INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed Edition :

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

ISSN: 2582-6433

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

www.ijlra.com
Volume 2 Issue 7 | Aug 2023
ISSN: 2582-6433

CONSTITUTIONAL SAFEGUARDS TO CIVIL SERVANTS

AUTHORED BY - TARUNA NAYYAR

ABSTRACT

The study contains the concept of provisions of Article 309, Doctrine of pleasure under Article 310 and 311 of Indian Constitution.

Article 310 states that the Civil Servants of the Union or of All-India Services hold office during the pleasure of the President and member of the State Services hold office during the pleasure of the Governor. But the rule is qualified with word "except or "expressly provided by the constitution". Article 311 provides some restrictions to the doctrine of pleasure. Researcher has also mentioned some relevant cases regarding doctrine of pleasure and Article 311.

Article 311 also gives safeguard to civil servants for protecting their rights so that nobody can do injustice with them. The 'Pleasure Doctrine' is a principle of the common law, the origins of which may be tracked back to the development of the concept in the United Kingdom. Similar 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. The power to dismiss a Government servant at pleasure is subject to only those exceptions which are specified in the Constitution itself. It must be ensured that civil servants can't make mockery of law if they are guilty and it is precisely for that reason, that the continued use of Doctrine of Pleasure is required in India.

Doctrine of pleasure does not allowed anybody to make scoff of the law if civil servant is guilty then he will be punished for the same.

Key Words – Article 311, Doctrine of Pleasure, Constitutional Safeguards, Civil Servants

ISSN: 2582-6433

INTRODUCTION

Articles 309 to 323 of the Constitution make elaborate provisions for the Central and Sate services. The Civil servant is indispensable to the governance of the country in the modern administrative age. Ministers frame policies and legislatures enact laws, but the task of efficiently and effectively implementing these policies and laws falls on the civil servants. The bureaucracy thus helps the political executive in the governance of the country.

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.

The Constitution, therefore, seeks to inculcate in the civil servant a sense of security and fair play so that he may work and function efficiently and give his best to the country. Nevertheless, the overriding power of the government to dismiss or demote a servant has been kept intact, even though safeguards have been provided subject to which only such a power can be exercised.

However the service jurisprudence in India is rather complex, intertwined as it is with legislation, rules, directions, practices, judicial decisions and with principles of Administrative Law, Constitutional Law, Fundamental Rights and Natural Justice.

There is a need to ensure that the disciplinary authorities exercise their powers properly and fairly.

RESEARCH QUESTIONS

I. Whether the safeguards enunciated under article 311 of the constitution are adequate to protect the interest of civil servants.
II. And if not, whether the safeguards must be strengthened by adequate measures to give true protection to the civil servants.

ISSN: 2582-6433

CONSTITUTIONAL PROVISIONS

I. *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.

II. *Article 310* of the Constitution of India incorporates the English doctrine of pleasure by clearly stating that every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State . But this power of the Government is not absolute.

III. *Article 311* puts certain restriction on the absolute power of the President or Governor for dismissal, removal or reduction in rank of an officer.

RECRUITMENT AND CONDITIONS OF SERVICE – ARTICLE 309

Article 309 of the Constitution reads as follows: –

"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;"[1]

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 [2]. It also authorities 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

[1] Article 309 of The Constitution of India 1950
[2] State of Karnataka & Ors. v. Ameerbi & Ors., 2006 (13) SCALE 319

ISSN: 2582-6433

are[3]:-

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.

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

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

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

In *T. K. Rangarajan V. Government of Tamil Nadu*,[5] the Government employees had gone on strike for their demands. The Government employees had challenged the validity of the Tamil Nadu act and the Ordinance. The Courts said that "Government employees cannot hold society to ransom/going on strike". The Bench said that if the employees felt aggrieved by any Government action, they should seek redressal from the statutory machinery provided under different statutory provisions for redressal of their grievances. The Courts said strike as a weapon is mostly misused which results in chaos and total mal-administration. Strike affects the society as a whole and particularly when 2 lakh employees go on strike the entire administration comes to a grinding halt.

