

LABOUR LAW PROJECT ON

Laws relating to Civil Servants

(Constitutional & Service Laws)

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LAWS RELATING TO CIVIL SERVANTS

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.

Power to Make Rules Governing Conditions of Service

Article 309 of the Constitution reads as follows: -

"309. Recruitment and Conditions of Service of Person Serving the
Union or a State

"Subject to the provisions of this Constitution, Act of the appropriate Legislature may regulate the recruitment, and conditions of service of

person appointed to public services and posts in connection with the affairs of the Union or of any State:

"Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of the State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act".

The above Article empowers the Parliament to make laws to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union. It also authorises the President to make rules for the above purposes until provision in that behalf is made by or under an Act of Parliament.

Parliament has not so far passed any law on the subject. Recruitment and the conditions of service of Central Government servants in general continue to be governed by rules made by the President under Article 309. The rules made under the Article which are relevant for the present purpose are: -

- i. The C.C.S. (Conduct) Rules, 1964.
- ii. The C.C.S. (C.C.A.) Rules, 1965.
- iii. The Railway (D.&A.) Rules, 1968.
- iv. The C.C.S. (T.S.) rules, 1965.

Special Provisions Relating to Certain Categories of Government Servants.

The Constitution also makes special provision relating to conditions of service of certain categories of public services. The more important of these are given below.

All India Services

Under Article 312 of the Constitution, Parliament has enacted the All India Services Act, 1951. Under Sec. 3 of that Act, the President has framed rules regulating various aspects of conditions of services of persons appointed to the All India Services. The three All India Services created so far are

1. the I.A.S.,
2. the I.P.S. and
3. the Indian Forest Service.¹

¹ J.N. Pandey- Constitutional Law of India

Doctrine of pleasure and its proviso article 311 of Indian Constitution

With lot many cases coming with corruption of civil servants and other government official it is interesting to know what procedure has been provided in the constitution of India to punish them.

The doctrine of pleasure owes its origin to common law. The rule in England was that a civil servant can hold his office during the pleasure of the crown and the service will be terminated any time the crown wishes the same rule is applied in India. The member of Defence services or civil services of the union or All-India services hold their office during the pleasure of president. Similarly member of state services holds the office during the pleasure of governor. the provisions related to services under union and state is contained under part XIV of the Indian constitution.

The article 310 of Indian constitution reads that "Except as expressly provided by this Constitution, 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.

"Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be of the Governor of the State, any contract under which a person, not being a member of a Defence service or of an All-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate the post".

Now if such powers are given to president of India and the governor of states than it would be really difficult to exercise power on them so there are certain offices which are outside the purview of article 310 and article 311 was put as a restriction to doctrine of pleasure.

Services excluded from the purview of Article 310

- 1.Tenure of supreme court judges{Article124}
- 2.Tenure of high court judges{Article148(2)}
- 3.The chief election commissioner{Article324}
- 4.Chairman and member of public- service commission{Article317)

The article 311 acts as a safeguard to civil servants. It reads as under;

(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 an 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: Provided that where, it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply —

(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.

(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 dismiss or remove such person or to reduce him in rank shall be final."

The procedure laid down in Article 311 is intended to assure, first, a measure of security of tenure to Government servants, who are covered by the Article and secondly to provide certain safeguards against arbitrary dismissal or removal of a Government servant or reduction to a lower rank. These provisions are enforceable in a court of law. Where there is an infringement of Article 311, the orders passed by the disciplinary authority are void ab-initio and in the eye of law "no more than a piece of waste paper" and the Government servant will be deemed to have continued in service or in the case of reduction in rank, in his previous post throughout. Article 311 is of the nature of a proviso to Article 310. The exercise of pleasure by the President under Article 310 is thus controlled and regulated by the provisions of Article 311.

When termination of service will amount to punishment of dismissal or removal.

