

Court. No reply was given to it. But Government obstinately clung to this amendment. Everyone knows what its effect has been. This thing was changed in order to enable State Governments to exercise any trade or any service without giving any compensation to those who would be displaced.

SHRI P. N. SAPRU: Sir, may I just clarify the position?

MR. DEPUTY CHAIRMAN: After lunch, Mr. Sapru.

The House stands adjourned till 2-30 P.M.

The House then adjourned for lunch at two minutes past one of the clock.

The House re-assembled after lunch at half-past two of the clock, THE VICE-CHAIRMAN (SHRI M. B. JOSHI) in the Chair.

MESSAGE FROM THE LOK SABHA

THE PAYMENT OF WAGES (AMENDMENT) BILL, 1957

SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Payment of Wages (Amendment) Bill, 1957, as passed by Lok Sabha at its sitting held on the 11th December, 1957."

I lay the Bill on the Table.

THE INDIAN RAILWAYS (AMENDMENT) BILL, 1957—continued.

SHRI P. N. SAPRU: I would like to generally support the amendment

of Mr. Dhage, and I think there are very good reasons why the Government should prefer that amendment to the clause as it is worded here. Dr. Kunzru has somewhat confused the issue. He is not here . . .

SHRI H. D. RAJAH: He is outside.

SHRI P. N. SAPRU: He has relied upon the recent amendment to the Constitution in support of the proposition that the clause as it is worded is valid. The argument that Mr. Dhage has advanced is of a different character. It relates to what can be done and what cannot be done under article 14 of the Constitution. Article 14 comes before article 19. Article 14 relates to equality. It is what is generally known as the equality clause. It provides for two things—equality before the law; we are not concerned with that, and equal protection of the laws. It provides that there shall be impartial administration of the laws and that there shall be no discrimination by the State between person and person falling within the same category and that there shall be no arbitrariness in this. That is the meaning of article 14. Article 14 has not been touched in this sense by the new amendment of the Constitution. I would read out from Basu's Commentary on the Constitution:

"Class legislation discriminating against some and favouring others is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, is not prohibited, if within the sphere of its operations it affects alike all persons similarly situated."

Then it goes on:

"Equal protection thus means, in short—

"that no impediment should be interposed to the pursuits by any one except as applied to the same pursuits by others under like circumstances; that no greater

[Shri P. N. Sapru.]

burden should be laid upon one than is laid upon others in the same calling and condition;

"that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences."

Then he goes on to add:

"It does not prevent a State from adjusting its legislation to differences in situation or forbid classification in that connection, but it does require that the classification is not arbitrary, but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation."

Now, Mr. Vice-Chairman, discrimination is, I fear, inherent in the clause as it is worded. Let us just have a glance at that clause. The clause says:

"The Central Government may,"
—I am omitting certain words—

"direct any railway administration—

to give special facilities for, or preference to, the transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or of such other goods or class of goods, as may be specified in the order;"

That is to say, it can discriminate between consignor and consignee. It can give preference to the goods of Mr. Dhage over my goods or give preference to the goods, shall we say, of the British India Corporation as against the goods of the Tata Steel Corporation. That is something which is prohibited by the equality clause. I do not know whether the question has been looked at from that point of view. I am indebted to Dr Gour for indicating to me the meaning

of preference in Chamber's Dictionary, and I would just like to point out that the word 'preference' does carry with it the idea of discrimination. Here is the meaning of the word 'preference'.

DR. R. B. GOUR (Andhra Pradesh): May I read out the meaning of the word 'preference' from the Oxford Dictionary?

"Liking of one thing better than another; thing one prefers; prior right esp. to payment of debts;—bond, share, stock; (on which dividend is paid before any is paid on ordinary stock); favouring of one person or country before others in business relations, esp., favouring of a country by admitting its products at lower import duty."

This is the meaning of the word 'preference'.

SHRI P. N. SAPRU: According to Chamber's Dictionary, it is the "act of choosing, favouring or liking one above another". Therefore, the choice may be arbitrary. There are no directions in the clause as it is worded as to how this choice shall be directed, shall be made. Therefore discrimination is possibly inherent in the clause as it is worded and article 14 prohibits discrimination. The new article 19 relates to a different situation altogether. The State can create monopolies, create complete monopolies or partial monopolies. All that is covered by the new amendment, but article 19 does not control article 14. It does not abridge the powers under article 14. Therefore, I think the point is of substantial legal importance, and I am surprised that this objection should be summarily rejected or dismissed. I should like some legal luminary to tell us why they think that this article is consistent with the Constitution. I am raising this point for this reason. Often you see that we pass legislation which is ill-drafted. Then persons who are affected by that legislation have to

go to courts of law in writ application. The courts have to interpret laws according to certain well-recognised canons of interpretation, and then a conflict develops between the judiciary and the legislature. Legislation should be framed in such a manner as to avoid all possible conflict, as not to make it possible for lawyers to advance arguments which may prevail with the High Court but may not prevail with the Supreme Court, or may prevail with some Judges of the Supreme Court and not with other Judges of the Supreme Court. Legislation should be unambiguous in character. I am sorry that Dr. Kunzru was not here when I was making a distinction between article 14 and article 19. I quite appreciate his point of view. He has got something different in his mind and my friend Mr. Dhage has something quite different in his mind and Mr. Dhage quoted from a judgment of the Allahabad High Court. It is reported in 1951 All India Report. The interpretation that the Court gave to article 14 has not been touched by the recent amendments. That interpretation stands. If I had time, I could cite the authorities to that effect. That interpretation has been accepted by the Supreme Court and by other courts and I believe there is a judgment to that effect of Mr. Justice Bhagwati. I could, if I looked upon the commentary, lay my hands on it but I was not prepared for the objection which Mr. Kunzru has raised. Therefore, I would say that the matter is one deserving of serious consideration at the hands of the Deputy Railway Minister. I would like to say that the word 'priority' is a more reasonable word. It too may create difficulties but I think the word 'priority' will be able to stand the test of scrutiny in a court of law better than the word 'preference'. Preference implies favouring one or the other and the spirit as also the letter of the Constitution is against any discrimination.

With these words, I would earnestly appeal to the Deputy Railway Minis-

ter to give to the amendment of Mr. Dhage due consideration, the consideration which it deserves. This is purely a legal question. There is no question of principle involved here. This is purely a question of drafting and therefore the Opposition and even the Government can speak with one voice.

SHRI SANTOSH KUMAR BASU: Mr. Vice-Chairman, I have listened with great respect to the interpretation of this clause *vis-a-vis* article 14 of the Constitution which has been made by my esteemed friend Shri Sapru. The authority of a judgment of the Allahabad High Court has been quoted by my hon. friend Shri Dhage in support of his amendment and a certain passage relating to article 14 of the Constitution has been placed before the House in support of his arguments. We must not forget that that decision of the Allahabad High Court was arrived at in connection with a case relating to the Motor Vehicles Act which provided that an ordinary citizen, when he obtains a permit can run buses along a particular route on a particular road and in that case it was found that the Government also would be entitled to run their own buses along the same route on a competitive basis with the business of a private owner. Now that is the outstanding distinction which ought to be made in the present controversy when one seeks to take advantage of the decision reported in that Allahabad case. What is the position here? The Government enjoys a monopoly under the appropriate Statute, so far as running of Railways is concerned. The Government is not running its Railways on a competitive basis with any private citizen so that the rights of no private citizen . . .

SHRI P. N. SAPRU: But the consignor will be a private person . . .

SHRI SANTOSH KUMAR BASU: Undoubtedly that is so. So far as discrimination is concerned, in the matter of running of the Railways,

[Shri Santosh Kumar Basu.]
there is absolutely none because the Railways can only be run in the discharge of the ordinary functions of the Government by the Government itself.

Now that distinction was very clearly brought out in that identical judgment by the learned Chief Justice of the Allahabad High Court who was presiding over that Full Bench and I would respectfully draw the attention of the House to the observations made by the learned Chief Justice in that connection. He says:

"Where a business is carried on by the Government as incidental to its ordinary functions as such, there can be no doubt that article 14 cannot be relied on in support of the argument that the State should be put on the same footing *qua* that business as any private citizen. It cannot be seriously urged that a citizen can claim that he must be given the same rights, as the State has to be given for carrying on its functions as such."

I strongly rely upon that passage in the learned Chief Justice's judgment. The State in carrying out its functions requires these facilities and these preferences, namely to transport any goods or any class of goods which in its opinion it is necessary in the public interest to transport to any particular place. It is in the public interest that the State which has got a monopoly in the matter of running Railways requires on any particular occasion that a certain class of goods should be transported as quickly as possible and priority should be given to it or preference should be given to it—I go so far—in the matter of facilities for transporting those goods. There the State does not at all come into conflict with the ordinary citizen who cannot claim any special privileges under article 14 in preference to those enjoyed by the State itself. Indeed it would really be a question of giving preference to the citizen and not to the State in such cases

because the overriding necessity of the State is guided by considerations of public interest. If those considerations are to be set aside and preference is to be given to the private citizen over the exigencies of the occasion so far as the requirements of the public are concerned, I submit that it is a case of preference to the citizen over the necessity of the public. In this clause as drafted in the Bill care has been taken to insert the words: "in the public interest."

"If in the opinion of the Central Government it is necessary in the public interest so to do, the Central Government may by general or special order, direct any railway administration—

(a) to give special facilities for, or preference to, the transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or of such other goods or class of goods, as may be specified in the order."

If no such provision is made in the Railways Act, then the entire scheme of supplying foodgrains to the deficit areas may come to a standstill. The entire scheme of food supplies, the entire scheme of other emergency supplies in cases of dire need in the public interest may altogether collapse. I am sure the House will agree that such a provision is essentially necessary in the Railways Act. Formerly these questions would not have arisen because of the normal way in which these functions were being carried on. Now we are passing through extraordinary times of crisis in so many matters, crisis in our economic life for which the Plan has been prepared and is being executed with great speed; crisis in our food situation for which special measures have to be taken in order to save the country from starvation. In these circumstances, as laid down by the learned Chief Justice in that decision, article 14 will not, in my humble opinion, come in the way of such provision being made in this Bill. I

fully agree with Shri Sapru that we should frame our laws in such a way as may not give rise to any controversy or challenge in a law court. But so far as this particular clause is concerned, I submit, it meets the requirements from that point of view and should be accepted.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Mr. Mukerjee.

