

CONSTITUTIONAL LAW –II SEMINAR

**TOPIC: CONSTITUTIONAL SAFEGUARDS AVAILABLE TO THE
CIVIL SERVANTS UNDER THE PROVISIONS OF INDIAN
CONSTITUTION**

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1. INTRODUCTION

Articles 309 to 323 of the Constitution make elaborate provisions for the Central and State services. The Civil servant is indispensable to the governance of the country in the modern administrative age. Ministers frame policies and legislatures enact laws, but the task of efficiently and effectively implementing these policies and laws falls on the civil servants. The bureaucracy thus helps the political executive in the governance of the country. The Constitution, therefore, seeks to inculcate in the civil servant a sense of security and fair play so that he may work and function efficiently and give his best to the country. Nevertheless, the overriding power of the government to dismiss or demote a servant has been kept intact, even though safeguards have been provided subject to which only such a power can be exercised.

The service jurisprudence in India is rather complex, intertwined as it is with legislation, rules, directions, practices, judicial decisions and with principles of Administrative Law, Constitutional Law, Fundamental Rights and Natural Justice. The role of the courts in this area is crucial as they seek to draw a balance between the twin needs of the civil service, viz., (1) the need to maintain discipline in the ranks of the civil servants; and (2) the need to ensure that the disciplinary authorities exercise their powers properly and fairly.¹

¹ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1427

2. CIVIL SERVANT

The term civil servant includes members of a civil service of the Centre or a State, or of an all-India service, or all those who hold civil posts under the Centre or a State. A 'civil post' means an appointment or office on the civil side and includes all personnel employed in the civil administration of the Union or a State.

The relation of master and servant between the state and the employee is necessary to make a civil post 'under the Government'. Whether such relationship exists is a question of fact to be decided in each case. A host of factors have to be taken into consideration to determine such relationship. None of these factors may be conclusive and no single factor may be considered absolutely essential.

Some of these factors are:

- (i) Who selects the employee
- (ii) Who appoints him
- (iii) Who pays him the remuneration or wages?
- (iv) Who controls the method of his work?
- (v) Who has power to suspend or remove him from employment?
- (vi) Who has a right to prescribe the conditions of service?
- (vii) Who can issue directions to the employee?

If the answer to all these questions is, the Government then it is a civil post under the Government. Co-existence of all these indicia is not predicted in every case to make the relationship as one of master and servant. In special classes of employment, a contract of service may exist even in the absence of one or more of these indicia.

A civil post outside the regularly constituted services does not have to carry a definite rate of pay; he may be paid on commission basis; the post need not be whole-time, it may be part-time and its holder may even be free to engage himself in other activities. What is important, however, is the existence of the master-servant relationship.

The term; civil servant; does not include a member of a defence service, or even a civilian employee in defence service who is paid salary out of the estimates of the Ministry of Defence. These persons, therefore, while falling under Articles 309 and 310 do not enjoy the protection of Article 311. A member of the police force, however, is a 'civil servant'.²

In State of Gujarat V, Ramanlal Keshav Lal³

The Supreme Court has held the Panchayat service in Gujarat created by a State law to be State civil service and its members as servants of the State.

² Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1434

³ AIR 1984 SC 161

3. RECRUITMENT AND CONDITIONS OF SERVICE

According to Art.309, Parliament or a State Legislature may, subject to the provisions of the Constitution, regulate the recruitment and conditions of service of persons appointed to the public services and posts in connection with the affairs of the Union or the State, as the case may be. Pending such legislation, the President, or the Governor, or any person authorized by him, may make rules in this respect [Proviso to Art 309]. The rules take effect subject to any legislation that may be enacted for the purpose. This rule-making power is thus in the nature of an interim power to be exercised by the Executive so long as the Legislature does not act.

The rule-making power is characterized as ‘legislative’ and not ‘executive’ power as it is a power which the legislature is competent to exercise but has not in fact exercised.

