CHAPTER XXXVI

GOVERNMENT SERVICES

SYNOPSIS

A. INTRODUCTORY

Articles 309 to 323 of the Constitution make elaborate provisions for the Central and State services.[1]

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. The Constitution, therefore, seeks to inculcate in the civil servant a sense of security and fairplay 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.

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. The role of the Courts in this area is crucial as they seek to draw a balance between the twin needs of the civil service, *viz.*, (1) the need to maintain disci-

1. This Chapter may be read along with Ch. XXIII, *supra*.

pline in the ranks of the civil servants; and (2) the need to ensure that the disciplinary authorities exercise their powers properly and fairly.

B. LEGISLATIVE POWER

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.[2] Pending such legislation, the President, or the Governor, or any person authorised 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 characterised as 'legislative' and not 'executive' power as it is a power which the legislature is competent to exercise but has not in fact exercised.[3]

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,[4] 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".[5]

The Supreme Court has ruled in *Kapur*[6] that "the benefits acquired under the existing rule cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Art. 309 which affects or impairs vested rights." Upholding the power to frame rules retrospectively, the Court has subjected the power to the following rider in *B.S. Yadav v. State of Haryana*:[7]

> "But the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case."

This means that the "retrospective operation of the rule will be struck down if there exists no reasonable nexus between the concerned rule and its retrospectivity."

Rules were made in 1985 but given operation with effect from 1976. The Supreme Court declared the rules invalid with the following comment:[8]

---

2. See entries 70 and 71 in List I, *supra*, Ch. X, and entries 41 and 42 in List II, *supra*, Ch. X.
3. *B.S. Yadav v. State of Haryana*, AIR 1981 SC 561 : 1980 Supp SCC 524.
4. *B.S. Vedera v. Union of India*, AIR 1969 SC 118 : (1968) 3 SCR 575; *S.S. Bola v. B.D. Sardana*, AIR 1977 SC 3127.
Also see, *V.K. Sood v. Secretary, Civil Aviation*, AIR 1993 SC 2285 : 1993 Supp (3) SCC 9.
5. *R.N. Nanjundappa v. T. Thimmaiah*, AIR 1972 SC 1767 : (1972) 1 SCC 409; *Ex. Capt. K.C. Arora v. State of Haryana*, AIR 1987 SC 1858 : (1984) 3 SCC 281; *P.D. Aggarwal v. State of Uttar Pradesh*, AIR 1987 SC 1676 : (1987) 3 SCC 622.
6. *T.R. Kapur v. State of Haryana*, AIR 1987 SC 415 : 1994 Supp (1) SCC 44.
7. *Supra*, footnote 3.
8. *K. Narayanan v. State of Karnataka*, AIR 1994 SC 55, 64 : 1994 Supp (1) SCC 44.

> "As even earlier there is no nexus between framing a rule permitting appointment by transfer and making it retrospective with effect from 1996….The retrospective operation of the impugned rule attempts to disturb a system which has been existing for more than twenty years. And that too without any rationale. Absence of nexus apart no rule can be made retrospectively to operate unjustly and unfairly against other. In our opinion the retrospective operation of the rule with effect from 1976 is discriminatory and violative of Arts. 14 and 16."

The Court also said: "Retrospectivity of the rules is a camouflage for appointment of junior engineers from a back date. In our opinion the rule operates viciously against all those Assistant Engineers who were appointed between 1976 to 1985."

The Court appears to have taken this stand because, at times, State Governments amend service rules with long retrospectivity. The Court has said that the governments change the rules as if they "are a play-thing in the hands of the government".

If there is breach of a statutory rule framed under Art. 309 in relation to the conditions of service, the aggrieved government servant can take recourse to the Court for redress.[9] Questions of interpretation of service rules continually arise before the Courts.[10]

It is not obligatory on the government to frame rules for creating a service, or a post, or to lay down qualifications for a post or service, or to recruit people for the same, as the government can proceed to do so under its executive power.[11] Article 309 does not abridge the power of the Executive to act under Articles 73 and 162 without a law.[12] When a rule has been framed under proviso to Art. 309 of the Constitution laying down the mode and manner of recruitment, no executive order even issued under Art. 162 of the Constitution could be made by way of alteration or amendment of such rules.[13] However, if a rule or a law is in existence then the Executive must abide by it.

The Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, then the Government can fill up the gaps and supplement the rules, or the law, by issuing instructions not inconsistent therewith.[14] The Government has power to issue administrative directions governing the service conditions of its employees in the

---

9. *State of Mysore v. Bellary*, AIR 1965 SC 868 : (1964) 7 SCR 471 ; *Shea Dayal Sinha v. State of Bihar*, AIR 1981 SC 1543 : (1982) 1 SCC 373.

10. There is a good deal of case-law on the point: see, for example, *Asim Kumar Bose v. Union of India*, AIR 1983 SC 509 : (1983) 1 SCC 345; *Paluru Ramkrishnaiah v. Union of India*, AIR 1990 SC 166 : (1989) 2 SCC 541.

11. *Ramesh Prasad v. State of Bihar*, AIR 1978 SC 327.

12. See, *supra*, Chs. III and VII.

13. *Punjab State Warehousing Corpn, Chandigarh v. Manmohan Singh*, (2007) 9 SCC 337 : (2007) 4 JT 291. See also *State of Uttaranchal v. Alok Sharma*, (2009) 7 SCC 647 : (2009) 6 JT 463, no condition in derogation of rules under Art. 309.

14. *B.N. Nagarajan v. State of Mysore*, AIR 1966 SC 1942; *Sant Ram v. State of Rajasthan*, AIR 1967 SC 1910; *State of Assam v. Premadhar*, AIR 1970 SC 1314 : (1970) 2 SCC 211; *State of Haryana v. Shamsher Jang Bahadur*, AIR 1972 SC 1546; *V.T. Khanzode v. Reserve Bank of India*, AIR 1982 SC 917 : (1982) 2 SCC 7; *Union of India v. Patnakar*, AIR 1984 SC 1587; *Krushna Chandra Sahu v. State of Orissa*, AIR 1996 SC 352 : (1995) 6 SCC 1; *O.P. Lather v. Satish Kumar Kakkar*, AIR 2001 SC 821 : (2001) 3 SCC 110; *Union of India v. Rakesh Kumar*, AIR 2001 SC 1877.

absence of any statutory provisions governing the field.[15] In *Baleshwar Dass v. State of Uttar Pradesh*,[16] an office memorandum regarding seniority in government posts was held binding as the government had been following the same for nearly two decades.

A rule framed under Article 309 cannot be modified by an executive order.[17] An administrative instruction cannot abridge, or run counter to, a statutory provision.[18]

When there is a conflict between a rule made under Art. 309, and an executive instruction, it is the rule which prevails. An executive instruction can make provision only with regard to a matter not covered by the Rules; executive instructions cannot override the rules.[19]

Where a person was appointed inconsistent with the rules but under an administrative instruction, the appointment was quashed by the Supreme Court with the following observation:[20]

> "The settled position of law is that no Government order, Notification or circular can be a substitute of the statutory rules framed under the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence."

The legislative or rule-making power under Article 309 is specifically made "subject to the provisions of this Constitution". Therefore, the powers is to be exercised subject to the Fundamental Rights, especially, Article 14,[21] 15,[22] 16[23] and 19(1).[24] Thus, rules have to be reasonable, fair and not grossly unjust, if they are to survive the test of Arts. 14 and 16.[25]

In *Chairman, Railway Board v. C.R. Rangadhamaiah*,[26] the Supreme Court has maintained that a rule made under the proviso to Art. 309 has to be exercised subject to the provisions of the Constitution. This means that the rules can be challenged on the ground of violation of the provisions of the Constitution including the Fundamental Rights. In this case, a rule made on December 5, 1988, reduced the pension of those railway employees who had retired after January 1, 1973, and before December 5, 1988. The Court declared the rule as invalid as being violative not only of Arts. 31(1), 19(1)(*f*), (since repealed),[27] but also of Arts. 14 and 16 on the ground that it was "unreasonable and arbitrary" since it

---

15. *M.M. Dolichan v. State of Kerala*, AIR 2001 SC 216 : (2001) 1 SCC 151.
16. AIR 1981 SC 41 : (1980) 4 SCC 226.
17. *State of Maharashtra v. Chandrakant*, AIR 1981 SC 1990 : (1981) 4 SCC 130.
18. *State of Gujarat v. Lal Singh*, AIR 1981 SC 368 : (1981) 2 SCC 75.
19. *Union of India v. Sh. Soma Sundaram Vishwanath*, AIR 1988 SC 2255; *Paluru Ramkrishnaiah v. Union of India*, AIR 1990 SC 166, 171 : (1989) 2 SCC 541.
20. *Rajinder Singh v. State of Punjab*, AIR 2001 SC 1769 : (2001) 5 SCC 482.
21. *Supra*, Ch. XXI.
22. *Supra*, Ch. XXII.
23. *Supra*, Ch. XXIII.
24. *Supra*, Ch. XXIV.
25. *Baleshwar Dass v. State of Uttar Pradesh*, *supra*; *State of Uttar Pradesh v. Ram Gopal*, AIR 1981 SC 1041 : (1981) 3 SCC 1; *B.S. Yadav v. Union of India*, *supra*; *P. Balakotiah v. Union of India*, AIR 1958 SC 232; *State of Mysore v. Krishna Murthy*, AIR 1973 SC 1146.
26. AIR 1997 SC 3828 : (1997) 6 SCC 623.
27. *Supra*, Chs. XXXI and XXXII.

had the effect of reducing the amount of pension that had become payable to the employees (as per the rules then prevalent) who had already retired from service on the date of issuance of the impugned rule.[28]

Similarly, any direction issued by the government in exercise of its administrative power, and any practice followed by it, is subject to these Fundamental Rights and thus arbitrary and unreasonable directions regarding service matters cannot be valid.[29]

An instructive case is *Rattan Lal v. State of Haryana*,[30] The Haryana Government followed the practice of appointing teachers on an *ad hoc* basis at the beginning of the academic year and terminating their services at the end of the year before the beginning of summer vacation, and appointing them again in the beginning of the next academic session and repeating the same process over and over again. The teachers were thus made to lose the benefits of summer vacation, salary and allowances for that period and leave privileges, available to all government servants. Condemning such a practice under Arts. 14 and 16, the Supreme Court said: "These *ad hoc* teachers are unnecessarily subjected to an arbitrary "hiring and firing" policy..... The Government appears to be exploiting this situation. This is not a sound personnel policy.... It is needless to say that the State Government is expected to function as a model employer."

The power conferred by Art. 309 is exercisable subject to the provisions of Arts. 233, 234 and 235.[31] Accordingly, the Supreme Court has ruled in *State of Bihar v. Bal Mukund Sah*[32] that the Bihar Reservation of vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward classes) Act, 1991, in *ultra vires* the Constitution insofar as the Act seeks to reserve 50% of the posts in subordinate judiciary for these sections. The Act is inconsistent with Arts. 233 and 234.[33] The State Legislature cannot lay down a statutory scheme of reservation in subordinate judiciary without consulting the High Court.

On the question of inter-relationship between Arts. 235 and 309, the Supreme Court has observed in *Sisir* :[34]

> "…the mere fact that Art. 309 gives power to the executive and the legislature to prescribe the service conditions of the judiciary does not mean that the judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the judiciary in that behalf, for theoretically it would not be impossible for the executive or the legislature to turn and twist the tail of the judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain the independence of the judiciary."

It is thus settled law that the power under Art. 309 can be exercised in relation to subordinate judiciary keeping "in view the opinion of the High Court of the

---

28. Also see, *Salabuddin Mohammad Yunus v. State of Andhra Pradesh*, AIR 1984 SC 1905 : 1984 Supp SCC 399.
29. *S.L. Sachdev v. Union of India*, AIR 1981 SC 411 : (1980) 4 SCC 562.
30. (1985) 4 SCC 43 : AIR 1987 SC 478.
31. For these provisions see, *supra*, Ch. VIII, Sec. G..
32. AIR 2000 SC 1296 : (2000) 4 SCC 640.
33. For details, see, *supra*, Ch. VIII, Sec. G(h).
34. *Registrar (Admin.), High Court of Orissa, Cuttack v. Sisir Kanta Satapahty*, AIR 1999 SC 3265 : (1999) 7 SCC 725.

concerned State and the same cannot be whisked away".[35] The framers of the Constitution have separately dealt with the judicial services of the State and have made exclusive provisions [Arts. 233 to 237] for the purpose. These provisions stand on their own and quite independently of the general provisions dealing with State Services, *viz*., Arts. 308 to 323. Thus, Art. 309, which, on its express terms, is made subject to other provisions of the Constitution gets circumscribed "to the extent to which from its general field of operation is carved out a separate and exclusive field for operation" by Arts. 233 to 239 dealing with subordinate judiciary. In laying down this proposition, the Supreme Court is guided by the premise that judicial independence is the very essence and basic structure of the Constitution.[36]

The Courts also lay down norms to deal with service matters when either no norms have been laid down under Article 309, or they are not fair and just.[37]

Besides, independently of general provisions of Art. 309, special provisions exist in the Constitution for some categories of public servants.

For officers of the Supreme Court, rules regarding conditions of service can be made by the Chief Justice subject to a law of Parliament [Art. 146(2)].[38]

For persons in the Audit and Accounts Department, conditions of service may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General, subject to a law made by Parliament [Art. 148(5)].[39]

Rules regarding conditions of service for officers and servants of a High Court can be made, subject to a law of the State Legislature, by the Chief Justice [Art. 229(2)].[40]

For servants of State Legislatures and Parliament, the relevant provisions in the Constitution are Articles 187[41] and 98.[42]

Article 312 makes provision for the creation of all-India Services common to the Union and the States.[43]

The rule-making or legislative power under Article 309 is *subject to* constitutional provisions[44] and so it is subject to Article 310 laying down the doctrine of pleasure; and Article 311 which controls Article 310.[45]

---

35. *State of Bihar v. Bal Mukund Sah,*, AIR 2000 SC at 1319 : (2000) 4 SCC 640.
36. *Ibid*, at 1318.
Also see, *Sisir, supra*, footnote 34*; All Inida Judges' Ass. v. Union of India*, AIR 1993 SC. 2493; *supra*, Ch. VIII, Sec. F and Sec. G.
37. *Krushna Chandra Sahu, supra*, footnote 14.
38. *Supra*, Ch. IV, Secs. I(f) and (g).
39. *Supra*, Ch. II, Sec. J(ii)(s).
40. *Supra*, Ch. VIII, Sec. B(u).
41. *Supra*, Ch. VI, Sec. D(c).
42. *Supra*, Ch. II, Sec. H(c).
43. *Supra*, Ch. XII, Sec. G.
44. *Supra*, Sec. B.
45. Art. 313 was a transitory provision as it kept in force all pre-constitution rules relating to public services, so far as consistent with the Constitution, until fresh rules were made under Art. 309.

C. DOCTRINE OF PLEASURE

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 statute, 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 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 is that the Crown should not be bound to continue in public service any person whose conduct is not satisfactory.[46] 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 employment, social security and labour relations. As De Smith observes: "The remarkably high degree of security enjoyed by established civil servants surpassed only by judiciary, was not recognised by rules applied in the Courts."[47]

A similar rule is embodied in Article 310(1) which lays down that the defence personnel[48] and civil servants[49] 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'.

This is the general rule which operates "except as expressly provided by the Constitution". This means that the "doctrine of pleasure" is subject to general constitutional limitations. Therefore, when there is a specific provision in the Constitution giving to a servant a tenure different from that provided in Article 310, then that servant would be excluded from the operation of the doctrine of pleasure. The Supreme Court Judges [Art. 124][50], Auditor-General [Art. 148][51], High Court Judges [Arts. 217, 218][52], a member of a Public Service Commission [Art. 317][53], and the Chief Election Commissioner[54] have been expressly excluded by the Constitution from the rule of pleasure.

(a) IMPLICATIONS OF THE DOCTRINE OF PLEASURE

The Supreme Court has recently justified the pleasure doctrine on the basis of 'public policy', 'public interest' and 'public good' insofar as inefficient, dishon-

---

46. *Shenton v. Smith*, (1895) AC 229; *Gould v. Stuart*, (1896) AC 575; *Reilly v. The King*, (1934) AC 176; *Terrell v. Secy. of State*, (1953) 2 QB 482; *Chelliah Kodeeswaran v. Attorney-General of Ceylon*, (1970) AC 1111.

47. S.A. DE SMITH, *CONSTITUTIONAL AND ADMINISTRATIVE LAW*, 189 (1977).
Also see, Wade *ADMINISTRATIVE LAW*, 67-71 (2000).

48. The term 'defence personnel' means a member of a defence service or a person holding any post connected with defence.

49. For meaning of the term 'civil servant' see, *infra*, Sec. D.

50. *Supra*, Ch. IV, Sec. B(m).

51. *Supra*, Ch. II, Sec. J(ii)(s).

52. *Supra*, Ch. VIII, Sec. B(t).

53. *Infra*, Sec. K.

54. Art. 324, *supra*, Ch. XIX, Sec. D.

est or corrupt persons, or those who have become a security risk, should not continue in service.[55]

Under Article 310, the government has power to punish any of its servants for misconduct committed not only in the course of official duties but even for that committed by him in private life. The government has a right to expect that each of its servants will observe certain standards of decency and morality in his private life. For example, government has power to demand that no servant shall remarry during the life-time of his first wife, or that he shall not drink at social functions, or that he shall not lend or borrow or acquire and dispose of property. If the government were not able to do so, there would be a catastrophic fall in the moral prestige of the administration. Thus, disciplinary action can be taken against a police constable for his behaving very rudely and improperly with a member of the public in his private life.[56]

A rule emanating from the doctrine of pleasure in Britain is that no servant of the Crown can maintain an action against the Crown for any arrears of salary. The assumption underlying this rule is that the only claim of the civil servants is on the bounty of the Crown and not for a contractual debt.[57]

The Supreme Court in India refused to follow the abovementioned rule in *State of Bihar v. Abdul Majid*.[58] A sub-inspector of police, dismissed from service on the ground of cowardice, was later reinstated in service, but the government contested his claim for arrears of salary for the period of his dismissal. The Supreme Court upheld his claim for arrears of salary on the ground of contract or *quantum meruit, i.e.,* for the value of the service rendered.

The above ruling was reiterated by the Supreme Court in *Om Parkash v. State of Uttar Pradesh*[59] where it was held that when the dismissal of a civil servant was found to be unlawful, he was entitled to get his salary from the date of dismissal to the date when his dismissal was declared unlawful. In *State of Maharashtra v. Joshi*,[60] a claim for arrears of salary was held to be based on contract.

(b) LEGISLATIVE POWER IS SUBJECT TO THE DOCTRINE OF PLEASURE

The legislative power conferred on Parliament or a State Legislature, or the rule-making power conferred on the President or the Governor, by Article 309 is controlled by the doctrine of pleasure embodied in Article 310 for Article 309 opens with a restrictive clause, *viz.*, 'subject to the provisions of the Constitution.'[61] Therefore, the power of the Legislature or that of the Executive to make

---

55. *Union of India v. Tulsiram Patel,* AIR 1985 SC 1416 : (1985) 3 SCC 398.

56. *Madhosingh v. State of Maharashtra,* AIR 1960 Bom 285.
Also see, *Laxmi Narain v. Dist. Magistrate.,* AIR 1960 All. 55.

57. *Mulvenna v. The Admiralty,* 1926 S.C. 842; *Lucas v. Lucas and High Commissioner for India,* (1943) P. 68; *I.M. Lall's* case, 75 I.A. 225; ANSON, *LAW AND CUSTOM OF THE CONST.,* II. 335-36.
See, D.W. LOGAN, A Civil Servant and his Pay, 61 *LQR* 240 (1945). Logan not only criticises the rule but even doubts its correctness.
Also see, *Chelliah Kodeeswaran v. Att. Gen., supra,* footnote 46.

58. AIR 1954 SC 245 : 1954 SCR 786.

59. AIR 1955 SC 600.
Also, *Madhav v. State of Mysore,* AIR 1962 SC 8 : 1962 SCR 886.

60. AIR 1969 SC 1302 : (1969) 1 SCC 1302.

61. *Moti Ram Deka v. N.E.F. Rlys.,* AIR 1964 SC 600 : (1964) 5 SCR 683.

rules, to lay down conditions of service of public servants is subject to 'the tenure at pleasure' doctrine under Article 310.

Article 309 is, therefore, to be read subject to Art. 310. A law or a rule cannot impinge upon the overriding power of the President or the Governor to put an end to the tenure of a civil servant at his pleasure.[62] The inter-relationship between Arts. 309 and 310 has been explained by the Supreme Court as follows in *Tulsiram Patel*:

> "The opening words of Art. 309 make that article expressly subject to the provisions of this Constitution. Rules made under the proviso to Art. 309 or under Acts referable to that Article must, therefore, be made subject to the provisions of the Constitution if they are to be valid. Art. 310(1) which embodies the pleasure doctrine is a provision contained in the Constitution. Therefore, rules made under the proviso to Art. 309 or under Acts referable to that Article are subject to Art. 310(1). By the opening words of Art. 310(1) the pleasure doctrine contained therein operates "except as expressly provided by this Constitution." Art. 311 is an express provision of the Constitution. Therefore, rules made under the proviso to Art. 309 or under Acts referable to Art. 309 would be subject both to Arts. 310(1) and Art. 311."

The result is that the rules made under Art. 309 are not applicable to defence personnel as they remain subject to the President's pleasure.[63]

The position in India differs from that in Britain, because in Britain, the doctrine of pleasure being a common law doctrine, Parliament may by law supersede the doctrine of pleasure in any case it likes. But, the same cannot be done in India. Here the doctrine of pleasure is sanctioned by the Constitution and can, therefore, be excluded only by a constitutional provision, such as, Article 311, but not by any legislation or rules.[64]

(c) DISCIPLINARY ACTION TAKEN UNDER STATUTORY AUTHORITY

Though a law (or the rules) made under Article 309 cannot restrict the pleasure of the President or the Governor, as noted above, yet a law or a rule can prescribe the procedure by which, and the authority by whom, disciplinary powers can be exercised over civil servants. Whatever this authority then does, it does so by virtue of the express power conferred on it by the law (or the rules), and not under the 'pleasure' of the President or the Governor.

