

PROTECTION OF CIVIL SETVANTS UNDER INDIAN CONSTITUTION: AN ANALYSIS

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ABSTRACT:

Ever since independence, the responsibility of the state has become onerous as it works for welfare of the people. There should be efficient administration for peace and progress of the country. Civil Servants are integral part of administration of the state. In England, the general rule that a civil servant holds his office during the pleasure of the crown is incorporated in Article 310 of Indian constitution. This allows the crown to terminate the services of civil servant any time without assigning any reasons. To prevent political or personal influence and enhance administrative system, it is important to protect these civil servants from the influence of other organs of the government.

In this paper, we will be understanding the provisions under constitution protecting the civil servants from influence and its limitations.

INTRODUCTION

In a welfare state, which involves various activities to deliver effective and efficient services to the public, civil service plays a vital role. They make and mark the efficiency of machinery of administration which is important for the peace and progress of the country. What about democratic institutions exist, experience has shown, that it is essential to protect the public services as far as possible from political or personal influence.¹ The doctrine of pleasure, a common-law practice that provides for the removal of civil servants arbitrarily by the crown has been limited and restricted under Article 311 of the constitution. It provides procedural safeguard and relief to civil servants concerning rights and privileges. So, provisions have been included under the Indian constitution which protects the interest of civil servants along with the protection of national security and public interest.

¹ Dr. J.N. Pandey, Constitutional Law of India 736 (55th edition, 2018).

WHO IS A CIVIL SERVANT?

From the perusal of Article 311 of the Indian constitution, it is clear that this provision is only applicable to civil servants and thus it becomes important to know who are civil servants.

A civil servant refers to a person who works in the civil service.² It can also be said that a civil servant is a person who holds a 'civil post'. The term 'civil post' has not been defined anywhere in the Constitution and it has to be understood through various judicial proceedings on this matter. Through the plain reading of Articles 310 and 311, it appears to have been used in contradiction to 'defence post'.³

In *Sher Singh v. State of Madhya Pradesh*⁴, the term civil post means an appointment or office or employment on the civil side of the administration.

In *State of U.P v. A.N Singh*⁵, the Supreme Court held that there is a certain test which determines whether a person holds a civil post or not, i.e., there should be the relationship of master and servant between the state and the person holding the post; state should have the right to select and appoint the holder of the post, and state should have to control the manner and method of work and payment of wages or remuneration.

In *Union of India v. Chote Lal*⁶, it was held that Article 311 of the Indian constitution does not apply to employees of military services.

NEED FOR PROTECTION OF CIVIL SERVANTS:

Civil servants are considered to be the backbone of administration. They play a major role in policy formulation, implementation, progress and development of the country. They play a vital role in uplifting the ideas of democracy. The civil services by the quality of its knowledge, experience and understanding of public affairs support the chosen representatives to device effectual policy and have a great responsibility to implement these policies for the

² CAMBRIDGE DICTIONARY, (Jan. 10, 2022), <https://dictionary.cambridge.org/dictionary/english/civil-servant>.

³ Dr. J.N. Pandey, *Constitutional Law of India* 738 (55th edition, 2018).

⁴ *Sher Singh v. State of MP*, A.I.R .1955 (India).

⁵ *State of UP v. A.N. Singh* A.I.R .1965 S.C 360 (India).

⁶ *Union of India v. Chote Lal* ,A.I.R .1999 S.C 376 (India).

welfare of society and enhancement of the nation.⁷ To strengthen the administration and to work towards the progress of the country it is important to protect the civil servants from personal and political influence.

THE DOCTRINE OF PLEASURE:

The doctrine of pleasure originated in the common law. It has its origin in the Latin phrase "Durante bene placito" which means during good pleasure, or "durante bene placito regis" which means during the good pleasure of the King. This doctrine states that a civil servant in England holds his post during the pleasure of the crown and can be terminated any time without giving any reasons. In other words, if a civil servant is dismissed from service, he cannot claim damages for premature termination of service and this doctrine was based on the principle of public policy.