Rules made by the Government under this power are regarded as legislative in character and so these rules can even be made to take effect retrospectively, but the Supreme Court has said that the President/Governor cannot make such retrospective rules under Art.309 as contravene Arts.14, 16 or 311 and “affect vested right of an employee”.⁴

⁴ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1428

In T. K. Rangarajan V. Government of Tamil Nadu⁵

The Government employees had gone on strike for their demands. The Government employees had challenged the validity of the Tamil Nadu act and the Ordinance. The Courts said that “Government employees cannot hold society to ransom/going on strike”. The Bench said that if the employees felt aggrieved by any Government action, they should seek redressal from the statutory machinery provided under different statutory provisions for redressal of their grievances. The Courts said strike as a weapon is mostly misused which results in chaos and total mal-administration. Strike affects the society as a whole and particularly when 2 lakh employees go on strike the entire administration comes to a grinding halt. The Court also agreed with the contention of the State government that 90% of the revenue raised through direct tax was spent on the 12 lakh government employee in the state. Thus in a society where there is large scale employment and a number of qualified persons are eagerly waiting for employment strike cannot be justified on any equitable grounds. The Supreme Court has also held that Government servant has no right to go on strike, neither moral nor statutory.

⁵ AIR 2003 SC 3032

4. DOCTRINE OF PLEASURE

In Britain, traditionally, a servant of the crown holds office during the pleasure of the crown. This is the common law doctrine. The tenure of office of a civil servant, except where it is otherwise provided by a statute, can be terminated at any time at will without assigning any cause, without notice. The civil servant has no right at common law to take recourse to the courts, or claim any damages for wrongful dismissal. He cannot file a case for arrears of his salary. The crown is not bound even by any special contract between it and a civil servant for the theory is that the crown could not fetter its future executive action by entering into a contract in matters concerning the welfare of the country.

The justification for the rule that the crown should not be bound to continue in public service any person whose conduct is not satisfactory. The doctrine is based on public policy, the operation of which can be modified by an Act of parliament. In practice, however, things are different as many inroads have been made now into the traditional system by legislation relating to the employment, social security and labour relations. As De Smith observes: “the remarkably high degree of security enjoyed by established civil servant surpassed only by judiciary, was not recognized by rules applied in the courts”.

A similar rule is embodied in article 310 (1) which lays down that the defense personnel and civil servant of the Union and the members of an All-India service, hold office during the ‘Pleasure of the President’. Similarly, a civil servant in a state holds office ‘during the pleasure of the Governor’.

This is the general rules which operates “doctrine of pleasure” is subject to general constitutional limitations. Therefore, when there is a specific provision in the constitution giving to servant tenure different from that provide in Article 310, then that servant would be excluded from the operation of the doctrine of pleasure. The Supreme Court Judges [Art. 124], Auditor-General [Art.148], High Court Judges [Arts, 217, 218], a member of a Public Service Commission [Art 317], and the Chief Election Commissioner have been expressly excluded by the Constitution from the rules of pleasure.⁶

⁶ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1431

5. CONSTITUTIONAL SAFEGUARDS TO CIVIL SERVANTS

A) Restrictions on the doctrine of pleasure

Article 311 provides the following safeguards to civil servants against any arbitrary dismissal from their posts:

(1) No person holding a civil post under the Union or the States shall be dismissed, or removed by authority subordinate to that by which he was appointed. [Art 311 (1)].

This does not mean that the removed or dismissed 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.⁷

In Mahesh v. State of Uttar Pradesh⁸

The person appointed by the Divisional Personnel Officer, E.I.R., was dismissed by the Superintendent, Power, E.I.R. the Court held the dismissal valid as both the officers were of the same rank.

(2) No such person shall be “dismissed”, “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.

⁷ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 656

⁸ AIR 1955 SC 70

In Khem Chand V. Union of India,⁹

The Supreme Court held that the 'reasonable opportunity envisaged by Art.311 includes:

(1) An opportunity to deny his guilt and establish his innocence which can be only done if he is told what the charges against him are and the allegation on which such charges are based;

(2) An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and also

(3) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do so if the competent authority, after the enquiry is over and after applying his mind to the gravity of the charges, tentatively proposes, to inflict one of the three major punishments and communicates the same to the Government servant.

Originally, the opportunity to defend was given to a civil servant at two stages:

(1) At the enquiry stage, and this is in accord with the rule of natural justice that no man should be condemned without hearing;

(2) At the punishment stage, when as a result of enquiry the charges have been proved and any of three punishments, i.e. dismissal, removal or reduction in rank were proposed to be taken against him.

