

# CONSTITUTIONAL PROTECTION TO CIVIL SERVANTS

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Civil Servants are considered as the back bone of the administration. In order to ensure the progress of the country it is essential to strengthen the administration by protecting civil servants from political and personal influence. So provisions have been included in the Constitution of India to protect the interest of civil servants along with the protection of national security and public interest. Part XIV of the Constitution of India deals with Services under The Union and The State. Article 309 empowers the Parliament and the State legislature regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State respectively.

## Doctrine of Pleasure

In England a civil servant holds his office during the pleasure of the Crown. His services can be terminated at any time by the Crown without giving any reasons. Article 310 of the Constitution of India incorporates the English doctrine of pleasure by clearly stating that every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State . But this power of the Government is not absolute. Article 311 puts certain restriction on the absolute power of the President or Governor for dismissal, removal or reduction in rank of an officer. Article 311 reads as follows:

- (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.**
- (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.**

## Civil Post

The protective safe guards given under Article 311 are applicable only to civil servants, i.e. public officers. They are not available to defence personnel. *In State of U. P. v A. N. Singh*<sup>1</sup> the Supreme Court has held that a person holds a civil post if there exists a relationship of master and servant between the State and the person holding the post. The relationship is established if the State has right to select and appoint the holder of the post, right to control the manner and method of his doing the work and the payment by it of his wages or remuneration.

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## **Dismissal and Removal**

Dismissal and removal are synonymous terms, but in law they acquired technical meanings by long usage in Service Rules. In case of dismissal a person is debarred from future employment, but in case of removal he is not debarred from future employment.

## **No Removal by Subordinate Authority**

No removal by subordinate authority does not mean that the dismissal or removal must be by the same authority who made the appointment or by his direct superior. It is enough if the removing authority is of the same or co-ordinate rank as the appointing authority.

## **Reduction in Rank**

Reduction in Rank means reduction from a higher rank or post to a lower rank or post and not losing place in rank or cadre. In *State of Punjab v Kishan Das*<sup>2</sup> The Supreme Court held that a mere reduction in the salary in the same cadre is not reduction in rank.

## **Inquiry**

It is mandatory under Article 311(2) to make an inquiry before the dismissal, removal or reduction in rank of a civil servant. In that inquiry the civil servant has to be informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

## **Informed of the charges**

Informed of the charges, means serving of a charge sheet explaining the reasons of the charges leveled against the concerned officer and statement of allegations against each charge.

## **Reasonable Opportunity of Being Heard**

In *Khem Chand v Union of India*<sup>3</sup> the Supreme Court held that the 'reasonable opportunity' means:-

- (a) An opportunity to deny his guilt and establish his innocence, which he can do only if he is told what the charges leveled against him are and the allegations on which such charges are based.
- (b) An opportunity to defend himself by cross examining the witness produced against him and by examining himself in support of his defiance.
- (c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him.

## **Termination of Service When Amounts to Punishment.**

The protection under Art. 311 is available only when the dismissal, removal or reduction in rank is by way of punishment. In *Parshotham Lal Dhingra v Union of India*<sup>4</sup> the Supreme Court has laid down two tests to determine whether termination is by way of punishment-

- (1) whether the servant had a right to hold the post or the rank (under the terms of contract or under any rule)
- (2) whether he has been visited with evil consequences  
If yes it amounts to punishment.

## **Suspension**

Suspension of a government employee is not a punishment. It is neither dismissal or removal nor reduction in rank. So the employee cannot claim a reasonable opportunity to be heard.

## **Exclusion of Opportunity to be Heard**

Article 311(2) Provides that reasonable opportunity of being heard is not applicable in the following cases.

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or**
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or**
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry**

An employee who is convicted on criminal charges need not be given an opportunity to be heard, before his dismissal from service. However in *Divisional personal Officer, Southern Railway v T. R. Chellappan*<sup>5</sup> the Supreme Court held that the imposition of the penalty of dismissal, removal or reduction in rank without holding an inquiry was unconstitutional and illegal. The objective consideration is only possible when the delinquent employee is being heard. But in *Union of India v Tulshiram*

*Patel*<sup>6</sup> the Court held that the dismissal, removal or reduction in rank of a person convicted on criminal charges is in public interest, and therefore not violative of Art. 311(2) of the Constitution. The Court thus overruled its earlier decision in Chellappan's case.