[3] Doctrine of Pleasure – An Analytical Study, Available at https://www.lawctopus.com/academike/doctrine-of-pleasure/#_ednref8 (Last Accessed on 18th April 2019)
[4] Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1428
[5] T. K. Rangarajan V. Government of Tamil Nadu, AIR 2003 SC 3032

ISSN: 2582-6433

The Court also agreed with the contention of the State government that 90% of the revenue raised through direct tax was spent on the 12 lakh government employee in the state. Thus in a society where there is large scale employment and a number of qualified persons are eagerly waiting for employment strike cannot be justified on any equitable grounds. The Supreme Court has also held that Government servant has no right to go on strike, neither moral nor statutory.[6]

DOCTRINE OF PLEASURE – ARTICLE 310

In England a civil servant holds his office during the pleasure of the Crown. His services can be terminated at any time by the Crown without giving any reasons. Article 310 of the Constitution of India incorporates the English doctrine of pleasure by clearly stating that every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State . But this power of the Government is not absolute. Article 311 puts certain restriction on the absolute power of the President or Governor for dismissal, removal or reduction in rank of an officer.[7]

The 'Pleasure Doctrine' is a principle of the common law, the origins of which may be traced back to the development of the concept in the United Kingdom.[8] It is a historical rule of common law that a public servant under the British Crown had no fixed tenure, but held his/her position at the absolute discretion of the Crown. Such rule had its origin in the Latin phrase "*durante bene placito*" ("during good pleasure"), or "*durante bene placito regis*" ("during good pleasure of the King"). It was thus affirmed by the Court of Appeal in *Dunn* v. *R*[9]

The scope of the doctrine was further expanded upon in *Shenton* v. *Smith*[10], where the Privy Council went as far as observing that the pleasure doctrine was a 'necessity' because:
"*The difficulty of dismissing servants whose continuance in office is detrimental to the State would, if it were necessary to prove some offence to the satisfaction of a jury, be such as to seriously impede the working of the public service.*"

[6] *Ibid*
[7] Constitutional Protection to Civil Servants, By Dr. A. Prasanna
[8] Radin, *Anglo- American Legal History*, 228 *(*1936*)*
[9] *Dunn* v. *R*, (1896) 1 QB 116
[10] *Shenton* v. *Smith*, 1895 AC 229 (PC)

ISSN: 2582-6433

It is thus not surprising that the doctrine was imported into the legal system of pre-partition Indian subcontinent, by virtue of the Government of India Act, 1935. Recognition of such may be found in pronouncements of the Apex Courts of both India and Pakistan, to that effect.

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

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

A similar rule is embodied in article 310 (1) which lays down that the defence personnel and civil servant of the Union and the members of an All-India service, hold office during the 'Pleasure of the President'. Similarly, a civil servant in a state holds office 'during the pleasure of the Governor'.[11]

RESTRICTIONS ON DOCTRINE OF PLEASURE

The Constitution lays down the following limitations on the exercise of the doctrine of pleasure.

I. The pleasure of the president or governor is controlled by provisions of Article 311, so the field covered by article 311 is excluded from the operation of the doctrine of pleasure.[12] The pleasure must be exercised in accordance with the procedural safeguards provided by article 311.

[11] Article 310(1) of The Indian Constitution, 1950
[12] Motiram v. North Eastern Frontier Railway, AIR 1964 SC 600 at p.609

ISSN: 2582-6433

II. The tenure of the following Services have been expressly excluded by the Constitution from the rules of pleasure under Article 310. They are not dependent on the pleasure of the president or the governor, as the case may be. These posts are expressly excluded from the operation of the doctrine of pleasure. [13]
   i. The Supreme Court Judges [Art. 124],
   ii. Auditor-General [Art.148],
   iii. High Court Judges [Arts, 217, 218],
   iv. Chairman and members of a Public Service Commission [Art 317],
   v. And the Chief Election Commissioner [14]

III. The doctrine of pleasure is subject to the fundamental rights. [15]

CONSTITUTIONAL SAFEGUARDS TO CIVIL SERVANTS – ARTICLE 311

The procedure laid down in Article 311 is intended to assure –

I. First, a measure of security of tenure to government servants, who are covered by the Article.
II. 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, inn 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.