SHRI H. N. KUNZRU: Before my hon. friend speaks, may I draw the attention of the House to article 302 of the Constitution? I agree with what fell from the last speaker with regard to the importance of the words "in the public interest". The article of the Constitution I wish to draw attention to is article 302 which says:

"Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse"

I leave out certain words—

"within any part of the territory of India as may be required in the public interest."

Now clause 3 of the Indian Railways (Amendment) Bill begins with these words:

"The Central Government may, if in its opinion it is necessary in the public interest so to do by general or special order, direct any railway administration" etc., etc.

It will thus be seen that apart from any other article in the Constitution, article 302 authorises Government to place or impose restrictions on the freedom of trade or commerce in the public interest. Government may, of course, in any case, when their order is challenged by any consignee, have to prove that their order is in the public interest. But this can be discussed with regard to the order issued by them in relation to any particular matter. I do not think that clause 3 will be vitiated simply because the Government wish to give special facilities for the transport of goods of a particular class.

SHRI V. K. DHAGE: Will transport be classified as trade?

SHRI H. N. KUNZRU: Well, it is "trade, commerce or intercourse" and after all, it is one of the means of doing so.

DR. R. B. GOUR: But the question is: Which is the better of the two words "preference" or "priority"? Because "preference" smacks of favouritism, "priority" seems to be better, because it does not. That is the whole thing. We are not challenging the question of imposing reasonable restrictions.

SHRI H. N. KUNZRU: I do not know whether the words "preference" and "priority" have been legally defined, but they mean the same thing. When it is said that preference is given to one article over another in the public interest, it means that it is to have priority over the other thing in the matter of transport.

SHRI B. K. MUKERJEE (Uttar Pradesh): Mr. Vice-Chairman, I think the amendment which is under discussion now is worth consideration at the hands of Government. The clause as it stands in this amending Bill, in my opinion, violates the succeeding clause in the principal Act, namely, section 28 which says:

"Prohibition of undue preference.
—A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

So if you put this clause as now proposed in the Bill, it will in my opinion, violate clause 28.

SHRI P. N. SAPRU: You can conflict with.

SHRI B. B. Mukerjee: Yes, conflict with or violate clause 28. Clause 27A says—give preference and section 28 says—give no preference. So they are conflicting in my opinion. If we now amend this Act as it is proposed here in this amending Bill, it will violate this section 28 of the principal Act. But the amendment now suggested to this amending Bill does not alter the situation from what it is in the principal Act. If in the opinion of the Government it is necessary and the Government wants certain things to be carried in preference to others, though the words may not be there, they will still have the power, this provision will afford Government the same right to give priority to a particular commodity over others. This will be a mere change of words. Therefore, instead of “preference” if we say “priorities” I think the effect will be the same. Therefore the Government should not have any objection to accepting this term “priorities” in place of the term “preference”. As the word “preference” has been used in section 28, I think the same word should not be used in clause 3 in section 27A, because preference is denied under section 28. Therefore we should introduce a new term as has been suggested by my hon. friend Shri Dhage and use the term “priorities,” as it does not occur in section 28. Therefore I feel Government should agree with this and . . .

SHRI V. K. DHAGE: It is also denied in section 27, sub-section (3). The word “preference” is used in section 27, sub-section (3) just prior to section 27A, in the last line.

SHRI B. K. MUKERJEE: Yes, yes. Anyway, this is my suggestion and I think this amendment is worth consideration at the hands of the Deputy Minister because it will save a lot of dispute hereafter as to whether we should be guided by section 27A or

by section 28. When that matter arises, if we introduce the word “priority”, then that question will not be raised and even if it is raised, the judgment will be in favour of the Government's action in giving priorities to certain commodities. We all talk about priorities because priorities are needed for implementing our Plan and some goods ought to be given preference, in other words, priority, over other commodities that will be carried by rail. Therefore, I strongly support the amendment and I recommend to the hon. Deputy Minister to give it proper consideration.

DR. R. B. GOUR: Mr. Vice-Chairman, I am not first of all, very much well versed in the Constitution or with legal terms.

3 P.M.

Nevertheless, as a layman, I have to choose between the two words, the word which the hon. Member is proposing in the amending Bill and the word which my hon. friend, Mr. Dhage, is proposing. Now Sir, I entirely see from the definition as given in the Oxford Dictionary that the word preference smacks of discrimination, favouritism, whereas the word priority is pure and simple selection. Therefore, Sir, I would read the definition of both the words and then request the hon. Minister and the Government to consider this question. With due deference to Dr. Kunzru, I would say that we are not contending the authority of the Government under article 302 of the Constitution; we are not saying that they have not got certain powers under amended article 19 also. In fact, article 302 does not come into conflict with article 14 of the Constitution. Article 14 bans any discrimination whereas article 302 gives you certain powers for giving certain priorities in the public interest. This is how preference is defined as I have already pointed out while the hon. Shri Sapru was speaking. Preference means the liking of one thing. The whole

thing is a favouritism of one person, one country, etc., whereas priority is defined, in the same dictionary, as an interest having a claim to consideration. Here, it is not a question of favouring a person or a country or a class of goods or anything. Here it is a certain class of goods taken together having a certain claim for consideration. This is a suitable word. It will be better and will not militate against article 14. It will also help Government under article 302.

SHRI SHAH NAWAZ KHAN: Sir, I do not have very much to add to what my hon. friend, Mr. Basu, has said on this particular point and I am also very grateful to Dr. Kunzru for having clarified the point earlier.

SHRI P. N. SAPRU: Does he stick to his original position?

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): It means so.

SHRI SHAH NAWAZ KHAN: I feel that it is necessary to retain this word because Government have, sometimes in national emergencies, when there are conditions of severe famine or drought, to move goods and give special preference to the movement of such goods. I think, Sir, this word has stood the scrutiny of time. It has been there for the last eight or nine years and it has stood the scrutiny. So, under the circumstances, I am sorry I cannot accept this amendment.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The question is:

1. "That at page 1, line 18 for the words 'give special facilities for, or preference to' the words 'give facilities for, or determine priorities for' be substituted."

(After a count)

Ayes : 6

Noes : 27

The motion was negatived.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clauses 4 and 5 were added to the Bill.

Clause 6.—Amendment of section 34.

SHRI V. K. DHAGE: Sir, I beg to move:

2. "That at page 2, lines 20-21, for the words 'he is, or has been, a Judge of the Supreme Court or of a High Court' the words 'he is qualified to be a Judge of a High Court or has been a member of a Tribunal' be substituted."

3. "That at page 2, line 27, for the words 'five years' the words 'seven years' be substituted."

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The clause and the amendment are now before the House.

SHRI V. K. DHAGE: Sir, in moving this amendment to this clause, my intention is to see that the independence of the judiciary is maintained. It is now observed that every day there is a law passed wherein we make provision for the appointment of the High Court Judges or the Supreme Court Judges, whether it be a matter of an enquiry or it be a matter of a tribunal. The matter has become so common now that it has begun to affect the independence of the judiciary.

I must remind you, Sir, that when a Supreme Court Judge was appointed as a Governor of a State in India, it was Dr. Kunzru who had rightly at that time commented that he was

[Shri V. K. Dhage.]
opposed to this appointment of a Supreme Court Judge as a Governor of a State.

Whenever we meet any lawyer, whether in the High Court or in the Supreme Court, and some of the lawyers happen to be Members of Parliament as well, I have heard invariably from them that it is rather difficult to find an independent judgment so far as a constitutional point is concerned, the reason being that there is expectation, after one has retired as a High Court Judge or as a Supreme Court Judge, to be appointed as a member of or as a chairman of some tribunal or the other. Dr. Kunzru pointed out at that time that that will be quoted as a precedent with regard to appointments in future in other respects also. What we find now is that under the guise of an independent enquiry, a High Court Judge or a judicial person is recommended to be appointed as the person to hold the enquiry or to sit in a tribunal in judgment. This expectation has gone so far now that every High Court Judge or every Supreme Court Judge would expect some return in some shape or form after he has retired as a Judge. This is not my opinion; this is not my view but this is the view which I have gathered not from lawyers alone but even from such Members of the Parliament who practise in the High Courts as well as in the Supreme Court.

Now, Sir, this provision has been made with a view to seeing that independent judgment is given. I have nothing to say with regard to the independence of the judgment that will be given by the judiciary but what I mean is that the person who will be appointed will be a person who shall have a tainted view in the matter because he expects some favour or the other from the Government.

Here, Sir, I would like to remind you of a certain case which I happen

to know myself very well. In the Hyderabad State, before the Razakars came to power, there was a lawyer who had not much of a practice. He was given a job as Assistant Secretary under the Government. He was promoted immediately to another job of Deputy Secretary. From this Deputy Secretaryship he jumped, when the razakars came to power, to a post of High Court Judge. But there were rules of seniority to be followed and when the police action took place and there was a Military Governor in the State of Hyderabad, protests were made and this gentleman was reverted back not to the post of Deputy Secretary but probably as a Sessions Judge. Again matters moved up and, after a year or two, the gentleman was again appointed as a Judge of the Hyderabad High Court.

At that time, Sir, you might remember Hyderabad had a sort of dual administration. The meaning of this dual administration was that for every post, there was a Hyderabad Officer as well as an officer who came with the police action. And the Hyderabad people were groaning under the burden of that dual administration, not only from the point of view of finance which they had to bear, but also from the point of view of not knowing where to go, what to do and whom to meet. And the people then started clamouring that, while there was popular Government in other States in India, there was no popular Government in Hyderabad. This agitation started, I think, somewhere in the district town of Warangal. From Warangal the agitation spread to Hyderabad city as well. The position became so serious that firing was resorted to on one occasion. I may tell you, Sir, that on the occasion of the firing, people who were interested in not having this kind of disturbance to law and order, including a person like the present Governor of West Bengal, and some of us were in the

fray, trying to persuade people not to resort to anything of violence, etc. and that they should go back. We were there the whole day, from morning till evening and again in the night, not having food, etc. and the police did not do anything unless and until they had consulted . . .

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): How is the story relevant here?

SHRI V. K. DHAGE: I am just coming to the point, Sir. Just a sentence . . .

SHRI BHUPESH GUPTA (West Bengal): Towards the end of this story there is as always a moral drawn.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): We want the moral and not the story.