The statutory power of the authority to take disciplinary action cannot be equated with the pleasure of the Governor or the President. The disciplinary authority has to act within the compass of its statutory power, and any infringement of this may result in the order being quashed by the Court. For example, in the case noted below,[65] the power to take disciplinary action was conferred under the law on the Inspector-General of Police subject to the approval of the State

---

62. *Union of India v. K.S. Subramanian*, AIR 1989 SC 662 : (1989) Supp 1 SCC 331.
Also, *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192; *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416 : (1985) 3 SCC 398; *Union of India v. S.B. Mishra*, AIR 1996 SC 613 : (1995) 5 SCC 657.

63. *Union of India v. S.B. Mishra*, AIR 1996 SC 613.

64. *Sampuran Singh v. State of Punjab*, AIR 1982 SC 1407 : (1982) 3 SCC 200.
Also, *Ramanatha Pillai v. State of Kerala*, AIR 1973 SC 2641 : (1973) 2 SCC 650.

65. *Supdt. of Police, Manipur v. R.K. Tomalsana Singh*, AIR 1984 SC 535 : 1984 Supp SCC 155.
Also, *Union of India v. Ram Kishan*, AIR 1971 SC 1402 : (1971) 2 SCC 349.

Government. Dismissal of a sub-inspector of police by the I.G. without the approval of the State Government would be invalid.

Conferment of disciplinary powers by statute or rules on a designated authority does not in any way override the pleasure of the Governor or the President, as the case may be. This 'pleasure' remains intact. The Governor or the President can still dismiss, remove or reduce in rank a government servant even though such power has also been conferred on any other authority. But, so far as this authority is concerned, the validity of its action is to be tested with reference to the law under which it functions, and the doctrine of pleasure cannot be invoked to justify a wrongful order made by such an authority. The doctrine of pleasure can be invoked only when an order of termination of service has been made in the name of the Governor or the President.

The pleasure of the President or the Governor is not required to be exercised by either of them personally. Such pleasure can be exercised by the President or the Governor acting with the aid and advice of the Council of Ministers.[66] The Supreme Court has propounded the view in *Shamsher Singh*[67] and *Sripati Ranjan*[68] that the Constitution 'conclusively contemplates' a 'constitutional President' acting with the aid and advice of the Council of Ministers. Appointment, dismissal or removal of civil servants is not a 'personal' but an 'executive' function of the President or the Governor. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by him of any power, it is not his personal satisfaction which is required but satisfaction in the constitutional sense. Thus, an officer authorised under the rules of business can take the desired action in the name of the President or the Governor as the case may be.[69]

In *Ranjan*,[70] an appeal in case of dismissal of an employee was disposed of by the Minister when, under the rules, the appeal lay to the President. The Supreme Court ruled that the disposal of the appeal was proper and legal.

D. CIVIL SERVANT

The term civil servant includes members of a civil service of the Centre or a State, or of an all-India service, or all those who hold civil posts under the Centre or a State. A 'civil post' means an appointment or office on the civil side and includes all personnel employed in the civil administration of the Union or a State.

What, however, is necessary to make a civil post 'under the government' is the relation of master and servant between the state and the employee. Whether such a relationship exists is a question of fact to be decided in each case. A host of factors have to be taken into consideration to determine such relationship. None of these factors may be conclusive and no single factor may be considered absolutely essential.

---

66. See, Ch. III, Sec. A(iii) and Sec. B; and Ch. VII, Sec. A(ii) and Secs. B and C *supra.*

67. *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192 overruling *State of Uttar Pradesh v. Babu Ram Upadhya*, AIR 1961 SC 751 : (1961) 2 SCR 679 on this point.
Also, *supra*, Ch. III, Sec. B; Sec. B, Ch. VII.

68. *Union of India v. Sripati Ranjan*, AIR 1975 SC 1755 : (1975) 4 SCC 699.

69. For "Rules of Business", see Chs. III and VII, *supra.*

70. *Supra*, footnote 68.

Some of these factors are:

(i) who selects the employee?

(ii) Who appoints him?

(iii) Who pays him the remuneration or wages?

(iv) Who controls the method of his work?

(v) Who has power to suspend or remove him from employment?

(vi) Who has a right to prescribe the conditions of service?

(vii) Who can issue directions to the employee?

If the answer to all these questions is, the Government then it is a civil post under the Government. Co-existence of all these indicia is not predicated in every case to make the relationship as one of master and servant. In special classes of employment, a contract of service may exist even in the absence of one or more of these indicia. Ordinarily, the right of an employer to control the method of doing work, and the power of superintendence and control are strong indicators of the master and servant relationship.[71]

A civil post outside the regularly constituted services does not have to carry a definite rate of pay; he may be paid on commission basis; the post need not be whole-time, it may be part-time and its holder may even be free to engage himself in other activities. What is important, however, is the existence of the master-servant relationship.[72] Applying the above indicia, the Supreme Court has held the panchayat service in Gujarat created by a State law to be State civil service and its members as servants of the State.[73]

The *kurk-amins* appointed on commission basis by the collectors have been held to be government servants as there exists no difference between them and the *kurk-amins* appointed on salary basis. The former perform the same duties and responsibilities as the latter.[74]

The term 'civil servant' does not include a member of a defence service,[75] or even a civilian employee in defence service who is paid salary out of the estimates of the Ministry of Defence.[76] These persons, therefore, while falling under Articles 309 and 310 do not enjoy the protection of Article 311. A member of the police force, however, is a 'civil servant'.[77]

The statutory public corporations, or government companies registered under the Companies Act, although regarded as instrumentalities of the State and, thus, 'authorities' for the purposes of Art. 12,[78] yet have their own distinctive personality separate from the government. Accordingly, employees of such bodies are

---

71. *State of Uttar Pradesh v. Audh Narain Singh*, AIR 1965 SC 360 : (1964) 7 SCR 89.

72. *State of Assam v. Kanak Chandra Dutta*, AIR 1967 SC 884 : (1967) 1 SCR 679.
Also see, *Supdt. of Post Offices v. P.K. Rajamma*, AIR 1977 SC 1677 : (1977) 3 SCC 94.

73. *State of Gujarat v. Ramanlal Keshav Lal*, AIR 1984 SC 161.
Also see, *Mathuradas v. S.D. Munshaw*, AIR 1981 SC 53.

74. *State of Uttar Pradesh v. Chandra Prakash Pandey*, AIR 2001 SC 1298 : (2001) 4 SCC 78.

75. *Inder Sain v. Union of India*, AIR 1969 Del 220. Defence personnel have their own service rules and regulations for maintaining discipline among their ranks.

76. *Lekh Raj v. Union of India*, AIR 1971 SC 2111 : (1971) 1 SCC 780.

77. *Jagannath Prasad v. State of Uttar Pradesh*, AIR 1961 SC 1245.

78. *Supra*, Ch. XX, Sec. D.

not regarded as employees of the government and do not, thus, fall within the term 'civil servants' and do not, therefore, fall under the scope of Arts. 310 and 311.[79]

Appointments made under a scheme and recruitment process being carried out through a committee would not render the incumbents thereof holders of civil post. No rule or regulation has been shown governing the mode of their recruitment. A distinction must be made about a post created by the Central Government or the State Governments in exercise of their power under Articles 77 or 162 of the Constitution of India or under a statute vis-à-vis cases of this nature which are *sui generis*. Terms and conditions of services of an employee may be referable to Acts of appropriate legislature. The matter may also come within the purview of Article 309 of the Constitution.[80] In this case a scheme was floated by the Central Government on a year to year basis and workers known as 'anganwadi workers' were appointed as helpers on honorarium basis. They were also given certain other financial benefits as per the recommendation of a Review Committee constituted by the Central Government. Anganwadi helpers conteded that they were holders of civil posts within the meaning of Article 309 of the Constitution. Distinguishing its earlier decision in *Kanak Chandra Dutta*[81] the Court pointed out that such workers did not carry out any function of the State. They do not hold posts under any statute. Recruitment rules ordinarily applicable to employees of the state were not applicable in their case. No process of selection was involved. In such factual context the Court held that such Anganwadi workers did not hold any civil post under the State and the State was not required to comply with constitutional scheme of equality under Articles 14 and 16 of the Constitution.[82]

In *Ameerbai*[83] after considering a number of its earlier decision the Court held that even though a person may be considered as an employee of an employer to which Art. 12 is attracted, he would not be considered as a government employee holding a 'civil post' under Art. 311. And the fact that such workers were subject to state controlled Integrated Child Development Scheme to which they were attached is not crucial.[84]

Employees of these bodies do remain subject to Fundamental Rights and can also claim natural justice in case of dismissal, reduction in rank, *etc*.[85] Similar is the status of employees of local bodies.[86]

---

79. *Bool Chand v. Kurukshetra University*, AIR 1968 SC 292 : (1968) 1 SCR 434; *S.L. Agarwal v. Hindustan Steel*, AIR 1970 SC 1150; *Sabhajit Tewary v. Union of India*, AIR 1975 SC 1329 : (1975) 1 SCC 485; *Sukhdev Singh v. Bhagatram*, AIR 1975 SC 1331; *A.L. Kalra v. Project and Equipment Corp. of India Ltd.*, AIR 1984 SC 1361 : (1984) 3 SCC 316; *K.C. Joshi v. Union of India*, AIR 1985 SC 1046; *Rajasthan SRTC v. Gurudas Singh*, (2004) 13 SCC 418.

Also see, M.P. JAIN, The Legal Status of Public Corporations and Their Employees, 18 *JILI* 1-34 (1976); JAIN and JAIN, *PRINCIPLES OF ADMINISTRATIVE LAW*, Ch XXV (1986).

80. *State of Karnataka v. Ameerbi*, (2007) 11 SCC 681 : (2007) 1 JT 279.

81. *State of Assam v. Kanak Chandra Dutta*, AIR 1967 SC 884.

82. *Ibid.*

83. (2007) 11 SCC 681 : (2007) 1 JT 279.

84. See also *Uttar Haryana Bijli Vitran Nigam Ltd. v. Surji Devi*, (2008) 2 SCC 310 : AIR 2008 SC 1114.

85. For the concept of Natural Justice, see, *supra*, Ch. VIII.

86. *Kumaon Mandal Vikas Nigam Ltd. v. Girija Shankar Pant*, AIR 2001 SC 24 : (2000) 1 SCC 182.

Officers and members of a High Court are civil servants.[87]

Protection under Art. 311 is not available to Members of Autonomous District/Regional Council under Sch. VI.[88]

Employees of an employer who come within the meaning of Article 12 of the Constitution are not necessarily government servants. The State by virtue of a scheme may exercise control over a section of the persons working but merely because of that such persons do not become entitled to protection under Article 311 of the Constitution.[89]

E. RESTRICTIONS ON THE DOCTRINE OF PLEASURE

The Doctrine of Pleasure embodied in Article 310, though not subject to legislative power is not, however, unlimited. On its exercise, the Constitution imposes the following several qualifications:

(1) The 'pleasure' under Art. 310 cannot be exercised in a discriminatory manner and is controlled by the Fundamental Rights, especially, Arts. 14, 15 and 16.

Article 14 can be invoked when a person's services are terminated in a discriminatory manner.[90] Art. 15(1) comes into play if a person's services are terminated on account of religious bigotry, racial prejudice, casteism, provincialism or gender.[91] Art. 16(1) imposes equable treatment and bars arbitrary discrimination.[92]

(2) Under Art. 320(3)(c), the Union or the State Public Services Commission is to be consulted on all disciplinary matters affecting a person serving in a civil capacity under the Central or a State Government.[93]

(3) When a person (not being a member of a defence service or an All-India service or a civil service) is appointed to a civil post on contract for a fixed term, the contract may (if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications) provide for the payment of compensation to him if, before the agreed period, that post is abolished, or that person is required to vacate that post for reasons not connected with misconduct on his part [Article 310(2)].

The Chief Minister and the Ministers appointed certain persons of their choice in their respective establishments. The order appointing the employees expressly stated not only that their services shall be terminated at any time without giving any notice and without assigning any reason but also that their appointment was for a limited period conterminous with the concerned minister's tenure. These

---

87. *Pradyat Kumar v. Chief Justice, Calcutta High Court*, AIR 1956 SC 285 : (1955) 2 SCR 1331; *Akhil Kumar v. State of Uttar Pradesh*, AIR 1960 All 193; *supra*, Ch. VIII, Sec. E(iv)(d).
88. *Pu Myllai Hlychho v. State of Mizoram*, (2005) 2 SCC 92 : AIR 2005 SC 1537.
89. *State of Karnataka v. Ameerbi*, (2007) 11 SCC 681,
90. See, *supra*, Ch. XXI.
91. See, *supra*, Ch. XXII, Sec. A.
92. See, *Supra.* Ch. XXIII, Sec. A.
93. See, *infra*, Sec. G.

employees were also asked to execute an undertaking in the above terms. They did execute such an undertaking.

The Supreme Court ruled that their appointment was purely a contractual appointment conterminous with the tenure of the Minister's establishment, at whose choice and instance they were appointed. The appointees in question could not be treated as temporary government servants. As soon as the tenure of the ministers at whose instance and on whose recommendation they were appointed came to an end, their services also came to an end simultaneously. Neither an order of termination as such, nor any prior notice was necessary for putting an end to their service. "They ought to go out in the manner they have come in."[1]

4. An important limitation on the doctrine of pleasure is imposed by Article 311(1). According to this constitutional provision, no civil servant is to be dismissed or removed by an authority 'subordinate' to the authority by which he was appointed. Dismissal or removal of a civil servant by an authority subordinate to the appointing authority is invalid.[2]

This requirement does not mean that the removal or dismissal must be by the appointing authority itself, or its direct superior. It is enough if the removing authority is of the same or co-ordinate rank or grade as the appointing authority.

The government can confer powers on an officer other than the appointing authority to dismiss a government servant provided he is not subordinate in rank to the appointing authority[3]. This means that a person appointed by Secretary cannot be dismissed by the Deputy Secretary.[4] A person appointed by the Central Government can be dismissed by it but not by the State Government.[5] A rule authorising a junior officer to dismiss employees appointed by a senior authority is invalid as contravening Article 311(1).[6]

The purpose underlying Article 311(1) is to ensure a certain amount of security to civil servants. The Article bars dismissal or removal by subordinate authorities in whose judgment the civil servants may not have much faith.[7] This requirement is not a restriction on the pleasure of the President or the Governor, for he may always dismiss a servant whether appointed by him or by some one subordinate to him. In effect, it constitutes a restriction on subordinate appointing authorities. In their case, the power of dismissal is to be exercised by authorities of the same rank as the appointing authorities.

Article 311(1) does not debar a superior authority from entrusting the function of making an inquiry to a subordinate and then acting on his report.[8]

---

1. *State of Gujarat v. P.J. Kampavat,* AIR 1992 SC 1685 : (1992) 2 SCC 226.
2. *Krishna Kumar v. Divl. Asstt., E.E. Central Rly.,* AIR 1979 SC 1912; *Sampuran Singh v. State of Punjab,* AIR 1982 SC 1407 : (1982) 3 SCC 200.
3. *Mahesh v. State of Uttar Pradesh,* AIR 1955 SC 70 : (1955) 1 SCR 965; *State of Uttar Pradesh v. Ram Naresh Lal,* AIR 1970 SC 1263 : (1970) 3 SCC 173; *Sampuran Singh v. State of Punjab,* AIR 1982 SC 1407 : (1982) 3 SCC 200; *Jai Jai Ram v. U.P. State Road Transport Corp.,* AIR 1996 SC 2289 : (1996) 4 SCC 727.
4. *Satish v. West Bengal,* AIR 1960 Cal 278.
5. *Union of India v. Gurbaksh Singh,* AIR 1975 SC 641. Also, *Mysore S.R.T. Corp. v. Mirja Khasim,* AIR 1977 SC 747 : (1977) 2 SCC 747.
6. *Mohd. Ghouse v. Andhra,* AIR 1957 SC 246 : 1957 SCR 414.
7. *Parshotam Lal Dhingra v. Union of India,* AIR 1958 SC 36, 44 : 1958 SCR 828.
8. *Pradyat Kumar v. Chief Justice, Calcutta,* AIR 1956 SC 285 : (1955) 2 SCR 1331.

In *State of Madhya Pradesh v. Shardul Singh*,[9] a departmental enquiry was initiated against a sub-inspector of police by Superintendent of Police. After holding an enquiry, hesent his report to the Inspector General of Police who ultimately dismissed the sub-inspector from service. The order of dismissal was challenged on the ground of its being inconsistent with Art. 311(1). It was argued that the inquiry held by the superintendent of police infringed the mandate of Art. 311(1) as the sub-inspector was appointed by the Inspector General of Police.

The Supreme Court ruled that Art. 311(1) "does not in terms require that the authority empowered under that provision to dismiss or remove an official should itself initiate or conduct the enquiry proceeding the dismissal or removal of the officer, or even that inquiry should be done at his instance". The only right guaranteed to a civil servant under Art. 311(1) is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed.

The Court has also pointed out that Article 311(1) does not command that the dismissal must be by the very same authority who made the appointment or by its direct superior. The dismissal can be either by the appointing authority or by any other authority to which the appointing authority is subordinate. The dismissal of a civil servant must comply with the procedure laid down in Article 311.[10]

The Supreme Court refused to agree with the proposition that the guarantee given by Art. 311(1) "includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in Art. 311(1). Thus, the initiation of a departmental proceeding and conducting an inquiry can be by an authority other than the one competent to impose the proposed penalty.[11]

The legal position is now well settled that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be controlling authority who may be an officer subordinate to the appointing authority.[12]

The power is concurrently conferred upon the appointing authority and as well as the authority to which the appointing authority is subordinate. There is no dispute that the Engineer-in-Chief being the appointing authority in respect of the post that was held by the respondent delinquent at the time of initiation of disciplinary enquiry is undoubtedly subordinate to the Government. It cannot be said that the Government had no jurisdiction or the authority under the Rules to impose a major penalty on a member of subordinate service.[13]

5. The most important limitation imposed on the doctrine of 'pleasure' is by Art. 311(2). According to this provision, no civil servant can be dismissed,

---

9. (1970) 1 SCC 108.

10. *Govt. of Andhra Pradesh v. N. Ramanaiah*, (2009) 7 SCC 165 : (2009) 6 JT 606.

11. *P.V. Srinivasa Sastry v. Comptroller and Auditor General*, (1993) 1 SCC 419 : AIR 1993 SC 1321; *Transport Commissioner, Madras v. A. Radha Krishna Moorthy*, (1995) 1 SCC 332 : 1995 SCC (L&S) 313; *I.G. of Police v. Thavasiappan*, AIR 1996 SC 1318 : 1996 SCC (125) 433.

12. *Director General, ESI v. T. Abdul Razak*, (1996) 4 SCC 708; *Steel Authority of India v. Dr. R.K. Diwakar*, AIR 1998 SC 2210 : (1997) 11 SCC 17.

13. *Govt. of Andhra Pradesh v. N. Ramanaiah*, (2009) 7 SCC 165 : (2009) 6 JT 606.

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.[14]

It may be pointed out that there are two kinds of penalties in service jurisprudence—major and minor. Amongst the minor penalties are: censure, withholding promotion, withholding increments. The major penalties are: dismissal, removal from service, compulsory retirement and reduction in rank. Art. 311(2) applies only to three major penalties, *viz.*, dismissal, removal, or reduction in rank.

6. The rule of reasonable opportunity embodied in Art. 311(2) does not however apply in three situations as mentioned in the second proviso to Art. 311(2) in clauses (a) (b) (c).[15] These constitutional provisions are discussed later.[16]

It will be seen from the above that the two main limitations on the doctrine of pleasure are as follows:

(1) A civil servant cannot be dismissed by any disciplinary authority which is subordinate to the authority by which the appointment in question was made.

(2) A civil servant cannot be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

These two qualifications on the President's/Governor's pleasure are in reality two safeguards which the Constitution extends to a civil servant.

These two restrictions (mentioned in (1) and (2) above) on the doctrine of pleasure are imperative and mandatory. If any of these restrictions is infringed, the matter is justiciable and the aggrieved party is entitled to suitable relief at the hands of the Courts.

F. DISMISSAL, REMOVAL, REDUCTION IN RANK

(i) DISMISSAL/REMOVAL

These are regarded as major punishments awarded to a civil servant. Art. 311(1) applies to the cases of 'dismissal' or 'removal', while Art. 311(2) covers all these three punishments. Art. 311(1) is thus narrower than that of Art. 311(2) insofar as 'reduction in rank' falls within the ambit of the latter but not the former. Over the years, through judicial exposition, these terms have acquired a somewhat technical significance.

Termination of service of a civil servant when the post held by him is abolished does not involve any punishment and is, thus, neither dismissal nor removal, and so does not attract Art. 311(2). Whether any post is to be retained or abolished is essentially a matter for the government to decide. But a decision to abolish a post should be taken in good faith. It will lose its effective character if it has been made arbitrarily, *mala fide* or as a cloak to take penal action against the

---

14. For comments on this provision, see, *infra*, Sec. G.

15. Second Proviso to Art. 311(2), the opening words of which are: Provided further that this clause [Art. 311(2)] shall not apply..."

16. *Infra*, Sec. H.

concerned employee which falls within the meaning of Art. 311(2). In such a case, abolition of the post will suffer from a serious infirmity.[17]

'Dismissal' and 'removal' are practically similar concepts except that in 'dismissal' the person concerned is barred from future employment but not in case of removal.[18]

Both dismissal and removal involve termination of service, but every case of termination of service does not amount to dismissal or removal for purposes of Art. 311(2). This matter can be discussed under the following several heads.

(a) PERMANENT POST

If the employee has the right to hold the post either under the terms of contract of employment, express or implied, or under the rules governing the conditions of service, then the termination of his service attracts Art. 311(2).

A person appointed substantively to a permanent post in government service normally acquires a right to hold the post until he attains the age of superannuation. Termination of service of such a person is regarded *per se* as punishment, for it operates as a forfeiture of his rights and brings about a premature end of his employment. He is therefore entitled to the protection of Art. 311(2).

Removal of a permanent government employee from service for overstaying his leave, or long absence, without observing Art. 311(2), is illegal even when the service rules make a provision to that effect.[19] A rule providing for termination of service of permanent employees merely by notice for a prescribed period, or payment of salary *in lieu of* the notice, is invalid as being inconsistent with Art. 311(2).[20]

When an employee is confirmed in a payscale, the same cannot be reduced without giving him an opportunity of being heard. An employee on confirmation becomes entitled to a right to the post and to the scale of pay fixed.[21]

A constable in the State Armed Police was discharged from service without being given a hearing. The order of discharge cast a stigma on him. The Supreme Court ruled that he should have been given reasonable opportunity of representation.[22]

(b) QUASI-PERMANENT

According to the government service rules, a person appointed to a post temporarily assumes *quasi*-permanent status when he has been in continuous service for more than three years, and has been certified by the appointing authority as fit for employment in a *quasi*-permanent capacity.

