

MR. DEPUTY CHAIRMAN: The question is:

"That leave be granted to introduce a Bill to amend the Delhi Road Transport Authority Act, 1950."

The motion was adopted.

SHRI D. P. KARMARKAR: Sir, I beg to introduce the Bill.

THE COMPTROLLER AND AUDITOR-GENERAL (CONDITIONS OF SERVICE) BILL, 1953—continued.

DIWAN CHAMAN LALL (Punjab): Sir, I was saying that this matter should be looked into by the authorities carefully so that every precaution is taken to see that we do not place ourselves in a false position. As I said yesterday, this is not a question of personalities. If it were a question of personality, everyone of us, I have not the slightest doubt, would desire that the present incumbent should continue. He is one of the best Auditors-General that India has produced. Fortunately he does not belong to the I.C.S. At the same time we are also very fortunate in having at the moment one of the best Finance Ministers that we have ever had, but unfortunately he belongs to the I.C.S.

SHRI C. G. K. REDDY: An honourable exception.

SHRI C. D. DESHMUKH: Belonged.

DIWAN CHAMAN LALL: He did belong to the I.C.S.

SHRI C. D. DESHMUKH: That is all right. But I resigned in 1941.

DIWAN CHAMAN LALL: Then we are fortunate in both respects. We have one of the most brilliant and talented men in the Finance Minister and one of the greatest integrity in the Comptroller and Auditor-General at present. That is obvious to everybody, but it is equally obvious, I think, to those who desire that there

should be created no complications with regard to this particular matter, that its echoes will be very strange echoes indeed, if complications are created. It is because of this that I would like my hon. friend to look into this matter most carefully to see that, simple as it may be or not, quite simple as it may be, the right thing is done in the right manner. The points of view that I placed before my hon. friend are simple enough, but there are other aspects that arise out of this matter which I crave your indulgence to place before the House and before my hon. friend. I am placing all these matters before my hon. friend, as I said, with one objective that he may consider these most carefully in order that neither the Government nor we in this House may be embarrassed by anything happening afterwards which may be wrong or which may lead us into difficulties. Now, if you look at section 148 (4)—you will find that in the Government of India Act also; section 166 (2)—that old section stated as follows in reference to the Comptroller General:

"He shall not be eligible for further office under the Crown in India after he has ceased to hold office."

Now, this particular provision in section 166 (2) of the old Government of India Act has been considered by previous Governments to mean that there should be no extension given to a person holding the office of Auditor-General. That has been the construction put upon it; not only has it been the construction, but acting upon that construction no extension has ever been given to the Auditor-General, because the legal authorities apparently were perfectly well aware and convinced of the fact that as the section stood, it was not possible for the Government of India under the Constitution to extend the term of office of the Auditor-General beyond the period fixed by law. You will notice.....

DR. W. S. BARLINGAY (Madhya Pradesh): May I remind my hon.

friend that the wording here is "further office" and not "further term of office".

DIWAN CHAMAN LALL: My hon. friend is quite right, but I do not know what his difficulty is? When a term has been prescribed for an office, an extension of that term means what? He is holding office for an extended term. There is no distinction constitutional or legal in regard to that matter. If he wants me to clarify it, I will do so but I hope my hon. friend will agree with me that there is no difficulty in regard to this. What I was saying is that the wording of section 166 (2) of the Government of India Act related to this particular matter and stated that he shall not be eligible for further office under the Crown in India after he has ceased to hold office. The same expression has been utilized by us under section 148 (4). I submitted that because of the particular wording of section 166 and the construction put upon it by the authorities, no further extension was ever given to the Auditor-General. Since that wording has been incorporated in the new Statute under section 148 (4), therefore I submitted that the constitutional and legal construction is that it cannot now be altered and it must be followed as it was under section 166 (2). When a particular form of legislative enactment which has received authoritative interpretation whether by judicial decision or by long course of practice is adopted in the framing of a later Statute, it is a sound principle of construction to hold that the words so adopted were intended by the Legislature to bear the meaning which has been so put upon it. I submitted that under section 166 (2) a particular construction was put upon that article, a certain course of conduct was followed thereafter having placed a particular construction upon that Statute namely, the course followed was that the Auditor-General shall not be given any further extension of office and never was given any further extension of office with the result that by incor-

porating the same clause under our Constitution we are bound by the interpretation laid down authoritatively in judicial decisions namely, that we are bound by the practice that was followed previously. It is given in Webb Vs. Outrim 1907 AC 81 at page 87. I am sorry but it has not been my habit actually to try to deal with legislation of this nature purely from the legalistic point of view but in this particular matter, it is an entirely legalistic one as far as we are concerned although its implications may be entirely different. I have been constrained to draw my hon. friend's attention to the rules of construction in a matter of this character and to article 166 (2) of the old Government of India Act which should be compared with article 148 (4) of the Constitution under which we function today and it is then that we will come to the conclusion that the rules of construction prevent us from adopting a different course from the one that has hitherto been followed namely, in any case not to grant extensions to the Auditor-General.