1. Whether termination of service of a Government servant in any given circumstance will amount to punishment will depend upon whether under the terms and conditions governing his appointment to a post he had a right to hold the post but for termination of his service. If he has such a right, then the termination of his service will, by itself, be a punishment for it will operate as a forfeiture of his right to hold the post. But if the Government servant has no right to hold the post the termination of his employment or his reversion to a lower post will not deprive him of any right and will not, therefore, by itself be a punishment.

2. If the Government servant is a temporary on and has no right to hold the post, dismissal or removal will amount to punishment if such a Government servant has been visited with certain evil consequences.

When Article 311 is applicable.

The most notable point is that Article 311 is available only when ` dismissal, removal, reduction in rank is by way of punishment ` .so it is difficult to determine as to when an order of termination of service or reduction in rank amounts to punishment

in case of *Parshottam Lal Dhingra Vs Union of India*.² The supreme court laid down 2 tests to determine when termination is by way of punishment – Whether the servant had a right to hold the post or the rank; Whether he has been visited with evil consequences.

If a government servant had a right to hold the post or rank 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 protection under Article 311. Articles 310 and 311 apply to Government servants, whether permanent, temporary, officiating or on probation.³

² AIR 1958 SC 36

³ J.N. Pandey- Constitutional Law of India

Exceptions to Article 311 (2)

The provision to Article 311 (2) provides for certain circumstances in which the procedure envisaged in the substantive part of the clause need not be followed. These are set out below. Conviction on a criminal charge. - One of the circumstances excepted by clause (a) of the provision is when a person is dismissed or removed or reduced in rank on the ground of conduct which has laid to his conviction on a criminal charge. The rationale behind this exception is that a formal inquiry is not necessary in a case in which a court of law has already given a verdict. However, if a conviction is set aside or quashed by a higher court on appeal, the Government servant will be deemed not to have been convicted at all. Then the Government servant will be treated as if he had not been convicted at all and as if the order of dismissal was never in existence. In such a case the Government servant will also be entitled to claim salary for the intervening period during which the dismissal order was in force. The claim for such arrears of salary will arise only on reinstatement and therefore the period of limitation under clause 102 of the Limitation Act would apply only with reference to that date . The grounds of conduct for which action could be taken under this proviso could relate to a conviction on a criminal charge before appointment to Government service of the person concerned. If the appointing authority were aware of the conviction before he was appointed, it might well be expected to refuse to appoint such a person but if for some reason

the fact of conviction did not become known till after his appointment, the person concerned could be discharged from service on the basis of his conviction under clause (a) of the proviso without following the normal procedure envisaged in Article 311.

2. Impracticability - Clause (b) of the proviso provides that where the appropriate disciplinary authority is satisfied, for reasons to be recorded by that authority in writing that it does not consider it reasonably practicable to give to the person an opportunity of showing cause, no such opportunity need be given. The satisfaction under this clause has to be of the disciplinary authority who has the power to dismiss, remove or reduce the Government servant in rank. As a check against an arbitrary use of this exception, it has been provided that the reasons for which the competent authority decides to do away with the prescribed procedures must be recorded in writing setting out why it would not be practicable

to give the accused an opportunity. The use of this exception could be made in case, where, for example a person concerned has absconded or where, for other reasons, it is impracticable to communicate with him.

3.Reasons of security - Under proviso (c) to Article 311 (2), where the President is satisfied that the retention of a person in public service is prejudicial to the security of the State, his services can be terminated without recourse to the normal procedure prescribed in Article 311 (2).The satisfaction referred to in the proviso is the subjective satisfaction of the President about the expediency of not giving an opportunity to the employee concerned in the interest of the security of the State. This clause does not require that reasons for the satisfaction should be recorded in writing. That indicates that the power given to the President is unfettered and cannot be made a justifiable issue, as that would amount to substituting the satisfaction of the court in place of the satisfaction of the President.

Is suspension or compulsory retirement a form of punishment? Neither suspension nor compulsory retirement amounts to punishment and hence they can't be brought under the purview of Article 311 and has no protection is available.

