
CONSTITUTIONAL SAFEGUARDS FOR CIVIL SERVANTS IN INDIA - A STUDY OF ARTICLE 311 AND JUDICIAL INTERPRETATION

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ABSTRACT

Civil Services constitute the backbone of Indian Administrative System. It is therefore, necessary that India's administrative system must ensure efficiency, transparency and protection from arbitrary action of the executive. The comprehensive regulatory framework with regards to civil services in India has been provided by the Indian Constitution under Article 311 in Part XIV. It acts as a safeguard against the doctrine of pleasure enshrined under Article 310. This study undertakes doctrinal study of the constitutional provisions providing protections to civil servants in India under Article 311 of the Constitution and role of this provision as a limitation upon the doctrine of pleasure enshrined under Article 310 of the Constitution. This paper further evaluates the scope and applicability of these safeguards to the permanent, temporary or probationary employees while examining the exceptions to the rule of natural justice enshrined under Article 311(2). Through case studies this research paper highlights how constitutional provisions strike an equilibrium between effective administrative functioning and the protection of individual security of tenure afforded to civil servants. This research study concludes that Article 311 plays a pivotal role in preventing arbitrary exercise of action by the executive ensuring fairness, transparency and accountability in public administrative services.

Keywords: Indian Administrative Service, Article 311, Accountability, Transparency, Fairness, Doctrine of Pleasure.

INTRODUCTION

Since the country gained its independence, the civil services has been a key factor involved in the running of the countries government services, it has turned out to be one of the most significant machinery whose performance must always be best to make country run peacefully towards progress. Article 308 to 323 of the Constitution provides in detail Central and State services. The civil services are a sort of enforcement mechanisms of the regulations and policies that are formulated by the government to govern the country. The individuals employed in the civil servants commonly known as civil servants are those individuals who drive this piece of machinery to run the governance of the country. The security of the civil servants also entails that civil servants must not be dismissed randomly but giving them fair opportunity of being heard. Under Civil Services proper balance must be ensured so as not to paralyse the government machinery and balance up on the side of the Constitution safeguards to civil servants provided under the Constitution of India. The safeguards to the civil servants are enshrined under Part XIV, Article 311 of the Constitution. Article 311 provides for the limitation on the Doctrine of Pleasure given under Article 310. It protects the civil servants which holds the civil posts by providing safeguards from any arbitrary or unreasonable actions of the authorities.

CIVIL POST AND CIVIL SERVANT

The protection guaranteed under Article 311 is confirmed to persons holding civil posts under the Union or a State that is why these constitutional safeguards do not extend to members of the armed forces or to civilian personnel employed in defence services, as they are governed by different legal framework. Civil post as held in the case of *Sher Singh v. State of M.P.*¹ refers to appointment or employment for the civil administration. In case of *State of UP v. Audh Narain Singh & Anr.*², the Supreme Court negated that a person does not have the civil post where relationship of master and servants exists between the State and the person who holds the post. Relationship is determined when the State has the right to choose and appoint the person to hold the post, right to regulate his performance at his work and payment of his own wages or remuneration by the State.

Employees of universities or registered societies are also not regarded as holders of civil posts.

¹ *Sher Singh v. State of M.P.*, AIR 1955 Nag. 175.

² AIR 1965 SC 360

If someone is appointed without following the correct recruitment and procedure, their appointment will be deemed unlawful and may be terminated without adhering to the safeguards.³ In the case of *J.S. Sehrawat v. Delhi Urban Shelter Improvement Board*⁴ It was decided that the Delhi Urban Shelter Improvement Board was not an autonomous board and that its employees were not protected by Article 311 of the Constitution because they were not considered as civil servants.

An employment in police is also held to be civil post.⁵ Employees of government companies or statutory corporations registered under the Companies Act are not considered civil servants.⁶ In another case of *P.L. Dhingra v. Union of India*⁷, Supreme Court in a landmark judgement if certain requirements are met, an individual holding a temporary position, a probationer holding a permanent position, or someone officiating against a permanent position may likewise hold a civil position. Thus, for the first time while defining civil post the Supreme Court has expanded the definition of a civil post to include temporary employees, probationers, and those who serve in opposition to permanent positions.