SHRI C. D. DESHMUKH: Will he read a little more from this Webb Vs. something and say what exactly is the point made there by reference to this case?

DIWAN CHAMAN LALL: It is the wording from the judgment itself. I have not given my own interpretation. I will read it again. It is as follows:

"When a particular form of legislative enactment which has received authoritative interpretation whether by judicial decision or by long course of practice is adopted in the framing of a later Statute, it is a sound principle of construction to hold that the words so adopted were intended by the Legislature to bear the meaning which has been so put upon it."

Here it is purely a question of practice—a long course of practice.....

MR. DEPUTY CHAIRMAN: Are the wordings exactly the same in the two?

SHRI C. D. DESHMUKH: I get the point of the hon. Member.

DIWAN CHAMAN LALL: May I therefore submit that this is a matter meant for my hon. friend and he will no doubt deal with it exhaustively and adequately but these are the facts that it is necessary for us to place before him in order that, as I said, future complications may not arise.

There is another matter in reference to this namely, the matter of further office which means holding office beyond the period of time fixed by law in the course of his tenure of appointment. I take it that that would be the correct definition of 'further office'.

Now let us have a look at article 319 of the Constitution, which says:

"The Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State."

SHRI K. S. HEGDE: There is an important distinction between 'any further office' and 'any further employment'.

DIWAN CHAMAN LALL: How can he hold an office unless he is employed? I don't know the distinction unless it is possible to hold a post *in vacuo*. That is not possible. By 'further office' is meant the same office in this case. He shall not hold any office beyond the stipulated time. The point is this whether he is capable of holding any further office or not under the Government after the expiry of his contract period.

SHRI K. S. HEGDE: In the context of this article it means any other

office, and that is made clear in article 119.

DIWAN CHAMAN LALL: Whether in that office or any other office?

SHRI K. S. HEGDE: That is under article 119.

DIWAN CHAMAN LALL: If Mr. Hegde wishes to interrupt, he can do so. I will sit down. I like my hon. friend to interrupt me. After all we are dealing with a very intricate matter and we want to be very clear in regard to this issue. It is a very serious issue and that is why I am bringing all these points forward so that we might get some if not complete clarification in regard to this matter in order to avoid any unnecessary complications. Now, Sir, further on, does it contemplate any other office? Does the holding of that same office after the term is completed, does it or does it not mean also further office? The question is really a question of tenure not of conditions of service and there again I will come to a very important point which I would like my hon. friend to take into consideration when he is dealing with this matter. Now extension of office is obviously the holding of that office for another term. I don't know of any other definition. If article 148(4) means that extension can be given, then since the Executive can make rules under article 148(3), it can go on extending the term of an office and defeating the very objective, namely, not to reward a competent officer—not to create a situation under which an officer of this calibre, of this quality and of this position would feel obliged to the Executive in any sense or in any manner.....

PROF. G. RANGA: Or not to be punished.

DIWAN CHAMAN LALL: Yes, as my hon. friend Prof. Ranga says, apart from being rewarded, of not being punished so that he does not go in fear of being punished by the Executive, or to expect a reward from the Executive in any manner. These, Sir, are matters of great importance in dealing with this question.

Now, as we know, the question arose originally whether we should or should not fix the same conditions for the Auditor-General as have been fixed for the judges of the Supreme Court. As you know, the judges of the Supreme Court hold their posts subject to good behaviour, naturally, up to a certain age limit. My hon. friend knows that when this matter was discussed by the Joint Select Committee in 1934, they also recommended the principle of the age limit being adopted. The Joint Select Committee in 1934 thought that the tenure should be similar to that of the high court judges subject to an age limit. This, I understand, was agreed to in the Audits and Accounts Order of 1936 referred to by my hon. friend yesterday. Since then a difficulty has arisen. The difficulty was this, that up to that point only I.C.S. officers had held this job and for the I.C.S. officers the tenure of office is 35 years of service and hence this difficulty arose when fixing it on the basis of an age limit. That is the real basis, the *raison d'être* for article 148(3). That is the reason why Parliament was given this particular authority to deal with this matter. Now, because the situation as I said, was that definite recommendations had been made by the Joint Select Committee and those had been reduced into the Order of 1936 a difficulty arose because of the varying terms of service of the I.C.S. officers as well as others. Others retired at 55 and the I.C.S. officers went up to the period of service of 35 years. And you will remember, Sir, they recommended later on that the age limit may be raised from 55 to 58 in order to cover some portion of this difficulty. Now, I would like my hon. friend to look at article 377 once again. But before he does that, he will please glance at article 148 where clause (3) says:

"The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law"

—and this is very vital "salary and other conditions of service"—

"and, until they are so determined, shall be as specified in the Second Schedule."

You will observe, there is nothing here with regard to tenure, nothing. It is only with regard to "salary and other conditions of service", of the Auditor-General,—pensions and so forth.

SHRI J. R. KAPOOR (Uttar Pradesh): Is not "tenure" one of these conditions of service?

DIWAN CHAMAN LALL: No, and I will point out the distinction to my hon. friend. If you look at article 377, you will find:

"The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148 in respect of the Comptroller and Auditor-General of India."

—these are the conditions—

"and be entitled to continue to hold office etc. etc."

We come to the tenure portion of it which is not covered in article 148(3). Otherwise it would have been left just at that. But they go beyond that to make the necessary distinction between article 148(3) and article 377, the conditions of service on the one side and tenure on the other:

"and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement."

It ties him down straightaway, in my opinion, to what was valid for him previously, that is to say, at the time when he came over and became the

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Comptroller and Auditor-General from being only Auditor-General.

SHRI K. S. HEGDE: Am I to understand that article 377 is a self-contained article?

DIWAN CHAMAN LALL: Sir, in this world there is nothing that is self-contained and all these articles have to be read as a whole. One cannot take one sentence out, one particular article out and say that it is self-contained. We have to take them together and consider them, in the light of rules of construction, in the light of consistent practice and in the light of so many other things, and of course, in the light of common sense and intelligence. Now, may I.....

THE MINISTER FOR FINANCE (SHRI C. D. DESHMUKH): Would it be convenient if after the hon. Member finishes I dealt with only the constitutional and legal point in order to save a great deal of discussion which I consider would at least be unnecessary in the light of what I am going to say?

AN HON. MEMBER: Let us hear the hon. Member fully.

SHRI C. D. DESHMUKH: In that case it may not be necessary for several hon. Members to ask questions because I think I shall be able to throw some light and possibly we may be able to finish the discussion earlier.

SHRI V. K. DHAGE: But, then Sir, there may be others who would like to raise other points and advance other arguments also.

SHRI H. N. KUNZRU: Sir, I think, on the whole it would be very desirable if the hon. Finance Minister got up immediately after my hon. friend Diwan Chaman Lall and gave his reply. That will not debar him from speaking afterwards and it will certainly be helpful in putting an end to this argument.

SHRI V. K. DHAGE: Only this point.

SHRI H. N. KUNZRU: But even after the clarification is given by him, if we do not agree with him, we shall then be able to explain the reasons for differing from him and he will then be able to deal with the other differences of opinion between us and him. So I welcome the course suggested by him.

SHRI K. S. HEGDE: Some of us are in substantial agreement with Diwan Chaman Lall, not only for the reasons advanced by him but for other reasons. Would it not be desirable to make known the other reasons also before the Finance Minister deals with the constitutional aspect?

MR. DEPUTY CHAIRMAN: Well, probably when the Finance Minister speaks all those differences might be set right.

SHRI C. D. DESHMUKH: There are two aspects. One is the question of propriety to which I shall not attempt to reply at this time but shall deal with it in the course of my final reply. I was hoping that if I lay the legal position as I see it before the House, at least in that respect it might not be necessary for hon. Members to deal with that aspect of the situation.

SHRI V. K. DHAGE: I agree with the suggestion of Pandit Kunzru. But if after the Finance Minister has replied there is still necessity for some of us to further clarify this point, I think they should not be debarred.

MR. DEPUTY CHAIRMAN: No, they will not be debarred.

DR. W. S. BARLINGAY (Madhya Pradesh): I would like to bring to your notice that the words in article 377 are that the Comptroller and Auditor-General shall—"be entitled to continue to hold office until the expiration of his term of office" and.....

MR. DEPUTY CHAIRMAN: You may leave it to the Finance Minister.