Supreme court in case of such *Bansh singh Vs State of Punjab*⁴ clearly held that suspension from service is neither dismissal nor removal nor reduction in rank, therefore, if a Government servant is suspended he cannot claim the constitutional guarantee of Article 311[2]

⁴ AIR 1957

In *Shyam Lal Vs State of U.P.*,⁵ Supreme Court held that compulsory retirement differ from dismissal and removal as it involves no penal consequences and also a government servant who is compulsory retired does not loose any part of benefit earned during the service so it doesn't attract the provisions of Article 311.

Other safeguards to civil servants
Article 311(1) : It says that a civil servant cannot be dismissed or removed by any authority subordinate to the authority by which he was appointed

Article 311(2): It says that a civil servant cannot be removed or dismissed or reduced in rank unless he has been given a reasonable opportunity to show cause against action proposed to be taken against him.

In many cases like in *Khem Chand vs. Union of India*⁶, and in *Union of India and another vs. Thusiram Patel*⁷, the Supreme Court gave an exhaustive interpretation of the various aspects involved and they provide the administrative authorities authoritative guidelines in dealing with disciplinary cases.

⁵ 1954 INSC (33)

⁶ AIR 1958

⁷ 1985(2) SLR SC 576

Is article 310 and 311 contrary to article 20(2) of Indian constitution or to the principle of natural justice? When a government servant is is punished for the same misconduct under the army act and also under central civil services (classification and control and appeal) rules 1965 then the question arises that can it be brought under the ambit of double jeopardy. The answer was given by supreme court in the case of *Union of India Vs Sunil Kumar Sarka*,⁸ held that the court martial proceeding is different from that of central rules , the former deals with the personal aspect of misconduct and latter deals with disciplinary aspect of misconduct.

Ordinarily , natural justice does not postulate a right to be represented or assisted by a lawyer ,in departmental Inquiries but in extreme or particular situation the rules of natural justice or fairness may require that the person should be given professional help.

Public Service Commissions

Articles 315 to 323 explain the provisions about Public Service Commissions.

Important Points

1. There shall be a Public Service Commission for the Union and a Public Service Commission for each State. Two or more States

⁸ AIR 2001 SC 1092

may agree and constitute a Joint Public Service Commission. (Art. 315)

2. Appointment and term of office of members: The Chairman or other members of the Union Public Service Commission or Joint Public Service Commission shall be appointed by the President. In case of The State Commission the Governor appoints the Chairman and other members. The member shall hold the office for a term of 6 years from the date on which he enter upon the office. (Art. 316)
3. Removal and Suspension of a member: Any member or Chairman of the Union Public Service Commission shall be removed by the President on the ground of misbehavior or is adjudged an insolvent or engaged during the term of his office in any paid employment outside the duties of his office or any other ground after an inquiry. (Art. 317)
4. Power to make rules and regulations: In case of Union Commission- the President and in case of State Commission- The Governor is empowered to make rules and regulations. (Art. 318)
5. Prohibition as to the holding of offices: The Chairman of a Public Service Commission, after completing his tenure, is not entitled to seek further employment either under the Government of India or under any State Government. However, he may be appointed as the Chairman of the Union or any other Public Service Commission. (Art.319)
6. Functions of Public Service Commission: Art 320 lays down that it shall be the duty of the Union and State Public Service

Commission to conduct examinations for appointments to the services of the Union and the State respectively.

7. Article 321 empowers the Parliament and State legislature to make laws extending the functions of the Public Service Commissions.
8. Article 323 provides that it shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission. Such report shall be presented before the Parliament. Similarly, the State Commission shall present it before the Governor which shall be presented before the State Legislature.

Remedies to Civil Servants - Writ Jurisdiction of the High Courts & Supreme Court of India

Writ Petitions can be filed either in the Supreme Court under Article 32 of the Constitution of India or in the High Court under Article 226 of the Constitution of India. The Supreme Court and the High Courts can even be moved by a letter or a post card in theory. The letter should not be addressed to any judge by name. The following are the types of Writ Petitions

1. **Habeas Corpus**: If there is a complaint by any person that he/she is being detained illegally or improperly, the law has provided means to set him/her at liberty. One of them is by writ of Habeas Corpus. It is therefore a process by which a person who is in illegal confinement may secure his/her release from such confinement. It can also be filed by a family member/friend to secure the release of the person detained.