The Supreme Court has also clarified the test to determine whether one is a holder of a 'civil post' or not. In *State of Assam v. Kanak Chandra Deka*⁸ the court has observed that if a post is under the administrative control of the Government, such a post is to be regarded as one under the State. The Government is said to have administrative control over a post if the State has the power to create, control, regulate and abolish the post.

DOCTRINE OF PLEASURE

To understand the safeguards to civil servants it is necessary to know about the Doctrine of pleasure as the provision under Article 311 act as restriction on the Doctrine of pleasure. In England the provision for civil servants is that they hold their offices during the pleasure of the Crown i.e. a civil servant may be terminated from his office without giving any explanations or reasons. The crown is not bound by an employment contract, even if one exists. This philosophy, which is founded on public policy, states that a civil servant who is fired from his

³ *State Of Jharkhand v. Manshu Kumbhkar* (2008) 1 SLR 1 (SC).

⁴ (2017) SCC OnLine Del 7219 (Del HC).

⁵ *Jagannath Prasad v State of U.P.*, AIR 1961 SC 1254.

⁶ *Sukhdev Singh v Bhagat Ram*, AIR 1975 SC 1331

⁷ AIR 1958 SC 36.

⁸ AIR 1967 SC 886.

position is not entitled to damages or wage arrears.

Article 310 embodies the doctrine of pleasure; it lays down that the defence personnel and civil servants of the Union and the members of All India Service holds office during the pleasure of the president in the same way civil servant in state holds office during the pleasure of the governor⁹. The doctrine of pleasure is restricted by itself because in the provision the words mentioned are “except as expressly provided by this Constitution”, and doctrine of pleasure is further limited by Article 311 (2).

SAFEGUARDS TO CIVIL SERVANTS

ARTICLE 311 (1)

According to this clause, any person appointed in civil services, whether all India services, or civil position under Union or a State shall not be fired or removed by any such authority who is subordinate to the one that appointed them.

In the case of *Mahesh v. State of Uttar Pradesh*¹⁰ the person appointed by the Divisional Personnel Officer, East Indian Railways was dismissed by the authority who was a Superintendent in Power department of East Indian Railways (EIR), the dismissal was challenged and the court held that as both the officers were of the same rank therefore dismissal was valid further it was also held by the court that no person can be “dismissed”, “removed” or “reduced” in rank unless he has been inquired in which he has been informed of all the charges against him and he has also been given reasonable opportunity of being heard for the charges against him.

Appointing Authority: The power to remove or terminate civil servant’s employment is vested in the authority that appoints them. No authority that is subordinate to the appointing authority may be granted this jurisdiction to remove or dismiss someone. In the case of *State of U.P v. Chandrapal Singh*¹¹ the Supreme Court ruled that the government may establish regulations allowing any other authority to start disciplinary actions as long as they are not subservient to the appointing authority.

⁹ The Constitution of India, art. 310 (1).

¹⁰ AIR 1955 SC 70.

¹¹ 2003 INSC 170.

In *Smt. Kanti Devi v. Union of India*¹² in this case the Reserve Police Force Act of 1949 gave the commandant general or inspector general the authority to appoint subedars under the CRPF rules of 1955. The Supreme Court affirmed that the previous officer is regarded as the appointing authority in the case where a statutory provision grants previous officer the right to make appointments to be exercised on the recommendation of another officer.

DISMISSAL, REMOVAL OR REDUCTION IN RANK:

No definition has been provided for the term dismissal and removal under the Constitution of India. Though the words dismissal and removal are used as synonyms but under service laws there is a distinction between two of them, dismissal being more serious as the person is debarred from being engaged in any future employment but in case of removal the person is removed from present services and not debarred from engagement in any future employment.¹³ Both of these must not be taken lightly as they are form of punishment given in case of misconduct or inefficiency in service and in serious cases it can invite even penal consequences which may include forfeiture or postponement of future chances of promotion, the right to salary, allowances and even pension.

A person dismissed from his service not only losses the job and all attendant benefits but also becomes disqualified from holding future employment with the government, therefore dismissal is considered as a very severe punishment that is why before imposing this major penalty a proper application of mind is a must by the authorities.

Removal from service is also another major punishment, it can only be effected only after completion of the procedural safeguards.

Reduction in rank means demotion in position the person holds but not in duties or powers. The Supreme Court held that the reduction in rank can only be of a who was promoted that is only a promoted can be reverted to lower post but a person who was appointed to direct post cannot be reverted to the lower post which has never been held by that person.¹⁴

¹² 2003 JT 165 (SC)

¹³ *Mod. Abdul Salim Khan v. Sarfaraz.*, AIR 1975 SC 1064.