SHRI V. K. DHAGE: Then there was a judicial enquiry ordered and that gentleman . . .

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Such things always happened in princely India.

SHRI V. K. DHAGE: It was also the Government of India then, Sir. That gentleman was promoted to a High Court Judgeship . . .

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Such things always happened.

SHRI V. K. DHAGE: It is not that I am referring to the time when it happened. I am concerned with the independence of the judiciary.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Go on with the principle.

SHRI V. K. DHAGE: I am not at all trying to find fault with either the Government of India or the Government of Hyderabad. I am trying to stress the point whether these kinds of appointments lead to an

independent judiciary or not. This is my point. We found, Sir, that this gentleman gave a report of his enquiry in which he had made no mention of what the public men did at the time. In fact he tried to find fault with them and later we found him confirmed as a High Court Judge. This is the thing which I feel, has been done which is not in accordance with the facts because we know it personally very well. And yet see what happened? He received further awards in that connection. I will not go into that detail. What I mean to say is that in the matter of making appointments, as in this legislation that a High Court Judge shall be appointed to the Tribunal, it is not going to promote a feeling of independence of the judiciary because they can always look up to have some sort of favouritism or other from the Government. And the advice and the caution that was given by Dr. Kunzru at that very time, when a Supreme Court Judge was to be appointed as Governor, has not been heeded.

Another point. What is the use of having retired men to preside over these Tribunals when we see a lot of unemployment among others fit to hold such jobs? From a social point of view also we must consider the problem. If you appoint a man who is a retired Judge as a member of the Tribunal or as its Chairman, do you think you are solving to any extent the unemployment problem? There are many people who are qualified to become Judges of High Courts and, if they be given the chance to work. I suppose, their independent judgment as Chairman of the Tribunal will be as good as that of a retired High Court Judge.

SHRI BHUPESH GUPTA: But then they will say that the person to be appointed as a Judge would not have been completely unemployed before that and he would have been engaged somewhere.

SHRI V. K. DHAGE: I feel, Sir, that if we adopted the amendment

[Shri V. K. Dhage.]
that I have given notice of, we shall have to that limited extent solved the unemployment problem as well and would have also created more independence in the judiciary. These are the two objects that we shall attain by means of the amendment that I have given notice of.

Then, Sir, I have also given notice of an amendment with regard to raising the period from "five years" to "seven years." Now "five years" for a person who has been practising at the bar for so long and who is qualified to be a Judge of a High Court seems to me to be too short. To my mind even "seven years" is too short. It is not going to be a period which will attract any person, having already a sufficient practice, to take to the Chairmanship of the Tribunal, etc. Even for more than "seven years" I have no objection. I have simply tried to express by my amendment that "five years" is too short a period and that the period should be extended to at least seven years, if not more.

There is another point that arises in that connection, and that is this. I understand that there is a gentleman who has been working with the Tribunal for the last eight or ten years. The hon. the Deputy Minister made some sort of a passing reference to this. He has been found to be very competent. Now under the provisions of this Bill he will have more or less to retire.

SHRI H. D. RAJAH: He will have to quit.

SHRI V. K. DHAGE: He will have to quit. Therefore I feel that we should not so frame a law as to affect persons adversely, a person who has been working satisfactorily in the Tribunal.

I therefore, Sir, commend these amendments of mine to be accepted by the House.

DR. B. B. GOUR: Mr. Vice-Chairman, the Bill circulated to us prior to its passing by the Lok Sabha contained a Statement of Objects and Reasons. Now there it has been said that "there has been a public feeling that the Railway Rates Tribunal as now functioning has tended to be too formal and legalistic in its approach and that proceedings before it have been unduly prolonged and expensive."

Now, Sir, the object of an amendment to the section that governs the formation of the Tribunal must be to remove this particular defect of the Tribunal, as it is very formal and legalistic in its approach and is devoid of the social approach which such Tribunals must possess in order to deal with the matters pending before them expeditiously.

Sir, it is not merely a question of the Railway Rates Tribunal. It is the case with industrial tribunals. It is the case with all these tribunals.

Now with due deference to the Judges of our country, both sitting as well as retired, I would certainly submit, Sir, that very few of the retired Judges are as revolutionary in their approach or as youthful in their vigour as the hon. Mr. Sapru of this hon. House. The feeling is just as our Prime Minister said yesterday speaking at the inauguration ceremony of the Law Institute, "The battle for social justice goes ahead of legal changes, and law always lags behind the requirements of social justice." But here is a person who is old not only in relation to the demands of social justice but also in relation to the law of the land, and he is brought in a place where he is to do matters in a very expeditious manner, to deal with problems of social justice with a social approach. We can well anticipate what the result will be and Government will be bogged in the very problem that it is facing to-day. They are not going to solve the problem. They

have in fact amended the original section, and the original section empowered the Government or the Railway Board to employ on such Tribunal persons who were qualified for appointment as Judges. That means they could easily take such people from the bar but now, by this amendment, they are themselves relinquishing that authority of appointing people from the bar, people who know, who are actually in the fighting line in relation to problems of law and justice.

Now, Sir, we are very seriously opposed to this because we on the industrial tribunals are facing this problem very seriously. When old retired High Court Judges are appointed to administer social justice, they do not know this problem of social justice. They only know the letter of the law. They do not go into the spirit of the law, the spirit in which the Legislature had passed the law. The result is trade unions are suffering; labour is suffering and social justice is suffering. Therefore we have to oppose such appointments when the question of tribunals comes up. Even with regard to tribunals under the Enquiry Commissions Act we were of the same view, that retired Judges should not be placed there. Because they will always have a bureaucratic approach or the prosecution's approach and, therefore social justice cannot be administered in a proper manner and in the way we want. Therefore, we are very strongly in favour of the amendment moved by Mr. Dhage and we are strongly opposing this particular amendment of the Government by which it is relinquishing its powers to employ on such tribunals people who are at present in the bar but who are qualified to be judges of the High Court and Supreme Court.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Mr. Vice-Chairman, I am entirely in agreement with the views expressed by my hon. friend, Mr. Dhage, so far as they relate to a part of his amendment relating to

the appointment of retired High Court or Supreme Court Judges. The other part of his amendment relates to the appointment of an existing High Court or Supreme Court Judge. To that part, of course, I cannot agree. So far as the question of appointment of retired High Court and Supreme Court Judges is concerned, I have said on occasions more than one, I have urged with all the emphasis at my command, that such a practice must be given up altogether. It is an important question involving a matter of policy and propriety. I am glad to be able to tell on this occasion that only very recently I had occasion to discuss this subject with a very eminent retired High Court Judge of Uttar Pradesh and he was very emphatically of the view that no temptation should be thrown out before High Court or Supreme Court Judges, no hope should be held out before them that after retirement they will be able to get some job here or there. Now, far be it from me to suggest that the Government while appointing retired High Court or Supreme Court Judges is always or mostly influenced by the consideration that such a retired High Court Judge or Supreme Court Judge would be passing judgment which will be in accordance with the view of the Government. Not at all. But then human nature being what it is, we should not forget the fact that if Judges have before them the temptation of being appointed, then naturally while sitting in the High Court or the Supreme Court, it is not unlikely or at least it is not impossible that such a consideration sometimes, may be very rarely, may weigh with them that if they displease the Government they would have no opportunity of being appointed to some tribunal here or there after retirement. As I have said, it is not my personal view only. This is the view of a very eminent retired High Court Judge also whose name, of course, I do not think it will be advisable for me to give out. But then I can assure the House that that Judge is a very eminent Judge,

[Shri Jaspat Roy Kapoor.]
with very sober views. As I have said, on occasions more than one I have been insisting on this point. In one way it is a matter of gratification to us and it should be a matter of gratification to our judiciary that we place so much confidence in them, that whenever there is a question of appointment to a very high post we always think of High Court Judges and that is something about which we are happy and about which the Judges must be very happy. But then we should not lose sight of the other aspect of the question. We very well remember only the other day we passed an amendment to the Constitution wherein we have now provided that the retired High Court Judges can now practise in a High Court of which they have not been members. So even after retirement these High Court Judges can go back to the bar, of course to the bar of the State in which they were not High Court Judges. So, even after retirement the High Court Judges will not be out of employment. But there is one other aspect which we should also take into consideration. Having retired at the age of 60 in the case of High Court Judges and at the age of 65 in the case of Supreme Court Judges, after that age, with a substantial pension that they will be getting, has not the society a right to expect them to devote the rest of their life to social service in an honorary way? We have the Bharat Sevak Samaj to which we are attaching so much importance and rightly, and we are appealing to all members of the public to work honorarily for the Bharat Sevak Samaj. Should not then we expect these retired High Court Judges and Supreme Court Judges for the matter of that . . .

SHRI B. B. SHARMA (Uttar Pradesh): May I know if the members of the Bharat Sevak Samaj do not get any honorarium?

SHRI JASPAT ROY KAPOOR: I do not think they get any honorarium.

But that is not relevant for the purpose of the discussion on this subject. I do not think that the members of the Bharat Sevak Samaj get honorarium; even if they do get it at all, it is not to such an extent as would amount to the salary of a High Court Judge or a Supreme Court Judge. If he gets an honorarium, or travelling allowance, that is an entirely different matter.

DR. R. B. GOUR: Sir, the retired Judges are appointed in the Bharat Sevak Samaj so that the youth of the Samaj serves them.

SHRI JASPAT ROY KAPOOR: Let us consider this subject in a little more serious manner if we do really mean business.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): That is not relevant here.

SHRI JASPAT ROY KAPOOR: What is not relevant?

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The Bharat Sevak Samaj question is not relevant here.

SHRI JASPAT ROY KAPOOR: No. But my submission is that rather than holding out these jobs before retired High Court Judges, we should expect them not to think of any re-employment anywhere and we should expect of them and appeal to them to do social service in an honorary manner.

Sir, in some cases I find that there are some favoured retired High Court Judges, favoured in the sense that hardly they are out of office after retirement. One retired High Court Judge—he is unfortunately dead—ever since the time he retired and up to the date of his death, was never out of employment. Now, I knew him and once I had occasion to talk to him and he said: 'What am I going to do if money is being thrust upon me? Of course, nobody should expect that I should refuse it.' He

was himself not very happy. He did not need much money. He had not a large family to leave behind. But then he said: 'I have never been out of employment. It is being thrust upon me. What can I do?' Therefore, I submit that it is an important matter which must be seriously considered by the Government. The public at large—the hon. Minister can take it from me if he may—is now in no small measure losing confidence in our judiciary because of this particular thing. They say the Judges cannot be relied upon now for an independent and impartial working. I mean this should not be considered from a party point of view. This question must be considered from a larger point of view, of the independence of the judiciary and from the point of view of the confidence which we must see that the public must have in the impartiality and independence of our judiciary.