2. **Mandamus**: It is, in form, a command directed to some Corporation or person requiring the performance of a particular duty specified therein which duty results from the official position of the party to whom the writ is directed, or from operation of law. Mandamus can be granted only when there is a right to the applicant to compel the performance of some duty cast on the respondent.

Mandamus can be issued when there is refusal to perform a public duty- The Writ of Mandamus is a very wide remedy available against public officers to see that they do their public duty as ordained by the statute. A member of public can draw the attention of the Court and enforce public duty by invoking this discretionary remedy.. The remedy allows an application to be made by any member of the public, though the Court will not permit use of it to a mere busy body who is interfering in things, which do not concern him. [*Alphonse v. State of Kerala*⁹,]

3. Prohibition: This writ is issued to prevent judicial or quasi-judicial authority or authorities amenable to writ jurisdiction from acting in excess of authority. If such person passes an order or is about to pass an order which it has no jurisdiction to pass or which does not conform to the basic principles of natural justice, a writ can be issued against it.

4. Quo-Warranto: A prerogative writ which can be granted by the Supreme Court and High Courts in India to inquire from the other party by what authority he/she claimed or usurped the office, franchise or liberty in order to determine the right. The object is to restrain a person who is illegally holding an office from continuing in that office.

⁹ 1986 KLT 1376, Varghese Kalliath (J)

5. Certiorari: It is a command to an inferior court or tribunal/or a body acting in judicial capacity, or quasi- judicial, to transmit the records of a cause or matter pending before them to the superior court, when the inferior court acts in excess of authority or in disregard to the principles of natural justice.

6. Certiorarified Mandamus: This expression means a merger of two writs i.e. Certiorari and Mandamus. Mandamus comes in to help Certiorari, which can only quash the order. Therefore Mandamus is required to direct rectification or defect or for suitable direction.

If you require an urgent interim order like a stay order, an injunction preventing some act from being done, it can be done by a separate writ miscellaneous petition.

Writ Jurisdiction of the High Courts

Article 226 of the Constitution empowers every High Court throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari for the enforcement of the fundamental rights or for any other purpose. However, the view

expressed by the Supreme Court in the matter of application of Art. 226 where no fundamental right is involved is that a High court would not exercise its jurisdiction when an alternative, adequate and efficacious legal remedy is available and the petitioner has not availed of the same before coming to the High Court.

Article 226 reads as under:-

1. Notwithstanding anything contained in article 32, every High Court shall have the power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any rights conferred by Part III and for any other purpose,
 1. -A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority, or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government authority or the residence of such person is not within those territories;
 2. The power conferred on a High Court by Clause (1) or Clause (1A) shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32.

As per Sub-clause (1) of Article 216 the relief under writ powers of the High Court is available in respect of the following two contingencies:

1. For the enforcement of any fundamental right conferred by Part III of the Constitution, and
2. For any other purpose.

The relief in a writ proceeding can be claimed as a matter of right where infringement of fundamental rights and violation article 311(1) are concerned. In other cases contemplated by the words "for any other purpose" the relief is discretionary.

Writ Jurisdiction of the Supreme Court:

Part III of the Constitution guarantees the Fundamental Rights to the citizens and persons within India. The Supreme Court of India has been made the custodian of the fundamental rights by Article 32 of the constitution.

Article 32 states that the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights, is guaranteed. The Supreme Court has power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate for the enforcement of any of the Fundamental Rights. The right guaranteed by Article 32 cannot be suspended except as otherwise provided for by the Constitution.