¹⁴ *Hussain Sasansaheb v. State of Maharashtra*, AIR 1987 SC 1627.

ARTICLE 311 (2)

The article states that any such person as mentioned in the first clause of Article 311 shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. It is a very important constitutional safeguard which follows the principal of natural justice and allows reasonable opportunity of being heard before taking any action against the civil servant. But he is entitled to safeguard only when he is being dismissed, removed or reduced in rank only by way of penalty.

The provision adds to main things one is inquiry and other is reasonable opportunity. It becomes important to discuss the inquiry and reasonable opportunity under this provision.

- **INQUIRY AND REASONABLE OPPORTUNITY**

It is important to follow the principle of natural justice and one of the principles is giving the opportunity of being heard. According to Article 311(2), a civil servant cannot be fired or demoted until he has been given a reasonable chance to be heard or to present evidence against the proposed action against him. This is because the inquiry is one method of providing the civil servant with a reasonable opportunity to present his case. The meaning of reasonable opportunity has been discussed in the case of *Khem Chand v. Union of India*¹⁵. When the appellant, who was employed by the government, received a chargesheet, an investigation was conducted, and the order of dismissal was delivered to him based on the investigation's findings, the appellant contested the order's legality on the ground that, in accordance with the requirements of Article 311, he was not provided with a copy of the inquiry report and was not given a chance to object to the proposed action against him.

Supreme Court held that the order of dismissal was unconstitutional as it was violative of Article 311 (2), further Supreme Court explained that the term 'reasonable opportunity' includes:

- It is an opportunity to prove innocence and refute the accusations made against him which is only possible if he is informed of the accusations.

¹⁵ AIR 1958 SC 300

- Opportunity to defend oneself through cross-examination of witnesses, self-examination and of other witnesses in his defence and
- The reasonable opportunity also means an opportunity to make his representation as to why the punishment should not be given to him, which can only be done when punishment has been stated after the completion of inquiry. The person must also take into account the gravity of charges against him while making such representation

A civil servant was initially offered the chance to defend in two stages:

- The inquiry stage – following the principle of natural justice that not one should be sentenced or given punishment without a trial.
- At the punishment stage, any of three punishments that is:

Dismissal, removal, or reduction in rank were suggested to be applied to him after an investigation revealed that the charges were true. The forty second amendment of the Constitution abolished the right of the public servant to make representation at the next stage of the inquiry or we can call it the second stage of the inquiry. The Article 311 (2) states that at the second stage of the inquiry there is a proposal to impose a penalty that is dismissal, reduction or removal, they can be imposed subject to the evidence placed before during the inquiry and at that time the individual against whom inquiry is going on will not have the right to make representation. The punishment will be applied in accordance with the evidence gathered during the inquiry in relation to the charges against the government servant.

After the enquiry if the person is dismissed on the basis of the findings, then the court examines that if the requirement of reasonable opportunity are fulfilled or not. The court will not examine the adequacy of the evidence found at the time of enquiry because it is not the matter of the court but court will interfere if the inquiry is mala fide or on extraneous consideration.¹⁶ Therefore at the time of inquiry it is important to follow the principles of natural justice. The rules of natural justice are:

¹⁶ S. Pratap Singh v. State of Punjab. AIR 1964 SC 72.

- No one can be judge in its own cause.
- Both the parties must be heard.
- Notice has to be given
- Action must be fair and unmartial, free of any kind of biasness.

Here the purpose of the principals of natural justice must be to prevent any kind of injustice in matters of administrative inquiries. Not giving importance to the principle of Natural justice will also amount to violation of Constitutional provision of equality before the law and equal protection of laws.¹⁷ The Constitution of India also provides that no one shall be deprived of his right and personal liberty except according to the procedure established by law¹⁸ therefore if the services of any civil servant is terminated without giving him reasonable opportunity of being heard or because of mala fide or malicious enquiry then it will be violative of Article 21 because losing ones job which is his source of living will amount to depriving that person from his right to life and personal liberty.