Article 311 is applicable only to one class of public officers i.e. those who hold a civil post under the Union or States. The term civil post means an appointment, or office or employment on the civil side of the administration.[16]

[13] Prof M P JAIN Indian Constitutional Law (LEXISNEXIS Butterworths Wadhwa Nagpur Fifth Ed.2008) at 1431
[14] *Ibid*
[15] UOI v. P.D More, AIR 1964 SC 630
[16] Sher Singh v. State of M.P, AIR 1955 Nag. 175

ISSN: 2582-6433

Following persons may claim the safeguards –

i. Members of the civil services of the union
ii. Members of All- India Services
iii. Members of the Civil services of the states
iv. Persons holding civil posts under the union or states

Members of the defence services are thus excluded from the scope of Article 311. They cannot claim the protection of Article 311.

Article 311(1)

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

(1) No person holding a civil post under the Union or the States shall be dismissed, or removed by authority subordinate to that by which he was appointed.[17]

This does not mean that the removed or dismissed must be by the same authority who made the appointment or by his direct superior. It is enough if the removing authority is of the same or co-ordinate rank as the appointing authority.[18]

For the purposes of Clause (1) of Article 311, the post which the government servant holds substantively is to be taken into consideration. The temporary or quasi – permanent appointment of the government servant earlier to his appointment to the susbordinate post, cannot be taken into consideration.[19]

It is the authority who actually appointed person to the post who shall be the "appointing authority" and not the authority empowered under the rules to make such appointment. [20]

In *Mahesh v. State of Uttar Pradesh*[21] The person appointed by the Divisional Personnel Officer, E.I.R., was dismissed by the Superintendent, Power, E.I.R. the Court held the dismissal valid as both the officers were of the same rank. [22]

[17] Art 311 (1) of the Indian Constitution 1950
[18] Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 656
[19] Daljit Singh v. UOI, AIR 1970 Delhi 52
[20] Bachubha Ramsinghji v. Shivlal, AIR 1970 Guj. 180
[21] Mahesh v. State of Uttar Pradesh AIR 1955 SC 70
[22] *Ibid*

ISSN: 2582-6433

Article 311(2)

(2) No such person shall be "dismissed", "removed" or "reduced" in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.[23]

DISMISSED, REMOVED OR REDUCED

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

I. *Termination of Service when amounts to punishment –*

The protection of Art.311 is available only when 'the dismissal, removal or reduction in rank is by way of punishment'. The main question, therefore, is to determine as to when an order for termination of service or reduction in rank amounts to punishment.[24]

In *Parshottam Lal Dhingra V. Union of India*[25] the Supreme Court has laid down two tests to determine whether the termination is by way of punishment-

i. Whether the servant had a right to hold the post or the rank;
ii. Whether he has been visited with evil consequences.

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

The Supreme Court held that the appellant had no right to the post as he was merely officiating in the post and the implied term of such appointment was that it was terminable

[23] Article 311(2) of the Constitution of India, 1950
[24] Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 657
[25] Parshottam Lal Dhingra V. Union of India AIR 1958 SC 36

ISSN: 2582-6433

at any time on reasonable notice by the Government. The appellant was not reduced in rank by way of punishment and, therefore, he cannot claim the protection of Art.311 (2). In a case where a Government servant has no right to hold the post or rank his termination from service or reversion does not amount to punishment, since it does not forfeit any right of the servant to hold the post or rank as he never had that right.[26]

II. *Suspension is not punishment* –

The suspension of a Government servant from service is neither dismissal or removal nor reduction in rank; therefore, if a Government servant is suspended he cannot claim the constitution guarantee of reasonable opportunity. When, the services of a Government servant are terminated for bonafide reasons as a consequence of the abolition of the post held by him, Art. 311(2) need not be complied with.