The Writ jurisdiction of Supreme Court as per Article 32 of the Constitution of India reads as under:-

1. The right to move the Supreme Court by appropriate proceedings for the enforcement of rights conferred by this part is guaranteed.
2. The Supreme Court shall have the power to issue directions, orders, or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.
3. Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by Supreme Court under Clause (2).
4. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

While it is to open to the citizens to approach either the Supreme Court or the High Court having jurisdiction, it is always preferable to approach the high Court for quicker remedy and easy access.

Where the Writ jurisdiction can effectively provide relief-

1. Though the relief under writ proceedings is discretionary "for any other purpose", it can be claimed as a matter of right where infringement of fundamental rights and violation of Article 311 (1) are concerned.

Writs under Article 226 have to be issued in grave cases where the subordinate tribunal or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission, error, or excess has resulted in manifest injustice. (G.Veerappa Pillai vs. Raman and Raman Ltd.)

¹⁰Whenever an order of dismissal is challenged by a writ petition under Art. 226, it is for the High Court to consider whether the constitutional requirements of Article 311 (2) have been satisfied or not. The inquiry officer may have acted bonafide, but that does not mean that the discretionary orders passed by him are final or conclusive. Whenever it is urged before the court that as a result of such orders the Public Officer have been deprived of a reasonable opportunity, it would be open to the High Court to examine the matter and decide whether the requirements of Art 311(2) have been satisfied or not[(State of Madhya Pradesh vs. Chintaman Waishampayan)¹¹,

PUBLIC SERVICE TRIBUNAL

Till 1970, adjudicating service matters fell under the jurisdiction of Civil Courts. With the passage of time, this branch of Law grew

¹⁰ AIR 1952 SC 192

¹¹ AIR 1961 SC 1623]

more complex and complicated, hence need was felt for specialised courts and Advocates to deal with the same. The post 1970 era witnessed

the setting up of specialised courts or Public Services Tribunals (hereinafter referred to as the Tribunal) which took up cases concerning only service matters. A Tribunal is basically a specialised court, concerning a specific or particular branch of Law. A Tribunal is empowered by the State to decide disputes, concerning a specific matter. Special and specific Tribunals like Debt Recovery Tribunal, Income Tax Appellate Tribunal and Public Services Tribunal etc. are located in different parts of the State. The Public Services Tribunal, its jurisdiction and functioning are governed by Article 323-A of the Constitution of India which runs as follows:

Parliament may, by Law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to 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 or of the Government Of India or of any corporation owned or controlled by the Government.

The article further provides for the establishment of Administrative Tribunal for the Union and the States, specifies the jurisdiction and powers of such Tribunals, procedure to be followed by the

Tribunals, excludes the jurisdiction of all courts except that of the Supreme Court under article 1362 of the Constitution of India , etc.

TYPES OF PENALTIES

- After the completion of inquiry, the Disciplinary Authority considering the facts and charges in the charge-sheet, findings of the Inquiry Officer, submissions made by the Government servant in response to the charge-sheet, may impose for good and sufficient reason upon the Government servant any of the Major or Minor Penalties.

MINOR PENALTIES

- a. Censure: It is a minor or small adverse entry which is made in the character role of the Government servant. In case of awarding a censure entry as punishment, the rule laid down is that the entry must be made in the character role of the year in which the departmental inquiry concluded and not in the year in which the alleged incident against the Government servant occurred.
- b. Withholding of increments for a specified period;
- c. Stoppage at an efficiency bar;
- d. Recovery from pay of the whole or part of any pecuniary loss caused to
- e. Government by negligence or breach of orders.

MAJOR PENALTIES

- a. Withholding of increments with cumulative effect;
- b. Reduction to a lower post or grade or time scale or to a lower stage in a time scale;
- c. Removal from service which does not disqualify from future employment,
- d. Dismissal from service which disqualifies from future employment.

PRELIMINARY INQUIRY: Sometimes, the Disciplinary Authority may appoint a Preliminary Inquiry Officer to look into the alleged charges against the Government servant. Such an inquiry which is conducted by a Preliminary Inquiry Officer cannot be termed as a full-fledged inquiry. Further if the Preliminary Inquiry Officer finds the Government Servant

prima-facie guilty of the alleged misconduct, he may prepare a charge-sheet of the same and produce it before the Disciplinary Authority. The Government servant may not be aware of such preliminary inquiry. The Disciplinary Authority may on the basis of such charge-sheet, as submitted by the Preliminary Inquiry Officer proceed to initiate a full-fledged departmental inquiry.