The rules of Natural Justice in relation to Article 311 (2), Justice, Venkatarama Aiyer stated as follows:

He stated that the process of inquiry must follow the principle of natural justice and the principle of natural justice requires that no such material shall be used against a person unless the person has been given a fair opportunity to respond to such material. This also applies to cross examination of witnesses whose statements are relied upon during the enquiry. If the relevant documents are withheld by the inquiry officer, thereby preventing the effective exercise of his right of defence, the enquiry cannot be regarded as having followed the principle of natural justice.¹⁹

In the case of *State of Punjab v. Bhagat Ram*²⁰ the respondent contested the dismissal order on the grounds that he was not given a fair chance since he was not provided with copies of the statements made by the police during the witness's investigation proposed to be

¹⁷ The Constitution of India, art., 14.

¹⁸ The Constitution of India, art., 21.

¹⁹ *Union Of India v. T.R. Varma*, AIR 1957 SC 882.

²⁰ AIR 1974 SC 2335.

examined at the departmental inquiry in spite of his request. The contention of the court was that the respondent was given opportunity to cross-examine the witness. The Supreme Court held that the dismissal was illegal as he was not given reasonable opportunity of being heard. The Court said “It is unjust and unfair to deny the Government servant copies of statement of witnesses examined during the investigation and produced at the inquiry in support of charges levelled against the government servant. A synopsis does not satisfy the requirement of giving the servant reasonable opportunity of showing cause against the action proposed to be taken. Though the Government servant is given an opportunity to cross-examine the witnesses unless the statements are given to him, he will not be able to have an effective and useful cross-examination. The object of supplying the Statement is that the Government servant will be able to refer to the previous statement of the witness proposed to be examined against the government servant.”

In the case of *U.P. Government v. Sabir Hussain*²¹ Supreme Court emphasized on the fact that sufficient details must be given in the show-cause notice to the delinquent employee so that he could effectively defend himself against the charges and proposed punishment. The court further observed that reasonable opportunity also includes access to the relevant material which were relied upon during disciplinary proceedings. In the present case since the copies of relevant document were not provided to the employee therefore principle of natural justice was violated hence the order of removal was declared to be invalid.

The denial of report of inquiry officer was dealt in the case of *Managing Director, ECIL v. B. Karunakar*²², it was held by supreme court that where enquiry officer and disciplinary authority are different person, the delinquent employee has the right to receive the copy of report from enquiry officer to defend himself effectively, the denial of report before the disciplinary authority takes its decisions will result in denial of principle of natural justice. In this case denial of report to the employee breaches principle of natural justice i.e. reasonable opportunity of being heard. The court further clarified that any service rules or statutory provision which restrict or deny the copy of inquiry report to employee will also be considered invalid. Even in case of presence of such service rule the employee is entitled to the report.

In the case of *Union of India v. Ram Lakhan Sharma*²³ the court answered the condition where the inquiry officer himself led the examination-in-chief of the prosecution witness and acted as

²¹ AIR 1965 SC 2045.

²² (1993) 4 SCC 727.

²³ AIR 2018 SC 4860.

prosecutor and Judge, it adversely affected his independent role of adjudicator, the Court held that principle of bias would come into play and dismissal order was liable to be set aside with liberty to proceed with fresh inquiry.

- **TERMINATION OF SERVICE:**

Article 311 protection is only available when the dismissal, removal or reduction in rank is imposed as a punishment. This created confusion that when will termination amount to punishment? The answer was laid down in the case of *Parshotam Lal Dhingra v. Union of India*²⁴ where the Supreme Court stated two test to determine whether the termination of service amounts to punitive action: The first was whether the employee has the legal right to hold or continue on the post or that rank and the second that whether the termination has resulted in negative i.e. adverse or penal consequences.

The court stated that where the government servant has substantive right to the post, then termination or reduction in rank may attract protection under article 311. But if the employee holds rank in officiating or temporary capacity without any legal right to continue then the termination will not be treated as punishment. The court in the present case held that employee was not entitled to the constitutional protection as he had no permanent right over the post and his termination or reversion will not amount to punishment.

In *Om Prakash Goel v. Himachal Pradesh tourism Development Corporation Ltd Shimla and Anr*²⁵ the Supreme Court held that if after initiating a full-scale departmental enquiry, a termination order is passed before conclusion of an inquiry then such an order attracts Article 311 (2) of the Constitution. If an order of termination cast a stigma on affected individual like in case of *Jagdish Mitter v Union of India*²⁶ it has to be considered by way of punishment therefore where services of a temporary government servant involve a stigma or amounts to a punishment one is entitled to the protection of Article 311 (2) of the Constitution, but when one's service are terminated on grounds of unsuitability, it cannot be considered to be by way of punishment, if not stigma is attached to it.²⁷

²⁴ AIR 1958 SC 36.

