivastava, was employed in the education department of the State of Uttar Pradesh and in due course was promoted to the United Provinces Education Service (junior scale) in 1946. Two years after this, he was appointed Officer on special duty and managing editor of a quarterly journal issued by the education department of the Government. He was also appointed a member of the Book Selection Committee and he continued to function as such until 1951. His conduct as a member of the Committee was not found to be satisfactory and above board inasmuch as it was discovered that he had allowed his private interests to come in conflict with his public duties. Charges were framed twice against him, which he answered elaborately on both the occasions, but ultimately he was demoted to a lower rank and compulsorily retired. His main complaint *inter alia* was that the Public Service Commission was not consulted in accordance with the provisions of Art. 320 (3)(c) but a proviso to Art. 320 proved to be the thin end of the wedge for him. That proviso runs thus :—

“The President or the Governor, as the case may be, may make regulations specifying the matters in which, either generally or in any particular class of cases or in particular

1. A.I.R. 1957 S. C. 912.



circumstances, it shall not be necessary for a Public Service Commission to be consulted.”

It appears from the above proviso that the regulations if made by the President or the Governor, could eliminate certain matters from being consulted with the Public Service Commission leaving other matters to be mandatorily consulted with the Public Service Commission—so long as regulations are not made with regard to them also. There are conflicting decisions on the question whether the provisions of Art. 320(3)(c) are mandatory or simply directory. The Allahabad High Court in this case held that those provisions are mandatory. The Supreme Court, however, upset the decision of the High Court, and held that these provisions are not mandatory although they seem to be so. This is therefore the law of the land on the subject now. This will take away an apparently powerful weapon from the hands of civil public servants, but the following observations of the court are encouraging to them :

“That does not amount to saying that it is open to the executive Government completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted. Once relevant regulations have been made under the proviso to Art. 320 they are meant to be followed in letter and in spirit, and it goes without saying that consultation with the Commission on all disciplinary matters affecting a public servant has been specially provided for, in order, first to give an assurance to the services that a wholly independent body not directly concerned with the making of orders adversely affecting public servants has considered the action proposed to be taken against a particular public servant with an open mind; and secondly, to afford the Government unbiased advice and opinion on matters vitally affecting the morale of public services. It is, therefore, incumbent upon the executive Government, when it proposes to take any disciplinary action against a public servant, to consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirement of the situation.”

Henceforth, the civil public servants will have to depend on the honesty of the Government and the Government cannot be presumed to be always hard and unjust to the persons under their employment.

N.C.S.