India has also adopted the doctrine of pleasure in the Constitution under Article 310 which states that 'every person who is member of a defence service or a civil service of the union or an all-Indian service or holds any post connected with defence or any civil post under union holds office during the pleasure of the President, and every person who is a member of civil service of the state or holds any civil post under the state holds office during the pleasure of the governor of the state'.

However, India has not adopted this doctrine absolutely and has provided for certain exceptions. The use of the doctrine of pleasure in this article is limited by clause 2 of Article 311.

CONSTITUTIONAL SAFEGUARDS TO THE CIVIL SERVANT:

Part XIV of the Constitution deals with services under the union and the states. Provisions under this part protect the interest of civil servants along with the protection of national security and public interest. Article 311 is the principal provision which safeguards civil servants against any arbitrary dismissal from the posts.

⁷ CIVIL SERVICE INDIA , (Jan.10, 2022) , <https://www.civilserviceindia.com/subject/General-Studies/notes/role-of-civil-services-in-a-democracy.html>.

It imposes a certain restriction on the absolute power of the President or Governor for dismissal, removal or reduction in rank of an officer.

It reads as follows:

- (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 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 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.

Following are the safeguards that can be determined from reading Article 311:

1. No dismissal or removal by subordinate authority

Clause 1 of Article 311 says that no person holding a civil post under union or state can be dismissed or removed by an authority who is subordinate to the appointing authority. Appointing authority refers to an official who appointed the civil servant for a post and has the right to dismiss or remove, whereas subordinate authority refers to an official who is below the rank of appointing authority.

In *Mahesh Prasad v. State of UP*⁸, the Supreme Court held that removing authority need not be appointing authority or its direct superior rather it is enough if the removing authority is of the same or coordinate rank as the appointing authority.

In the above case the person appointed by the divisional personnel officer, E.I.R was dismissed by Superintendent, Power, E.I.R and the court held that dismissal was valid as both officers were of the same rank.

2. Inquiry and reasonable opportunity of being heard

Clause 2 of Article 311 says that no person holding a civil post under the union or state can be dismissed or removed or reduced in rank except after holding an inquiry in which he has to be informed of the charges against him and should be given a reasonable opportunity of being heard.

⁸ *Mahesh Prasad v. State of U.P* , A.I.R. 1950 S.C 70 (India).

In *State of Punjab v Kishan Das*⁹, The Supreme Court held that a mere reduction in the salary in the same cadre does not result in a reduction in rank.

It is mandatory under this article to conduct an inquiry where the enquiry officer should explain the reasons for charges levelled against the concerned civil servant. During the enquiry, the concerned officer should be given a reasonable opportunity of being heard.

In *Khem Chand v. Union of India*¹⁰, in this case, a civil servant was served with the charge sheet and an enquiry was held based on the enquiry officer and he was served with an order of dismissal. The civil servant challenged the validity of the order as no opportunity was given to him against the action taken regarding him as required by Article 311. The court held that even though an enquiry was held based on which the enquiry officer had reported that the charges were proved and recommended the punishment of dismissal the authority competent to pass an order of punishment was bound to give a further opportunity to the civil servant to show cause why the particular punishment of dismissal should not be injected on him and hence the order of dismissal was on Constitution violating Article 311(2).

In this case, the Supreme Court held that the 'reasonable opportunity includes:

- a. An opportunity to deny his guilt and establish his innocence which can only be done if he is told what the charges are against him and allegations which charges are based;
- b. An opportunity to defend himself by cross-examining the witness produced against him and by examining himself or any other witnesses in support of his defence; and
- c. An opportunity to make his representation as to why is the proposed punishment should not be inflicted on him.

Before the 42nd amendment of the constitution in 1976, there was a provision that provided civil servants to defend themselves not only during the inquiry but also during inflicting punishment. However, after the aforesaid amendment, it is not necessary to give such person any opportunity of making a presentation on the penalty proposed.