²⁵ AIR 1991 SC 1490

²⁶ AIR 1964 SC 449

²⁷ *Commodore, Commanding Southern Naval Area, Cochin v. V.N. Ranjan*, AIR 1981 SC 964.

- **SUSPENSION:**

The suspension of legal servant is distinct from dismissal, removal or reduction in rank in legal terms. Since suspension is generally a temporary administrative measure rather than a penalty affecting the employee's substantive status, the constitutional safeguard of providing a reasonable opportunity of hearing under Article 311(2) is ordinarily not attracted merely because an employee has been placed under suspension.²⁸

It was illustrated in *Kesho Nath Khurana v. Union of India*²⁹ where the employee was suspended after being informed that the department in which he served was being abolished. The court stated that reinstatement cannot be granted because the post itself had ceased to exist. However, the employee remained entitled to receive all salary and allowances due up to the date of suspension, as well as the pay and benefits accruing from the date of suspension until the abolition of the post. The court further recognised his entitlement to consequential service benefits, including gratuity, in accordance with the applicable service rules.

Hence, when a government post is abolished for any genuine administrative reasons and the termination of service happens because of abolition of that particular position, the requirement of Article 311 (2) are not applicable. The reason is that the cessation of service in these circumstances does not amount to punitive action but is merely the consequence of the non-existence of the post. Since no penalty is imposed on the employee, the constitutional protection guaranteed under Article 311(2) cannot be invoked.³⁰

- **COMPULSORY RETIREMENT:**

This retirement is not a punishment therefore it does not cast any stigma on the government employee. It is done in public interest, a government employee is not entitled to a prior hearing before an order of compulsory retirement. Compulsory retirement means a premature retirement of a civil servant which can come in effect against his will, the Compulsory Retirement does not attract the principles of natural justice, it can only be attracted when an order of compulsory retirement is intended to be penal or of evil consequences.

An order of compulsory retirement does not take away any of the rights that have accrued to

²⁸ Sukh Bansh Singh v. State of Punjab, AIR 1962 SC 1711.

²⁹ AIR 1982 SC 1176.

³⁰ Dr J.N. Pandey, "Constitutional Law of India", (Central Law Agency, Allahabad 56th edn., 2019).

the government servant. As it does not lead to forfeiture of earned benefits, one is entitled to proportionate pension etc. which he has actually earned.³¹

The Supreme Court of India in the case of *State of Gujarat v. Umedhbhai M. Patel*³² laid down some important guidelines and principles in relation to exercise of power of compulsory retirement.

The court emphasized that compulsory retirement is intended to safeguard administrative efficiency and it should be invoked only when the continued service of a public servant is no longer considered beneficial to the public interest rather than to punish employee. Since the objective of such retirement is to maintain the effectiveness of the public administration rather than to discipline an employee, it does not ordinarily attract the protection available under Article 311 of the Constitution.

While exercising such power, the competent authority must undertake a comprehensive assessment of the employee's entire service record instead of relying on isolated incidents. Particular importance should be given to employee's confidential report including adverse remarks, irrespective of whether such remarks were formally communicated. At the same time, if an employee has subsequently earned promotions despite adverse entries, such promotions indicate that the employee's overall performance was considered satisfactory and must be taken into account before arriving at decision.

The court further clarified that compulsory retirement cannot be used as an alternative to disciplinary proceedings. Where allegations of misconduct warrant a departmental inquiry, the authority should not resort to compulsory retirement merely to avoid following the prescribed disciplinary procedure. Thus, an order of compulsory retirement must be based on objective considerations relating to public interest and administrative efficiency rather than serving as a punitive action against the employee.

The Supreme Court in *Baikunth Nath v. Chief Medical Officer*³³ court made further clarified the legal principles governing compulsory retirement. The Court reiterated that an order of compulsory retirement is not punitive and therefore does not cast any stigma upon the employee. Since the purpose of such an order is to protect public interest and preserve

³¹ Chief Justice Andhra Pradesh High Court v. A.V. Dikshitalu, AIR 1979 SC 193.