---

17. *N. Ramanatha Pillai v. State of Kerala*, AIR 1973 SC 2641 : (1973) 2 SCC 650; *State of Haryana v. D.R. Sangar*, AIR 1976 SC 1199 : (1976) 2 SCC 844; *K. Rajendran v. State of Tamil Nadu*, AIR 1982 SC 1107 : (1982) 2 SCC 273.

18. *Mohd. Abdul Salam Khan v. Sarfaraz*, AIR 1975 SC 1064 : (1975) 1 SCC 669.

19. *Jai Shanker v. State of Rajasthan*, AIR 1966 SC 492 : (1966) 1 SCR 825; *Deokinandan Prasad v. State of Bihar*,, AIR 1971 SC 1409 : (1971) 2 SCC 330.

20. *Moti Ram Deka v. N.E. Frontier Rly.*, AIR 1964 SC 600 : (1964) 5 SCR 683.

21. *Div. Supdt., Eastern Rly. v. L.N. Keshri*, AIR 1974 SC 1889 : (1975) 3 SCC 1.

22. *Director General of Police v. Mrityunjoy Sarkar*, AIR 1997 SC 249 : (1996) 8 SCC 280.

A *quasi*-permanent post can be terminated in the same manner as the employment of a permanent government servant, or, when a reduction occurs in the number of posts for such employees. If, therefore, a *quasi*-permanent servant's services are terminated otherwise than in accordance with this rule, he is deprived of his right to that post and it will *prima facie* be a punishment and regarded as dismissal or removal from service so as to attract Art. 311.[23]

(c) FIXED TENURE SERVICE

The service of a person appointed to a post for a fixed term cannot, in the absence of a contract or a service rule permitting its premature termination, be terminated before the expiry of the stipulated period unless he has been guilty of some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under Art. 311(2). The premature termination of the service of a servant so appointed will *prima facie* be a dismissal or removal from service by way of punishment and so would fall within the purview of Art. 311(2).

(d) TEMPORARY POST

It is an implied term of a temporary appointment, other than the one for a fixed term, that the service of the appointee may be terminated on a reasonable notice, usually one month's notice.[24]

A temporary government servant has no right to the post he is holding. The character of employment in his case is transitory. His service is liable to be terminated at any time by giving him one month's notice without assigning any reason either under the terms of the contract or under the service rules. This does not *per se* amount to dismissal or removal and, accordingly, Art. 311(2) is not attracted.[25]

An order of termination *simpliciter* without casting any stigma on him or disclosing any penal consequences does not attract the application of Art. 311(2).[26]

It is now well settled that a temporary servant can be discharged if it is found that he is not suitable for the post which he is holding without complying with Art. 311(2). Suitability does not depend on mere proficiency or excellence in work.

The words 'unsuitable' or 'unfit' for the job do not amount to a stigma.[27] Ordinarily, the position is that if an order terminating the service of a temporary servant is an order of termination *simpliciter* without attaching any stigma to the employee, and if the order is not by way of punishment, Art. 311 is not

---

23. *K.S. Srinivasan v. Union of India*, AIR 1958 SC 419 : 1958 SCR 1295; *Champaklal v. Union of India*, AIR 1964 SC 1854 : (1964) 5 SCR 190.

24. *Satish Chandra Anand v. Union of India*, AIR 1953 SC 250 : 1953 SCR 655.

25. *Nagaland v. G. Vasantha*, AIR 1970 SC 537.

26. *Triveni Shankar Saxena v. State of Uttar Pradesh*, AIR 1992 SC 496 : 1992 Supp (1) SCC 524; *State of Uttar Pradesh v. Km. Premlata Misra*, (1994) 4 SCC 189 : AIR 1994 SC 2411.

27. *T.C.M. Pillai v. Technology Institute*, AIR 1971 SC 1811 : (1971) 2 SCC 251.
Also, *Hari Singh v. State of Punjab*, AIR 1974 SC 2263; *State of Uttar Pradesh v. Ram Chandra*, AIR 1976 SC 2547; *Commodore Commanding, Southern Naval Area v. V.N. Rajan*, AIR 1981 SC 965 : (1981) 2 SCC 636.

attracted.[28] Even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the concerned authority to terminate the service of a temporary employee, such termination cannot be termed as penalty or punishment.[29]

An order of termination of service of a temporary employee *simpliciter* is not invalid. But, if disciplinary grounds or other reasons are set out in the termination order, the same attaches stigma to the employee and, therefore, such an order cannot be made without an enquiry.[30] When the order of termination of service is passed by way of punishment and is *ex facie* punitive in nature, such an order cannot be passed even in respect of a temporary employee, without a regular departmental inquiry.[31]

The Supreme Court has ruled in a recent case that if there are allegations of misconduct against an employee on probation and an enquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not with a view to assess the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In such a situation, the order would be founded on misconduct.[32]

If the government dismisses such an employee in a punitive manner, or as a punishment, then termination of his service may amount to 'dismissal' or 'removal' attracting the application of Art. 311.[33] In such a case, it becomes incumbent to hold a formal inquiry by framing charges against him and giving him reasonable opportunity in accordance with Art. 311(2).

From this, it is clear that government can terminate the service of a temporary servant in either of the two ways:

(i) It can discharge him purporting to exercise its power under the terms of contract or the relevant rules simply by giving him notice. In such a case, it is only a case of discharge and nothing more and Art. 311 is not attracted.

(ii) The government may terminate his service by way of punishment in which case Art. 311 is attracted.

Even in the first case, the authority concerned, before exercising its power to discharge a temporary servant, may have to examine the question of the employee's suitability for being continued in service, and it may give him a chance to explain by giving him a show-cause notice enquiring whether he should be continued in service or not. Such an obligation may be imposed on the authority concerned by the relevant service rules.

---

28. *Union of India v. P.S. Bhatt*, AIR 1981 SC 957 : (1981) 2 SCC 761; *State of Uttar Pradesh v. Bhoop Singh*, AIR 1979 SC 684 : (1979) 2 SCC 111; *Commodore Commanding, Southern Naval Area, Cochin v. V.N. Rajan*, AIR 1981 SC 965 : (1981) 2 SCC 636.

29. *State of Uttar Pradesh v. Bhoop Singh Verma*, AIR 1979 SC 684 : (1979) 2 SCC 111; *ONGC v. Iskander Ali*, AIR 1980 SC 1242.

30. *Chandreshwar Narain Dubey v. Union of India*, AIR 1998 SC 2671 : (1998) 6 SCC 671.

31. *Nar Singh Pal v. Union of India*, AIR 2000 SC 1401 : (2000) 3 SCC 588.

32. *Chandra Praksh Shahi v. State of Uttar Pradesh*, AIR 2000 SC 1706, at 1715 : (2000) 5 SCC 152.

33. *State of Madhya Pradesh v. Ramashanker Raghuvanshi*, AIR 1983 SC 374 : (1983) 2 SCC 145; *Kanhailal v. Distt. Judge*, AIR 1983 SC 351 : (1983) 3 SCC 32; *Nepal Singh v. State of Uttar Pradesh*, AIR 1980 SC 1459 : (1980) 3 SCC 288.

The Courts have taken the view that Art. 311 does not apply to such an enquiry because it is held only with a view to determine the suitability of the servant concerned to be continued in service or not, and that there is no element of punishment involved therein. Misconduct, negligence, inefficiency or such other disqualification of the servant may have led the authority to terminate his service, but that would not change the character of the inquiry from being one to assess his suitability to one of punishment.[34]

If, on the other hand, a formal inquiry is held against the servant on charges of misconduct, negligence, inefficiency or other disqualification, findings are recorded against him and his service is terminated thereafter then, in substance, it would amount to dismissal.

In *Madan Goptal v. State of Punjab*,[35] a temporary employee was discharged from service after holding an inquiry into charges of bribery against him. He was found guilty of the charges by the enquiry officer. The order of discharge indicated that the punishing authority agreed with the enquiry officer's finding that he had accepted bribes. As the inquiry was held with a view to decide whether or not disciplinary action should be taken against him for his alleged misconduct, Art. 311(2) became applicable. The order of discharge was held to be one for dismissal because it had been preceded by a formal inquiry. The order was quashed as Art. 311(2) had not been observed.

The Courts have, therefore, to examine the facts in each case to determine whether the order of discharge of a temporary servant is one for discharge *simpliciter* or is for dismissal by way of punishment.

A distinction is thus drawn between an inquiry held to assess the suitability of such a servant to be continued in service, and a formal inquiry undertaken with a view to punish him. Art. 311 does not apply in the former case but it does in the latter case. The reason is that otherwise it would lead to this anomalous result that while an authority can discharge a temporary servant without inquiring into his alleged inefficiency or unsuitability, if it chooses to act fairly and make some kind of an inquiry and give the servant involved an opportunity to explain his alleged deficiency, the discharge becomes dismissal and attracts Art. 311.

The Court can lift the veil of an innocuously worded order to find out whether the foundation of the order is misconduct. If it is so, then an enquiry according to Art. 311(2) becomes inevitable. The Supreme Court has observed in this connection: "It is settled law that the order though is innocuous, it is open to the Court to lift the veil and find the cause for terminating the temporary employment. If it is by way of punishment, then necessarily an enquiry has got to be made in accordance with the rules."[36]

---

34. *Ranendra Chandra Banerjee v. Union of India*, AIR 1963 SC 1552 : (1968) 3 SCR 234; *Champaklal Chimanlal Shah v. Union of India*, AIR 1964 SC 1854 : (1964) 5 SCR 190; *State of Punjab v. Sukh Raj Bahadur*, AIR 1968 : (1964) 2 SCR 135 SC 1089 : (1968) 3 SCR 234; *Benjamin, A.G. v. Union of India*, (1967) 1 Lab LJ 718; *Ram Gopal v. State of Madhya Pradesh*, AIR 1970 SC 158; *State of Uttar Pradesh v. Kaushal Kishore Shukla*, (1991) 1 SCC 691.

35. AIR 1963 SC 531 : (1963) 3 SCR 716.

36. *G.B. Pant Agricultural and Technology University v. Kesho Ram*, AIR 1995 SC 718 : (1994) 4 SCC 437.

Also see, *Madan Gopal v. State of Punjab*, AIR 1963 SC 531 : (1963) 3 SCR 716; *Samsher Singh v. State of Punjab*, AIR 1974 SC 2192 : (1974) 2 SCC 831.

The Supreme Court has emphasized that the form of the order is not decisive and whether an order is one for punishment or not is a matter of substance which has to be decided on the basis of the entirety of circumstances preceding or attendant on the impugned order.[37]

An order may *ex facie* disclose that a stigma is cast on the servant, or that it visits him with penal consequences. Where an order of dismissal was founded on the ground that the employer had failed in the performance of his duties administratively and technically, it was characterised *ex facie* as "stigmatic as also punitive". The order was quashed as it had been passed without an inquiry according to natural justice.[38]

But it may also be that while termination of service is by way of punishment, the order *ex facie* is innocuous and shows termination *simpliciter*. In such a case, if the government servant can establish by material on record that the order is in fact passed by way of punishment, Art. 311(2) would apply. The Court can even send for the official record where the government servant is able to make out a *prima facie* case that the order is by way of punishment and the government seeks to rebut the same.[39]

If the order is merely a camouflage for an order of dismissal for misconduct, the Court can go behind the form and ascertain the true character of the order. If the order is found in reality to be a cloak for an order of punishment, the Court can give effect to the rights conferred by law upon the employee. On this basis, the order of dismissal was quashed in *Anoop v. Union of India*.[40]

An order of discharge against a temporary employee though couched in innocent terms was really made on the basis of the misconduct as found on inquiry behind her back. She was served with no charge sheet; no explanation was called for from her; she was given no opportunity to cross-examine witnesses and was given no opportunity to show cause against the purported order of dismissal. The order was merely a camouflage for an order of dismissal from service and was made in total contravention of Art. 311(2) and was therefore quashed.[41]

Even when no formal inquiry is held, Art. 311 is attracted if the order of discharge visits the servant concerned with any evil consequences, or casts an aspersion or stigma on his character or integrity. Such an order is characterised as an order to punish. An order of discharge on the ground of "unsatisfactory work and conduct" does not cast a stigma on the servant concerned.[42] But an order

---

37. *Samsher Singh v. State of Punjab*, AIR 1974 SC 2192 : (1974) 2 SCC 831; *R.S. Sial v. State of Punjab*, AIR 1974 SC 1317 : (1975) 3 SCC 111; *State of Uttar Pradesh v. Ram Chandra*, AIR 1976 SC 2547.

38. *V.P. Ahuja v. State of Punjab*, (2000) 3 SCC 239 : AIR 2000 SC 1080.

39. *Maharashtra v. Veerappa R. Saboji*, AIR 1980 SC 42 : (1979) 4 SCC 466; *Manager, Government Branch Press v. D.B. Belliappa*, AIR 1979 SC 429 : (1979) 1 SCC 477.

40. AIR 1984 SC 636 : (1984) 2 SCC 369.
Also, *Nepal Singh v. State of Uttar Pradesh*, AIR 1985 SC 84 : (1985) 1 SCC 56; *Gujarat Steel Tubes Ltd. v. Mazdoor Sabha*, (1980) 2 SCC 593 : AIR 1980 SC 1896; *Nar Singh Pal v. Union of India*, (2000) 3 SCC 588 : AIR 2000 SC 1401.

41. *Smt. Rajinder Kaur v. State of Punjab*, AIR 1986 SC 1790 : (1986) 4 SCL 141.
Also see, *Babu Lal v. State of Haryana*, AIR 1991 SC 1310; *Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd.*, AIR 1999 SC 609 : (1999) 2 SCC 21.

42. See, *Orissa v. Ram Narayan Das*, AIR 1961 SC 177; *Hari Singh v. State of Punjab*, AIR 1974 SC 2263; *State of Uttar Pradesh v. Kaushal Kishore Shukla*, (1991) 1 SCC 691 : 1991 SCC (L&S) 587; *State of Uttar Pradesh v. Prem Lata Misra*, AIR 1994 SC 2411 : (1994) 4 SCC 189.

discharging a temporary servant on the ground that he had been "found undesirable to be retained in government service" amounts to an order of dismissal as it "expressly casts a stigma" on him. Such an order can be passed only after an inquiry under Art. 311.[43]

In *Shesh Narain Awasthy v. State of Uttar Pradesh*,[44] the service of a temporary constable in the U.P. Police was terminated apparently by an innocuous order. On scrutiny, however, the Court found that his service was terminated on account of his alleged participation in the activities on an unrecognised police karamchari parishad. The termination order, therefore, was held to be bad as having been passed without following the procedure prescribed by Art. 311(2).

(e) PERMANENT APPOINTMENT ON PROBATION

The object of appointment on probation is to test the suitability of the appointee; if the appointing authority finds that the candidate is not suitable, it has power to terminate the services of the employee either during or at the end of the period of probation and normally this is not regarded as amounting to imposing the punishment of dismissal attracting the application of Art. 311(2).[45]

In *Krishnamani*,[46] the appellant was first appointed on an *ad hoc* basis. Thereafter, to regularise his services, he was put on probation. During probation, his services having been found to be not satisfactory, were terminated. During the probation, he did not acquire any right to the post; only if he had been regularised on his work being found to be satisfactory, he would have acquired the right to continue in the post.

The words 'unsuitable' or 'unfit' or 'unsatisfactory work and conduct' for the job do not cast any stigma.[47]

In *State of Orissa v. Ram Narayan Das*,[48] a Sub-Inspector of Police, on probation, was discharged from service on the ground of 'unsatisfactory work and conduct.' An inquiry was held against him under Rule 55B of the Civil Services (Classification, Control and Appeal) Rules, 1930. Under the rule, when a probationer's service is proposed to be terminated for any specific fault, or on account of his unsuitability, the probationer is to be apprised of the grounds of such proposal and given an opportunity to show cause against it, and only then an order of termination of service can be passed. The Supreme Court held that the purpose of an inquiry under this rule is not to punish the servant concerned, but is merely to ascertain whether he is fit to be confirmed. Therefore, it was not a case of dismissal and Art. 311(2) would not apply to such an inquiry.

In *Champaklal v. Union of India*,[49] a memorandum containing four charges was served on a temporary government servant, who was asked to explain why

---

43. *Jagdish Mitter v. Union of India*, AIR 1964 SC 449 : (1964) 1 LLJ 418.
44. (1988) 2 LLJ 99 (SC).
45. *Hartwell Prescott Singh v. State of Uttar Pradesh*, AIR 1957 SC 886 : 1958 SCR 509; *State of Uttar Pradesh v. Akbar Ali*, AIR 1966 SC 1842 : (1966) 3 SCR 821.
46. *K.V. Krishnamani v. Lalit Kala Academy*, AIR 1996 SC 2444 : (1996) 5 SCC 89.
47. See, *supra*, footnote 27.
Also see, *State of Orissa v. Ram Narayan Das*, AIR 1961 SC 177 : (1961) 1 SCR 606; *Union of India v. R.S. Dhabe*, (1969) 3 SCC 603.
48. AIR 1961 SC 177 : (1961) 1 SCR 606.
49. AIR 1964 SC 1854 : (1964) 5 SCR 190.
Also, *State of Punjab v. Sukh Raj*, AIR 1968 SC 1089 : (1968) 3 SCR 234.

disciplinary action should not be taken against him. No formal departmental inquiry was held against him and after six months his services were terminated without assigning any reason. The Supreme Court ruled that, as no formal inquiry was held against him, the action taken against him was not punitive and, therefore, Art. 311(2) was not attracted. Issue of a memorandum of charges was not material as no formal inquiry was held thereafter. The Court pointed out that, generally, a preliminary inquiry is held to determine whether a *prima facie* case for a formal inquiry is made out or not. The preliminary inquiry and the formal inquiry should not be confused with each other. The preliminary inquiry is only for enabling the authority to decide whether punitive action should be taken against the servant concerned or he should be discharged under the terms of the contract or the relevant service rules. Therefore, Art. 311(2) would apply only to a formal inquiry and not to a preliminary inquiry.

In *State of Punjab v. Sukh Raj Bahadur*,[50] a charge memo was served on the employee on probation for a regular inquiry. The employee replied and thereafter the inquiry was dropped and a simple termination order was issued. The Court held that the order of termination was not founded on any findings as to misconduct. The termination was held valid.

In *Jagdish Prasad v. Sachiv, Zila Gaon Committee*,[51] the termination order stated that the officer had concealed certain facts relating to his removal from an earlier service on charge of corruption and, therefore, he was not suitable for appointment. This was held to amount to stigma.

Usually, the use of the words "unsatisfactory work and conduct" in the termination order are not regarded as stigmatic. In such a case, termination of the service of a probationer without a formal hearing is not regarded as bad.[52]

Termination of service of a probationer without formal hearing would be bad if the termination order is *ex facie* stigmatic.[53]

At times, the employer may hold an inquiry before passing the termination order to satisfy himself about the suitability of the probationer for the job in question. If the language of the order does not cast a stigma on him, the order remains valid.[54]

From the above sundry cases it becomes clear that no hearing need be given to a probationer if the order of termination is not stigmatic. It depends on the facts and circumstances of each case and the language or the words used in the termination order to assess whether the words used amount to stigma or not.

The Supreme Court has now clarified through its decisions in *R.S. Gupta v. U.P. State Agro Industries Corp. Ltd.*[55] and *D.P. Banerjee v. S.N. Bose National Centre for Basic Sciences, Calcutta*,[56] that whether an order of termination of a

---

50. AIR 1968 SC 1089 : (1968) 3 SCR 234.
51. AIR 1986 SC 1108 : (1986) 2 SCC 338.
52. *Dipti Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences,* AIR 1999 SC 983; *H.F. Sungati v. Registrar—General High Court of Karnataka,* AIR 2001 SC 1148; *Krishnadevaraya Ed. Trust v. L.A. Balakrishna,* AIR 2001 SC 625.
53. *V.P. Ahuja v. State of Punjab,* AIR 2000 SC 1080 : (2000) 3 SCC 239.
54. *Pavendra Narayan Verma v. Sanjay Gandhi P.G.I. of Medical Sciences,* AIR 2002 SC 23; *Chandra Prakash Shahi v. State of Uttar Pradesh,* AIR 2000 SC 1706.
55. 1999 AIR SCW 207 : AIR 1999 SC 608 : (1999) 2 SCC 21.
56. AIR 1999 SC 983 : (1999) 3 SCC 60.

probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of termination are the motive or the foundation. If findings were arrived at in an inquiry as to misconduct, behind the back of the employee or without a regular departmental inquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he was not willing to continue the employee against whom there were complaints, it would only be a case of motive and the order of termination would not be bad. Similarly, if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings, or he was doubtful about securing adequate evidence; in such a circumstance, the allegation would be a motive and not the foundation and the simple order of termination would be valid.

In *Banerjee*, the order of termination was held not to be a simple order of termination. The letters written by the employer to the employee contained findings which were arrived at without a full-fledged departmental inquiry. Those findings amounted to stigma and would come in the way of his career. When stigma is cast, it has an adverse effect on the person's future career.

In *State of Bihar v. Gopi Kishore Prasad*,[57] a show cause notice was served seeking a reply to the allegation regarding the officer's bad reputation. The termination order stated that grave doubts had arisen about his integrity which indicated that he was a corrupt officer. It was also stated that confidential inquiries revealed that he was a corrupt officer having bad reputation. The Court quashed the order and ruled that it was a clear case of stigma and it required a full-fledged departmental inquiry under Art. 311(2).

The case-law concerning termination of service of a probationer has been in a state of confusion as each case is based on its own peculiar facts. The Supreme Court has in *Chandra Prakash Shah v. Uttar Pradesh*,[58] has extensively reviewed the previous case-law and sought to rationalize the same on the basis of the concept of "motive" and "foundation".

The Court has stated that an order dismissing a probationer though innocuously worded may be punitive in character. The form of the order is not conclusive and the Court can go behind the order to find out the real foundation of the order. Where misconduct on the part of the employee was the 'foundation' for the order, it is to be regarded as punitive in nature. But where it is only the motive for passing the order of termination, then it is not to be regarded as punitive.