As I said initially, my remarks apply only to the case of retired High Court and retired Supreme Court Judges. So far as the sitting Judges are concerned and Judges who are already working in the High Courts and the Supreme Court, I see no reason why we should not be agreeable to their being appointed on any tribunal. When their age limit expires, 60 in the case of High Court and 65 in the case of Supreme Court, they may retire even from the tribunal to which they may be appointed.

SHRI H. D. RAJAH: Provided the rates of pay are the same, provided the rates of pay of the tribunal members and the High Court Judges are the same.

SHRI JASPAT ROY KAPOOR: I presume that the pay of a member of a tribunal can never be more than what the Judge of the Supreme Court or the High Court is paid.

SHRI H. D. RAJAH: It may be less.

SHRI JASPAT ROY KAPOOR: I hope not. If that is the case, that should also be taken into consideration. We must see to it that the members or the chairman of the tribunal are not paid a salary which is higher than the salary of a High Court Judge or Supreme Court Judge. But I think it is hardly the case. (Interruption.) I think that the Government would see. . .

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): That is not relevant.

DR. R. B. GOUR: No, Sir. If the salary is equal to the work of the Supreme Court Judge, then it will be obviously higher than that of the High Court Judge.

SHRI JASPAT ROY KAPOOR: Sir, I have nothing more to add.

SHRI B. K. P. SINHA (Bihar): Mr. Vice-Chairman, it seems that my task will be very heavy for I have to speak against the current of opinion in this House. My hon. friends both from the Congress Benches and from the Benches opposite have expressed views with which it is difficult for me to agree. Mr. Dhage, the mover of the amendment, has supported his amendment on two grounds—one, that the independence of the judiciary should be maintained and that it can be maintained if there are no allurements before the judges and No. 2, on the score of employment. My hon. friend from Hyderabad, one of the leaders of the Communist Party . . .

DR. R. B. GOUR: Both are from Hyderabad.

SHRI B. K. P. SINHA: I see, but one moderate, one extremist. My hon. friend of the Communist Party has introduced a new argument that the judges are old men.

DR. R. B. GOUR: Retired.

SHRI B. K. P. SINHA: Retired judges are old men, that their conception of law is oldish and their

[Shri B. K. P. Sinha.]
conception of social justice is also
oldish.

The independence of the Judiciary is dear to all of us. People have much faith in the independence of the judiciary and the day when the people lose faith in the integrity and impartiality of the judiciary shall be an evil day for India. For once that happens, people will resort to means other than constitutional for a change of the system. But how are the independence and the integrity of the judiciary maintained? We can take a lesson from the experience of other countries. In other countries, there are no such bars, as my hon. friend, Mr. Dhage, proposes to put here in this amendment. There, retired judges are open to employment in important offices requiring decisions of a judicial character. This has been the practice in India also from the British times. Even in the British times, the judges after retirement could be appointed to the offices of the nature contemplated in this Bill. There was no talk then, no suspicion then, that the independence of the judiciary was being tampered with. I do not know what has happened after independence that we have become so suspicious of our judges. The integrity and the independence of the judiciary are maintained by the great tradition of the Court, a tradition which has been built up in the course of at least a century. It is built up, it is conditioned, by the atmosphere of the Court. Last but not the least, it is conditioned by the fact that each individual judge is part of the Court and a Court, as a whole, is independent and is above any suspicion.

Mr. Vice-Chairman, it is the experience of military leaders that when people who are not very brave are put in the fighting line along with others, since they form part of that fighting line in the midst of the battle, they develop a bravery which is demanded of that fighting. Therefore, what determines, what conditions . . .

SHRI BHUPESH GUPTA: What happens to the better men if that happens?

SHRI B. K. P. SINHA: They become more brave and less weak.

Therefore, this provision of putting a ban on future employment of judges deals only partially with the question. Their independence and integrity are conditioned by different factors. They are not conditioned by lack of opportunities of employment after retirement.

While moving his amendment Mr. Dhage raised the issue of employment. After all, how many such offices would be there available in India? They could be counted on the tips of fingers. And if 25 or 20 or 10 people get employment in offices of this character, I do not think that the employment situation as a whole will be affected. It shall not be affected even appreciably. Moreover, we require men of such experience, men of such learning and men who have, in the course of their life and duties, developed a certain approach to all issues. And it is not easy that we can get such men in the lower age groups. Therefore, his fears on the score of employment are not justified, in my opinion.

I come next, Sir, to the great argument built up on the basis of social justice by the hon. Communist Member from Hyderabad. If I understand his argument aright, he probably expects the judges to administer justice according to the spirit of the law. That is an astounding proposition for any lawyer to think of. And if my friend were a lawyer, if he knew the mind of the lawyer, I am sure he would not have advanced such arguments. If judges were free to administer justice according to the spirit of the law, justice would vary with every judge and there will be no objective standard to guide the judges.

DR. R. B. GOUR: Do you or don't you agree that the law lags behind the conception of social justice?

SHRI B. K. P. SINHA: Wel, the law can be changed, Parliament is there. It is not for the judges to change the law. If judges start legislating, there would be chaos and confusion. The President yesterday said here . . .

DR. R. B. GOUR: It is a question of interpreting law in the spirit in which it is passed, by the legislature.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): That depends upon the judges.

SHRI B. K. P. SINHA: It is not conducive to justice and that is an argument which will lead to consequences which my hon. friend will very much regret. What is the spirit of the law? The spirit of the law is not laid down in any book. Where to get it? I am reminded of a question that Pontius Pilat put to Jesus Christ, when he was taken to him. Jesus Christ said, "I have committed no crime; I am preaching a truth." Pontius Pilat asked, "What is that truth?" and never waited for an answer. Similarly, the spirit of the law is as vague or more vague than the word 'truth.' It varies from man to man; it varies from country to country and it varies from age to age.

DR. R. B. GOUR: What will happen if you pass a legislation with a certain object and the practice defeats that particular object? What will happen then?

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): There will be interpretation according to the law and not to the spirit. That is the law . . .

DR. R. B. GOUR: But we pass it according to the objects. These objects....

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): In that case, if it is not according to the spirit with which you have passed it, then it is for you again to amend it.

SHRI B. K. P. SINHA: I am reminded, Sir, of an incident in a court. My hon. friend says, he put certain objects with certain reasons. (*Interruptions.*) He put certain things in writing.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Let us not interrupt him, please.

SHRI B. K. P. SINHA: It is for Parliament or for legislatures or the initiators of the Bill to cloak their intentions in a proper language. Failing that, it is not for the judges to correct them. It is, therefore, the experience of ages that judges have to interpret the letter of the law in the background of the Constitution. If they were to do otherwise, there would be no justice as such in the land; there would be chaos and confusion. Justice, I am told, varies with the Chancellor when the law is interpreted according to the letter and not the spirit. But justice would vary from man to man, if law were to be interpreted according to its 'spirit'.

I can very well understand the objections of my friends. I can tell them that one of the criticisms or one of the explanations of the proletarian justice is that proletarian justice is variable. It varies from man to man, case to case. My friend evidently wants the repetition of these conditions in India, to which we can never agree.

DR. R. B. GOUR: Do you agree with the Prime Minister at least or you do not agree with him?

SHRI B. K. P. SINHA: The Prime Minister is not infallible. He has his own views and we have our own views, and I do not think the Prime Minister has said anything that the hon. Member is trying to put in his mouth. The Prime Minister explained himself yesterday very well, and after that explanation you must correct yourself. And therefore, Sir, this third argument of my friend, in my opinion, does not hold ground or

[Shri B. K. P. Sinha.]
scrutiny, because if that were to be done, there would be chaos instead of uniformity in law.

I may in the end, Mr. Vice-Chairman, remind this House that when the Constitution was framed, no such restrictions on post-retirement employment were put so far as the Judges were concerned. In the case of Public Service Commissions it was definitely put, because it was considered necessary that once they cease to be Members of the Public Service Commission, they shall not be open for any employment under any State or the Centre. Later on, of course, an amendment has been made. But then the point is that it was thought necessary after considering all the facts and circumstances of the case that Members of the Public Service Commissions should have no further employment after retirement. But after fully considering the matter in all its aspects this was not considered necessary in the case of the Judges, and only certain restrictions were put. I do not think that after that provision in the Constitution it is proper for us by legislation to put certain other restrictions. I may remind this House that even today with the conditions of service for High Court Judges and the Supreme Court Judges being what they are, there is a great difficulty in getting lawyers of requisite standard and calibre to fill these offices. People are not forthcoming. The result is that the standard of the judiciary has been going down imperceptibly, and if we put further restrictions, we should be prepared for the further lowering of the standard of the judiciary. And I think that that would be a situation which nobody would contemplate with equanimity. I therefore feel that the provisions as embodied in the Bill are very proper and the amendment should not be accepted.

Dr. W. S. BARLINGAY (Bombay):
Mr. Vice-Chairman, I have had the advantage of listening to very able

arguments both for and against the proposed amendments of Mr. Dhage. And on the whole, although I think that there is a good deal of truth in the points of view urged by both the parties, I feel that the balance must tilt in favour of Mr. Dhage and the other hon. Members who have supported him. For one thing, Sir, I do not see why there is a restriction made in clause 6, sub-clause (3), that only High Court Judges or Supreme Court Judges could occupy the position of a Chairman of the Tribunal in question. Sir, I would not like to repeat the very able arguments put forward by Mr. Dhage in this connection. But I would say this that there are several people who are as able or perhaps more able than even High Court Judges. Take for instance our Attorney-General. He has not been a Judge of any High Court, nor has he been a Judge of the Supreme Court. Or take several senior advocates of the Supreme Court here. They are as good or perhaps better than several High Court Judges. Now there is no reason on earth why any of those people should be debarred from holding the office of the Chairman of the Tribunal under clause 6. I do not see any valid reason for that restriction at all. I therefore feel, Sir, for the very good reasons that have been given by Mr. Dhage and Mr. Kapoor that this clause is unnecessarily restrictive. It seems to me that if we accept the amendments of Mr. Dhage, we are not going to lose anything at all in the quality of the Chairman of the Tribunal. And therefore, I suggest, Sir, and suggest as strongly as I can, that we should, instead of restricting this clause 6, extend it to other people who may be as competent as the High Court Judges or the Supreme Court Judges. That is one aspect of the whole matter.