The Constitution (42nd Amendment) Act, 1976, has abolished the right of the Government servant to make representation at the second stage of the inquiry. The newly added proviso to Art.311 (2) makes it clear that if after inquiry it is

⁹ AIR 1958 SC 300

proposed to impose upon a person any of the three punishments, i.e., dismissal, removal or reduction in rank, they may be imposed on the basis of the evidence given during such inquiry and he shall not be entitled to make any representation. The above mentioned punishments will be imposed on the basis of the evidence adduced during the time of inquiry of charges against the Government servant.¹⁰

In Managing Director, ECIL v. B. Karunakar¹¹

The Supreme Court has held that when the enquiry officer is not disciplinary authority, the delinquent employee has a right to receive the copy of the enquiry officer's report so that he could effectively defend himself before the disciplinary authority. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of the principles of natural justice.

The protection under Article 311 (2) is available only where dismissal, removal or reduction in rank is proposed to be inflicted by way of punishment and not otherwise. 'Dismissal' and 'removal' are synonymous terms but in law they acquired technical meanings by long usage in Service Rules. There is, however, one distinction between the 'dismissal' and 'removal', that is, while in case of 'dismissal' a person is debarred from future employment, but in case of 'removal' he is not debarred from future employment.

i) Termination of Service when amounts to punishment.

The protection of Art.311 is available only when 'the dismissal, removal or reduction in rank is by way of punishment'. The main question, therefore, is to

¹⁰ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 656

¹¹ 1993(4) SCC 727

determine as to when an order for termination of service or reduction in rank amounts to punishment.¹²

In Parshottam Lal Dhingra V. Union of India¹³

The Supreme Court has laid down two tests to determine whether the termination is by way of punishment-

- (1) Whether the servant had a right to hold the post or the rank;
- (2) Whether he has been visited with evil consequences.

If a Government servant had a right to hold the post or rank either under the terms of any contract of service, or under any rule, governing the service, then the termination of his service or reduction in rank amounts to a punishment and he will be entitled to the protection of Art. 311.

The Supreme Court held that the appellant had no right to the post as he was merely officiating in the post and the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government. The appellant was not reduced in rank by way of punishment and, therefore, he cannot claim the protection of Art.311 (2). In a case where a Government servant has no right to hold the post or rank his termination from service or reversion does not amount to punishment, since it does not forfeit any right of the servant to hold the post or rank as he never had that right.

ii) Suspension is not punishment.-

The suspension of a Government servant from service is neither dismissal or removal nor reduction in rank; therefore, if a Government servant is suspended

¹² Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 657

¹³ AIR 1958 SC 36

he cannot claim the constitution guarantee of reasonable opportunity. When, the services of a Government servant are terminated for bonafide reasons as a consequence of the abolition of the post held by him, Art. 311(2) need not be complied with.¹⁴

In Divisional Personnel Officer. Western Railway V. Sunder Das¹⁵

Where an employee is suspended during the disciplinary inquiry but the dismissal order is set aside by the court and a fresh inquiry is ordered against him on the same charge it was held that the initial suspension continued till the final order of dismissal was passed and the employee was entitled to subsistence allowance only and not full wages.

iii) Compulsory retirement simpliciter not punishment.-

A premature retirement of a Government servant in 'public interest' does not cast a stigma on him and no element of punishment is involved in it and hence the protection of Art. 311 will not be available. The expression in the context of premature retirement has a well settled meaning and refers to cases where the interest of public administration require the retirement of a Government servant who with the passage of years has prematurely, ceased to possess the standard of efficiency, competence and utility called for by the Government service to which he belongs. The power to compulsorily retire a government servant is one of the face of the doctrine of pleasure incorporated in Art.310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in

¹⁴ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 659

¹⁵ AIR 1981 SC 2177

order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration.¹⁶

Guidelines for Compulsory retirement Stated

In State of Gujarat v. Umedbhai M. Patel,¹⁷ the Supreme Court has laid down following principles governing compulsory retirement-

1. When the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of 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 wood but the order of compulsory retirement can be based after having due regard to 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 record can also be taken into consideration.

¹⁶ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 659

¹⁷ AIR 2001 SC 1109

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 made in the confidential record that is a fact in favour of the officer.