The enquiry officer, however, is required to follow rules of natural justice in conducting an enquiry such as

⁹ *State of Punjab v. Kishan Das* A.I.R. 1971 S.C 766 (India).

¹⁰ *Khem Chand v. Union of India*, A.I.R. 1958 S.C 300 (India).

- (1) Nemo judex in causa sua i.e., No one can be a judge in one's cause
- (2) Audi Alteram Partem i.e., No one should be condemned unheard.
- (3) Doctrine of Bias

In *Keya Kar v. The State of West Bengal*¹¹, petitioner not was allowed to defend herself against the order of punishment. Rules indicate that the employee concerned is not given a second opportunity to make her defence on the proposed punishment. She was given the due opportunity to defend herself in the enquiry. So there was no violation of principles of natural justice.

In *Managing Director, ECIL v. B. Karunakar*¹², the Supreme Court held that unless an enquiry officer is not a disciplinary authority it is compulsory on their part to provide a copy of the report of inquiry otherwise it leads to violation of natural principles of justice and is said to be unconstitutional.

EXCEPTIONS TO ARTICLE 311(2)

The protection of Article 311(2) providing for inquiry and reasonable opportunity of being heard will not be available in the following circumstances-

- i. Conviction on a criminal charge

When a person is dismissed or reduced in rank on the ground of misconduct which led to the conviction and criminal charge then there is no need of conducting an inquiry.

- ii. Not practicable to hold an enquiry

When the authority empowered is satisfied for some reason that it is not reasonably practical to hold such enquiry then enquiry it need not be held.

- iii. When the President or governor in the interest of the security of the state is satisfied that it is not expedient to hold such enquiry.

¹¹ *Keya Khar v. State of West Bengal* , A.I.R. 2018 (India).

¹² *M.D ECIL v. B Karunakar* ,A.I.R. 1993 4 S.C.C 727 (India).

Union of India v. Tulshiram Patel¹³, the Supreme Court held that dismissal, removal, reduction in rank for government servant under the second proviso of Article 311(2) without holding enquiry is in the public interest and therefore not violative of Article 311(2) and 14 of the constitution.

TERMINATION OF SERVICE WHEN AMOUNTS TO PUNISHMENT

The protection of article 311 is available only when dismissal or removal or reduction in rank is by way of punishment. Therefore, it is essential to determine as to what constitutes over amounts to punishment.

In Parshottam Lal Dhingra v. Union of India¹⁴, Supreme Court has laid down the certain test to determine whether the termination is by way of punishment or not-

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

If the above questions are answered in the affirmative then the dismissal or removal or reduction in rank is by way of punishment.

DECIDING AUTHORITY:

Clause 3 of Article 311 of the constitution says that if a question arises whether it is reasonably practicable to hold such enquiry as referred in clause (2), the decision of authority and power to dismiss all remove such person or to reduce him in rank shall be final.

In Jaswant Singh v. State of Punjab¹⁵, the Supreme Court held that despite 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."

¹³ Union of India v Tulshiram Patel, A.I.R. 1985 1416 (India).

¹⁴ Parshottam lal Dhingra v. Union of India, A.I.R. 1958 S.C 36 (India).

¹⁵ Jaswant Singh v. State of Punjab, 1991 S.C.R (1) 411 (India).

CONCLUSION:

The Constitution of India through Article 311, therefore, protects the civil servants from arbitrary dismissal or removal or reduction in rank. As seen earlier the above article imposes restrictions on the doctrine of pleasure thereby enabling the civil servants to discharge their administrative functions effectively and efficiently. Judiciary has also played a major role in laying down tests for determining the provisions of this article. It requires the authorities to hold an enquiry and provide a reasonable opportunity of being heard by incorporating principles of natural justice. However, there are certain exemptions to these safeguards where conducting inquiry is not necessary such as dismissal or removal or reduction in rank due to criminal conviction or where it is practically not possible to hold an enquiry or when it is in the public interest.

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