Then, Sir, what Dr. Gour said with regard to the High Court Judges and the lawyers generally, does seem to be absolutely correct. Mr. B. K. P. Sinha was quite right—I do not disagree with the observations that he

made—when he said that the independence of the judiciary is not maintained merely by putting this restriction or that restriction. That is really due to the climate that we create in our society and the traditions that we build up in our society, traditions of independence and justice generally. He was quite right in saying this, but nonetheless, what I feel is that after all it is much better to err on the safer side. I am not suggesting that for instance a lawyer who has been taking sides all his life, after he becomes a Judge, will not be independent. I am not suggesting that. I am also not suggesting that a Member of Parliament who may be a Congress member all his life may not, when he becomes a Judge, be as independent as any person on earth. I am not suggesting that at all. I think there is a good deal of truth in what Mr. Sinha says. But nonetheless, what I feel is that after all when there is a question of choosing between two evils, it is much better to choose the lesser of the two evils. On the whole I feel that it is much better, in order to secure the independence of Judges, that no temptations in any form should be offered to them while they are acting as Judges. On the whole that is a better proposition. I therefore fully support the amendments proposed by Mr. Dhage. I say that judges and lawyers—I say lawyers of the class including you and me—normally are conservative in their outlook. In a changing world we want people who could very rapidly adapt themselves to the changing circumstances and who could move and progress with the progressive world. It is therefore very much better not to restrict this clause merely to existing High Court Judges or to those people who have been High Court Judges or the Supreme Court Judges. I therefore very strongly support the amendments proposed by Mr. Dhage. I feel, Sir, that the Government should not have any objection to accept these amendments which seem to me eminently reasonable.

SHRI H. N. KUNZRU: Mr. Vice-Chairman, I am wholly with Mr. Dhage in the amendment that he has proposed to clause 6 of the Bill before us. He has asked us to delete the words "he is, or has been, a Judge of the Supreme Court or of a High Court" and to substitute for them the words "he is qualified to be a Judge of a High Court or has been a member of a Tribunal". If the wording that he has used will not prevent Government from appointing a person who has held or is holding the post of a Judge of a High Court, I should be prepared to vote for it. I have more than once said in this House, as pointed out by Mr. Dhage, that the present practice of reserving the chairmanship of important tribunals for retired High Court or Supreme Court Judges is undesirable in the interests of the independence of the judiciary. We all know that the independence of everybody is affected by the surroundings in which he lives. If temptations are placed in a man's way it is made unnecessarily difficult for him to be a man of integrity. If you reserve the chairmanship of tribunals for retired High Court or Supreme Court Judges, it is obvious that some of them at least will be tempted to try, before they retire, to persuade the executive to appoint them to chairmanships immediately or sometime after their retirement, and that may unconsciously affect their attitude in cases which concern the Government. I think therefore that it is very undesirable, when a tribunal is going to be appointed, to say that the chairman shall be a retired Judge of a High Court or of the Supreme Court. I would, as I have said, be ready rather to rise the pensions given to Judges so that they may not be tempted or may not feel the need for taking up any further appointment. This may increase the expenditure, but it will be much better to increase the expenditure a little and let our Judges be absolutely independent and make the Judges to be regarded by public opinions as above all temptations rather than place temptations in their way. There is another reason why I say this. Formerly

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the powers of the Tribunal were much higher than those it will enjoy in future. Under the existing Act, the Tribunal alone had the power to reclassify a commodity in a higher class. It could not do this except on the application of the Central Government but the main point is that the Central Government itself could not reclassify any commodity in a higher class. Again, under the existing Act, both the Tribunal and the Government had the power to reclassify any commodity in a lower class. According to the amendment before us, I think the Central Government alone will have the power to reclassify any commodity in a lower class.

SHRI H. D. RAJAH: Clause 11.

SHRI H. N. KUNZRU: Under the amending Bill, the Central Government alone will have the power to increase or reduce the level of class rates and other charges and to classify or reclassify any commodity. It means therefore that the powers of the Tribunal will be seriously curtailed. I am not saying now that this curtailment is undesirable. That is quite a different matter. The raising or revising the level of rates by reclassifying any commodity is really equivalent to increasing or lowering taxation, and as a matter of principle, as I said in the Provisional Parliament, this power ought to rest with the Government and not with any Tribunal. But when you have a Tribunal with powers much reduced than these it now enjoys where is the need for having a Tribunal of the kind that we have now?

There is another point also that I should like to stress. If an application is made to the Tribunal that a commodity has been wrongly reclassified, that it has been put in a higher class and that this has adversely affected the business in that commodity, the Tribunal will either say that it is not competent to entertain such an application, or it may make sugges-

tions to the Government which will be only in the nature of a recommendation. At present, the view of the Tribunal will amount to a decision which the Government will have to carry out. In future any proposal made by the Tribunal in regard to the matters that I have just referred to will be only a recommendation. I do not know whether any retired or serving Judge of a High Court or of the Supreme Court will consider it worth his while to preside over a Tribunal whose proposals in certain cases may amount to recommendations only. But this again shows that it is not necessary to reserve the chairmanship for a person who is or has been a Judge of a High Court or of the Supreme Court. On all these grounds, I am in favour, on the whole, of the amendment proposed by Mr. Dhage. I know that the Bill is not likely to be amended by Government, but I have no doubt in my own mind that the practice that the Government are following with regard to the appointment of Chairmen is wholly contrary to public interests and is likely to undermine seriously in the near future the independence of the judiciary.

SHRI BHUPESH GUPTA (West Bengal): Mr. Vice-Chairman, it was not my intention at least to speak on this particular amendment or on this Bill, but the controversy has taken a very interesting turn in the discussions that we are having. I was particularly interested in the speech made by the hon. Mr. Sinha who, I believe, is an important lawyer of the Supreme Court. But he belongs to the old school of thought in such 4 P.M. matters because the arguments that he has given are neither true in fact nor valid from the point of view of common reason but before I deal with him, I should like to make certain observations with regard to questions of public policy involved in this matter. It is necessary for the Government to explain now, in view of the almost unanimous opposition to the formula in the clause as to why the selection of the Chair-

man of the Tribunal should be restricted to a Judge—the Supreme Court Judge or High Court Judge or a retired Supreme Court or High Court Judge. They owe us an explanation. What made them make these restrictions in regard to their choice? After all it is the Government who is going to make the appointments. Now it is not a question of whether a particular judge is good or bad. It is conceivable that at a given point of time the majority of the judges may not yield to temptation. It is also conceivable contrarywise that at certain other point of time the majority of the judges under certain circumstances, would be liable to temptation. We don't know these. We are passing a law and the law will bind the hands of the Government and will be in a way a precedent for other measures of this kind that may come in the future. Therefore we don't know exactly what will happen. We have seen that judges in their office do get biased not only in this country but also in other countries. We have also seen the independence of the judges. These are matters of common knowledge but when we make a law, we should ensure that we guard against the possible wrong things because it is only when a wrong thing takes place, only when a judge gets biased, only when a judge gets tempted, that injustice will follow and the purpose for which a good measure is passed will be defeated. People will suffer. This is how matters should be viewed. Now here we are in the midst of a practice where we find that one is a Minister here, he gets defeated in the elections, becomes a Governor, he gets out of the Governor's office, comes to the Supreme Court, defends a case of big employers and probably if he were a former judge, he will do the same thing. This kind of a spectacle we are having today. Now is it a very right example to set before the public? I don't cast any reflection on any individual but I should like to know whether this is the kind of thing we should encourage in our public life.—Ex-Governors becoming the

counsel of the very rigid conservative, moneygrabbing employers or capitalists. Is it the right thing to have? May be he is making only money, may be he thinks he is serving the cause of law, he may be thinking that justice is on his side, but what does it matter to the people who think otherwise. You demoralise the public life. This is what I say. If we put now a picture before the judges in the country that after they retire as pretty old men, I don't say very old at 65—though fairly advanced in our country to be regarded as such . . .

SHRI H. D. RAJAH: The average life of a man is 25 in India.

SHRI BHUPESH GUPTA: . . . if this picture is that after retiring, certain positions are there, the Chairmanship of these Tribunals in Railways or that Tribunal elsewhere, and these Chairmanships are after all, for retired men cushy jobs because they give them funds, give them some employment and make their lives a little more prosperous at the time of retirement, then temptations may be there and human beings are not infallible creatures. Even the original sin was committed in the midst of certain temptation. What is the guarantee then that the great judges in the country will not, at least some of them, be tempted? How can you give a guarantee? Can you give me a guarantee that not one single judge in the country will be tempted by this kind of thing? I think even with all the chivalry and courage that he possesses, the hon. Deputy Minister would not be in a position to give such an assurance and guarantee. I know that. He will not be able to do that. He may say many things but he knows that he cannot because how can he give such a guarantee? I would ask Mr. Sinha to consider this point. We don't like such things to happen in the country. Are we to understand that only the retired judges at the fag end of their lives, good as they may

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be, are qualified for such positions? Are we to understand that only those who sit in the Bench as Supreme Court Judges or High Court Judges are qualified to hold this position and others are not? After all at the bar and in other places, at the bar for instance, there are many eminent lawyers who are not judges, who don't want to be judges. I know some of them want to be Ministers—I know at least one of them has become a Minister—but don't want to be judges. I know of such people. What happens to them? I would ask Mr. Vice-Chairman, how are they disqualified? They may be earning Rs. 30,000 or 20,000 a month, may be their legal acumen and knowledge are greater than 2 or 3 judges put together. Even then they are to be regarded as disqualified. They have not any association. It is an indirect reflection otherwise they would have raised that point. Therefore why the choice should be restricted? There are people who could be taken from among the lawyers who are not judges, or who do not want to be judges and who may fulfil the functions of the Chairman of these Tribunals just as good, if not better than, those people who are supposed to decorate the posts under the present provision. This is another point that I place before the House to consider. Are we to think that the supply of retired judges is going to be so high and heavy that unless and until these positions are kept exclusively for them, there will be a long queue before some Ministry? I don't think so. There are not many judges in the High Courts. In any event the retirement takes place very slowly and at a time not very many people retire and there will not be a, shall we call, very big supply of labour that way in the market if I may use a labour term. That is not at all the point. Why? Because there is a tendency to pursue certain conservative life here.

