

The section seems to me to assume an application and a refusal before an appeal can arise, and if it were otherwise interpreted the inconvenience might be exceedingly great. Can every one not advanced in salary or grade appeal without applying for change of grade, salary, or work? I am of opinion that might occasion great inconvenience in the Service, and greater than in construing the section as allowing an appeal if an application for a new office were refused.

The next contention was that the appeal, if one applied for a different office to that which he held, and it was not granted to him, would not be a decision within section 31 of the Act. It was said the officer is appointed by the Commissioner, and, once appointed, the appointment remains, even if His Excellency does not issue his Warrant (see section 60). The Commissioner must come to a decision before he actually signs the appointment. The decision comes first, and if an application is made and is declined, that is a decision. It may mean that in carrying out the Act the proper thing to do is to wait until the thirty days—the time within which to appeal—lapses before the final appointment is made. For example, an officer is second clerk, and he applies for first clerk: could it be said that as this would mean a new appointment, there is no right of appeal? That is, I understand, the contention. If that is correct, the right of appeal given is slight indeed.

The word “promotion” means and includes the change to a new office; and by our Acts Interpretation Act, 1908, every provision in a statute is to receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act, and of such provision or enactment, according to its true intent, meaning, and spirit. “Promotion” meaning, as it does, appointment to a higher office, I do not know any authority that would warrant me in limiting its true meaning. Further, the general intent of the statute appears to me to give a broad and liberal appeal to Civil servants.

There need arise no inconvenience if applications are asked for and if the final appointment is not made until after thirty days after the decision has been come to, and it is not, therefore, a case in which the maxim *ab inconvenienti* can be applied. Lord Halsbury said in *Cooke v. Charles A. Vogler Company* (1901, A.C., 102, 107) that a Court of law has no jurisdiction to disregard what the Legislature has enacted. It cannot balance one inconvenience against another inconvenience, or choose between alternatives. The words in this statute are clear, and it does not appear to me that by reading “promotion” as meaning “promotion” any greater inconvenience can arise than may arise in carrying out the other provisions of section 31.

I must therefore answer the questions put as follows: 1. No. 2. Yes. 3. The officer can, after application for an office and notification of the decision of the Commissioner against him, appeal to the Board. 4. Yes, he can appeal. 5. No.

As this judgment, particularly in its insistence on the necessity for application for promotion precedent to an appeal, left matters in an unsatisfactory condition from the point of view of officers, the Commissioners decided, after lengthy discussion with the association and their legal adviser, to meet the case by agreeing to provide special facilities to all officers for appeals on the subject of promotion until the Public Service Act could be amended. The existing arrangement is as follows:—

(1.) In the case of positions not exceeding £220 per annum (which generally require to be made without delay, as, for example, positions in the Post and Telegraph and Mental Hospitals Departments), although the Commissioner will advertise where practicable, the appointments may be finally made; but if any officer, whether he has applied for the appointment or not, considers that the action taken has superseded him, he may, within thirty days of the first notification in the Official Circular, lodge an appeal.

(2.) All other positions to be advertised for, except in extraordinary circumstances where it is impracticable to do so; but in order that all officers, whether or not they have applied for the vacant position or for any vacancy consequent upon the filling of such vacant position, may be given an opportunity of appealing, appointments shall not be finally made for thirty days after notification in the Official Circular, or longer if any appeals are forthcoming.

(3.) All appeals lodged under the conditions in paragraph (1) shall be sent on to the Board of Appeal on the understanding that if an appellant is successful he shall be placed on an equivalent footing with the officer appealed against.

(4.) Notification in the Official Circular of a particular appointment, or of a decision to make a particular appointment, shall be deemed notification to the whole of the Service, and the thirty days within which an appeal must be lodged shall commence from the date of the Circular in which the notification first appears.

(5.) Appeals shall be deemed to be made against the decision not to promote the officer appealing.

This is said to fully meet the contentions of officers. So far as the Commissioners are concerned, the Act is being interpreted in this matter in the broadest way, and