SHRI H. N. KUNZRU: Would it not be better to leave it to be dealt with by the Finance Minister?

MR. DEPUTY CHAIRMAN: Yes.

DIWAN CHAMAN LALL: I entirely agree with what the hon. Finance Minister said. This is a very vital matter and when my hon. friend has clarified it, I think probably it will not be necessary for a number of people to get up and make long speeches.

As for the hon. Member who has just drawn my attention to article 377, I wish he had been a little more patient, because that was the very next point I was about to deal with. What article 377 says is:

"The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148....."

DR. W. S. BARLINGAY: I am not referring to that portion, but to the portion further on where.....

DIWAN CHAMAN LALL: I would again request my hon. friend to be a little more patient. I am coming to that. It goes on to say: "in respect of the Comptroller and Auditor-General of India and be entitled to hold office until..." when?

"Until the expiration of his term of office". When? "as determined"; how? "under the provisions which were applicable to him immediately before such commencement".

(Interruptions by Shri Bhist)

MR. DEPUTY CHAIRMAN: Order, order; let there be no argument across.

DIWAN CHAMAN LALL: It is all right, Sir. The hon. Members need a little clarification either from me or when my hon. friend the Finance Minister clarifies the position. They

will see then that their doubts are dissolved. My hon. friend said "you cannot reduce it". I want my hon. friend to read this correctly. What is he entitled to? He is entitled to continue his tenure, that is to continue to hold his office. How, "until the expiration of his term of office". But how? The term of office is to be determined not by your passing legislation here; it has got to be determined and determined by the provisions which were applicable to him immediately before such commencement. You cannot change that. That is the whole point of my argument. If you change the Constitution, certainly change it but you cannot do it under 148(3) which deals with matters in respect of pay, service conditions, pensions etc.

Now, Sir, I don't think it is really necessary, after having said as much as I have said on this point, for me to say anything more in regard to this matter except to make it perfectly clear once again that none of us who knows the working of my hon. friend's Department on the one side and who is familiar with the working of the Comptroller and Auditor-General's Department on the other, would be at all willing that what my hon. friend should do should not be done. It is very necessary to utilise men of great integrity in the high positions of this nature; that is perfectly correct. What we suggest is this: let us not, in our desire to do something which may be good for the country today, do something which may damage the country in future or which may be perfectly legal and constitutional in our opinion today but which may, at the proper time, be found to be unconstitutional and *ultra vires*. Therefore, we have to guard against any such contingency that might arise. I would like, therefore, my hon. friend to deal with this matter because I have a feeling that the legal opinion that has been obtained by the Department is not sufficient; it was not comprehensive and some machinery should be devised by each Ministry, and I think more particularly by the Finance Ministry, to try and get hold of proper legal opinion on a

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proper basis, placing before those who are to give that opinion every aspect of the issue so that it may not be a disjointed opinion that is given but may be in the interest of the nation as a whole. Therefore, Sir, these are my fears and these are my doubts and I am convinced in my mind that there may be doubts, in regard to this matter, but I have no doubt in regard to the ability of my hon. friend to deal with these doubts and I do hope he will satisfactorily deal with them in a comprehensive manner.

THE MINISTER FOR FINANCE (SHRI C. D. DESHMUKH): Mr. Deputy-Speaker,.....

SHRI H. N. KUNZRU (Uttar Pradesh): Mr. Deputy Chairman.

SHRI C. D. DESHMUKH: Mr. Deputy Chairman, I am glad that this point has been raised by the hon. Member. In my original speech I did not consider it necessary to deal with this at length because I thought that the point had been made and perhaps would be taken but I agree that in view of these important issue having been raised, so far as the legal and constitutional plane is concerned, I should deal with them fully.

I did not quite follow the hon. Member when he said that the procedure that was adopted by Government for referring this matter for legal advice was not comprehensive or was disjointed because, to my knowledge, he has not seen the legal opinion. May be he will change his opinion when I have read it out as I intend to do. I think.....

SHRI H. N. KUNZRU: Please read out the terms of reference also.

SHRI C. D. DESHMUKH: The terms of reference are contained in the first paragraph of that opinion itself.

