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Concept - Protection of civil servants

Protection of civil servants

INTRODUCTION

The Government of India is the largest employer of the people of India. The Railways provide the most number of jobs. There are nearly 6.4 million people employed by the Government. These do not include the jobs in Public Sector Undertakings. For the administration and the for the government to function effectively and efficiently, a contingent of trained civil servants is essential. The concept of Civil Service was evolved and brought in during the British Era and still continues to be a coveted position for service. A competent civil service is imperative for the attainment of socio-economic ideals of a welfare state.

India is the only country where the laws in relation to the Civil Services are provided in the Constitution. The members of the Indian Civil Services were considered as the ‘steel frame’ of the British Government of India. They wanted their conditions of service to be protected by the Constitution and the same to be followed for the civil services of Independent India. This was done so that the services can remain independent from various political agendas. Articles 308 to 323 of the Indian Constitution provide protection to the Civil servants. The role of civil services is extremely important in India as they help to execute the policies and programmes of the Government. The civil servants must have qualities such as honesty, loyalty, fairness, dynamism, impartiality and so on.

SERVICE RULES

Article 309 talks about the recruitment and conditions of services of persons serving the Union or any State. It states:

“Recruitment and conditions of service of persons serving the Union or a State Subject to the provisions of this Constitution, Acts of the appropriate Legislature may 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: 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 a 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 conditions of services must conform to the provisions of the Constitution that are mandatory and cannot violate any fundamental rights.

In **West Bengal Electricity Board v. Desh Bandhu Ghosh**[1], it was held that the service rules providing for termination of services n three months notice on either side was arbitrary and thus violative of Article 14.

In **Moti Ram v. N.E. Frontier Railways**[2]**,** it was held that termination of services of permanent employees by giving them notice for the mentioned period under Rules 148(3) and 149(3) violated Article 311.

Doctrine of pleasure

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 Indian Constitution incorporates the Common Law Doctrine of Pleasure. This doctrine is based on public policy. The provisions related to services under union and state is contained under part XIV of the Indian constitution.

In England, the normal rule is that a civil servant of the Crown holds his office till the pleasure of the Crown. This means that his services can be terminated at any point seen fit by the Crown without reason. Even if a contract of employment exists, the Crown is not bound by it. The servant may not also claim any damages for premature termination.

The article 310 of Indian constitution reads that

[1] *(1985) 3 SCC 116*
[2] *AIR (1964) SC 600*

"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".

Article 310 of the Constitution has integrated this doctrine and provides that all persons who are members of the Defense Services or the Civil Services of the Union or All India Services hold office during the pleasure of the President. Similarly, members of State Service hold their positions during the pleasure of the Governor. This is not exactly like English law, as here, the servants may sue the Crown for arrears of salary as stated in **State of Bihar v. Abdul Majid**[3]. The power of the President or Governor to dismiss civil servants is not a personal right. It should only be exercised with the aid and advice of his Council of the Minister. Any law cannot abrogate the Doctrine of Pleasure but in England, it can be omitted by any act of parliament as there, the Constitution is unwritten There also exists a certain provision under Article 310 that allows abolishment of a post.

The Supreme Court of India has justified the Doctrine of Pleasure on the grounds of Public Policy, public interest, and public good. A misconduct committed by a servant not only while performing his official duties but also in his private lie may be punished under the Government under Article 310. Only Civil Services and various other posts under State are subject to the Doctrine of Pleasure.

[3] *AIR (1954) SC 425*

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)

LIMITATIONS TO THE DOCTRINE OF PLEASURE

Some restrictions placed on the usage of the Doctrine are –

1. The application of the doctrine is checked by the provisions of Articles 14,15, and 16. Article 14 prohibits discriminatory and arbitrary termination of service. Article 15 puts a stop to termination on the basis of religion, race, caste or place of birth.
2. Article 320(3) provides that the Union or State Public Service Commission is to be consulted in all disciplinary matter affecting civil servants.
3. Measures provided under Article 311 –

1. No dismissal or removal of a member of Civil service of Union or State by an authority subordinate to that which made the appointment.
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

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[4] The supreme court laid down 2 tests to determine when termination is by way of punishment –

a. Whether the servant had a right to hold the post or the rank;
b. 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.

[4] AIR1958 SC 36.

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.

1. 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 thefact 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 Article311 and has no protection is available.

Supreme court in case of such Bansh singh Vs State of Punjab[5] 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

In **Baikunth Das v. Chief Medical Officer**[6] it was held that the matter of compulsory retirement is on the basis of subjective satisfaction and not on the basis of any behavior. The proceedings are also not quasi-judicial and hence the principles of natural justice are not attracted.

In Shyam Lal Vs State of U.P[7] Supreme Court held that compulsory retirement differ from dismissal and removal as it involves no penal consequences and also a government servant who

[5] AIR 1962 SC 1711
[6] *(1992) 2 SCC 299*
[7] AIR1954 SC 369

is compulsory retired does not lose 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[8], and in Union of India and another vs. Tlusiram Patel[9], 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.

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 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 Sarkar[10] 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.

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[8] AIR 1958 SC 300
[9] 1985(2) SLR SC 576
[10] AIR 2001 SC 1092

Conclusion

In cases like that of Pradeep Sharma, the encounter specialist of Mumbai police who has links with underworld and other charges of corruption was dismissed from his post which proves that civil servants cant make mockery of law if they are guilty then they will be punished and no matter what position they held. 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 framer of the constitution had a insight of corruption in near future that's why such provisions were included.