In *Divisional Personnel Officer. Western Railway V. Sunder Das,*[27] *w*here an employee is suspended during the disciplinary inquiry but the dismissal order is set aside by the court and a fresh inquiry is ordered against him on the same charge it was held that the initial suspension continued till the final order of dismissal was passed and the employee was entitled to subsistence allowance only and not full wages.[28]

III. *Compulsory retirement simpliciter not punishment* –

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

[26] *Ibid*
[27] Divisional Personnel Officer. Western Railway V. Sunder Das AIR 1981 SC 2177
[28] *Ibid*

ISSN: 2582-6433

In *State of Gujarat v. Umedbhai M. Patel*,[29] the Supreme Court has laid down following principles governing compulsory retirement-

i. When the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
ii. Ordinarily the order of compulsory retirement is not to be treated as a punishment under art.311 of the Constitution.
iii. For better administration, it is necessary to chop off wood but the order of compulsory retirement can be based after having due regard to entire service record of the officer.
iv. Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
v. Even uncommunicated entries in the confidential record can also be taken into consideration.
vi. The order of compulsory retirement shall not be passed as a short cut to avoid departmental inquiry when such course is more desirable.
vii. If the officer is given promotion despite adverse entries made in the confidential record that is a fact in favour of the officer.
viii. Compulsory retirement shall not be imposed as punitive measure.[30]

REASONABLE OPPORTUNITY

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

I. At the enquiry stage, and this is an accord with the rule of natural justice that no man should be condemned without hearing;
II. At the punishment stage, when as a result of enquiry the charges have been proved and any of three punishments, i.e. dismissal, removal or reduction in rank were proposed to be taken against him.

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

[29] State of Gujarat v. Umedbhai M. Patel AIR 2001 SC 1109
[30] *Ibid*

ISSN: 2582-6433

punishments, i.e., dismissal, removal or reduction in rank, they may be imposed on the basis of the evidence given during such inquiry and he shall not be entitled to make any representation. The above mentioned punishments will be imposed on the basis of the evidence adduced during the time of inquiry of charges against the Government servant.[31]

In *Khem Chand V. Union of India,*[32] The Supreme Court held that the 'reasonable opportunity envisaged by Art.311 includes:

I. An opportunity to deny his guilt and establish his innocence which can be only done if he is told what the charges against him are and the allegation on which such charges are based;
II. An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and also
III. An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do so if the competent authority, after the enquiry is over and after applying his mind to the gravity of the charges, tentatively proposes, to inflict one of the three major punishments and communicates the same to the Government servant. [33]

In *Managing Director, ECIL v. B. Karunakar,*[34] the Supreme Court has held that when the enquiry officer is not disciplinary authority, the delinquent employee has a right to receive the copy of the enquiry officer's report so that he could effectively defend himself before the disciplinary authority. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of the principles of natural justice.[35]

PROVISO TO ARTICLE 311(2)

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

I. Where a civil servant is dismissed or removed or reduced in rank on the ground of conduct which has led to his ***conviction on a criminal charge****.*[36]

[31] Dr. J.N.PANDEY The Constitutional Law of India (Central Law Agency Allahabad 45th Ed. 2008) at 656
[32] Khem Chand V. Union of India, AIR 1958 SC 300
[33] *Ibid*
[34]Managing Director, ECIL v. B. Karunakar, 1993(4) SCC 727
[35] *Ibid*
[36] Art. 311(2) (a) of the Constitution of India, 1950

ISSN: 2582-6433

II. *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**.*[37]

III. *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.*[38]

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. 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.