Hon. Mr. Sinha is a lawyer and he was arguing with our doctor comrade

and he took advantage of that fact. He at least was trying to take advantage of that fact. He said what will happen to the spirit of the law? In that case law will change from man to man, as if it is something new, as if we have never heard of the spirit of the law, as if the American law is not based on laws of interpretation, as if even in the United Kingdom a part of the common law, the law of equity is not based on interpretation and common sense and ideas of justice rather than statutory or strict provisions of law as put in the Statute Books.

Then he will say, we have got in our country Statute Book but I would ask the hon. Member to remember that everything is not in the Statute Books and there is a lot of scope for interpretations otherwise how even in the Supreme Court today you get two judgments in the same case.

SHRI B. K. P. SINHA: Mr. Vice-Chairman, may I point out to the hon. Member this? He referred to common law and law of equity. There are no Statutes or written laws so far as these branches of law are concerned . . .

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Equity law does not come here . . .

(*Interruptions.*)

SHRI B. K. P. SINHA: Reason and natural justice have played a part in determining that law because there is no Statutory law. But it is unusual that a written law should be interpreted according to its spirit.

SHRI BHUPESH GUPTA: I am very grateful to the hon. Member for misinforming me on the English law and he knows very well that in England side by side with the Statute law, unwritten law exists or co-exists. There are Statutes in England. He

should be knowing that As such Statutes are interpreted There are also many laws which are not written .

SHRI P N SAPRU. May I intervene to point out that Mr Sinha's point is that there is a direction in the Constitution to interpret it according to the General Clauses Act and we have a General Clauses Act which acts as the interpretation clause of all acts. Therefore, where is he to go for equity jurisdiction here or common law jurisdiction in this country? That is the point.

SHRI BHUPESH GUPTA. But Sir, despite the General Clauses Act which is supposed to be the guiding law, we do find in courts judges delivering dissenting judgments, majority judgments and minority judgments. We do get them sometimes. These are not unknown. How is it that such things happen when there is a simple law? We sometimes find two judges on the same bench differing and I have no doubt in my mind that my hon friend Shri Sapru also on occasions differed with some of his brother judges. Such things happen. Do not bind me to the strict language. For heaven's sake I would not like to be drawn into rigid legal arguments. Everybody knows that there does exist in this country a dissenting judgment or a differing judgment. Judges sitting on the same bench sometimes differ on some point of law, over some point of fact, as far as interpretation goes.

Here the Tribunal is made to do all these things. If it were a simple question then I could have understood. But many things will come and it will be flexible, the way legal minds will work, each mind in its own direction, according to its understanding and each law also may be differently interpreted.

THE VICE-CHAIRMAN (SHRI M B JOSHI): Order, order. Let us not go

into nice discussions about interpretation of law. You may go on discussing the propriety of the appointment of the Chairman.

SHRI BHUPESH GUPTA. I am coming to it. The point is merely a technical one. Here I am coming to the point. First of all let us concede it, I hope the point will be conceded that it is not so simple or rigid as it is sought to be made out by Mr Sinha. The question, he said, varies from man to man. We do find that law changes in the courts also, at least the legal concept. The sense of justice does change in the courts of law and we do find such things. Since we are a progressive people, since we look forward and not backward, we should see that the direction is forward and not backward. Therefore I would like to say superannuated old people who have been much too conditioned in the old set-up, by conservative conditions should not be placed in this office. There should be young blood, fresh minds, who look forward to the future and can understand things in the light of the future and not according to certain dogmas and certain rules and procedures of the by-gone days or of the past. That should be the attitude. And what is wrong with that? I think there is nothing wrong in that. Therefore, it is not necessary to put emphasis on the old. I do not cast any reflection on old people. There are very many good old people in this House whom I would like to see chairmen of very many public bodies. But that is not the only point. Young people should be given encouragement and such people should be taken. And I do not believe there are not many people, that there are not sufficient people at the bar who can fulfil such functions. That is also very important.

DR R B GOUR. Mr Sinha himself can be there.

SHRI BHUPESH GUPTA. Ideas should be dynamic in such matter. The whole conception of this thing should

[Shri Bhupesh Gupta.]
be dynamic. Therefore, first of all the spirit of the law comes in. Sometimes we pass a law, but we have to see how laws are interpreted. We can see how some of our laws have been interpreted by certain judges in a conservative and rigid manner, with the result that we have had to come with amending Bills to clarify the position. May be that if the judges were of a different type, a little more progressive, a little more dynamic in their outlook, such amendments would not have been found necessary and probably the judgments and the findings of such courts would have followed the spirit of the law or the intention behind the law that was passed. Sometimes the letter of the law will be very vague. Then comes the question of the interpretation of the law. All these things are there. Their judicial minds are brought to bear on how the law should be interpreted. Therefore, this argument should not be raised, Mr. Vice-Chairman, and the whole basis and the entire argument that Mr. Sinha has built up falls through. I know, he is such an eminent lawyer that if you ask him to argue out my case in the Supreme Court, he will do it much better than I can do. There is no doubt about that. But for the moment, temporarily for whatever reasons he knows best, he has decided to argue this particular case. But I know he can argue my case as well. But let us not build up our public policies on such legal casuistries. Mr. Dhage and Dr. Kunzru also made the point very clear that temptations and such things should not be there. We must guard against corruption or allowing things that might take place, irrespective of whether a given point of view of the judge is good or bad. We want to create conditions or a set-up where factors that encourage corruptions or factors that encourage temptations should be the least. That should be our approach. Healthy conditions we should create, and leave the rest to the future to be looked after. That is how we make the approach and I would like the Deputy

Minister, in conclusion, to give thought to this matter. He can accept this amendment, because he does not lose anything by it. But you will now find that they have a rigid mind and he will get up and say, "I will not accept the amendment." And there are also judges like that. The whole world is moving, but they will not move, they live in the days of Montaigne or such persons. We want to be saved from the hands of these rigid people, whether they be ministers or judges. Since we want to do so, we think we should have provisions in this Bill along the line that Mr. Dhage has suggested which will make such rigidity and such inflexibility impossible.

SHRI H. D. RAJAH: Sir, these arguments have gone on to a very large extent. But the point at issue is whether the Government should be a party to a psychological corruption in this country. That is the point, because the provision which is now embodied in clause 6 is really a provision which gives temptation to the present judges, and that is not a very desirable thing. First of all we have to know why this Tribunal is necessary. I have gone through the subsequent clauses and I have come to the conclusion that this amending Bill is doing away with the statutory powers of the Tribunal. You can see that the power to classify or to reclassify, the power to levy rates according to the classification, are all now taken away from the Tribunal and they are now vested with the Government. From the taxation point of view, from the revenue point of view, the Government is right. But then I ask them: Why do you want an appendage called the Tribunal? Formerly the Tribunal had statutory powers. They co-existed with the powers of the Government.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Are you going out of the amendment? In the amendment there is the Tribunal.

SHRI H. D. RAJAH: No, I am in agreement with the amendment. But we should also know why we should have the Tribunal.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Therefore, you seem to be going out of the amendment. In the amendment also the provision for the Tribunal is there. You should not go out of it.

SHRI H. D. RAJAH: That is right, Sir. But take the Tribunal and find out what its functions are. I am coming to that point. Now the functions of the Tribunal are made such that it is now merely an appendage of the Government. Formerly the Tribunal had functions, statutory functions to do and the Government was forced to accept the recommendations of the Tribunal. But what I am saying is that this Tribunal has now been reduced to a puppet and you want puppet Chairman and puppet members in it who will be drawn out of the judiciary. In that way we create a psychological corruption. That is exactly my point that I want to bring home to this House. I cannot say that if you are a High Court Judge or a Supreme Court Judge, you have a future for you. Shri Bhupesh Gupta was perfectly correct when he said if the Tribunal is to be given certain rights of classification or things like that, then senile people may be brought into it with an old outlook, persons just bordering on death, after the age of 65, when the average life in this country is only 25, to take decisions on such fundamental issues like classification and re-classification and things like that.

DR. R. B. GOUR: That means they would have died three times.

SHRI H. D. RAJAH: So, you have to say that this Tribunal is only a nomenclature, it has no function to perform and that it is only an appendage. "Not being satisfied with our decision on the rates and classification", you say, "let it be warmed up by another tribunal". In

my opinion, it has no meaning. If you have a tribunal with fresh minds who can go into the details and find out things which are good for the country it is all right. If you can't have such a tribunal, then do not have any tribunal at all. As you have said, I accept the position of the Tribunal being there and that we cannot get rid of that but we can get rid of the provision by which old senile people are employed. That is the position which you have to see. Do not create a situation in this country by which a High Court Judge will be made to feel that he has something more to get and that, therefore, he must look to the Government for favours. As such, they will not dispense justice in the proper way or in an equitable way.

SHRI P. N. SAPRU: Mr. Vice-Chairman, I shall very briefly indicate my point of view in regard to this amendment. I may say, Sir, that broadly speaking, I am in sympathy with the spirit of Mr. Dhage's amendment. I do not like the idea of retired High Court Judges or sitting High Court Judges serving on tribunals which are subject to the superintendence of the High Court. The High Court is a superior court of record and a High Court Judge is a Judge of a superior Court of record. So is the case with the Supreme Court and it is not right in principle that a High Court or Supreme Court Judge should serve on a tribunal which, under the Constitution is under the superintendence of the High Court. I would just like to read to you article 227 of the Constitution. "Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction." Therefore, the High Court or Supreme Court Judge who sits on this tribunal will be subject to the jurisdiction of a superior court of record. It is an elementary principle of constitutional law that one superior court cannot be . . .

SHRI BHUPESH GUPTA: Do I understand, Sir, that "Law" has come to the rescue of the "Railways"?