8. Compulsory retirement shall not be imposed as punitive measure.

B) Article 311 applies to both temporary and permanent servants.-

The constitutional guarantee of reasonable opportunity is available to both permanent and temporary servants. Article 310 makes no distinction between permanent and temporary members of the service or between persons holding temporary or permanent post in the matter of their tenure being dependent upon the pleasure of President or the Governor, so does Article 311 make no distinction between the two classes, both of which are, therefore within its protection and the decisions holding the contrary view cannot be supported as correct. However, if a Government servant is holding a temporary post, termination after reasonable notice cannot entitle him to the protection of the safeguards provided in article 311(2) because he has no right to the post held by him.¹⁸

In Union of India V. Jagdish Prasad¹⁹

Where the petitioner was promoted to a higher post and there was nothing to show that the initial promotion was on permanent basis and in view of this reversion was violative of Art 311 (2).

¹⁸ Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 662

¹⁹ AIR 1982 SC 773

In State of Punjab V. Sukh Raj Bahdur²⁰

The Supreme Court after summarizing the principles relating to the applicability of Art.311 of the temporary servants and probationers laid down the following propositions:

(1) The services of a temporary servant or of a probationer can be terminated under the rules of his employment and such termination without anything more will not attract the operation of Article 311.

(2) The circumstances preceding or attended on the order 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 Article 311.

(5) If there is a full scale departmental enquiry envisaged by article 311, that is, an enquiry officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract article 311.

²⁰ AIR 1968 SC 1089

C] EXCLUSION OF ART.311 (2)

The second proviso to Art 311 (2), in Clauses (a), (b) and (c): lays down three situations with Art 311 (2) does not apply. These clauses are as follows:

- (a) Where a civil servant is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge [Art. 311(2) (a)].

The Supreme Court has emphasized that under Art. 311 (2) (a), the disciplinary authority is to regard the conviction of the concern civil servant has sufficient proof of misconduct on his part. The authority is to decide whether conviction demands the imposition of any penalty and, if so, what penalty. For this purpose, the authority has take into consideration the judgment of the criminal court, the entire conduct of the civil servant, the gravity of the offence, the impact of the offence on the administration, whether the offence was of a technical or trivial nature, and the extenuating circumstances, if any. This the disciplinarily authority has to do ex parte and without giving a hearing to the concern civil servant

Action under Art.311 (2) (a) is to be taken only when the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Art.311 (2). The power has to be exercised “fairly, justly and reasonably”. No hearing need be given while imposing the penalty after conviction on a criminal charge, but “the right to impose a penalty carries with it the duty to act justly”. For example, a government servant convicted for parking his scooter in a no-parking area cannot be dismissed from service.²¹

²¹ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1460

However if the court finds that the penalty imposed by the impugned order is arbitrary, of grossly excessive, or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case, or the requirements of that particular government service, the court will strike down the order.

In Shankar Dass V. India²²

Where the order imposing the penalty of dismissal was set aside as the court found that in the fact-situation, the penalty of dismissal from service was whimsical. The Supreme Court emphasized that the power under cl. (a) of the second proviso to Art. 311 (2) must be exercised “fairly, justly and reasonably” and that “right to impose a penalty carries with it the duty to act justly”.

Dy. Director of Collegiate education, Madras v. S. Nagoor Meera²³

The Supreme Court held that Art.311 (2) (a) speaks of “conduct which has led to his conviction on a criminal charge”. It does not speak of sentence or punishment awarded. The court has ruled that the appropriate course in such cases would be to take action as soon as a government servant is convicted of a criminal charge and not to wait for the appeal or revision against conviction. If however he is acquitted on appeal or other proceeding, the order can always be revised. If the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to, had he continued in service.

(b) Where an authority empowered to dismiss or remove a civil servant or reduce him in rank is satisfied that, for some reason to be recorded by it in writing, it is not reasonably practicable to hold such inquiry [Art. 311 (2) (b)].