A probationer has no right to hold the post and his services can be terminated at any time on account of general unsuitability for the post in question. To determine his suitability an inquiry may be held and, on the basis of the inquiry, a decision is taken to terminate his services, the order is not punitive and Art. 311(2) is not attracted. But if there are allegations of misconduct, and an inquiry is held to find out the truth, and the order of termination is based on that inquiry, the order is regarded as punitive as it is founded on misconduct and it will not be a mere matter of motive.

---

57. AIR 1960 SC 689 : (1960) 1 LLJ 577.
58. (2000) 5 SCC 152 : AIR 2000 SC 1706.

In the instant case, a probationer constable's services were terminated by a simple notice. The Court ruled that the order was punitive in nature. There were allegations of indiscipline and misbehavior against him; a preliminary inquiry was held and on the basis of that inquiry his services were terminated. As the procedure under Art. 311(2) had not been followed, the order of termination was set aside.

The services of a probationer were terminated because of her long absence from duty. The order of termination merely said that she was 'dismissed' from service. Holding the order as having been passed validly, the Supreme Court has pointed out that the services of a probationer can be terminated if his services are unsatisfactory. If the services of a probationer are terminated without any reason whatsoever, it is possible to characterise the order as having been passed arbitrarily. On the other hand, when there is a reason for terminating the services of a probationer and the termination order is worded in an innocuous manner, the order cannot be regarded as having been passed by way of punishment. The use of the word 'dismissed' in the order cannot be regarded as being by way of punishment.[59]

(ii) REDUCTION IN RANK

The expression 'reduction in rank' means reduction of an employee from a higher to a lower rank. The principles discussed above regarding dismissal or removal apply *mutatis mutandis* to reduction in rank as well. When reduction in rank is imposed as a punishment, Art. 311(2) becomes applicable but not otherwise.

When a civil servant has a right to a particular rank, his reduction from that rank operates as a penalty as he loses the emoluments and privileges of that rank. If, however, an employee is appointed temporarily to, or to officiate in, a higher post, his appointment is of transitory nature and he acquires no right to the higher post and, therefore, his reduction to his original substantive post does not *per se* attract Art. 311(2).[60] But even in such a case reduction by way of punishment attracts Art. 311(2), as when the employee is visited with penal consequences, such as, forfeiture of his pay or allowances or loss of seniority in his substantive rank, or stoppage or postponement of his future chances of promotion, or if a stigma is attached to him, or when a full-scale formal inquiry was held before his reversion.[61]

The petitioner appointed to officiate in a higher position was reverted to his original position after two years because of unsatisfactory work. Art. 311(2) was held non-applicable to him because—having been appointed in an officiating capacity he had no right to continue in the post; an officiating appointment can be terminated at any time on reasonable notice; his seniority in his substantive post or his future chance of promotion were not affected as he could be considered for

---

59. *Ganganagar Zila Dugdh Utpadak Sahkari Sangh Ltd. v. Priyanka Joshi,* AIR 1999 SC 2363 : (1999) 6 SCC 214.

60. *Hartwell Prescott Singh v. State of Uttar Pradesh,* AIR 1957 SC 186 : 1958 SCR 509.

61. *Div. Personnel Officer, S. Rly. v. S. Raghavendrachar,* AIR 1966 SC 1529; *State of Punjab v. Sukh Raj Bahadur,* AIR 1968 SC 1089 : (1968) 3 SCR 234; *G.S. Gill v. State of Punjab,* AIR 1974 SC 1898 : (1975) 3 SCC 73; *R.S. Sial v. State of Uttar Pradesh,* AIR 1974 SC 1317 : (1975) 3 SCC 111.

promotion in future if his work and conduct justified the same and, hence, his reduction did not operate as a forfeiture of any right or amount to punishment.[62]

As noted above, mere unsuitability or unfitness for the job does not amount to any stigma. When after reduction, the employee loses his seniority in his substantive post, Art. 311(2) becomes applicable.[63] In *Wadhwa*,[64] the appellant was officiating as Additional Superintendent of Police. He was reverted to his substantive post on the ground that he was found to be immature as a Supdt. of Police. The record showed that he was not reverted because of the return of the permanent incumbent from leave, and other officers junior to him continued while he was reverted. The record also revealed that an enquiry was not resorted to for the reason that it would take a long time. His reversion was regarded as reduction in rank.

The Chief Secretary to a State Government, and a member of the Indian Civil Service, was appointed as a Secretary to the Central Government, a tenure post. But before the expiry of the tenure, he was asked to choose between compulsory retirement or reversion to his State post. It was held that the order was a stigma and amounted to reduction in rank and Art. 311(2) became applicable.[65]

When reversion of a probationer to his substantive post appeared to be *mala fide* and really as a punishment for some misconduct, Art. 311(2) became operative.[66] When charges were served on a probationer, but he was reverted without an enquiry, Art. 311(2) did not apply to his case as no formal inquiry had been held against him.[67]

Out of 200 officers appointed on an officiating basis, some of whom were junior to the respondent, only he was reverted to his substantive rank. The order of reversion was *prima facie* innocuous. Nevertheless, the attendant circumstances were such that reversion was by way of punishment attracting Art. 311(2).[68]

In *S.P. Vasudeva v. State of Haryana*,[69] the Supreme Court expressed dissatisfaction with the view taken in some earlier cases that when order of discharge or reversion of a temporary or probationer employee is preceded by an inquiry, then Art. 311(2) must apply. It results in the anomalous position that the Court may not interfere if the order *ex facie* gives no reasons for discharge or reversal, but it may interfere if the superior official makes a *bona fide* inquiry before making up his mind as to the suitability of the employee. The position at present is confusing.

A mere loss of seniority as a result of re-adjustment and re-fixing of seniority *inter se* does not amount to reduction in rank within Art. 311(2).[70]

---

62. *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36 : 1958 SCR 828.
63. *Madhav Laxman Vaikunthe v. State of Mysore*, AIR 1962 SC 8 : (1962) 1 SCR 886.
64. *P.C. Wadhwa v. Union of India*, AIR 1964 SC 423 : (1964) 5 SCR 598.
65. *Debesh Chandra Das v. Union of India*, AIR 1970 SC 77 : (1969) 2 SCC 158.
66. *Sukhbans Singh v. State of Punjab*, AIR 1962 SC 1711 : (1963) 1 SCR 416.
67. *State of Punjab v. Sukh Raj*, AIR 1968 SC 1089 : (1968) 3 SCR 234, applying the principle of *Ram Narayan Das, supra*, footnote 42.
68. *State of Uttar Pradesh v. Sughar Singh*, AIR 1974 SC 423.
Also, *Regional Manager v. Pawan Kumar*, AIR 1976 SC 1766 : (1976) 3 SCC 334.
69. AIR 1976 SC 2292 : (1976) 1 SCC 236.
70. *G. Samuel v. State of Kerala*, AIR 1960 Ker 237; *M. Kamalamma v. State of Mysore*, AIR 1960 Mys. 255.

Even when Art. 311(2) is inapplicable to a case of reversion, it may be discriminatory or for a collateral or extraneous purpose attracting challenge under Art. 16.[71]

G. REASONABLE OPPORTUNITY TO SHOW CAUSE

Under Art. 311(2), a civil servant is not to 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. Art. 311(2) gives a constitutional mandate to the principles of natural justice. [72] The disciplinary proceedings before a domestic tribunal are of *quasi*-judicial character.

A mass of case-law has gathered around the question: what constitutes a 'reasonable opportunity' for purposes of Art. 311(2)? The Courts have laid down a number of norms to define the content of, and elements constituting this concept. A full discussion of these various norms falls appropriately within the realm of Administrative Law and not within the scope of this work, but a few salient principles may be noted here.

The concept of 'reasonable opportunity' being a constitutional limitation on the doctrine of 'tenure at pleasure',[73] Parliament or a State Legislature can make a law defining the content of 'reasonable opportunity', and prescribing procedure for affording the said opportunity to the accused government servant. Pending legislation, rules can be made by the executive for the purpose under Art. 309.[74]

Neither the law nor the rules are, however, decisive of the content of the concept of 'reasonable opportunity'. It is finally for the Courts to ascertain whether or not the law or the rules provide a reasonable opportunity and the Courts can thus test the validity of the law or the rules from this point of view.[75] The reason is that the word 'opportunity' in Art. 311(2) is prefixed by the word 'reasonable'. In each case, therefore, it is for the Courts to see whether, on the facts of the case, a reasonable opportunity was given to the government servant or not.

The concept of "reasonable opportunity to show cause" is synonymous with natural justice. According to the Supreme Court, Art. 311(2) gives a constitutional mandate to the principles of natural justice.[76]

But natural justice does not have a fixed connotation; it cannot be put in a straight-jacket. Natural justice depends on the circumstnaces of each case—the nature of the inquiry, the rules under which the inquiry is being held, the subject-matter which is being dealt with and so forth. The essential point is that the person concerned should have a reasonable opportunity of presenting his case and

---

71. *State of Mysore v. Kulkarni*, AIR 1972 SC 2170 : (1973) 3 SCC 597; *supra*, Ch. XXIII, Sec. A.
72. JAIN, *A TREATISE ON ADM. LAW*, Ch. IX; JAIN, CASES & MATERIALS ON INDIAN ADM. LAW, Ch. VIII.
73. *Supra*, Sec. E.
74. *Supra*, Sec. B.
75. *K. S. Hemrajsinhji Pravinsinhji v. Ins. Gen. Police*, AIR 1961 Guj 63.
76. See footnote 66.

that the administrative authority should act fairly, impatially and reasonably. The duty is not so much to act 'judicially' but 'fairly'.[77]

A few general propositions may however be stated here.

The question of requirement of apply the principles of natural justice can be only invoked where there was a jural relationship of employer and employee existed at any point of time. Thus where a person procured in a post meant for a reserved category candidate, on the basis of a false caste certificate has been held not to be a person holding civil post within the meaning of Art. 311. Such appointment, held, is no appointment in the eye of the law and has dismissal will not attract Art. 311.[78]

There must be an inquiry into the charges made against a government servant before any of the three punishments is awarded to him. A statutory departmental inquiry was held into a railway accident. The inquiry committee came to the conclusion that the accident was due to the negligence of the Asst. Station Master. He was later served with a show cause notice as to why he should not be reduced in rank. Thereafter, he was reduced in rank. The Supreme Court held that the inquiry into the accident was not directed against the appellant as such. The findings reached by the statutory inquiry committee could not be said to be findings made against the appellant for the alleged neglect of duty. It was necessary to give him a chance to show his innocence by holding an inquiry in the charge that he was responsible for the accident before imposing any major punishment on him. The order was thus set aside.[79]

The Constitution guarantees to the government servant a fair inquiry into his conduct. The inquiry should therefore be in accordance with the principles of natural justice.[80] When several delinquent officers are involved in a matter, it is salutary to conduct a common inquiry against them all. This avoids multiplicity of proceedings and saves time. Even if one charged officer cites another charged officer as a witness, in his defence, there is no need to split the inquiry. A disciplinary inquiry is not to be equated to a criminal prosecution where defendants are arrayed as co-accused. In a disciplinary proceeding, the concept of co-accused does not arise.[81]

The delinquent officer should be informed of the charges against him. This requirement is specifically laid down in Art. 311(2). The charges must be clear, precise and accurate. If a charge is vague, the inquiry may be vitiated. As for example, a vague accusation that a government servant accepts bribe is not sufficient. He should be given particulars of specific acts of accepting bribes.[82]

Along with the charges, the government servant concerned should also be informed of the evidence by which those charges are sought to be substantiated

---

77. *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant,* AIR 2001 SC 24 : (2001) 1 SCC 182.

78. *R. Vishwanatha Pillai v. State of Kerala,* (2004) 2 SCC 105 : AIR 2004 SC 1469.

79. *Amalendu v. Dist. Traffic Supdt.,* AIR 1960 SC 992 : (1960) 2 LLJ 61. Also, *Jagdish Pd. Saxena v. Madhya Bharat,* AIR 1961 SC 1070 : (1963) 1 LLJ 325.

80. *Supra,* Ch. VIII; *Nand Kishore v. State of Bihar,,* AIR 1978 SC 1277 : (1978) 3 SCC 366.

81. *Balbir Chand v. Food Corporation of India Ltd.,* AIR 1997 SC 2229 : (1997) 3 SCC 371.

82. *Surath Chandra Chakravarthy v. State of West Bengal,* AIR 1971 SC 752 : (1971) 3 SCR 1; *State of Tamil Nadu v. Thiru K.V. Perumal,* AIR 1996 SC 2474 : (1996) 5 SCC 474.

against him.[83] This is very necessary in order to give him an opportunity to deny his guilt and establish his innocence. At times, prior to the framing of charges, Government may hold a confidential investigation to ascertain what charges should be enquired into. The report of this investigation need not be given to the servant unless it forms part of the evidence at the formal inquiry held into the charges framed against him, and is relied on by the inquiry officer at any stage.[84]

Copies of relevant documents must be supplied to the concerned employee. The inquiry is vitiated if the non-supply of documents has prejudiced the case of the concerned employee.[85] The test to be applied in this behalf has been set out by the Supreme Court in *State Bank of Patiala v. S.K. Sharma*.[86] It was the duty of the employee under enquiry to point out how each and every document was relevant to the charges or to the enquiry being held against him and whether and how their non-supply has prejudiced his case.[87]

The Court has insisted that the opportunity of hearing must be an effective opportunity and not a mere pretence. When charge-sheet is served on a person, documents to prove the charges mentioned therein must be supplied him. But when neither copies of these documents are supplied to him in spite of his request, nor an opportunity given to him to inspect these documents, then there is violation of natural justice.[88]

Not all documents need be supplied to him. If a document has no bearing on the charges, or if it is not relied upon by the enquiry officer to support the charges, or the material was not necessary for the purposes of cross-examination, it need not be supplied.

Many a time, witnesses are examined in the preliminary enquiry in the absence of the person charged, and on the basis of this evidence, charges are framed later. It is, therefore, necessary that copies of these statements be supplied to him. If this is not done, it may vitiate the inquiry.[89]

Where disciplinary proceedings are initiated by issuing a charge sheet, actual service of the charge sheet on the person concerned is essential as the concerned person is required to submit his reply thereto.[90]

After the charges have been intimated to the servant concerned, and his formal reply thereto has been received, the disciplinary authority has to apply his mind to decide whether a further inquiry is called for. If after deliberation and due con-

---

83. *Tribhuwan v. State of Bihar*,, AIR 1960 Pat 116; *Altafur Rahman v. Coll., Central Excise*, AIR 1960 All 551; *Khem Chand v. Union of India*, AIR 1958 SC 300 : 1958 SCR 1080; *Ram Prakash v. State of Punjab*, AIR 1960 Punj. 278; *Saghir v. State of Uttar Pradesh*, AIR 1960 All 270.

84. *Krishna Chandra Tandon v. Union of India*, AIR 1974 SC 1589 : (1974) 4 SCC 374.

85. *State of Tamil Nadu v. K.V. Perumal*, AIR 1996 SC 2474 : (1996) 5 SCC 474.

86. 1996 (3) Scale 202 : (1996) 3 SCC 364.

87. Also see, *Secretary to Government v. A.C.J. Britto*, AIR 1997 SC 1393 : (1997) 3 SCC 387.

88. *Chandrama Tewari v. Union of India*, AIR 1988 SC 117 : 1987 Supp SCC 518; *Kashinath Dikshita v. Union of India*, AIR 1986 SC 2118 : (1986) 3 SCC 229; *State of Uttar Pradesh v. Mohd. Sharif*, AIR 1982 SC 937; *Govt. of Tamil Nadu v. K.N. Ratnavelu*, AIR 1998 SC 3037 : (1998) 7 SCC 569.

89. *Govt. of T.N. v. K.N. Ratnavelu*, AIR 1998 SC 3037 : (1998) 7 SCC 569.

90. *Union of India v. Dinanath Shantaram Karekar*, AIR 1998 SC 2722 : (1998) 7 SCC 569.

sideration, the disciplinary authority has come to an affirmative decision, a formal inquiry is to be held into those charges.[91]

Personal hearing is a part of reasonable opportunity, and, if it is demanded by the delinquent servant it cannot be refused.[92]

If the delinquent fails to appear before the inquiry officer in spite of several opportunities having been given to him, then the inquiry officer can proceed *ex parte*.[93]

At the inquiry, the servant concerned must be given full opportunity to answer the charges levelled against him, and to put up his defence by demonstrating that the evidence against him is untrue and unreliable. With this in view, the employee charged must be provided with an opportunity to cross-examine the witnesses produced against him.[94]

Ordinarily speaking, all evidence must be given in his presence. Finding a person guilty on the basis of evidence recorded behind his back is a violation of the principles of natural justice.[95] However, statements of the witnesses taken at the preliminary inquiry can be used at the time of the formal inquiry provided that the statements are made available to the accused employee and he is given opportunity to cross-examine the witnesses in respect of those statements.[96] It is not necessary for making each witness repeat word for word the statement made by him earlier. A mere synopsis of those statements does not satisfy the requirements of Art. 311(2).[97] The Supreme Court has laid down the procedure as follows:[98]

> "Reasonable opportunity contemplated by Art. 311(2) means "hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental inquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness".

No material should be relied on against the accused employee without giving him an opportunity to explain it. A sub-inspector of police was dismissed from service. Holding the dismissal order invalid, the Supreme Court pointed out that the officers making confidential reports against him were not summoned for examination at the inquiry and this deprived him of the opportunity of cross-

---

91. *State of Punjab v. V.K. Khanna*, AIR 2001 SC 343 : (2001) 2 SCC 330.
92. *State of Punjab v. Karam Chand*, AIR 1959 Punj 402; *C.S. Sharma v. State of U.P.*, AIR 1961 All 45; *Nripendra v. State of West Bengal*, AIR 1961 Cal 1.
93. *State of Tamil Nadu v. M. Natarajan*, AIR 1997 SC 3120 : (1997) 6 SCC 415.
94. *John v. Travancore-Cochin*, AIR 1955 SC 160; *State of Madhya Pradesh v. Chintaman*, AIR 1961 SC 1623; *Bombay v. Nurul Khan*, AIR 1966 SC 269 : (1965) 3 SCR 135; *Bhagat Ram v. State of Himachal Pradesh*, AIR 1983 SC 454 : (1983) 2 SCC 442.
95. *M/s. Kesoram Cotton Mills v. Gangadhar*, AIR 1964 SC 708 : (1964) 2 SCR 809.
96. *State of Mysore v. Shivbasappa*, AIR 1963 SC 375 : (1963) 2 SCR 943; *State of Uttar Pradesh v. O.P. Gupta*, AIR 1970 SC 679; *State Bank of Bikaner and Jaipur v. Srinath Gupta*, AIR 1997 SC 243 : (1996) 6 SCC 486.
97. *State of Punjab v. Bhagat Ram*, AIR 1974 SC 2335.
98. *Kuldeep Singh v. The Commr. of Police*, AIR 1999 SC 677, at 683 : (1999) 2 SCC 10.

examining these persons. Thus, reasonable opportunity of defending himself was denied to him.[1]

Strict rules of evidence as laid down in the Indian Evidence Act do not apply to disciplinary enquiries.[2] Ordinarily, a confession or admission of guilt made by a person accused of an offence before a police officer is not admissible in according to ss. 25 and 26 of the Evidence Act. But as rules of evidence do not apply to departmental enquiries, a confession which is relevant and voluntary can be admitted in a departmental inquiry.[3]

It is however necessary that the inquiry officer bases his findings on some evidence. The Court would quash a dismissal order if it is based on findings recorded by the inquiry officer which are not supported by evidence and were thus wholly perverse.[4]

The inquiry officer should not make private enquiries behind the back of the employee. If it is done, the evidence against him must be disclosed to hi m. An inquiry is vitiated if the findings are based on secret information which the accused officer had no opportunity of meeting.[5] Therefore, the inquiry officer can refer to the past conduct of the accused servant only after giving him an opportunity to explain it.[6]

The accused servant should be given an opportunity to give his testimony. He should have an opportunity of adducing all relevant evidence on which he relies and examines witnesses in his defence.[7]

The inquiry officer should attempt to secure the attendance of defence witnesses. Without so trying, he cannot take shelter behind the plea that he has no legal authority to compel their attendance. Refusal on his part to summon witnesses may vitiate the inquiry.[8] But the right of the servant charged to cross-examine witnesses and produce his own witnesses can be controlled by the inquiry officer so as to see that cross-examination is not done in an irrelevant manner, or that irrelevant evidence is not given. The inquiry officer has to ensure that the inquiry proceedings are not unduly or deliberately prolonged.[9] The Indian Evidence Act as such does not apply to enquiries against Government servants. All materials which are logically probative for a prudent mind are permissible.[10]

The government servant against whom an inquiry is being held has a right to argue his own case, for the right to argue is deemed to be a part of personal

---

1. *State of Punjab v. Dewan Chuni Lal,* AIR 1970 SC 2086 : (1970) 1 SCC 479.
2. *State of Mysore v. Shivabasappa,* AIR 1963 SC 375 : (1963) 2 SCR 943; *Assam v. M.K. Das,* AIR 1970 SC 1255; *State Bank of Bikaner & Jaipur v. Srinath Gupta,* AIR 1997 SC 243 : (1996) 6 SCC 486; *Union of India v. A.N. Rao,* AIR 1998 SC 111 : (1998) 1 SCC 700.
3. *Kuldip Singh v. State of Punjab,* AIR 1997 SC 79 : (1996) 10 SCC 659.
4. *S.S. Moghe v. Union of India,* AIR 1981 SC 1495 : (1981) 3 SCC 271. Also see, *infra.*
5. *State of Mysore v. S.S. Makapur,* AIR 1963 SC 375; *Assam v. M.K. Das,* AIR 1970 SC 1255 : (1970) 1 SCC 709; *Krishna Chandra v. Union of India, supra,* footnote 84; *Andhra Pradesh v. S.M. Nizamuddin,* AIR 1976 SC 1964 : (1976) 4 SCC 745.
6. *Nanjudeshwar v. State of Mysore,* AIR 1960 Mys. 159; *Damodar v. Land Reforms Comm.,* AIR 1959 All 437.
7. *Khem Chand v. Union of India,* AIR 1958 SC 300 : 1958 SCR 1080.
8. *Hanif v. Supdt. Police,* AIR 1957 All 634; *Valayya v. A.P.,* AIR 1958 AP 240.
9. *Bombay v. Nurul Khan,* AIR 1966 SC 269 : (1965) 3 SCR 135.
10. *Union of India v. Verma,* AIR 1957 SC 882; *K.L. Shinde v. State of Mysore,* AIR 1976 SC 1080; *Haryana v. Rattan Singh,* AIR 1977 SC 1512 : (1977) 2 SCC 491.

hearing to which he is entitled. A general and absolute right to have legal representation at the inquiry is not recognised. When there is no oral evidence to be recorded, and so no need to cross-examine witnesses, and no legal complexity in a case, absence of a lawyer does not amount to denial of natural justice.[11] But, there may be circumstances when it may be regarded just to permit the help of a lawyer as a part of 'reasonable opportunity' to defend himself, as for example, when the case is complicated and long and a large number of witnesses have to be examined.[12]

When the case against the officer is being handled by a trained prosecutor (though not a lawyer) it is a good ground for allowing him to engage a legal practitioner to defend him lest the scales should be weighed against him.[13] When however the employer appoints a legally trained person as the presenting officer, the delinquent employee must also be allowed to take the assistance of a lawyer.[14]

In the instant case,[15] the presenting officer was a person with legal attainments and experience. The Supreme Court therefore ruled that the refusal of the service of a lawyer to the concerned employee, who had no legal background, resulted in denial of natural justice.