However, the departmental inquiry must not proceed from the point where the preliminary inquiry was left, but it should start afresh. It is also an established rule, that the Preliminary Inquiry Officer cannot be appointed as an Inquiry Officer in the full-fledged inquiry, as he may be prejudiced towards the Government servant, because he has already framed a charge-sheet against him in the preliminary inquiry.

PROCEDURE FOR CONDUCTING THE INQUIRY IN CASE OF

IMPOSING A MAJOR PENALTY

The Appointing Authority or the Disciplinary Authority has to issue an order, allowing the initiation of Disciplinary Proceedings against the Government servant. Sometimes the Governor of the State has to do the same, as he is the Appointing Authority of specified Government servants. The Disciplinary Authority may himself inquire into the charges or

appoint an officer subordinate to him as Inquiry Officer to inquire into the charges. The facts constituting the misconduct on which it is proposed to take action shall be reduced in the

form of definite charge or charges to be called the charge-sheet.

The charge-sheet shall be approved by the Disciplinary Authority.

The charges framed shall be so precise and clear as to give

sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of the witnesses proposed to prove the same along with oral evidence, if any, shall be mentioned in the charge-sheet. The charged Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and state whether he desires to cross-examine any witnesses mentioned in the charge-sheet and whether he desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex-parte.

It has been laid down in *Radhey Kant Khare v. U.P. Co-Operative Sugar Factories Federation Ltd.*¹² That after a charge-sheet is given to the employee, an oral enquiry is must and notice should be given to the employee intimating him date, time and place of inquiry. It has

also been laid down in this case that if an opportunity to the employee concerned to produce witnesses, lead evidence in defence, and cross-examine the witnesses or to rebut the evidence against him is not given then the whole inquiry is liable to be

¹² 2003 L.C.D. 610

declared invalid inquiry and the punishment on the basis of such inquiry report is not sustainable.

It is settled Law that the documents relied in support of the charge, have to be proved in the departmental inquiry by the Inquiry Officer in the presence of the delinquent employee. The delinquent employee is also at liberty to ask for documents in case they are mentioned in the

charge-sheet, but the same have not been annexed with the charge-sheet. Also, if the documents on which the charges are to be proved are not annexed with the charge-sheet or they cannot be supplied, then opportunity of inspection of such documents has to be provided. Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission. Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence

of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence. The Inquiry Officer may ask any question he pleases, at any time from any witness or from the person charged with a view to discover the truth or to obtain

proper proof of facts relevant to charges. The Disciplinary Authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as 'Presenting Officer' to present on its behalf the case in support of the charges. The charged Government servant may take the assistance of any other Government servant to present the case on his behalf but not

engage a legal practitioner for the purpose, unless the Inquiry Officer appointed by the Disciplinary Authority, having regard to the circumstances of the case, so permits.

PROCEDURE FOR IMPOSING MINOR PENALTIES: The Government servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and

where a penalty is imposed, reason thereof shall be given. The order shall be communicated to the concerned Government servant.

SUBMISSION OF INQUIRY REPORT: When the inquiry is complete, the Inquiry Officer shall submit its inquiry report to the Disciplinary Authority along with all the records of the inquiry. The Inquiry Report shall contain a sufficient record of brief facts,

the evidence and statement of the findings on each charge and the reasons thereof. The Inquiry Officer

shall not make any recommendation about the penalty.

Conclusion

Civil servants cant make mockery of law if they are guilty then they will be punished and no matter what position they hold. So, the main reason for which article 310 and 311 has been envisaged in the constitution by the makers of constitution is still working today but it is interesting to note that the framers of the constitution had an insight of corruption in near future that's why such provisions were included.

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