DISCIPLINARY PROCEEDINGS AGAINST GOVERNMENT SERVANTS. A Case Study. Prepared under the auspices of the Indian Law Institute, New Delhi. [1962. Bombay, N.M. Tripathi Private Ltd. xiii + 149 pp. inc. appendixes and index. Rs. 12.50.]

Although disciplinary proceedings against government servants in Malaya do not follow exactly the same procedure as those in India, there is sufficient similarity for this study by Professor Markose and his team to be pertinent to the Malayan situation. Moreover, article 135 of the Federation of Malaya constitution is so closely related to article 311 of the Indian constitution [1] as to make Indian experience a valuable guide to the application of the Malayan provision.

The Indian Law Institute's research is a consideration not of cases decided by the courts but of cases of disciplinary proceedings within the Central Public Works Department for the five years beginning in 1955. The cases are traced through all stages from an original complaint, through the preliminary investigation, formal proceedings to determine guilt, formal proceedings to determine punishment, the

1, See "A Digest of Dismissal and Reduction in Rank" (1962) *Public Law* 260,

decision, to appeals, memorials and review, including the role of the Union Public Service Commission. Throughout the book, critical comment is made, much of which is summarised in chapter XIII, and suggestions for reform, largely summarised in chapter XIV, figure prominently too. The treatment is full and scholarly and well produced.

Among the suggested changes in the law are two which, since they affect constitutional provisions as well as government service rules, particularly command the attention of the legal profession. One is designed to make disciplinary proceedings fairer, the other to make them less cumbersome. The first is that accused persons in disciplinary proceedings should have the right of being represented, including representation by counsel. At present, under the rules, representation by anyone other than a fellow servant is at the discretion of the inquiry officer, while under the constitution it seems to depend on the complexity of the case.[2] It is difficult to dispute the view that, while the absence of lawyers at inquiries may obviate unnecessary technicality, their absence from the defence side puts the accused at a marked disadvantage in marshalling his facts and arguments as against the experience supporting the complaint.

The other suggestion is to amend article 311(2) of the Indian constitution so as to get rid of the need[3] for two formal inquiries, one as to guilt and one as to consequential action where a major punishment is proposed. That one composite inquiry would be enough appears to be established by the case study, and that has apparently proved satisfactory in practice in the Federation of Malaya.[4]

However, it must not be forgotten that article 311 of the Indian constitution and article 135 of that of the Federation of Malaya are not in terms confined to disciplinary proceedings. It is true that in India the majority of the Supreme Court seem to have so confined it,[5] but the majority of the Supreme Court of Pakistan adopted[6] a wider construction of section 240 (3) of the Government of India Act, 1935. For this reason, it is submitted, the formulation in the Federation of Malaya constitution[7] is preferable to that suggested by the Indian Law Institute team.[8]

These comments should not give the impression that *Disciplinary Proceedings Against Government Servants* is a study in constitutional law. It is a case study of disciplinary proceedings and makes available material previously interred in departmental files. Its quality is such as to whet the appetite for further such studies by the Indian Law Institute and to make one look forward to the study of the same matter, from the constitutional point of view, which, it is understood, is projected by the Institute.

L. A. SHERIDAN.

2. See, *e.g., Haragovinda Sarma* v. *Kagti* A.I.R. 1960 Assam 141; *Nripendra Nath Bagchi* v. *Chief Secretary, Govt. of West Bengal* A I.R. 1961 Calcutta 1; *Nitya Ranjan Bohidar* v. *State* A.I.R. 1962 Orissa 78.
3. Established under the Government of India Act, 1935, by *High Commissioner for India* v. *Lall* A.I.R. 1948 P.C. 121 and continued under the constitution by *Khem Chand* v. *Union of India* A.I.R. 1958 S.C. 300 and *Jagannath Prasad Sharma* v. *State of Uttar Pradesh* A.I.R. 1961 S.C. 1245.
4. See *Government of the Federation of Malaya* v. *Surinder Singh Kanda* (1960) 27 M.L.J. 121.
5. *Parshotam Lal Dhingra* v. *Union of India* A.I.R. 1958 S.C. 36.
6. *Ghulam Sarwar* v. *Pakistan* P.L.D. 1962 S.C. 142.
7. No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard (art. 135(2) ).
8. No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity to defend himself against the charges (new art. 311(2) proposed on p. 119 of the book).