Under Rule 15(5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1967, a government servant may present his case with the assistance of any government servant approved by the disciplinary authority or, with its permission, through a lawyer. This is a mandatory rule. Denial of assistance of a government servant to an accused officer at the inquiry against him amounts to denial of reasonable opportunity to defend himself.

The Supreme Court has gone further and insisted that justice and fairplay demand that when in a disciplinary proceeding, the department is represented by a presenting officer, the delinquent officer should be informed that he has a right to take the help of another government servant from his department to defend him. When at the inquiry against a class IV employee, the Government was represented by a presenting officer but not the employee, and he was not informed of his right to seek assistance of another government servant in the department to represent him, the Supreme Court held the enquiry vitiated and the order of dismissal based on such an inquiry was quashed.[16]

Reasons must be given for their decisions by the inquiry officer as well as the disciplinary authority.[17]

---

11. *Krishna Chandra v. Union of India, supra*, footnote 84; *H. Sharma v. S.C. Kagti*, AIR 1960 Ass 141; *Hari Pd. v. CIT*, AIR 1972 Cal. 27.

12. *Dr. K. Subbarao v. Hyderabad*, AIR 1957 AP 414; *Nripendra v. State of West Bengal*, AIR 1961 Cal. 1; also see, *Jeevaratnam v. State of Madras*, AIR 1966 SC 951 : (1966) 2 SCR 204, *T. Muniswamy v. State of Mysore*, AIR 1964 Mys. 250.

13. *C.L. Subramanian v. Collector of Customs*, AIR 1972 SC 2178.
Also, LAKSHMI SWAMINATHAN, A Civil Servant's Right to be represented in Disciplinary Proceedings, 16 *JILI* 282 (1974).

14. *Board of Trustees, Bombay Port v. Dilipkumar*, AIR 1983 SC 109 : (1983) 1 SCC 124.

15. *J.K. Aggarwal v. Haryana Seeds Development Corp. Ltd.*, AIR 1991 SC 1221 : (1991) 2 SCC 283.

16. *Bhagat Ram v. State of Himachal Pradesh*, AIR 1983 SC 454 : (1983) 2 SCC 442.

17. *A.L. Kalra v. P & E Corp. of India*, AIR 1984 SC 1361 : (1984) 3 SCC 316.

There is no bar in the disciplinary authority deputing some responsible and competent official to enquire and report into the conduct of the servant against whom action is proposed to be taken. It is open to the disciplinary authority to hold the inquiry itself, or appoint an inquiry officer to conduct the inquiry into the charges against an employee. What cannot be delegated, however, by the disciplinary authority, except when the law specifically so provides, is the ultimate responsibility for the exercise of power of punishment.[18]

The inquiry officer, however, cannot delegate his functions. The inquiry is improper if the inquiry officer delegates the task of hearing witnesses to someone else and then decides the case upon the mere record of evidence.[19] In case an inquiry is held by someone other than the authority, the latter can order a re-inquiry, or a fresh inquiry superseding the earlier inquiry.

If the disciplinary authority exonerates the civil servant finally, no re-inquiry or fresh inquiry on the same facts can then be ordered unless there is a specific provision for reviewing an order of exoneration of this kind in the service rules or any law to that effect.[20] This view is based on the ground of justice, equity and good conscience. Of course, exoneration in a departmental inquiry is no bar to prosecuting the servant concerned in a Court of law.

In the *Kumaon* case, cited above,[21] disciplinary inquiry conducted against an employee was quashed on the ground of denial to him of a reasonable opportunity to defend himself as there were many flaws in the procedure adopted, e.g., no documents were shown to the employee; there was no presenting officer; no defence witness was examined and no cross-examination of the witnesses testifying against him was allowed.

As has already been discussed, even if the servant is found guilty in a departmental inquiry and action is taken against him on that basis, he can still be prosecuted in a Court.[22]

It is well established proposition that the disciplinary authority is the sole judge of the facts.[23] The report of the inquiry officer is not binding on the disciplinary authority. The disciplinary authority is not bound by the findings reached by the inquiry officer. The disciplinary authority has to make its own mind as regards the guilt of the accused servant and the punishment to be meted out to him on the basis of the evidence before him. In this, the inquiry officer's findings can assist, but do not bind, the punishing authority. The report of the enquiry officer is not final or conclusive till the disciplinary authority takes the final decision thereon. The inquiry is not complete till the disciplinary authority comes to its own conclusions whether the charges have been proved or not. Even when the inquiry officer holds that the charges against the concerned employee have not

---

18. *Pradyat Kumar v. Chief Justice, Calcutta H.C.*, AIR 1956 SC 285 : (1955) 2 SCR 1331. Also see, *Ramesh Verma v. R.D. Verma*, AIR 1958 All 532; *S. Neelakanta v. State of Kerala*, AIR 1960 Ker 279; *Sreedharaiah v. Dist. Supdt. of Police*, AIR 1960 AP 473.

19. *Amulya Kumar v. L.M. Bakshi*, AIR 1958 Cal 470.

20. *Dwarkachand v. State of Rajasthan*, AIR 1958 Raj 38; *V. Moopan v. State of Kerala*, AIR 1960 Ker 294.

21. *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant*, AIR 2001 SC 24 : (2001) 1 SCC 182.

22. *Supra*, Ch. XXV, Sec. B.

23. *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant*, AIR 2001 SC 24, at 32 : (2001) 1 SCC 182.

been established, the disciplinary authority may disagree with these findings, and hold that the charges were proved.[24]

The Constitution Bench of the Supreme Court observed in *India v. Goel*,[25] that "the Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report." The Court has stated the legal position in *D'Silva*[26] that neither the findings of the enquiry officer nor his recommendations are binding on the punishing authority.

The Supreme Court has further clarified the position in this regard recently in *Shashikant*:[27]

> "The findings of the Inquiry officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry Officer."

When an earlier order of removal from service was quashed because of a technical flaw in the inquiry and the concerned government servant was reinstated, a second inquiry on merits can still be held on the same charges.[28] Even if an employee is acquitted by a criminal Court, departmental inquiry may still continue.[29]

The degree of proof required in a departmental disciplinary proceeding need not be of the same standard as the degree of proof required for establishing the guilt of an accused in a criminal case. However, even then suspicion, however strong, cannot be substituted for proof.

The Courts do not sit in appeal over the findings recorded by the disciplinary authority, or the enquiry officer in a departmental inquiry. But this does not mean that in no circumstance can the Court interfere.

The Supreme Court has emphasized again and again that the enquiry officer should arrive at his conclusions on the basis of some evidence which, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as, in that event, the finding recorded by the enquiry officer would be perverse.[30] As the Supreme Court has observed in *Kuldeep Singh*:[31]

> "Where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be

---

24. *Yoginath D. Bagade v. State of Maharashtra*, AIR 1999 SC 3734.
25. *Union of India v. Goel*, AIR 1964 SC 364 : (1964) 4 SCR 718.
Also, *Railway Board v. N. Singh*, AIR 1969 SC 966; *Krishna Chander v. Union of India*, AIR 1974 SC 1589.
26. *A.N. D'Silva v. Union of India*, AIR 1962 SC 1130 : 1962 Supp (1) SCR 968.
27. *High Court of Judicature v. Shashikant S. Patil*, AIR 2000 SC 22, 26 : (2000) 1 SCC 416.
28. *Union of India v. M.B. Patnaik*, AIR 1981 SC 858 : (1981) 2 SCC 159; *Anand Narain Shukla v. State of Madhya Pradesh*, AIR 1979 SC 1923 : (1980) 1 SCC 252.
29. *Corp. of Nagpur v. Ram Chandra Modak*, AIR 1984 SC 636.
30. *Mysore v. Shivbasappa*, AIR 1963 SC 375 : (1963) 2 SCR 943; *Nand Kishore v. State of Bihar*,, AIR 1978 SC 1277 : 1978 (3) SCC 366; *State of Andhra Pradesh v. Sree Rama Rao*, AIR 1963 SC 1723; *Rajinder Kumar Kindra v. Delhi Administration*, AIR 1984 SC 1805 : (1984) 4 SCC 635.
31. *Kuldeep Singh v. Commr. of Police*, AIR 1999 SC 677, 679 : (1999) 2 SCC 10.

> rejected as perverse….Where a *quasi*-judicial Tribunal records findings based on no legal evidence and the findings are his mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated."

A broad distinction has therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act on it, the decision would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the decision would not be regarded as perverse and the Court would not interfere with the findings.

In *Kuldeep Singh,* the Court quashed the findings of the enquiry officer as there was absolutely no evidence in support of the charge framed against the concerned employee; the entire findings recorded by the enquiry officer were held vitiated as they were not supported by any evidence on record and were wholly perverse.

In *S.S. Moghe v. Union of India*,[32] an order of dismissal was set aside because the findings recorded by the inquiry officer were not supported by evidence and were wholly perverse.

The Court can also interfere if the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse, or the decision of the disciplinary authority was based on surmises and conjectures rather than the evidence on record.[33]

What is the impact of delay on departmental proceedings? Can delay vitiate these proceedings? The Supreme Court has refused to lay down any predetermined principle applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on the ground of delay, the disciplinary proceedings are to be terminated depends on the facts and circumstances of each case. The Court has to balance all relevant factors to determine whether in the interest of clean and honest administration, the disciplinary proceedings should be terminated because of long delay.

In *State of Andhra Pradesh v. N. Radhakishan*,[34] the Supreme Court quashed the charge memo issued in 1995 because of delay in holding the inquiry. On the other hand, in *Punjab v. Chaman Lal*,[35] the incident occurred in 1987, but the inquiry was initiated in 1993, i.e., nearly 5½ years later. There was no explanation for the delay. The Supreme Court did not quash the disciplinary proceedings. The Court ruled that in the interest of justice as well as administration, the inquiry ought to be completed.

(a) SECOND OPPORTUNITY

Before December, 1976, after the completion of enquiry against a civil servant, if it was proposed to impose on him the punishment of dismissal, removal

---

32. AIR 1981 SC 1495 : (1981) 3 SCC 271.
See also, *Syed Rahimuddin v. Director General C.S.I.R.,* AIR 2001 SC 2418 : (2001) 9 SCC 575.

33. *Nand Kishore v. State of Bihar*,, AIR 1978 SC 1277; *State of Andhra Pradesh v. Sree Rama Rao*, AIR 1963 SC 1723; *Yoginath D. Bagade v. State of Maharashtra*, AIR 1999 SC 3734.

34. AIR 1998 SC 1833 : (1998) 4 SCC 154.

35. (1995) 2 SCC 570 : 1995 SCC (L&S) 541.

or reduction in rank, then it was necessary to give him another opportunity of making a representation as to why the proposed punishment should not be awarded to him. It was illegal to impose any of these punishments without this formality.[36] The Courts reached this conclusion by interpreting Art. 311(2).

A mass of case-law gathered around this second opportunity of hearing. At this stage, the punishing authority was not bound to hear the civil servant, and a written representation by him was regarded as sufficient.[37] The second opportunity enabled the servant to plead that no case had been made out against him, or that the conclusions of fact drawn from the evidence were not correct, or that the proposed punishment was excessive.[38]

In course of time, a feeling grew that Art. 311(2), as interpreted by the Courts, had come to impose elaborate procedural formalities before a delinquent civil servant could be punished. Fulfilment of these formalities appeared to consume too much time and cause undue delay in meting out punishment to guilty officials which resulted in lowering the standards of employee discipline in government establishments. The second opportunity, it was thought, protracted disciplinary proceedings without affording any additional safeguard to the guilty officials. It was thus thought desirable to cut down some procedural formalities to expedite disciplinary proceedings against civil servants.[39] With this in view, the Fifteenth Amendment of the Constitution was undertaken.[40]

Originally, the amending bill proposed abolition of the second opportunity as such. But this proposal ran into heavy weather in Parliament. Consequently, the bill was modified and the second opportunity was retained with this restriction that the employee was to make representation on the penalty proposed, but only on the basis of the evidence adduced during the enquiry. This meant that the concerned employee should seek to refer only to the evidence produced at the time of the inquiry and he should not throw in any fresh evidence at that stage.

The XV Constitutional Amendment did not dilute the second opportunity to any significant extent. However, the 42nd Constitutional Amendment abolished the second opportunity.[41] It provides expressly that it is not necessary to give to a delinquent government servant any opportunity of making representation on the proposed penalty.

The position now is that where it is proposed, after inquiry, to impose upon a government servant the punishment of dismissal, removal or reduction in rank, it may be imposed on the basis of the evidence adduced at the inquiry without giving him any opportunity of making representation on the penalty proposed.

It has now been ruled by the Supreme Court that if the inquiry officer holds the charges proved, a copy of the inquiry report must be furnished to the con-

---

36. *Union of India v. Jeewan Ram*, AIR 1958 SC 905; *Kapur Singh v. Union of India*, AIR 1960 SC 493 : (1960) 2 SCR 569; *Bachhittar Singh v. State of Punjab*, AIR 1963 SC 395 : 1962 Supp (3) SCR 713; *Maharashtra v. B.A. Joshi*, AIR 1969 SC 1302 : (1969) 1 SCC 804.

37. *U.R. Bhatt v. Union of India*, AIR 1962 SC 1344 : (1962) 1 LLJ 656.

38. *Khem Chand v. Union of India*, AIR 1958 SC 300; *Union of India v. Goel, supra*, footnote 25, on 1696.

39. I.L.I, *DISCIPLINARY PROCEEDINGS AGAINST GOVERNMENT SERVANTS*, 90 (1962); *REPORT OF THE SANTHANAM COMMITTEE ON PREVENTION OF CORRUPTION* (1964).

40. See, *infra*, Ch. XLII.

41. *Ibid.*

cerned officer against whom disciplinary action is proposed to be taken.[42] This means that after the inquiry officer submits his report containing his findings and recommendations, but before the disciplinary authority takes a final view thereon, a copy of the report of the inquiry officer ought to be sent to the delinquent employee and his comments invited thereon. The Court has explained the position in *Ramzan Khan* thus:

> "….the disciplinary authority is very much influenced by the conclusions of the Inquiry Officer and even by the recommendation relating to the nature of punishment to be inflicted. Even if the second stage of the inquiry has been abolished, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer."

Accordingly, the Court has concluded:

> "….supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice"

The Court has reiterated this proposition in *E.C.I.L.*[43]

The Court has explained that the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. The 42nd Amendment has taken away the second right, but the right of the charged officer to receive the report of the inquiry officer was an essential part of the first stage itself. The Court has, therefore, observed in *E.C.I.L.*:

> "Both, the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

The *ECIL* ruling was given in the context of natural justice. But the Court ruled that the position would be the same where statutory rules governed the procedure. The *ECIL* principle would apply even when statutory rules were silent or even prohibited the supply of a copy of the enquiry report to the delinquent.

But the Court has imposed a rider, *viz*., merely because an enquiry report has not been furnished to the delinquent employee, the order of dismissal is not vitiated unless it is shown that the delinquent has been prejudiced thereby. "Whether, in fact, prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case".

A Court/tribunal ought not to interfere with the order of punishment if it concludes that the non-supply of the report would have made no difference to the ultimate result and the punishment given. "The Court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished." Only if the Court/tribunal finds that the furnishing of the report

---

42. *Union of India v. Mohd. Ramzan Khan*, AIR 1991 SC 471 : (1991) 1 SCC 588.
43. *Managing Director, E.C.I.L. v. B. Karunakar*, AIR 1994 SC 1074 : (1973) 4 SCC 727.

would have made a difference to the result that the order of punishment should be set aside.

The same principle applies even when a statutory rule requires that a copy of the inquiry report be furnished to the delinquent officer before passing the order of punishment. Under a Civil Service Rule, the report of the inquiry officer has to be furnished to the delinquent officer. The report was not sent to him in the instant case[44] but he was dismissed from service. The Supreme Court ruled that the effect of the non-submission of the inquiry report to the delinquent on the punishment awarded to him would depend on the question whether in fact prejudice had been caused to the concerned employee because of denial of the report to him. If the Court concludes that the non-supply of the report would have made no difference to the ultimate findings and the punishment given by the disciplinary authority, the Court ought not to interfere with the order of punishment. The Court ought not to mechanically set aside the order of punishment on the ground that the report was not furnished to the delinquent employee.[45]

HEARING BY DISCIPLINARY AUTHORITY

In *Punjab National Bank v. Kunj Behari Misra*,[46] the following question was raised: when the inquiry officer, during the course of the disciplinary proceedings, comes to the conclusion that the charges of misconduct against an official are not proved, then can the disciplinary authority differ from that view and give a contrary finding without affording any opportunity to the delinquent officer?

The Court has ruled that natural justice demands that the authority which proposes to hold the delinquent officer guilty must give him a hearing. If the inquiry officer holds the charges to be proved then the report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action prejudicial to the delinquent officer.

Further, in case the report of the inquiry officer is favourable to the delinquent officer, but the disciplinary authority takes a different view, and holds the delinquent employee to be guilty, then it must record its tentative findings with reasons and give an opportunity to the concerned officer to represent against these findings. Only, thereafter, the disciplinary authority can record its final findings. The Court has observed:

> "The principles of natural justice….require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer".[47]

---

44. *State of Uttar Pradesh v. Harendra Arora,* AIR 2001 SC 2319 : (2001) 6 SCC 392.
Also see, *Oriental Insurance Co. v. S. Balakrishnan,* AIR 2001 SC 2400 : (2003) 1 SCC 734.

45. Also see, *Oriental Insurance Co. v. S. Balakrishnan,* AIR 2001 SC 2400.
The Supreme Court has adopted this position on pragmatic considerations. As the Court has observed : "where therefore, even after the furnishing of the report, no different consequence would have followed it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits."
See, *Managing Director, ECIL, Hyderabad v. B. Karunakar,* AIR 1994 SC 1074 : (1993) 4 SCC 727.

46. AIR 1998 SC 2713 : (1998) 7 SCC 84.

47. Also see, *State Bank of India v. Arvind K. Shukla,* AIR 2001 SC 2398.

To the same effect is the ruling of the Supreme Court in *Yoginath D. Bagde v. State of Maharashtra*.[48] A delinquent officer has a right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him, but also when those findings are considered by the disciplinary authority and when the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings of the enquiry officer are favourable to the delinquent employee holding that the charges are not proved against him, it is all the more necessary to give to the delinquent officer an opportunity before reversing the findings of the enquiry officer.

The formation of the opinion by the disciplinary authority should be tentative and not final. It is at this stage that the delinquent officer should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority proposes to disagree with the findings of the inquiry officer. When the disciplinary authority disagrees with the enquiry officer, the disciplinary authority must give reasons as to why it disagrees with the enquiry officer. In the absence of reasons, it will be difficult for the employee charged to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer.[49]

This has been held to be in consonance with Art. 311(2). Till a final decision is taken in the matter, the inquiry does not come to an end. The enquiry ends when the disciplinary authority has taken a final view and held whether the charges are proved or not proved and punishment inflicted on the delinquent. That being so, the right of being heard is available to the delinquent employee upto the final stage. This being a constitutional right of the employee under Art. 311(2) cannot be whittled down by any law or service rules made under Art. 309.[50]

(b) EFFECT OF FAILURE OF NATURAL JUSTICE

What is the impact of failure of natural justice at the inquiry stage on the ultimate order imposing punishment on the delinquent officer. After discussing the matter elaborately in *State Bank of Patiala v. S.K. Sharma*,[51] the Supreme Court has ruled that the Court must distinguish between two situations—

(1) where there is a total violation of natural justice, i.e., where no opportunity of hearing has been given; where there has been no notice/no hearing at all; and

(2) where a facet of natural justice has been violated, *i.e.*, where there has not been adequate opportunity of hearing, or where a fair hearing is lacking.

In situation (1), the order would undoubtedly be void. In such a case, normally, the authority concerned can proceed afresh according to natural justice.

In situation (2), the Court has to see whether in the totality of the circumstances, the delinquent servant did or did not have a fair hearing. While applying the *audi alteram partem* rule, the ultimate and overriding objective must be kept in mind, *viz.*,

---

48. AIR 1999 SC 3734 : (1999) 7 SCC 739.
49. Also see, *State Bank of India v. Arvind K. Shukla*, AIR 2001 SC 2398 : (2004) 13 SCC 797.
50. On Art. 309, see, *supra*, Sec. B.
51. AIR 1996 SC 1669 : (1996) 3 SCC 364.

to ensure a fair hearing and to ensure that there is no failure of justice. Whether any prejudice was caused to the person concerned?[52]

Further, there may be situations, where in the interests of the state or public interest, the *audi alteram partem* rule may have to be curtailed. "In such situations, the Court may have to balance public/state interest with the requirement of natural justice and arrive at an appropriate decision."

The application of the above propositions can be illustrated by referring to a few cases.

An order made without giving any notice to the affected person and without giving him any hearing, has been held to be bad in law.[53]

Where a copy of the enquiry officer's report has not been supplied to the delinquent officer, the order of punishment should be set aside only if there has been a failure of justice. It is only if the Court finds that furnishing the report would have made a difference to the result in the case that it should set aside the order.[54]

(c) BIAS

Bias on the part of the inquiry officer vitiates the inquiry. The inquiry officer should be a person with an open mind and he should hold an impartial domestic enquiry. He should not be biased either in favour of the department or against the person against whom the inquiry is to be held, or prejudge the issue, or have a foreclosed mind, or have pre-determined notions.[55] The test is that "there should be a real danger of bias". The conclusion as to bias can be drawn from the surrounding circumstances.[56] A fanciful allegation of bias would not vitiate the proceedings.

