

The comparatively small number of appeals from the Post and Telegraph Department is accounted for by the fact that the Department had been classified for twenty years.

RIGHT OF APPEAL.

Much misconception about the right of appeal on promotion arose during the year. The Public Service Association sought a declaratory judgment in the Supreme Court, when a judgment as follows was delivered by the Chief Justice :—

This is an originating summons under the Declaratory Judgments Act, 1908. The Court is asked to interpret certain provisions of the Public Service Act, 1912—namely, those regarding appeals from the decision of the Commissioner.

The Act is a new departure in the mode of appointing Civil servants, and was no doubt aimed at removing all appointments from the usual method of Ministerial recommendation to the Governor. Under the statute the right to appoint Civil servants (with a few exceptions) is vested in a Commissioner and Assistant Commissioners. I presume the appointment was vested in the Commissioner and not in the Governor so as to absolutely free the appointment from any political control. Rights are, however, given to Civil servants by the statute, and the most important is the right of appeal from the Commissioner's decision. Section 31 provides,—

“(1.) Any officer dissatisfied with any decision of the Commissioner, or of any person or persons to whom the Commissioner has delegated his powers or functions, in regard to grade affecting such officer, or in regard to the classification of the work performed by him or assigned to him, or in regard to salary or promotion, may forward to the Commissioner, within thirty days after such decision has been notified to him, a notice of appeal setting forth the grounds of his dissatisfaction; and a Board of Appeal, constituted in the manner hereinafter set forth, shall thereupon consider such appeal and the grounds thereof, and further evidence in relation thereto which the Board may deem necessary for the proper determination of the appeal, and may allow or disallow the appeal; and the decision of the Board of Appeal thereon shall be final.

“(2.) If in the opinion of the Board any appeal is frivolous or vexatious the Board may order the appellant to pay the cost of the appeal, and the sum so ordered to be paid shall be paid in the manner prescribed for the recovery of fines for breaches of regulations.”

The only word in the section that has caused a difference of opinion between the Commissioner and the Civil servants is the word “promotion,” and the meaning to be applied to it. It is granted that if a Civil servant is not promoted to a grade that he thinks he is entitled to he may appeal, or if he is assigned work he does not like he may appeal, or if he gets no rise in salary to which he thinks he is entitled he may appeal. But though all these things are really questions of promotion, and are specifically provided for in the statute, for the words are “in regard to grade, in regard to the classification of the work,” &c., “or in regard to salary,” yet that the word “promotion” used after the word “salary” cannot mean promotion to another office. It is admitted that the word “promotion,” unlimited as it stands in the section, may include an advancement to a new office, but it is said, if it means that, a great inconvenience will arise, and that the word “promotion” should be limited to four classes: (1) Advancement from Class F under subsection (4) of section 20; (2) advancement from Subdivision 4 of Class VII or from Subdivision 7 of Class VII; (3) advancement from the Clerical Division to the Professional Division; (4) promotion from one grade to another.

It seems to me that all these advancements come under “grade,” “work,” and “salary,” and that unless the word “promotion” has to mean what it ordinarily would include, an appointment to a new office, it was unnecessary. Nor am I influenced by the contention that it would create inconvenience. The inconvenience that is suggested would be that many thousands of officers would expect that they were eligible for a new office, and if they did not get it they might appeal. The same might be said if salaries were not raised or if their grades were not advanced.

It appears to me that section 31 contemplates an application to the Commissioner by the Civil servant, and the right of appeal does not arise until there is a notification. The decision has to be notified. Without a request or application to reply to there is no need of a notification “to him”—that is, to the Civil servant. It is suggested that a general notice of an officer being appointed would be a “notification to him.” To so read the section would be to strain its language.

It was argued that section 6 would prohibit any application for advancement in any shape to the Commissioner. The words of the section are (subsection 3), “Any officer who, directly or indirectly, solicits or endeavours to influence the Commissioner or an Assistant Commissioner for the purpose of obtaining promotion or increase of salary shall be deemed to be unworthy of such promotion or increase, and it shall not be accorded to him; and he shall be liable to immediate dismissal.” The word “solicit” may mean “apply for,” but it is, I think, obvious that it means something more than a formal application. For example, suppose the Commissioner advertised for candidates for an engineership, would it be contended that if an engineer in the Service applied he was soliciting the office? “Solicit” in its primitive meaning has something violent or abnormal in it; it is not a bare application; it is a beseeching, begging, persistently begging, persuading, or entreating.

I notice in Funk and Wagnall's new Standard Dictionary the word “solicit” is not given the meaning of “apply”; the meanings go beyond mere “apply,” such as “to ask for with some degree of earnestness, to seek to obtain by persuasion or entreaty, or to solicit a favour,” &c. It means “applying with importunity”; and in Latham's Johnson's Dictionary the meaning of “apply” is not given. “Importune,” “entreat,” “implore,” “ask,” &c., are given; and in Sweet's Etymological Dictionary “apply” is not given as a meaning of “solicit,” nor as a synonym of the word.