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SHRI P. N. SAPRU: . . . in an administrative sense, subject to the superintendence of another superior court. I think by adopting this procedure of appointing a High Court or Supreme Court Judge as Chairman of the Railway Rates Tribunal with very very limited powers we are lowering the position of a High Court and Supreme Court Judge. He is being treated as a departmental officer, as a Secretary to a Government department. There may be High Court Judges who might like to consider themselves as equals of Joint Secretaries or Secretaries to the Government of India but there are, I think, High Court Judges who take a different view of their status and their stature and I would, therefore, say that it is not right from the point of view of principle to exclusively reserve these appointments for High Court Judges. I think the section as it stands in the parent Act is much better. It could have included the Attorney-General, it could have included the Solicitor-General, it could have included the Advocates-General of States, it could have included the senior Standing Counsel of Government, Government Advocates . . .

SHRI JASPAT ROY KAPOOR: Like Mr. Sinha.

SHRI P. N. SAPRU: . . . or practising lawyers of distinction or of no distinction but, Mr. Vice-Chairman, I think we are not attaching sufficient importance or sufficient weight to the importance of maintaining the independence and dignity of the judiciary. I was taught in my college days to regard two things as vital for the independence of the judiciary, the first was life tenure and the second was ineligibility for further re-employment. If you read Lord Denning's little book, "The Road to Justice," you will find him saying that appointments to the Court of Appeal are not regarded as promotions. He says that one of the foundations of the judiciary's independence is that once a man is appointed as a High Court Judge, he can look for no further preferment to the executive Gov-

ernment. Now, this is my attitude towards this question. I quite appreciate that we have a shortage of capable personnel in this country and, therefore, I am prepared, for my part, to agree to the retention of the old provision but I see no reason why the membership or the chairmanship of this tribunal should be reserved exclusively for High Court Judges.

Now, Mr. Vice-Chairman, I do not wish to talk at length on the other aspects of this question. They have been dealt with by Dr. Kunzru and Mr. Dhage in their able speeches and I would like generally to indicate my sympathy for the amendment moved by Mr. Dhage.

SHRI SANTOSH KUMAR BASU: May I, Mr. Vice-Chairman, say a few words or, is there anyone on the Treasury Benches who is going to speak?

SHRI H. N. KUNZRU: May I suggest that before this debate concludes, we should hear the opinions of the Law Minister on this subject. We have a right really on this question to know what the Law Minister's interpretation of this thing is, what its effects on the judiciary are and so on.

SHRI BHUPESH GUPTA: I would also like to know from the Law Minister as to whether, before he came here, he considered himself to be suitable for this . . .

SHRI SANTOSH KUMAR BASU: The Law Minister has just arrived in this House and he should be allowed, in my submission, some time to gather the trends of this debate and to get instructions from the Railway Minister.

THE MINISTER OF LAW (SHRI A. K. SEN): I am quite aware of the trend of the debate here and, should the House desire, I am certainly willing to explain the position.

SHRI H. D. RAJAH: We would like to hear the Law Minister.

SHRI A. K. SEN: So far as the Law Ministry is concerned, it had full concurrence with the Bill as it was placed before the House. Sir, it is not accepted on behalf of the Government that the appointment of an ex-Judge of the High Court or an ex-Judge of the Supreme Court is going to affect the integrity or the independence either of the Supreme Court or of the High Courts. It will be a poor day when we shall start thinking of our Judges in terms of baits being offered by the Government. The reason that had impelled Government to confine the appointment to ex-High Court Judges and ex-Supreme Court Judges was only for the purpose of getting a highly qualified independent judicial officer who would not be weighed by any influence whatsoever.

DR. R. B. GOUR: Why not have an ex-Judge as a Law Minister?

(Interruptions.)

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The House wants to hear him. Let him not be disturbed.

SHRI BHUPESH GUPTA: Before the elections he was qualified and then some people . . .

SHRI A. K. SEN: Technically, I may have been qualified but, nevertheless, I am sure, my appointment would have been attacked as a party appointment. It is exactly to negative such suspicions that such appointments are provided for in our Bill. Also, Sir, I think it follows the line of other democratic countries. For instance, in coal commissions and in various other commissions in the United Kingdom the tendency after the Second World War has been to recruit persons who had been ex-High Court Judges either of England or of other countries.

SHRI P. N. SAPRU: On which commission or on which tribunal such High Court Judges were appointed?

SHRI A. K. SEN: The Coal Commission in England.

SHRI H. N. KUNZRU: Is the Law Minister referring to Commissions or Tribunals? He must be clear on that point.

SHRI P. N. SAPRU: Lord Sankey was the Chairman of the Coal Commission in old days and he was a sitting Judge of a High Court.

SHRI A. K. SEN: I am glad an ex-Judge of the Allahabad High Court has joined in. I am sure, Sir, that the hon. Member Mr. Sapru will agree with me that a High Court Judge remains a High Court Judge always, and we hope . . .

SHRI H. D. RAJAH: Even when they are one foot in the grave?

(Interruptions.)

SHRI A. K. SEN: I cannot answer everyone together.

SHRI P. N. SAPRU: A High Court Judge remains a High Court Judge always? Is not private practice allowed in our country to a retired High Court Judge? If I become a senior advocate of a High Court or the Supreme Court, do I still remain a High Court Judge?

SHRI A. K. SEN: When I said, "A High Court Judge remains a High Court Judge", I meant to say not officially because when he retires he does not remain a High Court Judge, but he remains in his mental equipment a High Court Judge.

SHRI BHUPESH GUPTA: It seems the Law Minister is indulging in metaphysics which is very difficult for us to follow.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): But we have asked the Law Minister to give his opinion.

SHRI A. K. SEN: Mr. Gupta has been so much tutored in metaphysics of all sorts including dialectics that

[Shri A. K. Sen.]

he always senses philosophy and metaphysics in everything. There is no metaphysics in this matter; it is a hard reality. It is a fact, Sir, that the public place great confidence in the High Court Judges, and I am proud that they do so. I am very glad that our High Courts have maintained their tradition of independence and integrity before the Constitution and after the Constitution. That is why, Sir, when a tribunal of public importance like the present Tribunal is sought to be constituted it is thought most desirable that the Chairman should be recruited from such a position that his selection may not be doubted or attacked or suspected by any person whatsoever. Sir, it was easy for us to take in others and had we done so we would have been accused. "This is one way of showing patronage." I am sure, Sir, that such an accusation would have been made if originally we came forward with a provision like that, that the Chairman may be anyone who is qualified for being a High Court Judge, that means, an advocate who has put in ten years of practice, we would thus have been accused of making such a provision just for the purpose of distributing patronage; I have not the least doubt about it.

SHRI BHUPESH GUPTA: That you will do in any case. We are prepared for it.

SHRI A. K. SEN: Let me see one instance where an enquiry committee or a tribunal has been constituted of party men. It must be said to the credit of the Government, Sir, that in these judicial appointments they had not allowed questions of party politics being introduced, and I hope, Sir, . . .

DR. R. B. GOUR: May not be party men but men won't go against the administration.

SHRI A. K. SEN: This is doing very poor justice to men of high character, men who have done good service to the country,

SHRI H. D. RAJAH: Why cannot you have a medical examination of the retired Judges before they are appointed to such posts to assess their mental faculty? You should insist on such an examination when a man is above 65 years of age.

SHRI A. K. SEN: If the hon. Member thinks that the mental faculty of a person can be understood by a medical examination I leave such theories to be developed by himself and not to be indulged in the House.

The point was, that for a very good reason, the Government thought and still thinks that the Chairmanship should be left to a person of high judicial training, of high quality, a person of integrity and independence. Had we done otherwise, I still maintain we would have been accused on the floor of the House of introducing an element of patronage in this Bill.

SHRI P. N. SAPRU: Why exclusively reserve it for them?

SHRI A. K. SEN: When you want to make a selection it will be from particular cadres and there must be some amount of exclusiveness. It is true that there may be advocates of ten years' standing who may be equally good. Nevertheless when it is a question of principle we have to fix certain criteria, introduce a certain amount of exclusiveness *per se*. The principle of selection must necessarily introduce an element of exclusiveness otherwise there is no selection, no principle of selection. Therefore, Sir, my submission is that the selection here is true to the tradition which has induced the Government in every such matter, in the matter of appointment of judicial tribunals. When we have enquiries about railway disasters, we have a High Court Judge. Why is not there any other man, equally suitable, an Advocate-General of a State, the Attorney-General of the Central Government or other advocates of high standing equally qualified to adjudicate upon? Why is it that nevertheless we possibly sometimes pick up a junior advocate who

nas been raised to the High Court Bench, whose standing in the bar might have been much inferior compared to other advocates in the High Court? Why is it that nevertheless we point our finger at a High Court Judge?

SHRI JASPAT ROY KAPOOR: Why a retired High Court Judge?

SHRI A. K. SEN: Is it a crime to be a retired Judge? The Constitution requires them to retire.

SHRI JASPAT ROY KAPOOR: Let him retire for good then.

SHRI A. K. SEN: Well you want them to be buried?

SHRI H. D. RAJAH: Another job.

SHRI A. K. SEN: It is no use developing the point further. But the point has been explained and we still feel that the High Court enshrines in itself the element of independence, integrity and tradition. It has done the country good.

SHRI BHUPESH GUPTA: But the other advocates also.

SHRI A. K. SEN: I know, Sir, that there are people who do not believe so much in an independent judiciary, but so far as our Constitution is concerned, independence of judiciary is a cardinal principle. Our State is based on the solid rock of an independent judiciary, which can call to account every act of the executive.

SHRI JASPAT ROY KAPOOR: That is exactly our point. Do not try to undermine their independence by holding out jobs for them after retirement.

SHRI A. K. SEN: It is doing very poor justice to those men who are recruited to the Bench. How can one think that the moment some office is given to them they will shed themselves of their past independence and

integrity? We do not believe in such human weaknesses.

SHRI V. K. DHAGE: Facts are otherwise.

SHRI A. K. SEN: To you, but not to others. They are very independent and I am sure they will always be so. Integrity and independence remain with them, whatever happens to them. They are not after a price for being so. They are people of firm conviction. Because there is no price for an ex-High Court Judge we may have to select from ex-High Court Judges and ex-Supreme Court Judges for this position of high responsibility, and since it is a matter of principle, Sir, we make it clear on behalf of the Government that we shall oppose any amendment for a change in the constitution of the tribunal.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): I think the Deputy Minister is not going to speak after the clarification and opinion given by the Law Minister.