An inquiry by a person who is biased against the charged officer is a clear denial of a reasonable opportunity.[57] For example, one and the same person cannot be a judge and a witness in the same case. Therefore, the inquiry officer cannot also be a witness against the servant against whom he is holding the inquiry. Such a procedure denotes a biased state of mind against the person concerned.[58]

An employee was dismissed by his superior officer on charge of misconduct in relation to himself after himself considering the employee's explanation. The order of dismissal was held to be illegal as violative of natural justice since no person can be a judge in his own cause. Any one having a personal stake in the enquiry must keep himself aloof from the enquiry.[59]

---

52. *Jankinath Sarangi v. State of Orissa,* (1969) 3 SCC 392; *K.L. Tripathi v. State Bank of India,* (1984) 1 SCC 43 : AIR 1984 SC 273; *State Bank of Patiala v. S.K. Sharma,* AIR 1996 SC 1669 : (1996) 3 SCC 364.

53. *C.B. Gautam v. Union of India,* (1993) 1 SCC 78 : AIR 1994 SC 771; *Chintapalli Agency T.A.S.C.S. Ltd. v. Secretary (F&A) Govt. of A.P.*, AIR 1977 SC 2313 : (1977) 4 SCC 337; *S.L. Kapoor v. Jagmohan*, AIR 1981 SC 136 : (1980) 4 SCC 379.

54. *Managing Director, E.C.I.L. v. B. Karunakar,* (1993) 4 SCC 727; *supra*, footnote 43.

55. *B. Martin v. Union of India,* AIR 1976 Kant. 144.
Also, *Sunil Kumar v. State of West Bengal,* AIR 1980 SC 1170.

56. *Kumaon Mandal Vikas Nigam Ltd. Girja Shankar Pant*, AIR 2001 SC 24 : (2001) 1 SCC 182; *State of Punjab v. V.K. Khanna*, AIR 2001 SC 343 : (2001) 2 SCC 330.

57. *State of Uttar Pradesh v. C.S. Sharma,* AIR 1963 All 94; *Manihar Singh v. Supdt. of Police,* AIR 1969 Ass. 1; *Sreeramulu v. State of Andhra Pradesh*, AIR 1970 AP 114.

58. *State of Uttar Pradesh v. Nooh,* AIR 1958 SC 86 : 1958 SCR 595.

59. *Arjun Chaubey v. Union of India,* AIR 1984 SC 1356 : (1984) 2 SCC 578.

In *Kuldeep Singh*,[60] the Supreme Court held the inquiry officer as biased as he "did not sit with an open mind to hold an impartial domestic inquiry which is an essential component of natural justice as also that of "reasonable opportunity", contemplated by Art. 311(2) of the Constitution." The inquiry officer, said the Court, acted so arbitrarily in the matter and found the employee guilty in such a coarse manner that it became apparent that he was merely carrying out the command from some superior officer who perhaps directed to "fix him up."

Bias on the part of the disciplinary authority may vitiate disciplinary proceedings.[61] In *Kahanna*,[62] the Supreme Court has ruled that the test of bias is whether "there is a real danger of bias.

In the instant case, the Punjab Government issued a charge-sheet against Khanna who was the former Chief Secretary to the Punjab Government. Even before Khanna could reply the Chief Minister announced appointment of an inquiry officer to enquire into the charges against Khanna. This was held to show bias against Khanna. In Service Jurisprudence, the disciplinary authority has to apply its mind upon receipt of the reply to the charge-sheet as to whether a further inquiry is called for or not. Only, thereafter, the inquiry follows and not otherwise. But here the enquiry officer was appointed even before receiving the reply of the delinquest officer. From this fact and the tenor of the charge-sheet, the Court deduced that there was bias in the proceedings.

(d) ENFORCEABILITY OF DISCIPLINARY RULES

Often the rules framed under Art. 309 lay down procedure to be followed at inquiries conducted into charges against civil servants.

In the beginning, some of the High Courts took the view that the rules were merely in the nature of administrative instructions, meant for the guidance of inquiry officers, but were not mandatory and their breach would not create any cause of action in the accused servant. This approach was the result of the doctrine of pleasure which, these Courts held, was controllable not by the rules or law but by constitutional provisions only, and that the procedure at the inquiry was to be tested on the touchstone of Art. 311(2) and not by the rules.[63]

But, the Supreme Court's approach has been to treat the rules as binding and not merely directory in nature, and to insist that statutory disciplinary authorities should act within the rules.[64] For example, the Court held with reference to a service rule in Uttar Pradesh that itgave an option to a gazetted civil servant to request the Governor that his case be tried by an administrative tribunal and not otherwise, and the rule imposed an obligation on the Governor to grant such a request. The proceedings in the instant case were quashed as the servant's request to this effect was not granted and this violated the rule in question.[65]

---

60. *Kuldeep Singh v. Commissioner of Police*, AIR 1999 SC 677, 684 : (1999) 2 SCC 10.

61. *State of Punjab v. V.K. Khanna*, AIR 2001 SC 343.
On bias, see, Ch. VIII, Sec. E (iv)(c).

62. AIR 2001 SC 343 : (2001) 2 SCC 330.

63. *Dr. Tribhuvan v. State of Bihar,*, AIR 1960 Pat. 116; *Krishnaswamy v. State of Kerala*, AIR 1960 Ker. 224; *Shankerlingam v. Union of India*, AIR 1960 Bom. 431; *Nripendra v. State of West Bengal*, AIR 1961 Cal. 1.

64. *State of Uttar Pradesh v. Babu Ram Upadhya*, AIR 1961 SC 751 : (1961) 2 SCR 679; *Ranendra Chandra v. Union of India*, AIR 1963 SC 1552 : (1964) 2 SCR 135.

65. *State of Uttar Pradesh v. Jogendra Singh*, AIR 1963 SC 1618 : (1964) 2 SCR 197.

Dismissal of a sub-inspector of police by the superintendent of police without observing the rules pertaining to inquiry made under the Police Act was held bad as mandatory rules had not been observed.[66] In another case, the Court held that Rule 55 of the Civil Services (Classification, Control and Appeal) Rules made it mandatory on the inquiry officer to hold an oral hearing, if the servant charged desired such an inquiry, and the denial of such an inquiry would introduce a fatal infirmity in the inquiry because of the contravention of the mandatory provisions of the rule. This requirement was held to be based plainly upon consideration of natural justice.[67]

Under the concept of 'reasonable opportunity' contained in Art. 311(2), the Courts resort to the concept of 'natural justice' which, in substance means minimal procedural safeguards to the accused person. Therefore, if the service rules provide more safeguards than the minimal, the rules are to be observed. If, however, the rules fall below the minimal safeguards, then the rules have to be supplemented with the natural justice concept.[68] The rules have to be considered in the light of the provisions of Art. 311(2) to find out whether the rules purport to provide reasonable opportunity of hearing to the delinquent employee.[69]

There were two separate rules for civil servants in Tamil Nadu—(i) general disciplinary rules, and (ii) for cases of corruption. The Supreme Court has ruled in the case noted below that the inquiry into corruption cases must be held under the relevant rules, and not under the general disciplinary rules. As both sets of rules have been framed under Art. 309, they both have equal force of law.[70]

In *State Bank of Patiala v. S.K. Sharma*,[71] a statutory regulation provided that copies of the statements of witnesses recorded earlier would be furnished to the delinquent employee. The copies of the statements were not supplied but he was advised to peruse, examine and take notes of the statements half an hour before the commencement of the inquiry. This meant, in substance, three days before the examination of these witnesses. The Supreme Court ruled that the said regulation contained a facet of natural justice and was designed to provide an adequate opportunity to the delinquent officer to cross-examine the witnesses effectively and thereby defend himself properly. However, in the circumstances of the case, the Court concluded that there was a substantial compliance with the regulation in question, though not a full compliance. On account of the said violation, it could not be said that the concerned employee did not receive a fair hearing.

In the instant case, the Court has considered the general question whether each and every violation of rules/regulations governing the inquiry would automatically vitiate the inquiry. The Court has laid down the following propositions concerning the impact of breach of these rules on the validity of the ultimate order:

(1) An order passed imposing punishment on an employee consequent upon a disciplinary inquiry held in violation of the rules/regulations, statutory provisions

---

66. *State of Uttar Pradesh v. Babu Ram Upadhya*, AIR 1961 SC 751 : (1961) 2 SCR 679.
67. *Bombay v. Nurul Khan*, AIR 1966 SC 269 : (1965) 3 SCR 135.
68. *Kapur Singh v. Union of India*, AIR 1960 SC 493 : (1960) 2 SCR 569; *State of Uttar Pradesh v. C.S. Sharma*, AIR 1968 SC 158.
69. *Kuldeep Singh v. Commr. of Police*, AIR 1999 SC 677, 683 : (1999) 2 SCC 10.
70. *Secretary to T.N. Govt. v. D. Subramanyan Rajadevan*, AIR 1996 SC 2634 : (1996) 5 SCC 334.
71. AIR 1996 SC 1669 : (1996) 3 SCC 364.

governing such enquiries should not be set aside automatically. The Court should enquire whether—(a) the provision violated is of a substantive character, or (b) whether it is procedural in nature.

(2) A substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not apply in such a case.

(3) Procedural provisions generally mean to afford a reasonable and adequate opportunity to the delinquent employee. These rules are generally conceived in his interest. Accordingly, violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed.

(4) Except for the cases falling under the categories of 'no notice', 'no opportunity' and 'no hearing', any complaint of violation of procedural rules should be examined from the point of view of prejudice, *viz*., whether such violation has prejudiced the delinquent employee in defending himself properly and effectively.

(5) If it is found that he has been so prejudiced, appropriate orders will have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is caused, no interference is called for.

(6) There may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in any such case.

(7) To repeat, the test is one of prejudice, *i.e*., whether a person has received a fair hearing considering all things, This aspect can also be looked at from the point of view of *mandatory* and *directory* provisions.

(8) In case of violation of a mandatory rule, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. In the former case, he can waive the same either expressly or by his conduct. If he has waived the same, the order imposing punishment cannot be set aside. If he has not waived it, or the provision is such that cannot be waived, then the Court has to give appropriate directions. The ultimate test is always the same, *viz.*, the test of prejudice or the test of fair hearing, as it may be called.

(9) If the breach of a directory rule has occurred, the complaint of violation has to be examined from the standpoint of substantial compliance. The order passed can be set aside only where such violation has caused prejudice to the delinquent employee.

Where the inquiry is not governed by rules but by the general concept of natural justice, the Court has to distinguish between—(i) total violation of natural justice; and (ii) violation of a facet of natural justice. In other words, a distinction has to be made between—(i) no opportunity, and (ii) no adequate opportunity.

The first category comprises: 'no notice', 'no hearing' and 'no fair hearing'. In such a case, the order passed is invalid or a nullity. An example of this is to be found in the case noted below,[72] where the departmental inquiry was quashed as being "totally unsatisfactory" and "without observing the minimum required procedure for proving the charge."

---

72. *Ministry of Finance v. S.B. Ramesh,* AIR 1998 SC 853 : (1998) 3 SCC 227.

In the second case, the matter has to be examined from the point of view of prejudice, *i.e.*, the Court has to see whether in the totality of circumstances, the delinquent employee has or has not received a fair hearing.

The Supreme Court has emphasized that the ultimate and overriding aim of *audi alteram partem* rule is to ensure a fair hearing and to ensure that there is no failure of justice.

The above propositions apply to the *audi alteram partem* rule and not to bias which has different tests.

(e) DEPARTMENTAL INQUIRY AND CRIMINAL PROSECUTION

Generally speaking, a criminal prosecution and a departmental inquiry, on the same set of facts, can both run simultaneously. The basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, the charge relates to misconduct, and many factors, such as, enforcement of discipline or investigation into the level of integrity of the delinquent or other staff, operate in the mind of the disciplinary authority. Further, the standard of proof required in disciplinary proceedings is also different from that required in a criminal case. In departmental proceedings, the standard of proof is one of preponderance of the probabilities; in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Another consideration is that criminal cases drag on for long and disciplinary proceedings should not be delayed unduly in the interest of good administration.

In *Meena*,[73] there were charges of misappropriation of public funds by the respondent who was a member of the IAS. Disciplinary proceedings were initiated against him in 1992. In 1993, criminal proceedings were initiated against him. The question arose whether the disciplinary inquiry against the respondent be stayed pending the criminal trial when the charges in the disciplinary proceedings and charges in criminal case were based on the same facts and allegations. The Supreme Court answered in the negative.

In *Nelson*,[74] the Supreme Court rejected the contention that disciplinary proceedings could not be continued in the face of the acquittal in the criminal case and held that the nature and scope of the criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude departmental proceedings. This is so because in a criminal case, the charge has to be proved beyond reasonable doubt while in departmental proceedings the standard of proof for proving the charge is preponderance of probabilities.

The *Nelson* case was followed in *Gopalan*.[75] The respondent who was employed as sub-post master was put on trial for the offences under ss. 407, 467 and 477(A), I.P.C. In the meantime, departmental proceedings were also initiated for these offences as well as for misappropriation. In the departmental proceedings, the charges were held proved and he was ordered to be compulsorily retired. Later, he was acquitted of the criminal charge on benefit of doubt as the offences

---

73. *State of Rajasthan v. B.K. Meena*, AIR 1997 SC 13 : (1996) 6 SCC 417.
74. *Nelson Motis v. Union of India*, AIR 1992 SC 1981 : (1992) 4 SCC 711.
75. *Senior Supdt. of Post Offices, Pathamanthitta v. A. Gopalan*, AIR 1999 SC 1514 : (1997) 11 SCC 239.

were not established beyond reasonable doubt. It was argued that in view of his acquittal by the criminal Court, the finding of the inquiry officer holding him guilty of those charges could not be sustained. The Supreme Court rejected the contention, citing *Nelson*, on the ground that the two types of proceedings are different from each other. The disciplinary proceedings were based not only on the offence tried by the criminal Court but on an additional charge also, *viz.*, misappropriation. The second charge was held established in departmental proceedings, and the punishment of compulsory retirement was imposed on him. Therefore, an acquittal in the criminal case, could not conclude the departmental proceedings.

The Courts have however made one exception to the above proposition, *viz.*, where the departmental proceedings and the criminal proceedings are both based on the same set of facts and the evidence in both the proceedings is common without there being a variance, and the criminal charge is of grave nature, in such a situation, the Courts have preferred that the departmental proceedings be suspended pending the final outcome of the criminal prosecution. After taking note of the previous cases,[76] on this point, the Supreme Court has laid down the following propositions in *Anthony*:[77]

(1) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(2) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(3) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of the offence and the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(4) The factors mentioned in (2) and (3) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(5) If the criminal case does not proceed, or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

In *Anthony*,[78] the appellant was employed as a security officer at the Kolar Gold Fields. In a raid on his house (according to the police version), some gold

---

76. *Jang Bahadur Singh v. Brij Nath Tiwari,* AIR 1969 SC 30 : (1969) 1 SCR 134; *Kusheshwar Dubey v. Bharat Coking Coal Co. Ltd.,* AIR 1988 SC 2118 : (1988) 4 SCC 319; *Depot Manager, APSRTC v. Mohd. Yousuf Khan,* AIR 1997 SC 2232 : (1997) 2 SCC 699.

77. *M. Paul Anthony v. Bharat Gold Mines Ltd.,* AIR 1999 SC 1416 at 1422 : (1999) 3 SCC 679.

78. *Ibid.*

sand was recovered. He was suspended from service and a charge sheet issued to him on June 4, 1985. A criminal prosecution was also launched against him. Simultaneously departmental proceedings were also launched against him and he was held guilty and dismissed from service on 7-6-1986. On 3rd February, 1987, the appellant was acquitted by the criminal Court with the categorical finding that the prosecution had failed to establish its case. Thereafter, the appellant requested for reinstatement but he was informed that as he had already been dismissed from service, the judgment passed by the magistrate did not matter.

The Supreme Court ruled in *Anthony* that the findings recorded by the inquiry officer were based on the evidence of the police officers who had raided his house. The criminal case and the departmental proceedings were based on the same set of facts, *viz.*, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom. "At the departmental inquiry, the charges framed against *Anthony* were sought to be proved by the evidence of the same police officers who were examined in the criminal Court. On examination of the same evidence, while the inquiry officer upheld the charge, the Court held, on the other hand, that no search was ever made and nothing was recovered from his residence, and the Court thus threw out the entire prosecution case and acquitted the appellant. The Supreme Court thus observed:[79]

> "In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the *ex parte* departmental proceedings, to stand."

The Court stated that since the facts and the evidence in both the proceedings were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not apply to the instant case.

The appellant was ordered to be reinstated forthwith and was paid the entire arrears of salary since the date of his suspension.

H. EXCLUSION OF ART. 311(2)

The second proviso to Art. 311(2), in clauses (*a*), (*b*) and (*c*) : lays down three situations where Art. 311(2) does not apply. Holding of inquiry by informing the government servant of the charges and giving reasonable opportunity of being heard is the rule and dispensing therewith is an exception.[80] These clauses are as follows:

(a) 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 [Art. 311(2)(a)].

The Supreme Court has emphasized that under Art. 311(2)(*a*), the disciplinary authority is to regard the conviction of the concerned civil servant as sufficient proof of misconduct on his part. The authority is to decide whether conviction demands the imposition of any penalty and, if so, what penalty. For this purpose,

---

79. *Ibid,* at 1425.
80. *Sudesh Kumar v. State of Hryana,* (2005) 11 SCC 525.

the authority has to take into consideration the judgment of the criminal Court, the entire conduct of the civil servant, the gravity of the offence, the impact of the offence on the administration, whether the offence was of a technical or trivial nature, and the extenuating circumstances, if any. This the disciplinary authority has to do *ex parte* and without giving a hearing to the concerned civil servant.

Action under Art. 311(2)(*a*) is to be taken only when the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Art. 311(2). The power has to be exercised "fairly, justly and reasonably". No hearing need be given while imposing the penalty after conviction on a criminal charge, but "the right to impose a penalty carries with it the duty to act justly".[81] For example, a government servant convicted for parking his scooter in a no-parking area cannot be dismissed from service.

However, if the Court finds that the penalty imposed by the impugned order is arbitrary, or grossly excessive, or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case, or the requirements of that particular government service, the Court will strike down the order. One such case is *Shankar Dass v. India*[82] 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 "the right to impose a penalty carries with it the duty to act justly."

A civil servant hit his superior officer with an iron rod leading to his conviction under s. 332, I.P.C., but he was put on probation instead of being sentenced to imprisonment. The disciplinary authority then removed him from service. The Supreme Court ruled that the punishment inflicted on the civil servant cannot be said to be excessive or arbitrary in the fact situation.[83]

A question of importance has been raised in relation to Art. 311(2)(*a*), *viz.*, after conviction by the lower Court, the concerned employee may appeal to a higher Court against his conviction. Can he be dismissed from service after conviction pending his appeal, or can he be dismissed immediately after conviction irrespective of his appeal?

The Supreme Court has answered this question in *Nagoor Meera*.[84] 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 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.

---

81. *Shankar Dass v. Union of India,* AIR 1985 SC 772 : (1985) 2 SCC 358.
82. *Ibid.*
83. *Tulsiram Patel*, *infra*, footnote 87.
84. *Dy. Director of Collegiate Education (Administration), Madras v. S. Nagoor Meera,* AIR 1995 SC 1364 : (1995) 3 SCC 377.

The Court disapproved of the suggestion that the government servant ought not to be dismissed till the appeal, revision or other remedies are over as that would mean continuing in service a person who has been convicted of a serious offence by a criminal Court.

In *Nagoor Meera*,[85] a government servant was convicted on a charge of corruption and was sentenced to undergo rigorous imprisonment for one year in addition to a fine of Rs. 5,000/-. On appeal, the High Court suspended his sentence pending disposal of his appeal. The Supreme Court ruled that merely because the sentence was suspended and he was released on bail, the conviction would not cease to be operative. As he was found guilty of corruption by a criminal Court, he could be dismissed from service; it would not be advisable to retain him in service. If his appeal succeeded, the matter could always be reviewed in such a manner that he suffered no prejudice.

An employee was convicted of an offence under the Prevention of Corruption Act and was sentenced to imprisonment for three years. Accordingly, he was dismissed from service. He then appealed to the High Court which suspended the sentence pending final disposal of the appeal and released him on bail. The Supreme Court ruled in *Union of India v. Ramesh Kumar*,[86] that suspension of the sentence does not wipe out conviction which continues and is not obliterated. Accordingly, his dismissal from service was not affected and so it could not be quashed.

(b) 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 [Art. 311(2)(b)].

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.

Explaining the scope of the clause, the Supreme Court has said in *Tulsiram Patel*:[87] "... 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."

The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. The disciplinary authority is the best judge of the situation.[88]

The Court has explained that it would not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails. It is immaterial whether the concerned government servant himself is or is not a party to bringing about such an atmosphere. It is the disci-

---

85. *Ibid.*
86. AIR 1997 SC 3531 : (1997) 7 SCC 514.
87. *Union of India v. Tulsiram Patel,* AIR 1985 SC 1416 : (1985) 3 SCC 398.
88. *Kuldip Singh v. State of Punjab,* AIR 1997 SC 79 : (1996) 10 SCC 659.

plinary authority which is the best Judge of the "reasonable practicability of holding an inquiry.

The decision of the disciplinary authority is final [Art. 311(3)], provided it records the reasons in 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.[89]

Principles of Administrative Law regarding discretionary decisions are applicable in this area as well.[90] The Supreme Court has emphasized that the reasons for dispensing with the inquiry must be *germane* to the issue, viz., dispensing with the inquiry. While the Court cannot enquire into the adequacy or sufficiency of the reasons, it can examine the reasons *ex facie*, and if they are not *germane*, it can hold that the pre-requisite for the exercise of power having not been satisfied, the exercise of power was bad or without jurisdiction.[91] The disciplinary authority has to reach this decision *ex parte*.

(c) Where the President or the Governor, as the case may be, is satisfied that, in the interest of the security of the State, it is not expedient to give to a civil servant such an opportunity [Art. 311(2)(c)].