I think, Sir, it would be best if we started with this Government of India Audit and Accounts Order, 1936. Now under the second section which deals with the Auditor-General of India, as I said yesterday, there are two clauses

and the first one deals with the conditions of service of the Auditor-General. Now, this is what this clause says in regard to the tenure. In paragraph 6 it says: "An Auditor-General who, at the date of his appointment, was a Member of the Indian Civil Service shall vacate his office on completing 35 years total service in that service and as Auditor-General provided that if, at the date of his appointment he had completed 30 years service or more then he may hold office for five years". That is to say, if he was 57—well then he could go on to 62. Similarly in the second sub-section of this paragraph, it says "any other Auditor-General shall vacate his office on attaining the age of 55 years or if at the date of his appointment he had not attained the age of 55—and I take it that it means that if he was 50, 51, 52, 53 or 54—then, after holding office for five years". Therefore, there was a provision here for continuing his service beyond the normal age of retirement of the Service to which he belonged. Now, Sir, the hon. Member has asked whether any extension had been given in the past. Now, I have not delved into ancient history, that is to say, prior to 1935, but the point I wish to make is that the question of giving an extension does not arise. It would arise only if, for extension not to the office generally but to a particular incumbent, one were to amend the rules. Now, as far as I know—and I am quite certain—this particular Audit and Accounts Order was never varied. If it was not varied, that is to say, for some other term, as for instance, fixing an age of 70, which was never fixed, this question whether the that-time incumbent should be allowed to continue till the age of 70 never arose. Therefore, there is, I submit, no comparable situation from which any inference can be drawn against the course that is proposed today.

SHRI GOVINDA REDDY: What is the age of retirement according to para. 2.....

SHRI C. D. DESHMUKH: 55 is the normal age of retirement for non-I.C.S.

and for I.C.S. 60 is the age of retirement or the completion of 35 years which usually coincides with the age of 60 on account of the age at which an I.C.S. officer was recruited. So these officers complete 30 years service or more before attaining the age of 60 and they could continue in office for five years more if they had put in only 30 years service. In the case of the non-I.C.S. the age of retirement is 55.

SHRI KISHEN CHAND: Suppose there is an I.C.S. who had put in only 28 years service and suppose he is made the Auditor-General will his tenure of office be only five years?

SHRI C. D. DESHMUKH: He will go up to 35 years.

SHRI KISHEN CHAND: So he can remain in office for seven years?

SHRI C. D. DESHMUKH: That is right.

PROF. G. RANGA: May I interrupt the Finance Minister for some clarification? He told us that at present the Comptroller and Auditor-General of India did not belong to the I.C.S. It was therefore clear that the age of retirement that applied to him was the lower age referred to by him, that is, the age of 55. Now he is to be allowed to go beyond the age of 55 in order to complete the period of five years which was put as the tenure of his office as Comptroller and Auditor-General of India. Since when has this period been reckoned?

SHRI C. D. DESHMUKH: Since the date of his appointment, Sir, that is the 15th August 1948. He was 54 on the 15th August 1948. Therefore instead of retiring on attaining the age of 55 he has been allowed to continue under this Order until he completes his tenure of this office which is for a period of five years. That is how he happens to be 59 to-day and in service although he belongs not to the I.C.S. but to the Indian Audit and Account Service. Well, as I was going to say, Sir, no inference can be drawn from the fact that no extension was given

because, as I said, the Rules were not amended by a competent authority. This question would have arisen if this Order had been amended to say that he shall continue to hold the office till he attained the age of 65. If such an amendment had been carried out then the question would have arisen whether the existing incumbent should be allowed to continue till he is 65.

The next point is that in my opinion the hon. Member has not read Article 377 correctly.

MR. DEPUTY CHAIRMAN: Before you go to the next point I would suggest that the hon. Prime Minister make the statement that he wants to make so that after that he may attend to other business. Also the discussion of this Bill will take a long time more.

STATEMENT BY THE PRIME
MINISTER ON THE INDIAN
INCOME-TAX (AMENDMENT)
BILL, 1952.

THE PRIME MINISTER (SHRI JAWAHARLAL NEHRU): I crave your leave, Sir, and the indulgence of the House, to refer to certain incidents which took place in this House as well as the other House in the course of the last week, and which somewhat disturbed the normal serenity of the work of Parliament. Unfortunately I was not here then, but since my return, I have endeavoured to acquaint myself fully with what happened in either of the Houses of Parliament.

Under our Constitution, Parliament consists of our two Houses, each functioning in the allotted sphere laid down in that Constitution. We derive authority from that Constitution. Sometimes we refer back to the practice and conventions prevailing in the Houses of Parliament of the United Kingdom and even refer erroneously to an Upper House and a Lower House. I do not think that is correct. Nor is it helpful always to refer back to the procedure of the British Parliament