In *Shankar Dass V. India*[39] Where the order imposing the penalty of dismissal was set aside as the court found that in the fact-situation, the penalty of dismissal from service was whimsical. The Supreme Court emphasized that the power under cl. (a) of the second proviso to Art. 311 (2) must be exercised "fairly, justly and reasonably" and that "right to impose a penalty carries with it the duty to act justly".[40]

In *Dy. Director of Collegiate education, Madras v. S. Nagoor Meera*[41] The Supreme Court held that Art.311 (2) (a) speaks of "conduct which has led to his conviction on a criminal charge". It does not speak of sentence or punishment awarded. The court has ruled that the appropriate course

[37] Art. 311 (2) (b) of the Constitution of India, 1950
[38] Art. 311 (2) (c) of the Constitution of India, 1950
[39] Shankar Dass V. India AIR 1985 SC 772
[40] *Ibid*
[41] Dy. Director of Collegiate education, Madras v. S. Nagoor Meera AIR 1995 SC 1364

ISSN: 2582-6433

in such cases would be to take action as soon as a government servant is convicted of a criminal charge and not to wait for the appeal or revision against conviction. If however he is acquitted on appeal or other proceeding, the order can always be revised. If the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to, had he continued in service.[42]

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 that 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.

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

In *Union of India V. Tulsiram Pate,l*[43] explaining the scope of the clause, the Supreme Court has said, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the Holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. [44]

The decision of the disciplinary authority is final [Art. 311 (3)], provided it records the reasons in

[42] *Ibid*
[43] Union of India V. Tulsiram Patel, AIR 1985 SC 1416
[44] *Ibid*

ISSN: 2582-6433

writing for denying the inquiry to the concerned civil servant. But a disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily, or out of ulterior motives, or merely in order to avoid the holding of an inquiry, or because the department's case against the government servant is weak and must fail. In such a case, the court can strike down the order dispensing with the inquiry as also the order imposing penalty.

The Tulsiram Patel ruling has been applied in the following fact-situations under Art. 311(2)(b): In *Satyavir Singh V. Union of India*[45] The Supreme Court upheld the impugned order of dismissal saying that clause (b) of the second proviso to Art.311 was properly applied in the facts of the case. As held in Tulsiram Patel, "it will not be reasonably practicable to hold an inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails." In the situation then prevailing, prompt and urgent action was required to bring the situation under control.

People's Union for Civil Liberties V. Union Of India,[46] A sub-inspector of police was dismissed by the Senior Superintendent of Police after dispensing with the inquiry invoking proviso (b) to clause (2) of Art.311. The order of dismissal was challenged but the same was upheld by the Supreme Court. After going through the facts of the case, the Court concluded that the Senior Superintendent of Police "cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the sub-inspector."

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. 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.[47]

While under clause (b) above, the satisfaction has to be that of the disciplinary authority, under

[45] Satyavir Singh V. Union of India, 1985 (4) SCC 252
[46] People's Union for Civil Liberties V. Union Of India, AIR 1997 SC 1203
[47] J.C. Johari, *The Constitution of India,* A Politico-Legal Study, p. 321

ISSN: 2582-6433

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

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

In *BK Sardari Lal V. Union of India,*[48] the Supreme Court ruled that under this constitutional provision, 'satisfaction' must be that of the President of or Governor personally and that function could not be allocated or delegated to anyone else. But this view was overruled in Shamsher Singh, and Sripati Ranjan. Thus, 'personal satisfaction' of the President or the Governor is not necessary to dispense with the inquiry. Such 'satisfaction' may be arrived at by anyone authorized under the Rules of Business. It is the satisfaction of the president or the Governor in the constitutional sense.

Article 311(3)

"If in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to discuss or remove such person or to reduce him in rank shall be final."[49]
This finality clause refers mainly to the situation covered by Art.311 (2) (b), proviso II, mentioned above. The Supreme Court has however ruled that Art. 311(3) does not completely bar judicial review of the action taken under Clause 2(b) of Art.311, second proviso.

In *Union of India V. Tulsiram Patel,*[50] the Supreme Court held that: "the finality given by clause (3) of Art.311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the Court. The Court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the Court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant

[48] BK Sardari Lal V. Union of India, AIR 1971 SC 1547
[49] Article 311(3) of the Constitution of India, 1950
[50] Union of India V. Tulsiram Patel, AIR 1985 SC 1416

ISSN: 2582-6433

then the recording of it satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority, the Court will not however, sit in judgment over them, like a court of first appeal."