While under clause (b) above, the satisfaction has to be that of the disciplinary authority, under 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 expediency or in expediency of holding an inquiry in the interest of the security of the state. Security of state being paramount, all other interests are subordinated to it. Further the satisfaction of the President as provided for in sub-clause (c) of Clause (2) of Art. 311 must be the satisfaction of the President himself and not of any delegated authority by reason of the GOI (Allocation of Business) Rules 1961 made under Art. 77(3) of the Constitution relying on the earlier pronouncement of a Constitution Bench of the Supreme Court in *Jayantilal*.[92]

The satisfaction mentioned here is subjective and is not circumscribed by any objective standards.[93] 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 this connection, the Supreme Court has observed in *Tulsiram*:

> "The satisfaction so reached by the President or Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing danger to the interest of the security of the State and like

---

89. *Arjun Chaubey v. Union of India*, AIR 1984 SC 1356 : (1984) 2 SCC 578; *Tulsiram Patel, supra*, footnote 87.

90. JAIN, *A TREATISE ON ADM. LAW*, I, Ch. XIX.

91. *Workmen, Hindustan Steel Ltd. v. Hindustan Steel Ltd*., AIR 1985 SC 251 : 1984 Supp SCC 554.

92. AIR 1964 SC 648, 656 : AIR 1971 SC 1547.

93. *Jagdish v. State of Bombay*, AIR 1958 Bom 283; *Mohd. Hyder v. State of Andhra Pradesh*, AIR 1960 AP 479.

> matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not…."

In *Bk. Sardari Lal v. Union of India*,[1] the Supreme Court ruled that under this constitutional provision, 'satisfaction' must be that of the President or Governor personally and that that function could not be allocated or delegated to any one else. But this view was overruled in *Shamsher Singh*,[2] and *Sripati Ranjan*.[3] Thus, 'personal satisfaction' of the President or the Governor is not necessary to dispense with the inquiry. Such 'satisfaction' may be arrived at by any one authorized under the Rules of Business.[4] It is the satisfaction of the President or the Governor in the constitutional sense.

Under (c), enquiry can be dispensed with only when it is not expedient to hold it 'in the interest of the security of the state.' 'Security of state' may comprise a situation of disobedience and insubordination on the part of members of the police force. As the Supreme Court has clarified in *Tulsiram Patel*,[5] the question is not whether the security of the state has been affected or not, for the expression used in Cl. (c) is "in the interest of the security of the state". The interest of the security of the state may be affected by actual act, or even the likelihood of such acts taking place. So, the Court has observed: "What is required under clause (c) is not the satisfaction of the President or the Governor ....., that the interest of the security of the state is or will be affected but his satisfaction that in the interest of the security of the state, it is not expedient to hold an inquiry as contemplated by Article 311(2)." This means that the satisfaction of the President/Governor must be with respect to the expediency or inexpediency of holding an inquiry "in the interest of the security of the state".

The scope of judicial review under Cl. (c) is much more restrictive than under Cl. (b). The scope of judicial review under (c) has thus been defined by the Supreme Court in these words:[6]

> "….an order passed under Cl. (c) of the second proviso to Art. 311(2) is subject to judicial review and its validity can be examined by the Court on the ground that the satisfaction of the President or the Governor is vitiated by *mala fides* or is based on wholly extraneous or irrelevant grounds…."

The Government must disclose to the Court the nature of the activities of the employee on the basis of which the satisfaction of the President or the Governor was arrived at for the purpose of passing an order under Art. 311(2)(c) "so that the Court or tribunal may be able to determine whether the said activities could be regarded as having a reasonable nexus with the interest of the security of the state." In the absence of any indication about the nature of the activities, it would not be possible for the Court to determine whether the satisfaction was arrived at on the basis of relevant consideration. The government is obliged to place before the Court relevant material on the basis of which the satisfaction was arrived at subject to a claim of privilege under Ss. 123 and 124 of the Evidence Act.

---

1. AIR 1971 SC 1547 : (1971) 1 SCC 411.
2. *Supra*, Sec. C(c).
3. *Supra*, Sec. C(c).
4. *Supra*, Chs. III and VII.
5. *Supra*, footnote 87.
6. *A.K. Kaul v. Union of India*, AIR 1995 SC 1403, 1414-1415 : (1995) 4 SCC 73.

The Supreme Court has clarified in *Union of India v. Tulsiram Patel*[7] that in none of the situations described in (a), (b), (c) above, there is to be held any inquiry or hearing as Art. 311(2) does not apply. The second proviso to Art. 311(2) has been inserted in the Constitution "as a matter of public policy and in public interest and for public good." "The second proviso expressly mentions that clause (2) shall not apply where one of the clauses of that proviso becomes applicable. This express mention excludes everything that clause (2) contains and there can be no scope for once again introducing the opportunities provided by clause (2) or any of them into the second proviso."

The Supreme Court has also refused to imply natural justice therein because it is expressly excluded by the opening words of the second proviso. Art. 14 cannot be invoked to imply natural justice in any of these three situations because Art. 311(2) is expressly excluded by the opening words of the second proviso. However, if any of the above three clauses is applied on extraneous grounds or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be *mala fide*, and, therefore, void. "In such a case the invalidating factor may be referable to Art. 14."[8]

The Court has ruled that even the service rules made under Art. 309 cannot liberalize the exclusionary effect of the second proviso. The reason is that the rule-making power under Art. 309 is subject to Art. 311. Any rule contravening Art. 311(1) or 311(2) would be invalid.

To reach the above conclusion, the Court has overruled its earlier decision in *Challappan*[9] from which it could be inferred that under the three above clauses, a limited enquiry ought to be held on the question of nature and extent of the penalty to be imposed. Also, *Challappan* raised the possibility of service rules conferring a right of hearing on a delinquent government servant in the three situations mentioned in (a), (b), (c) above. On both these grounds, the Court has now overruled *Challappan*.

Rules cannot do what the second proviso to Art. 311(2) denies. Rules cannot restrict the exclusionary impact of the second proviso to Art. 311(2) "because that would be to impose a restriction upon the pleasure under Art. 310(1) which has become free of the restrictions placed upon it by clause 2 of Art. 311 by reason of the operation of the second proviso to that clause." Also, the Court has now ruled: "Considerations of fair play and justice requiring a hearing to be given to a government servant with respect to the penalty proposed to be imposed upon him do not enter into the picture when the second proviso to Art. 311(2) comes into play and the same would be the position in the case of a service rule reproducing the second proviso in whole or in part and whether the language used is identical with that used in the second proviso or not."

The *Tulsiram Patel* ruling has been applied in the following fact-situations under Art. 311(2)(b):

---

7. *Supra*, footnote 87.

8. On Art. 14 and Administrative Process, see, *supra*, Ch. XXI, Sec. D.
Also see, JAIN, *A TREATISE ON ADM. LAW*, Ch. XVII.

9. *Divisional Personnel Officer, S. Rly. v. T.R. Chellappan*, (1976) 1 SCR 783 : AIR 1975 SC 2216.

(*i*) Certain employees of the Research and Analysis Wing (RAW) were dismissed from service under Art. 311(2), second proviso, clause (b), without holding an inquiry. These orders were challenged as *mala fide*. It was argued that the reasons given therein for dispensing with the inquiry were not true and that an inquiry was reasonably practicable. The facts were that a large number of employees of RAW had been indulging in various acts of misconduct, indiscipline, intimidation and insubordination and had resorted to coercion, intimidation and incitement of other fellow employees.

The said employees were dismissed without an inquiry for the following reasons. Because of coercion and intimidation by them, no witness would co-operate if an inquiry were held against them and, therefore, the concerned disciplinary authority was satisfied that the circumstances were such that it was not reasonably practicable to hold a regular enquiry.

Applying the *Tulsiram Patel* ruling to the facts of the case, the Supreme Court upheld the impugned order of dismissal in *Satyavir Singh v. Union of India*[10] 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.

(*ii*) A large number of the members of the Central Industrial Security Force (CISF) stationed at Bokaro Steel Plant staged an agitation which assumed an aggravated form for recognition of their association. They indulged in agitational acts and violent indiscipline so much so that the army had to be called out. There was exchange of fire between the army and the CISF personnel resulting in a number of deaths. A large number of the members of the CISF were dismissed by applying cl. (b) of the second proviso to Art. 311(2). It was believed that any inquiry under Art. 311(2) would be dangerous and counter-productive. The Court held that clause (b) was properly applied in the fact-situation.

(*iii*) Railway employees staged an illegal strike. A number of employees belonging to the all-India loco-running staff were dismissed by applying clause (b) as they were concerned in incidents in furtherance of the strike. Railway services being vital to the country, railway is a public utility service. The Court ruled that clause (b) was properly applied in their case.

(*iv*) Members of the Madhya Pradesh Police Force stationed at the annual mela at Gwalior indulged in violent behaviour and rioting. Some of the active leaders were dismissed by applying clause (c). The orders were issued by the Governor on the advice of the Council of Ministers. Police are the guardians of law and order but they themselves turned into law breakers.

---

10. (1985) 4 SCC 252 : AIR 1986 SC 555.

The Court ruled that clause (c) was rightly applied as the situation was such that prompt and urgent action was necessary and holding of an inquiry into the conduct of the dismissed members of the police force would not have been expedient in the interest of the security of the State.

(*v*) 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 recited that "it is not reasonably practicable to hold an inquiry" against the said sub-inspector "for the reason that the witnesses cannot come forward freely to depose against him in a regular departmental inquiry."

The order was challenged but the same was upheld by the Supreme Court. After looking into 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."[11]

(*vi*) A head constable of police in the service of the Punjab Government was dismissed from service without holding an enquiry as contemplated by Art. 311(2). The Senior Superintendent of Police invoked Art. 311(2)(b) dispensing with the inquiry on the ground that it was not reasonably practicable to hold such an inquiry. The constable had links with terrorists, was mixed up with them and was supplying secret information to them. It was impossible to hold an inquiry as nobody would come forward to depose against such "militant police official". He was also preparing to murder senior police officials. In a confession, he had admitted his links with terrorists. The Court found these reasons for dispensing with the enquiry quite acceptable and ruled that the satisfaction not to hold the inquiry was not unjustified or unwarranted.[12]

(*vii*) Insofar as Cl. (b) is concerned, two conditions must be satisfied to sustain action thereunder, *viz.*, (i) there must exist a situation which renders holding of any inquiry "not reasonably practicable"; and (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction and other surrounding circumstances. This means that the question of reasonable practicability must be judged in the light of the circumstances prevailing at the date of the passing of the order.

The decision not to hold the enquiry cannot rest solely on the *ipse dixit* of the concerned authority. It is incumbent on the concerned authority when the decision not to hold the inquiry is questioned in a Court, to show that its 'satisfaction' is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. "Clause (b) of the second proviso to Art. 311(2) can be invoked only when the authority is satisfied from the material placed before

11. *People's Union for Civil Liberties v. Union of India,* AIR 1997 SC 1203 : (1997) 3 SCC 433.
12. *Kuldip Singh v. State of Punjab,* AIR 1997 SC 79 : (1996) 10 SCC 659.

him that it is not reasonably practicable to hold a departmental inquiry."

In *Jaswant Singh*,[13] the Court quashed the order of dismissal as the "subjective satisfaction" dispensing with the inquiry under Art. 311(2)(b) was not fortified by any independent material to justify the dispensing with the inquiry envisaged by Art. 311(2).

(*viii*) An inquiry was dispensed with and the respondent removed from service. The reason for dispensing with the inquiry was that the witnesses appearing against the employee concerned "are likely to suffer personal humiliation and insults thereafter and even they and their family members may become targets of acts of violence".

The Supreme Court considered this reason for dispensing with the inquiry as "totally irrelevant and totally insufficient in law." "There is total absence of sufficient material or good grounds for dispensing with the inquiry."[14]

The interpretation of the Second Proviso to Art. 311(2) now adopted by the Supreme Court in *Tulsiram Patel* no doubt strengthens the hands of the government to take disciplinary action against its servants in cases of grave misconduct. As MADON, J., delivering the majority opinion of the Court said, it could not possibly have been the intention of the Constitution-makers to grant immunity from summary dismissal to dishonest or corrupt government servants so that they may continue in service for months together "at public expense and to public detriment." But, at the same time, care has been taken by the Court to ensure that the power is not misused through a limited judicial review and departmental appeal.

The Supreme Court has upheld the order passed under Art. 311(2)(c) *inter alia* in the following situations.

(i) In *A.K. Kaul v. Union of India*.[15] The appellant was employed as Deputy Central Intelligence Officer in the Intelligence Bureau in the Ministry of Home Affairs, Govt. of India. The employees in the Intelligence Bureau formed an Association and the appellant was elected as its general secretary. He was dismissed from service without holding an enquiry under Art. 311(2)(c). The President was satisfied, said the order, that "in the interest of the security of the State it is not expedient to hold an inquiry" in his case. Having regard to the facts and circumstances of the case, the Court refused to hold that the order was *mala fide* or was based on wholly extraneous or irrelevant grounds.

(ii) In *Union of India v. Balbir Singh*,[16] the respondent who was one of the accused in the assassination of Prime Minister Indira Gandhi wad dismissed from Delhi Police without holding an inquiry. The dismissal was based on the recommendations of a High-Powered Committee of advisors constituted according to the directive of the Central Government. The Committee considered information and documents collected by the Intelligence Bureau having a bearing on the security of the state.

---

13. *Jaswant Singh v. State of Punjab*, AIR 1991 SC 385 : (1991) 1 SCC 362.
14. *Chief Security Officer v. Singasan Rabi Das*, AIR 1991 SC 1043 : (1991) 1 SCC 729.
15. AIR 1995 SC 1403 : (1995) 4 SCC 73.
16. AIR 1998 SC 2043 : (1998) 5 SCC 216.

The Court upheld the dismissal observing that this was not a case where there was absolutely no material relating to the activities of the respondent prejudicial to the security of state. Though the respondent was acquitted in criminal trial against him, yet the material placed before the committee was not confined to the assassination only; it related to various other activities of the respondent as well, which the authorities considered as prejudicial to the security of the state and, therefore, acquittal did not make any difference to the order which was passed by the President on the totality of material which was before the authorities long prior to the conclusion of the criminal trial.

Article 311(3) runs as follows:

> "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."

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 Cls. 2(b) of Art. 311, second proviso.

The Supreme Court has commented on this aspect in *Tulsiram* in the following words:

> "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 fide*s, 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 then the recording of its 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."

The Supreme Court has reiterated the proposition in *Jaswant Singh v. State of Punjab*,[17] 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 considerations or merely a ruse to dispense with the inquiry.[18]

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.

Even if some of the material on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action. The Court will not question the truth or correctness of the

---

17. AIR 1991 SC 385 : (1991) 1 SCC 362.

18. Also see, *Satyavir Singh v. Union of India*, AIR 1986 SC 555 : (1985) 4 SCC 252; *Shivaji Atmaji Sawant v. State of Maharashtra*, AIR 1986 SC 617 : (1986) 2 SCC 112; *Ikramuddin Ahmad Borah v. Supdt. of Police, Darrang*, AIR 1988 SC 2245 : 1988 Supp SCC 643; *Kuldip Singh v. State of Punjab*, AIR 1997 SC 79, 82 : (1996) 10 SCC 659.

material nor will it go into the question of adequacy of the material; the Court will not substitute its own opinion for that of the President.

The ground of *mala fides* includes *inter alia* situations where the order is found to be a clear case of abuse of power or fraud on power. The Court does not lightly presume abuse or misuse of power as it will make allowance for the fact that the President and the Council of Ministers are the best judge of the situation and that they possess information and material and the Constitution trusts their judgment in the matter, but still they do not become the final arbiter in the matter or that their opinion is conclusive.[19]

The Supreme Court has ruled in *Balbir*,[20] as regards clause (c) that the Court can examine the circumstances on which the satisfaction of the President/Governor is based. If the Court finds that the said circumstances have no bearing whatsoever on the security of the state, the Court can hold that the satisfaction of the President/ Governor which is required for passing such an order has been vitiated by wholly extraneous or irrelevant considerations.

I. OTHER INCIDENTS OF GOVERNMENT SERVICE

Article 311(2) refers to three incidents of government service, *viz.*, dismissal, removal and reduction in rank. But there are many other incidents of government service besides the above mentioned three incidents. An effort is made to throw some light on these other incidents of government service which fall outside the purview of Art. 311(2).[21]

It is the Executive which lays down the conditions of service subject to any law made by the Legislature. The Executive can prescribe the conditions of service subject to any law made by the Legislature and the Executive can do so either by making rules under the proviso to Art. 309[22], or by issuing instructions in exercise of its executive power.

The function of the Courts in the area of Service Law is to ensure rule of law and to ensure that the Executive acts fairly and gives a fair deal to its employees consistent with Arts. 14 and 16. The state ought not to exploit its employees. The Courts ensure that the Executive observes the statutory provisions, rules and instructions, if any, regulating the conditions of service of government employees.[23]

(a) APPOINTMENTS

An authority has freedom to devise procedure for selecting candidates for posts under it, but it does not mean and imply that the employer can do so at the cost of "fairplay, good conscience and equity."[24]

It is the prerogative of the Executive to create and abolish a post. Demarcation of cadres or gradation in the same cadre on higher and lower qualifications is a

---

19. *S.R. Bommai v. Union of India,* AIR 1994 SC 1918 : (1994) 3 SCC 1; *A.K. Kaul v. Union of India, supra,* footnote 15.
20. *Union of India v. Balbir Singh,* AIR 1998 SC 2043 : (1998) 5 SCC 216.
21. This portion may be read along with the material in Ch. XXIII, Sec. B, *supra,* under Art. 16.
22. On Art. 309, see, *supra,* Sec. B.
23. *State of Haryana v. Piara Singh,* AIR 1992 SC 2130 : (1992) 4 SCC 118.
24. *Praveen Singh v. State of Punjab,* AIR 2001 SC 152 : (2000) 8 SCC 633.

common phenomenon for fixing hierarchy in service. It is a valid basis of classification.[25]

When the Government proposes to constitute a new service, it is fully within its competence to decide as a matter of policy the sources from which the personnel required for manning the service are to be drawn.[26]

The State indisputably, subject to the constitutional limitations having regard to its power contained in the proviso appended to Article 309 of the Constitution of India, is entitled to frame rules laying down the mode and manner in which vacancies are to be filled up. If the State has the legislative competence to frame rules, indisputably, it can issue governmental orders in exercise of its power under Article 162 of the Constitution of India.[27]

The selection committee functions according to the Service Rules. It has no inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication.[28]

The Government can create civil posts and fill them up according to executive instructions consistent with Arts. 14 and 16.[29] Existence of statutory rules is not necessary for the purpose. But once the rules for recruitment have been made, the appointments have to be made according to the rules. The executive power can only be used to supplement, and not supplant, the rules.

Under Art. 320, it is not necessary for the Government to make all appointments through the Public Service Commission. [30] But the procedure prescribed for the purpose should be just, fair and reasonable. An opportunity is to be given to eligible persons by inviting applications through public notifications.

Appointments made in violation of the recruitment rules violate Arts. 14 and 16.[31] The Supreme Court has insisted again and again that the recruitment rules made under Art. 309 must be followed strictly. If these rules are disregarded, it will open a back-door for illegal recruitment without limit.[32] Recently, the Supreme Court has observed:[33]

> "The decisions of this Court have recently been requiring strict conformity with the recruitment rules for direct recruits and promotees. The view is that there can be no relaxation of the basic or fundamental rules of recruitment."[34]

---

25. *State of Mysore v. P. Narasinga Rao*, AIR 1968 SC 349 : (1968) 1 SCR 407; *Union of India v. Dr. (Mrs.) S.B. Kohli*, AIR 1973 SC 811 : (1973) 3 SCC 592; *State of Jammu & Kashmir v. Triloki Nath Khosa*, AIR 1974 SC 1 : (1974) 1 SCC 19; *K. Narayanan v. State of Karnataka*, AIR 1994 SC 55 : 1994 Supp (1) SCC 44.

26. *S.S. Moghe v. Union of India*, AIR 1981 SC 1495.

27. *Andhra Pradesh Public Service Commission v. Baloji Badhavath*, (2009) 5 SCC 1 : (2009) 5 JT 563.

28. *Ramachandra Iyer v. Union of India*, AIR 1984 SC 541; *Umesh Chandra Shukla v. Union of India*, AIR 1985 SC 1351 : (1985) 3 SCC 721; *Durgacharan Misra v. State of Orissa*, AIR 1987 SC 2267 : (1987) 4 SCC 646.

29. See, *supra*, Chs. XXI and XXIII.

30. For Art. 320, see, *infra*, Sec. K.

31. *State of Orissa v. S. Mohapatra*, (1993) 2 SCC 486; *State of J&K Public Service Comm. v. Narinder Mohan*, AIR 1994 SC 1808 : (1994) 2 SCC 630.

32. *Dr. Arundhati Ajit Pargaonkar v. Maharashtra*, AIR 1995 SC 962 : 1994 Supp (3) SCC 380.

33. *Suraj Parkash Gupta v. State of Jammu & Kashmir*, AIR 2000 SC 2386 : (2000) 7 SCC 561.

34. See, for example, *Keshav Chandra Joshi v. Union of India*, AIR 1991 SC 284 : 1992 Supp (1) SCC 272; *State of Orissa v. Sukanti Mohapatra*, AIR 1993 SC 1650 : (1993) 2 SCC 486; *J&K Public Service Comm. v. Dr. Narinder Mohan*, AIR 1994 SC 1808; *Dr. M. A. Haque v. Union of India*, (1993) 2 SCC 213 : 1993 SCC (L&S) 412.

It is common experience that it is a vicious circle that initially governments impose ban on recruitment, and then make massive *ad hoc* appointments *de hors* the rules giving a go by to making appointments in accordance with the rules. Thereafter the governments resort to regularisation of such appointments exercising the power under Art. 320(3) proviso[35] or Art. 162[36] to make them regular members of the service. The Supreme Court has expressed its unhappiness at such practice in these words:[37]

> "This practice not only violates the mandates of Arts. 14 and 16 but also denies to all eligible candidates their legitimate right to apply for and stand for selection and get selected."