## Compulsory Retirement

Compulsory retirement simpliciter is not punishment. It is done in 'public interest' and does not cast a stigma on the Government servant. So the employee cannot claim an opportunity to be heard before he is compulsorily retired from service. The Supreme Court of India has issued certain guidelines regarding compulsory retirement. In *State of Gujarat v Umedbhai M. Patel*<sup>7</sup> the Court laid down the following principles.

1. When the Service of a public servant is no longer useful to the general administration, the officer can be compulsorily retired in public interest.
2. Ordinarily the order of compulsory retirement is not to be treated as a punishment under Art. 311 of the Constitution.
3. For better administration, it is necessary to chop off dead wood but the order of compulsory retirement can be based after having due regard to the entire service record of the officer.
4. Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
5. Even uncommunicated entries in the confidential report can also be taken in to consideration.
6. The order of compulsory retirement shall not be passed as a short cut to avoid departmental inquiry when such course is more desirable.
7. If the officer is given promotion despite adverse entries in the C. R., that is a fact in favour of the officer.
8. Compulsory retirement shall not be imposed as a punitive measure.

In *Baikunth Nath v Chief Medical Officer*<sup>8</sup> the Court issued further clarifications regarding compulsory retirement.

- (1) An order of compulsory retirement is not a punishment. It implies no stigma.
- (2) The order has to be passed by the Govt. in public interest. The order is passed on the subjective satisfaction of the Govt.
- (3) Principles of natural justice have no place in the context of an order of compulsory retirement. However courts will interfere if the order is passed *mala fide* or there is no evidence or it is arbitrary.
- (4) The Govt. shall have to consider the entire record of service before taking a decision in the matter particularly during the later years' record and performance.
- (5) An order of compulsory retirement is not liable to be quashed by a Court merely on showing that while passing it excommunicated adverse remarks were taken in to consideration. The circumstances by itself cannot be a basis for interference.

## Temporary Employees and Probationers

In *State Of Punjab & Anr v Sukh Raj Bahadur*<sup>9</sup> the Supreme Court laid down the following principles regarding the applicability of Article 311 to temporary servants and probationers.

1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Art. 311 of the Constitution.
2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.
3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.
4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Art. 311 of the Constitution.
5. If there be a full-scale departmental enquiry envisaged Art. 311 i.e. an Enquiry Officer is appointed, a charge sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article.

The Constitution of India through Article 31, thus protects and safeguards the rights of civil servants in Government service against arbitrary dismissal, removal and reduction in rank. Such protection enables the civil servants to discharge their functions boldly, efficiently and effectively. The public interest and security of India is given predominance over the rights of employees. So conviction for criminal offence, impracticability and inexpediency in the interest of the security of the State are recognised as exceptions. The judiciary has given necessary guidelines and clarifications to supplement the law in Article 311. The judicial norms and constitutional provisions are helpful to strengthen the civil service by giving civil servants sufficient security of tenure. But there may arise instances where these protective provisions are used as a shield by civil servants to abuse their official powers without fear of being dismissed. Disciplinary proceedings initiated by Government departments against corrupt officials are time consuming. The mandate of 'reasonable opportunity of being heard' in departmental inquiry encompasses the *Principles of Natural Justice* which is a wider and elastic concept to accommodate a number of norms on fair hearing. Violation of *Principles of Natural Justice* enable the courts to set aside the disciplinary proceedings on grounds of *bias* and procedural defects<sup>10</sup>.

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1. AIR 1965 SC 360
  2. AIR 1971 SC 766
  3. AIR 1958 SC 300
  4. AIR 1958 SC 36
  5. (1976) 3 SCC 1990
  6. (1985) 3 SCC 398
  7. AIR 2001 SC 1109
  8. (1992) 2 SCC 299
  9. AIR 1968 SC 1089
  10. See for details, I P Massey, *Administrative Law* (2003), pp.161-212

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