In *Jaswant Singh V. State of Punjab,*[51]the Supreme Court has reiterated the proposition that in spite of Art. 311(3) the "finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous consideration or merely a ruse to dispense with the inquiry.

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

ARE ARTICLES 310 AND 311 CONTRARY TO ARTICLE 20 (2) OF THE INDIAN CONSTITUTION OR TO THE PRINCIPLES 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 the ambit of double jeopardy. The answer was given by the Honourable Supreme Court in the case of UOI v. Sunil Kumar Sarkar,52 in which it was held that the court martial proceedings 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 presented 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.

A five Judge Constitution Bench comprising the C. J.: M. N. Venkatachaliah and B. B. Sawant, K. Ramaswamy, S. Mohan and B. P. Jeevan Reddy, JJ., held in a case that since the denial of the

[51] Jaswant Singh V. State of Punjab, AIR 1991 SC 385
[52] *Union of India* v. *Sunil Kumar Sarkar*, AIR 2001 SC 1092

ISSN: 2582-6433

report of the enquiry officer First Schedule reasonable opportunity to the employee to prove his innocence and a breach of principles of natural justice, it follows that the statutory rules if any, which deny the report to the employee, are against the principles of natural justice and, therefore, invalid. The delinquent employee will therefore be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. The reason why the enquiry officer's report is considered an essential part of the reasonable opportunity at the first and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions.[53]

The mandate of 'reasonable opportunity of being heard' in departmental inquiry encompasses the Principles of Natural Justice which is a wider and elastic concept to accommodate a number of norms on fair hearing. Violation of Principles of Natural Justice enables the courts to set aside the disciplinary proceedings on grounds of bias and procedural defects.[54]

CONCLUSION

The Constitution of India through Article 311 thus protects and safeguards the rights of civil servants in Government service against arbitrary dismissal, removal and reduction in rank. Such protection enables the civil servants to discharge their functions boldly, efficiently and effectively. The public interest and security of India is given predominance over the rights of employees. So conviction for criminal offence, impracticability and inexpediency in the interest of the security of the State are recognized as exceptions. The judiciary has given necessary guidelines and clarifications to supplement the law in Article 311. The judicial norms and constitutional provisions are helpful to strengthen the civil service by giving civil servants sufficient security of tenure. But there may arise, instances where these protective provisions are used as a shield by civil servants to abuse their official powers without fear of being dismissed.

Disciplinary proceedings initiated by Government departments against corrupt officials are time consuming. The mandate of 'reasonable opportunity of being heard' in departmental inquiry encompasses the Principles of Natural Justice which is a wider and elastic concept to accommodate a number of norms on fair hearing. Violation of Principles of Natural Justice enables

[53] International Journal of Trend in Scientific Research and Development (IJTSRD)
[54] I. P. Massey, *Administrative Law* (2003), pp.161-212

ISSN: 2582-6433

the courts to set aside the disciplinary proceedings on grounds of bias and procedural defects.

Now days we see so many of corruptions appear which is done by civil servants and other government official and it is interesting to know what procedure has been provided in the constitution of India to punish them. In one of recent case it was held that Pradeep Sharma who was the encounter specialist of Mumbai police has links with underworld and other charges of corruption was lead to his dismissal from his post which vindicates that civil servants can't make scoff of law if they are guilty then they will be punished and no matter what position they held. Thus, the main reason for which Articles 310 and 311 has been brought 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 an insight of corruption in near future that's why such provisions were included.

The purpose for which Articles 310 and 311 were made in the Constitution is still relevant in the light of recent instances including the case of Pradeep Sharma, the encounter master from Mumbai Police who has links with underworld and faces other charges of corruption and was dismissed from his post. It must be keep in mind that civil servants can't make scoff of law if they are guilty and it is precisely for that reason, that the continued use of Doctrine of Pleasure is required in India.