³² AIR 2001 SC 1109

³³ (1992) 2 SCC 299.

administrative efficiency, it is based on the subjective satisfaction of the competent authority rather than on a finding of misconduct.

The court also observed that the doctrine of natural justice does not ordinarily require the Government to provide the employee with an opportunity of hearing before issuing an order of compulsory retirement. Nevertheless, the exercise of this power is not immune from judicial scrutiny. Courts may examine the validity of such an order where it is established that the decision was arbitrary or motivated by mala fide intention.

Further, the authority must evaluate the employee's entire service record before arriving at a decision, with particular emphasis on the employee's performance in the later years of service. The court also held that the mere consideration of uncommunicated adverse entries in the confidential record does not, by itself, invalidate an order of compulsory retirement. Such consideration is permissible, provided the decision is based on an overall assessment of the employee's service record and is made in furtherance of public interest.

ARTICLE 311 AND TEMPORARY EMPLOYEES

The Constitutional Guarantee of reasonable opportunity is available to both permanent and temporary servants. In the case of *Parshotam Lal Dhingra v. Union of India*³⁴ the Supreme Court held that "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."

In the case of *State of Punjab & Anr. v Sukh Raj Bahadur*³⁵ the Supreme Court clarified the circumstances in which Article 311 of the Constitution becomes applicable to temporary employees and probationers. The court held that the services of a temporary employee or a probationer may be terminated, by itself, does not attract the safeguards provided under Article 311. The determining factor is not the employer's motive but the true nature and effect of the order.

The court further observed that where the termination results in adverse civil consequences or

³⁴ AIR 1958 SC 36.

³⁵ AIR 1968 SC 1089

contains findings that adversely affect the employee's character, integrity or reputation, the order assumes a punitive character. In such situations, the constitutional protection under Article 311 cannot be denied merely because the employee holds the status of a probationer or temporary servant.

The judgement also distinguished between a preliminary assessment and a formal disciplinary proceeding. An inquiry conducted solely to evaluate whether an employee is suitable for continued service does not ordinarily attract Article 311. However, where the employer initiates a regular departmental inquiry by appointing an inquiry officer, framing specific charges, seeking and considering the employee's explanation, and thereafter terminates the employee's service, such action is treated as punitive. In such cases, the procedural safeguards guaranteed under Article 311 becomes applicable.

EXCLUSION OF PRINCIPLE OF NATURAL JUSTICE

Although Article 311 (2) states that a government servant should ordinarily be given a reasonable opportunity to defend himself before the imposition of major penalty, this safeguard is not absolute. The constitution recognizes certain exceptions in which compliance with the requirement of a prior hearing is unnecessary. These exceptions are contained in the proviso to Article 311 (2) and are based on the view that, in specifies circumstances, insisting upon a departmental hearing would serve little practical purpose.

Exception 1: Conviction on a Criminal Charge

Clause (a) of the proviso to Article 311(2) authorizes the competent authority to dismiss, remove or reduce a government servant in rank where such action is founded upon the employee's conduct that has resulted in a criminal conduct. In these circumstances, the disciplinary authority is not required to provide a separate opportunity of hearing before imposing the penalty because the employee has already undergone a judicial trial in which the allegations were examined by a competent criminal court.

The scope of this provision was considered in *K. Venkateshwarlu v. State of A.P.*³⁶. The court observed that a criminal conviction ordinarily provides a valid basis for initiating disciplinary action against a public servant. At the same time, the court clarified that an acquittal does not automatically prevent departmental proceedings. Where the acquittal is not an honourable one

³⁶ AIR 2012 SC 2955.

and the facts justify disciplinary scrutiny under the applicable service rules, the employer may still institute departmental action.

Where a government servant is convicted by a criminal court for an offence under the criminal law, the disciplinary authority may impose a major penalty without first providing the employee with a separate opportunity of hearing under Article 311(2) of the Constitution. The authority is not required to postpone disciplinary action until any appeal or revision against the conviction has been finally decided.³⁷ However, if the conviction subsequently reversed or set aside by a higher court, the disciplinary order founded solely on that conviction cannot continue to operate on the same basis and must be dealt with in accordance with the applicable legal principles.