SHRI SHAH NAWAZ KHAN: Sir, it is hardly necessary for me to say anything further after the very lucid explanation of the Law Minister. I would just like to add a word to what he said. The hon. House is aware that Judges of High Courts, even when they retire, are eligible to become Judges of the Supreme Court. Nobody has even dreamt of doubting their integrity, casting any doubt on the integrity of such Judges, and if it cannot be doubted in that case, I do not see any reason why it should be doubted in this particular case.

SHRI BHUPESH GUPTA: That is all that you have to say

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The question is:

2. "That at page 2, lines 20-21 for the words 'he is, or has been, a Judge of the Supreme Court or of a High Court' the words 'he is qualified to be a Judge of a High Court or has been a member of a Tribunal' be substituted."

The House then divided.

AYES

Dhage, Shri V. K.
Gour, Dr. R. B.
Gupta, Shri Bhupesh
Kishen Chand, Shri
Kunhambu, Shri A. V.
Kunzru, Shri H. N.
Nair, Shri Perath Narayanan
Rajah, Shri H. D.
Sekhar, Shri N. C.

NOES

Ammu Swaminadhan, Shrimati
Barlingay, Dr. W. S.
Basu, Shri Santosh Kumar
Bedavati Buragohain, Shrimati
Chauhan, Shri Nawab Singh
Daga, Shri Narayandas
Deokinandan Narayan, Shri
Dharam Das, Shri A.
Doogar, Shri R. S.
Dutta, Shri Trilochan
Khanna, Shri Mehr Chand
Lilavati Munshi, Shrimati
Mahapatra, Shri Bhagirathi
Malviya, Shri Ratanlal Kishorilal
Mazhar Imam, Syed
Misra, Shri Govind Chandra
Misra, Shri S. D.
Mukerjee, Shri B. K.
Naik, Shri Maheswar
Pattabiraman, Shri T. S.
Prasad, Shri Mahabir
Raghavendrarao, Shri
Rajagopalan, Shri G.
Reddy, Shri S. Channa
Shah, Shri M. C.
Singh, Babu Gopinath
Sinha, Shri B. K. P.
Thanhlira, Shri R.
Venkataraman, Shri S.
Vijaiavargiya, Shri Gopikrishna
Violet Alva, Shrimati

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Ayes 9; Noes 31.

The motion was negatived.

• THE VICE-CHAIRMAN (SHRI M. B. JOSHI) The question is:

3. "That at page 2, line 27, for the words 'five years' the words 'seven years' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clauses 7 to 18 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI SHAH NAWAZ KHAN: Sir, I move:

"That the Bill be passed."

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Motion moved:

"That the Bill be passed."

SHRI KISHEN CHAND (Andhra Pradesh): Mr. Vice-Chairman, I listened to the speech of the hon. Deputy Railway Minister when he moved his motion and I submit that in spite of the arguments advanced by him, I remain unconvinced and I feel that in his advocacy he has let the cat out of the bag and told us the reasons why this alteration has been made in the powers of the Tribunal. He said that the Railway Freights Structure Committee which was appointed by the Central Government and which has submitted a report has said that for the Second Five Year Plan the railways want money and the Railway Ministry should have the full powers to alter the classification of the rates of freight so as to bring in more money. That

means this whole amending Bill has been brought forward by the hon. Deputy Minister for Railways with the sole purpose of taking away the powers from the Railway Rates Tribunal so that the Railway Ministry may go on re-classifying the goods and altering the rates of freight in such a way that it leads to much greater income.

Sir, I will begin by saying that the Railways are a utility concern. They have a specific purpose for which they have been established and it is a monopoly concern. These two factors must be always kept in view. The entire prosperity of our country depends on the proper working of the railways. So, the hon. Deputy Minister's coming forward and advancing arguments that he wants more money for the Second Five Year Plan and, therefore, he is going to use this round-about method of first taking away powers from the tribunal and then reclassifying the goods and raising the rates of freight, does not hold much weight. I submit that, from a short point of view, you may increase the rates; you may reclassify the goods. But it will do incalculable harm to the industry and trade of this country. The important purpose is the development of trade and industry. Even the prosperity of the railways entirely depends upon trade and industry. If trade and industry grow in our country, then naturally, there will be more goods to carry. And when there are more goods to carry, it will lead to a greater income. After all, it is by the best utilisation of the railways by carrying goods to their maximum capacity and most efficiently, that we have got to get income. But the Railway Minister wants to adopt the other method. They do not think about increasing the efficiency of the railways, if they want more money. They come forward for increasing the rates or raising the classification which is another way of raising the rates. If the hon. Minister takes a long-term view he should have said that, when railways are a utility concern and a monopoly concern, they should inspire

confidence. Confidence is an important thing. Let the trading community and the industrial community, the small industry and the small trader be convinced that he will get a fair deal from the railways. If he thinks that the railways are charging him too high rates either by classification of rates or are not giving him special rates from station to station, he has a tribunal to appeal to. If there was that fear of the tribunal, the railways would not arbitrarily raise the rates. But the fear of the tribunal will go away and the Railway Board will be supreme.

The hon. Minister in his reply said that the Ministry has made some alterations. Sir, I think there are only two main powers of the tribunal. One is classification; the other is about revision of rates. The rates could be increased between a maximum and a minimum limit, by the Ministry; that was already in the original Bill; but in that original Bill, under 'Complaints against the Railway Ministry', there were certain clauses for appeal. The aggrieved party could approach the tribunal and submit that the rates fixed are too heavy and excessive. Now, the hon. Deputy Minister, in this amending Bill, has made two amendments. First of all, the power of enhancing the classification which vests entirely with the tribunal on the recommendation of the railway authorities has been taken away. I should like to know from the hon. Deputy Minister during the Third Reading stage even, what justification he can produce except the Budget. He will come round and say that he wants more money. Then increase the rates by a straight forward, honest method. But do not increase the classification, because apart from the classification being a relative thing, it has been arrived at after very long consideration about the relative importance of various articles and the freight bearing capacity of the various articles. Suppose an article of light weight occupies a large volume. It naturally cannot go in a wagon to the same extent as a heavy article. After tak-

[Shri Kishen Chand.]
ing all these things into consideration, a special station-to-station rate was given. Now, the hon. Deputy Minister has not given me a completely satisfactory answer as to why he wants to take away from the tribunal this power of classification. That is my one objection.

My second objection is that the Ministry had the power to fix the rates in any particular classification. But under Section 41, there were five clauses (a), (b), (c), (d) and (e), under which an aggrieved party could appeal to the tribunal. Now, the hon. Deputy Minister in the amending Bill has omitted (b), (c), (d) and (e), four clauses, and put in only two clauses and those are unimportant ones. The important clauses have been omitted. The result is that the aggrieved party cannot approach the tribunal.

Sir, there has been a great deal of discussion and a division has taken place on an amendment which was tabled to show that new and modern ideas can only be administered when persons with modern ideas about trading are put in charge of the Chairmanship of the tribunal. I do not want to go into those details because it has already been decided.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): I hope you will be very short.

SHRI KISHEN CHAND: I will finish in a minute or two.

DR. R. B. GOUR: Is not the Minister going to give any reply?

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): He may give it.

SHRI KISHEN CHAND: What I am trying to say is that I want the railways to adopt a long-term policy. They should not be guided by the temporary requirements of the railways, for a little more fund, and thereby put the industry and trade to

a very great harm. I, therefore, appeal to the hon. Deputy Minister that he should very carefully consider these points when he is curtailing the powers of the tribunal. I think, even now it is not too late if he, in the implementation of the provisions of this Bill, instructs the railway administration not to take advantage of this amending Bill and revise the classification or increase the rates.

Thank you, Sir.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): I want to finish the Bill. We will have to sit as long as we do it.

SHRI SHAH NAWAZ KHAN: Sir, I feel sorry that, in spite of what I thought was a fairly comprehensive reply which I gave previously, my hon. friend, Shri Kishen Chand, should have remained unconvinced. That is my misfortune. Sir, the reason why it has been found necessary....

SHRI KISHEN CHAND: Apart from Budgetary reasons, any other reasons.

SHRI SHAH NAWAZ KHAN: That, I think, is a very substantial reason, Sir, and that has been recommended by a Committee which contained three very distinguished Members of Parliament. It is with a view to implement the recommendations of that Committee that we had to do this. If I can take three or four minutes more....

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): Yes, three or four minutes.

SHRI SHAH NAWAZ KHAN: I would like to clarify certain points raised by Mr. Kishen Chand.

Sir, in the matter of railway rating, there are two fundamental aspects, viz., that pertaining to the adequacy of the total railway revenues and that pertaining to the relativity of individual rates which might give room for complaints of undue preference and undue prejudice from the traders.

Railway rates for the transportation of goods are divisible into two groups—Class rates and Station-to-Station rates. Commodities are classified under several classes and for each class, there is a scale of rates increasing with distance. The scale of rates is of fundamental importance for ensuring that adequate revenues are secured by the railway from the transportation of goods, as by a lowering of the scale of rates generally railway revenue resources can be jeopardised. Similarly, also if there is any downward revision in the classification of any important commodity the total goods revenues of the railways will be seriously affected.

These are very substantial and weighty reasons for which it has been found necessary to do so.

With these remarks, I move:

"That the Bill be passed."

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The question is:

"That the Bill be passed."

The motion was adopted.

MESSAGES FROM THE LOK SABHA

(1) THE ESTATE DUTY AND TAX ON RAILWAY PASSENGER FARES (DISTRIBUTION) BILL, 1957

(2) THE UNION DUTIES OF EXCISE (DISTRIBUTION) BILL, 1957

SECRETARY: Sir, I have to report to the House the following two messages received from the Lok Sabha, signed by the Secretary of the Lok Sabha:—

I

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in the Lok Sabha, I am directed to enclose herewith a copy of the Estate Duty and Tax on Railway Passenger Fares (Distribution) Bill, 1957, as passed by Lok Sabha at its sitting held on the 13th December, 1957."

II

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Union Duties of Excise (Distribution) Bill, 1957, as passed by Lok Sabha at its sitting held on the 13th December, 1957.

2. The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India."

I lay these two Bills on the Table.

THE VICE-CHAIRMAN (SHRI M. B. JOSHI): The House stands adjourned till 11 A.M. on Monday.

The House then adjourned at two minutes past five of the clock till eleven of the clock on Monday, the 16th December, 1957