²² AI 1985 SC 772

²³ AIR 1995 SC 1364

The important thing to note is that this clause applies only when the conduct of the government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. Before denying a government servant his constitutional right to an inquiry, the paramount consideration is whether the conduct of the government servant is such as justifies the penalty of dismissal, removal or reduction in rank.²⁴

In Union of India V. Tulsiram Patel²⁵

Explaining the scope of the clause, the Supreme Court has said, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the Holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

The decision of the disciplinary authority is final [Art. 311 (3)], provided it records the reasons in writing for denying the inquiry to the concerned civil servant. But a disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily, or out of ulterior motives, or merely in order to avoid the holding of an inquiry, or because the department's case against the government servant is weak and must fail. In such a case, the court can strike down the order dispensing with the inquiry as also the order imposing penalty.

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 give to a civil servant such an opportunity [Art. 311 (2) (c)].

²⁴ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1462

²⁵ AIR 1985 SC 1416

While under clause (b) above, the satisfaction has to be that of the disciplinary authority, under clause (c) it is that of the President or the Governor, as the case may be. The satisfaction of the president or the Governor must be with respect to the security to the expediency or in expediency of holding and inquiry in the interest of the security of the state. Security of state, being paramount all other interests are subordinated to it.

The satisfaction mentioned here is subjective and is not circumscribed by any objective standards. Whereas under Art 311 (2) (b) as stated above, the competent authority is required to record in writing the reason for its satisfaction that it is not reasonably practicable to hold an inquiry, there is no such requirement for recording the reason in Cl. (c).²⁶

In BK Sardari Lal V. Union of India²⁷

The Supreme Court ruled that under this constitutional provision, ‘satisfaction’ must be that of the President of or Governor personally and that function could not be allocated or delegated to anyone else. But this view was overruled in Shamsher Singh, and Sripati Ranjan. Thus, ‘personal satisfaction’ of the President or the Governor is not necessary to dispense with the inquiry. Such ‘satisfaction’ may be arrived at by anyone authorized under the Rules of Business. It is the satisfaction of the president or the Governor in the constitutional sense.

²⁶ Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1462

²⁷ AIR 1971 SC 1547

The Tulsiram Patel ruling has been applied in the following fact-situations under Art. 311(2)(b):

(i) In Satyavir Singh V. Union of India²⁸

The Supreme Court upheld the impugned order of dismissal saying that clause (b) of the second proviso to Art.311 was properly applied in the facts of the case. As held in Tulsiram Patel, “it will not be reasonably practicable to hold an inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails.” In the situation then prevailing, prompt and urgent action was required to bring the situation under control.

(ii) People’s Union for Civil Liberties V. Union Of India²⁹

A sub-inspector of police was dismissed by the Senior Superintendent of Police after dispensing with the inquiry invoking proviso (b) to clause (2) of Art.311. The order of dismissal was challenged but the same was upheld by the Supreme Court. After going through the facts of the case, the Court concluded that the Senior Superintendent of Police “cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the sub-inspector.”

²⁸ 1985 (4) SCC 252

²⁹ AIR 1997 SC 1203

D] Art. 311(3)

“If in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to discuss or remove such person or to reduce him in rank shall be final.”³⁰

This finality clause refers mainly to the situation covered by Art.311 (2) (b), proviso II, mentioned above. The Supreme Court has however ruled that Art. 311(3) does not completely bar judicial review of the action taken under Clause 2(b) of Art.311, second proviso.

In Union of India V. Tulsiram Patel³¹

The Supreme Court held that: “the finality given by clause (3) of Art.311 to the disciplinary authority’s decision that it was not reasonably practicable to hold the inquiry is not binding upon the Court. The Court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the Court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant then the recording of it satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In

³⁰ H.K. SAHARAY The Constitution of India (Eastern Law House Kolkata 4th Ed.2012) at 1030

³¹ AIR 1985 SC 1416

considering the relevancy of the reasons given by the disciplinary authority, the Court will not however, sit in judgment over them, like a court of first appeal.”

In Jaswant Singh V. State of Punjab³²

The Supreme Court has reiterated the proposition that in spite of Art. 311(3) the “finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous consideration or merely a ruse to dispense with the inquiry.

Even the President’s satisfaction under Cl. (c) mentioned above, can be examined by the court on such grounds as mala fides, or being based wholly on extraneous and/or irrelevant grounds.

³² AIR 1991 SC 385

6. CONCLUSION

The Constitution of India through Article 311 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 recognized 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 enables the courts to set aside the disciplinary proceedings on grounds of bias and procedural defects.

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