Exception 2: When it is not practicable to hold inquiry

Proviso (a) to Clause (2) of Article 311 provides that "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"

The scope of this exception was examined by Supreme Court in *Union of India v. Tulsiram Patel*³⁸. The court observed that the expression "not reasonable practicable" does not imply that in inquiry must be absolutely impossible to conduct. Rather, the test is whether, in the prevailing circumstances, a reasonable person would consider the holding of a fair departmental inquiry to be impracticable. The satisfaction of the disciplinary authority must therefore rest on objective circumstances and cannot be based on mere convenience or administrative expediency. Although the authority is required to record its reasons in writing, there is no constitutional requirement that such reasons be communicated to the concerned employee. The court further states that while Article 311(3) declares the disciplinary authority's decision to be final, such finality does not exclude judicial review. Courts are competent to examine whether the power was exercised lawfully, in good faith, and on relevant material.

The principle laid down above was subsequently applied in *Southern Railway Officers*

³⁷ *Kunwar v. union of India* (1969)

³⁸ AIR 1985 SC 1479.

Association v. Union of India³⁹. In this case, a railway employee who had earlier been subjected to disciplinary proceedings later threatened and abused the disciplinary authority, creating circumstances that made the conduct of a departmental inquiry unsafe and impracticable. Considering the available evidence and the surrounding circumstances, the Supreme Court upheld the employee's dismissal without a formal inquiry, holding that the constitutional exception had been validly invoked.

A different conclusion was reached in *Jaswant Singh v State of Punjab*⁴⁰. The disciplinary authority skipped with the inquiry on the allegation that the employee has threatened the inquiry officer and prospective witnesses. However, when the matter reached the Supreme Court, the State failed to produce material capable of sustaining the allegation or justifying its satisfaction that inquiry could not be reasonably be held. In the absence of supporting evidence, the court held that the constitutional power had been exercised without an adequate factual foundation and directed the reinstatement of the appellant.

The case also demonstrated that although disciplinary authority enjoys discretion under exceptions, the exercise of the discretion remains subject to judicial scrutiny to prevent arbitrary action.

Exception 3: Holding inquiry not expedient in the Interest of State

This exception provides that "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".

The scope of this constitutional exception was examined by Supreme Court in the case of *Union of India v Tulsiram Patel*⁴¹. The court observed that the satisfaction contemplated under clause © relates to the expediency of conducting a departmental inquiry in matters involving the security of the State. Such satisfaction is primarily based on considerations of governmental policy and national security and is, therefore, subjective in nature.

The application of this exception is illustrated by *Union of India & Anr. v. M.M. Sharma*⁴². In

³⁹ AIR (2010) SC 1241.

⁴⁰ (1991) 1 SCC 362.

⁴¹ (1985) 3 SCC 362

⁴² S.L.P (C) No. 9032 of 2011.

that case, the employee was alleged to have disclosed confidential material while serving in China. Considering the nature of the information involved and its implications for national security, The Supreme Court upheld the disciplinary action taken without inquiry, holding it justified under clause (c) in the interest of security of the State.

CONCLUSION

The civil servants are very important to run the countries administration and therefore the government also focuses and gives importance to the civil services. They are important that is why civil servants are protected under the Constitution of India. It is the Indian Constitution that directly provides safeguards to the right of civil servants. The purpose of these safeguards is to give security to a civil servant which is a must condition for its protection and safe working environment in government offices. The Article 311 puts restriction on the Doctrine of Pleasure and its second provision imposes limitation on the power of the president or the governor to determine the tenure of a civil servant, in addition, it also imposes limitation on the power of the of the authorities to impose penalty such as removal, dismissal and reduction of a civil servant. These penalties cannot even be imposed by a president or the Governor or any authority if the other party has not been given reasonable opportunity against the imposition of such penalty.

The principles of natural justice must be followed by the authorities in administrative decision. Article 311 basically follows the principle of natural justice and therefore the clause basically states that nothing must be done to civil servants post without applying the principle of natural justice. Here while studying Article 311 it has been observed that each and every case has used the natural justice principle in different manner, it means that the application of principle of natural justice is not rigid, its application has to be flexible taking into consideration all the aspects of the case, the application differs from case to case depending on its facts and circumstances.

The inclusion of principle of natural justice is an important aspect to be followed by the government departments against the corrupt practices. It is because of the principle of natural justice, if in any case it is violated it enables the court to set aside the arbitrary punishments or disciplinary proceedings on ground of bias and procedural defects keeping in mind the exception to, reasonable opportunity' or principle of natural justice given under Article 311.

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