The Court has ruled that regularisation in violation of the statutory rules is not permissible, in exercise of the executive power of the State which has the effect of overriding the rules framed under Art. 309. No regularisation in exercise of executive power under Art. 162, in contravention of the statutory rules is permissible.[38] The Supreme Court has insisted that once the rules are framed under Art. 309, the actions of the government in respect of matters covered by the rules should be regulated by these rules.[39]

The selection by the Commission of a candidate for appointment to a post is only a recommendation and the final authority for appointment is the Government. The Commission's selection is only recommendatory. This means that the Government is free to accept or decline to accept the recommendation made by the Commission. But if the Government chooses not to accept the Commission's recommendation, then the Constitution enjoins the Government under Art. 323 to place on the table of Parliament or State Legislature its reasons for doing so. The Government is made answerable to the Legislature for any departure from the Commission's recommendations, vide Art. 323.[40] The candidates, as such, gets no right to appointment pursuant to the Commission's recommendation.

The Government must make appointments in order of merit fixed by the Commission. The Government cannot disturb the order of merit according to its own sweet will except for other good reasons, *viz.*, bad conduct or character. The Government cannot also appoint any one whose name is not on the recommended list. The Government decides as to how many appointments it will make. The Government decides as to how many appointments it will make.

The Government is not required by Art. 323 to give its reasons to the Commission for departing from its recommendations. All that Art. 323 requires is that along with the report of the Commission, a memorandum containing the reasons for declining to accept the recommendation of the Commission ought to be placed before the Legislature. The Government should place the reasons for not accepting the Commission's recommendations on the file so that it can produce the same in the Court as and when called upon to do so. The Government can

---

35. See, *infra*, Sec. K.
36. See, *supra*, Ch. VII, Sec. B.
37. *K.C. Joshi v. Union of India*, AIR 1991 SC 284; *V. Sreenivasa Reddy v. State of Andhra Pradesh*, AIR 1995 SC 586 : 1995 Supp (1) SCC 572.
38. *B.N. Nagarajan v. State of Karnataka*, AIR 1979 SC 1676 : (1979) 4 SCC 507. Also see, *Subedar Singh v. District Judge, Mirzapur*, AIR 2001 SC 201 : (2001) 1 SCC 37.
39. *A.K. Bhatnagar v. Union of India*, (1991) 1 SCC 544.
40. See, *infra*, Sec. K.

take into consideration any developments which may take place after the Commission has made its recommendations.[41]

A candidate on making an application for a post pursuant to an advertisement does not acquire any vested right of selection or appointment to the post in question.[42] A candidate who is eligible and otherwise qualified in accordance with the rules and the terms of the advertisement acquires a vested right of being considered for selection in accordance with the rules as they existed on the date of the advertisement. He cannot be deprived of this limited right during the pendency of selection unless the rules are amended with retrospective effect.[43]

Mere inclusion of the name of a candidate in the list of selected candidates does not confer any right on him to be appointed unless the relevant rules so indicate.[44] He could feel aggrieved at his non-appointment if the Administration does so either arbitrarily or for no *bona fide* or valid reason. The Supreme Court has clarified the position in this regard thus: [45]

> "It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the state is under no legal duty to fill up all or any of the vacancies. However it does not mean that the state has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bona fide* for appropriate reasons. And if the vacancies or any of them are filled up, the state is bound to respect the comparative merit of the candidates as reflected at the recruitment test, and no discrimination can be permitted".[46]

The Supreme Court has however ruled that when the list of selected candidates is challenged through a writ petition, it is necessary to make these candidates as parties, or to implead some of them in a representative capacity, if their number is very large. The selected candidates may not have a vested right to be appointed, they surely are interested in defending the select list; setting aside the list will affect them adversely. Natural justice demands that any person who may be adversely affected by a Court order should have an opportunity of being heard.[47]

---

41. *Jatinder Kumar v. State of Punjab*, AIR 1984 SC 1850 : (1985) 1 SCC 122; *H. Mukherjee v. Union of India*, AIR 1994 SC 495; *Mrs. Asha Kaul v. State of Jammu & Kashmir*, (1993) 2 JT (SC) 688 : (1993) 2 SCC 573.

42. *Jatinder Kumar v. State of Punjab*, AIR 1984 SC 1850 : (1985) 1 SCC 122.

43. *N.T. Devin Katti v. State of Karnataka PSC*, AIR 1990 SC 1233 : (1990) 3 SCC 157.
Also see, *S.N. Nagarajan v. State of Mysore*, AIR 1966 SC 1942 : (1966) 3 SCR 682; *P. Ganeshwar Rao v. State of Andhra Pradesh*, AIR 1988 SC 2068 : 1988 Supp SCC 740; *P. Mahendra v. State of Karnataka*, AIR 1990 SC 405.

44. *Union Territory of Chandigarh v. Dilbagh Singh*, (1993) 1 SCC 154 : AIR 1993 SC 796.

45. *Shankarasan Dash v. Union of India*, AIR 1991 SC 1612 : (1991) 3 SCC 47.

46. See, *State of Haryana v. Subhash Chander Marwaha*, AIR 1973 SC 2216 : (1974) 3 SCC 220; *Neelima Shangla v. State of Haryana*, AIR 1987 SC 169 : (1986) 4 SCC 268; *Jatinder Kumar v. State of Punjab*, AIR 1984 SC 1850 : (1985) 1 SCC 122; *Union of India v. Ishwar Singh Khatri*, 1992 Supp (3) SCC 84 : 1992 SCC (L&S) 1999; *All India SC and ST Employees Association v. A. Arthur Jeen*, AIR 2001 SC 1851 : (2001) 6 SCC 380.

47. *Prabodh Verma v. State of Uttar Pradesh*, AIR 1985 SC 167; *A.M.S. Sushanth v. M. Sujatha*, (2000) 10 SCC 197; *All India SC and ST Employees Ass. v. A. Arthur Jeen*, AIR 2001 SC 1851 : (2001) 6 SCC 380.

A panel of select candidates can be kept operative for a reasonable time. A long waiting list cannot be kept *in infinitum* in view of the principle "*infinitum injure reprobatur"*.[48] The reason for limiting the life of the waiting list is to ensure that other qualified candidates are not deprived of their chance to apply for the posts in succeeding years and be selected for appointment.

In the following case,[49] select list was prepared on the basis of merit in the examination without any qualifying marks. All those who wrote the examination were ranked in the list. These candidates claimed that they had a right to be appointed and that no fresh list be prepared till this list was exhausted. The Supreme Court rejected their contention observing that empanelment is, at best, a condition of eligibility and by itself confers no indefeasible right on the candidates so listed unless the rules do so provide.

For appointment to the posts of presiding officers of the labour Courts, the minimum qualification prescribed was five years' practice. While short-listing the candidates for *viva voce,* the candidates with 7½ years practice were selected. This was held to be valid by the Supreme Court in *M.P. Public Service Commission v. Navnit Kumar Potdar*.[50] This did not amount to changing the statutory criteria. A person with more practice experience is maturer. The fixing of limit at 7½ years instead of five cannot be said to be "irrational, arbitrary having no nexus with the object to select the best among the applicants."

In *Krishn Yadav v. State of Haryana*,[51] the Supreme Court found the process of selection by the subordinate selection board to be arbitrary, vitiated by fraud and motivated by extraneous considerations. The process of selection was quashed with the remark that "it is stinking" and "conceived in fraud."

175 candidates were appointed as assistant teachers, but before they could join, the Deputy Development Commissioner cancelled the orders of appointment on the ground that the appointing authority had no power to make these appointments. Nevertheless, the Supreme Court ruled that these appointees ought to have been given a hearing before their appointments were cancelled.[52]

Where a temporary or *ad hoc* appointment is continued for long, the Court presumes that there is need and warrant for a regular post and may accordingly direct regularization. 50,000 persons were being employed by the State on daily-rated or monthly-rated basis for over 20 years. The Court ordered the regularisation of all workers who had completed 10 years of service.[53]

Normally, as stated above, an appointment made in violation of the Service Rules is regarded as invalid and is quashed by the Courts. As the Supreme Court has observed: "It is well settled that where recruitment to service is regulated by

---

48. *Babita Prasad v. State of Bihar*,, 1993 Supp (3) SCC 268 : (1993) 1 SLR 44.

49. *State of Bihar v. Secretariat Assistant Successful Examinees Union,* 1986, (1994) 1 SCC 126 : AIR 1994 SC 736.
Also *N. Mohanan v. State of Kerala,* AIR 1997 SC 1896 : (1997) 2 SCC 556.

50. AIR 1995 SC 77.
Also see, *Haryana v. Subash Chander Marwaha,* AIR 1973 SC 2216 : (1974) 3 SCC 220.

51. AIR 1994 SC 2166 : (1994) 4 SCC 165.

52. *Uttar Pradesh v. Girish Bihari,* AIR 1997 SC 1354 : (1997) 4 SCC 362.

53. *Dharwad District P.W.D. Literate Daily Wage Employees Association v. State of Karnataka,* AIR 1990 SC 883 : (1990) 2 SCC 396.
Also see, *Jacob v. Kerala Water Authority,* AIR 1990 SC 2228; *State of Haryana v. Piara Singh,* AIR 1992 SC 2130 : (1992) 4 SCC 118.

the statutory rules, recruitment must be made in accordance with those rules, any appointment made in breach of rules would be illegal."[54]

In several cases, such appointments have been set aside even if it means uprooting of persons after appointment. But the Supreme Court has taken this unpalatable step because it has felt that "if equality and equal protection before the law have any meaning and if our public institutions are to inspire that confidence which is expected of them we would be failing in our duty if we did not, even at the cost of considerable inconvenience to Government and the selected candidates, do the right thing."[55]

But, on the other hand, there are cases where the Supreme Court has desisted from quashing irregular appointments on humanitarian considerations, such as, the incumbent has been holding the post for a long period.[56] In *Rafiquddin*,[57] appointment of Judges was made against the rules. The appointments were made in 1975. The Supreme Court did not strike down these appointments "having regard to the period of 12 years that have elapsed."

In the following case,[58] even appointments made in contravention of Art. 16 by allotting higher marks than warranted for the *viva voce* test, were not quashed by the Supreme Court, as the selected candidates had already joined the posts long back.

(b) CONFIDENTIAL REPORTS

No statutory rules have been made so far under Art. 309 regulating the award of entries in the character roll of a Central or State Government employees. Accordingly, the entire field is regulated by administrative directions.

Under these directions, the character rolls of government servants are maintained. Every year, entries are made in these rolls by superior competent authorities regarding the work, conduct and character of government servants. These entries are confidential in nature. These entries contain the assessment of the work and conduct of each government servant, reflecting his efficiency or defect in his work and conduct. If any penalty has been imposed on a government servant, it is mentioned in these entries. These entries are important as they constitute the foundation on which the career of an employee is based and is made or marred.

On the basis of these entries, a government servant's suitability to the office is assessed for the purpose of his confirmation, promotion and even for retention in service. The purpose of writing confidential reports is two fold—(1) to give an opportunity to the officer to remove deficiencies and to inculcate discipline; (2) it seeks to serve improvement of quality and excellence and efficiency of public service.

Any adverse entries against a government servant are communicated to him with a view to inform him regarding the deficiencies in his work and conduct and

---

54. *State of Uttar Pradesh v. Rafiquddin,* AIR 1988 SC 162, 176 : 1987 Supp SCC 401.
55. *C. Channabasavaiah v. State of Mysore,* AIR 1965 SC 1293.
Also, *Umesh Chandra Shukla v. Union of India,* AIR 1985 SC 1351 : (1985) 3 SCC 721.
56. See, for example, *Shainda Hasan v. State of Uttar Pradesh,* AIR 1990 SC 1381; *H.C. Puttaswamy v. High Court,* AIR 1991 SC 295 : 1991 Supp (2) SCC 421.
57. *Supra,* footnote 54.
58. *Vikram Singh v. Subordinate Services Selection Board,* AIR 1999 SC 1011 : (1991) 1 SCC 686.

afford him an opportunity to make, amend, and improve in his work and, further, if the entries are not justified the communication affords him an opportunity to make representation.

The Supreme Court has observed in this connection:[59]

> "the object of writing the confidential reports or character roll of a Government servant and communication of the adverse remarks is to afford an opportunity to the concerned officer to make amends to his remiss; to reform himself; to amend his conduct and to be disciplined, to do hard work, to bring home his lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a government servant…."

The employee can make a representation against any adverse entry awarded to him. If the competent authority feels that the remarks are justified, he may reject the employer's representation and inform him accordingly. But if he finds the adverse remarks not justified, unfounded or incorrect, he may expunge the same. This means that the adverse remarks ought to be communicated to the employee concerned as soon as possible. If the adverse remarks are communicated to the employee after several years, then the object of communicating the same is lost. In this connection, the Supreme Court has observed in *Baidyanath Mahapatra v. State of Orissa*:[60]

> "It is therefore imperative that the adverse entries awarded to a government servant must be communicated to him within a reasonable period to afford him opportunity to improve his work and conduct and also to make representation in the event of the entry being unjustified."

There is no rule that before an adverse entry is recorded in the character roll, an opportunity of hearing must be given to the concerned employee.[61] There is no rule or principle that the competent authority ought to give reasons for rejecting the employee's representation. The competent authority is obligated to consider the employee's representation in a fair and just manner and if thereafter the representation is rejected, the order of rejection would not be invalid merely because of the absence of reasons. In case the order rejecting the employee's representation is challenged in a Court, the competent authority can always place the reasons before the Court for rejecting the representation.[62]

In view of the importance of the confidential and character rolls on the career of the employee, the Supreme Court has emphasized that these be written by superior officers higher above the cadres. The officer should show objectivity, impartiality, and fair assessment without any prejudices whatsoever with the highest sense of responsibility to inculcate devotion to duty, honestly and integrity to improve excellence of the individual officer.

It is for the employer to prescribe the officer competent to write the confidentials but he should be a superior officer of high rank lest the employees get demoralised which would be deleterious to the efficacy and efficiency of public

---

59. *Swatantar Singh v. State of Haryana,* AIR 1997 SC 2105 : (1997) 4 SCC 14.
60. AIR 1989 SC 2218, 2221 : (1989) 4 SCC 664.
61. *R.L. Butail v. Union of India,* (1970) 2 SCC 876 : (1970) 2 LLJ 514; *Maj. Gen. I.P.S. Dewan v. Union of India,* (1995) 3 SCC 383 : (1995) SCC (L&S) 691; *Ramachandra Raju v. State of Orissa,* (1994) Supp (3) SCC 424 : 1995 SCC (L&S) 74; *State of Uttar Pradesh v. Yamuna Shanker Misra,* AIR 1997 SC 3671 : (1997) 4 SCC 7.
62. *Union of India v. E.G. Nambudri,* AIR 1991 SC 1216 : (1991) 3 SCC 38.

service. There should be another higher officer in rank above the one writing the confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls.[63]

In a recent case,[64] the Supreme Court has again explained that the confidential reports of an officer "are basically the performance appraisal of the said officer and go to constitute vital service record in relation to his career advancement. Any adverse remark in the CRs could mar the entire career of that officer". The Court has therefore emphasized that:

> "it is necessary that in the event of a remark being called for in the Confidential Records, the authority directing such remark must first come to the conclusion that the fact-situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned. A decision in this regard must be taken objectively after careful consideration of all the materials which are before the authority directing the remarks being entered in the C.Rs."

In the instant case, the direction entering adverse remarks against a sessions Court judge by the High Court was quashed by the Supreme Court as having been based on no material. In another case,[65] adverse entries against a subordinate judge were quashed by the High Court as being "unjustified, arbitrary and based on non-existent facts".

(c) CONFIRMATION OF A PROBATIONER

The usual practice is that a person is appointed on probation against a permanent post and is confirmed after the lapse of the period of probation. At times, the employee may not be con-firmed after the lapse of the period of probation. A question then arises as to what is the status of such an employee—is he still to be regarded as being on probation or having been confirmed automatically?

The judicial decisions on this point have been varying depending upon the specific rules/regulations and the scheme underlying them.

A person appointed on probation for a specified period does not *ipso facto* stand confirmed after the lapse of the period of probation unless a specific order of confirmation is made. The period of probation can be extended if the relevant rules so permit, *i.e.,* if the rules do not prescribe any period of probation, or if the rules prescribe only a minimum and not maximum period for the purpose. Allowing a probationer to continue in the post beyond the period of probation, without an order of confirmation, only means that by implication his period of probation has been extended and he acquires no substantive right to hold the post.

There is no right in a government servant to the confirmed merely because he has completed his period of probation. The Supreme Court has ruled out the proposition of automatic confirmation on completion of the period of probation. The permanent status can be acquired only by a specific order confirming the employee on the post held by him on probation. The function of confirmation

---

63. *State Bank of India v. Kashinath Kher,* AIR 1996 SC 1328, 1333-34 : (1996) 8 SCC 762.
Also, *High Court of Judicature at Allahabad v. Sarnam Singh,* AIR 2000 SC 2150 : (2000) 2 SCC 339.

64. *P.K. Shastri v. State of Madhya Pradesh,* AIR 1999 SC 3273 : (1959) 7 SCC 329.

65. *High Court of Judicature at Allahabad v. Sarnam Singh,* AIR 2000 SC 2150 : (2000) 2 SCC 339.

implies the exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service.[66] Therefore, termination after expiry of probation is not invalid. The Supreme Court has observed in this connection:[67]

> "….if in the rule or order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond this prescribed period of probation, he cannot be deemed to be confirmed…."

A probationer may, however, automatically stand confirmed and acquire the status of a permanent employee by lapse of probation in one of the two situations:

(1) If the service rules applicable to him expressly provide for such a result; or

(2) If the order of appointment itself stipulates that the appointee will stand confirmed at the end of the period of probation in the absence of any order to the contrary.[68]

(3) When the rule fixes the maximum period of probation, and the probation cannot be extended beyond that period, on the expiry of the prescribed period of probation.[69]

When a service rule prohibited extension of period of probation beyond three years, a probationer in a permanent post was held to have become confirmed after three years without an express order of confirmation having been passed.

In *Dharam Singh*,[70] under the relevant rule, after an initial period of one year's probation, the same could be extended upto a maximum period of three years. The petitioner was on probation for five years, and, thereafter, his services were terminated without an enquiry. The termination was held to be invalid as his probation could not be extended beyond four years. As the maximum period of probation was fixed by the rules, the employee must be held to be confirmed after the lapse of this period.[71] On the other hand, even when a maximum period of probation is fixed, if there is a further provision in the rules for continuation of probation beyond the maximum period, there will be no deemed confirmation in

---

66. *G.S. Ramaswamy v. I.G. of State of Mysore*, AIR 1966 SC 175 : (1964) 6 SCR 279; *U.P. v. Akbar Ali Khan*, AIR 1966 SC 1842 : (1966) 3 SCR 821; *State of Punjab v. Dharam Singh*, AIR 1968 SC 1210; *Partap Singh v. U.T. of Chandigarh*, AIR 1980 SC 57; *Dhanjibhai Ramjibhai v. State of Gujarat*, AIR 1985 SC 603 : (1985) 2 SCC 5; *Municipal Corp. Raipur v. Ashok Kumar Misra*, AIR 1991 SC 1402 : (1991) 3 SCC 325; *Chandra Prakash Shahi v. State of Uttar Pradesh*, AIR 2000 SC 1706 : (2000) 5 SCC 152.

67. *Karnataka State Road Transport Coprn. v. S. Manjunath*, (2000) 5 SCC 250 : AIR 2000 SC 2070; *Dayaram Dayal v. State of Madhya Pradesh*, (1997) 7 SCC 443 : AIR 1997 SC 3269; *Wasim Beg. v. State of Uttar Pradesh*, (1998) 3 SCC 321 : 1998 SCC (L&S) 840; *State of Punjab v. Baldev Singh Khosla*, (1996) 9 SCC 190 : AIR 1997 SC 432.

68. *Sukhbans Singh v, State of Punjab*, AIR 1962 SC 1711; *State of Uttar Pradesh v. Akbar Ali*, AIR 1966 SC 1482 : (1966) 3 SCR 284.

69. *Om Prakash Maurya v. U.P. Co-op. Sugar Factories Federation*, AIR 1986 SC 1844; *M.A. Agarwal v. Gurgaon Bank*, AIR 1988 SC 286 : 1987 Supp SCC 343.

70. *State of Punjab v. Dharam Singh*, AIR 1968 SC 1210; *S.M. Mehta*, Legal status of Probationers in Government Service, 16 *JILI*, 104 (1974).

71. Also, *Wasim Beg v. State of Uttar Pradesh*, (1998) 3 SCC 321 : 1998 SCC (L&S) 840.

such a case, and the probation period is deemed extended.[72] This judicial view has been consistently followed in several cases subsequently.[73]

In *Samsher Singh*,[74] the relevant rule provided for an initial period of probation of 2 years which could be further extended for a maximum period of one year. But there was an explanation saying that the period of probation shall be deemed extended if a subordinate judge is not confirmed on the expiry of his period of probation. The Supreme Court ruled that the explanation meant that "the provisions regarding the maximum period of probation for three years is directory and not mandatory unlike in *Dharam Singh*, and that a probationer is not in fact confirmed till an order of confirmation is made."

The Supreme Court has observed in *Patwardhan*,[75] that "confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies."

(d) SENIORITY

Seniority is an incident of service which cannot be eroded or curtailed by a rule which operates discriminately. A person entering government service should feel secure of equality in continuance, promotion, etc. Any executive action violating it cannot be upheld.[76]

Once an appointment is made to a post according to the service rules, the seniority of the person so appointed is to be counted from the date of his appointment and not with regard to the date of his confirmation. Where the initial appointment is only *ad hoc* and not according to the rules and has been made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.[77]

Appointment in accordance with the rules is a condition precedent to count seniority. Temporary, or *ad hoc* or fortuitous appointment, etc. is not an appointment in accordance with the rules and cannot be counted towards the seniority.[78] Therefore, seniority is to be counted from the date on which the appointee is appointed to the post in accordance with the rules, and starts discharging the duty of the post borne on the cadre, and the previous temporary service is

---

72. *Samsher Singh v. State of Punjab*, (1974) 2 SCC 831 : AIR 1974 SC 2192; *Satya Narayan Athya v. High Court of M.P.*, (1996) 1 SCC 560 : 1996 SCC (L&S) 338.

73. *Om Prakash Maurya v. U.P. Co-op. Sugar Factories Federation*, AIR 1986 SC 1844 : 1986 Supp SCC 95; *M.K. Agarwal v. Gurgoan Gramin Bank*, AIR 1988 SC 286 : 1987 Supp SCC 643; *Dayaram Dayal v. State of Madhya Pradesh*, AIR 1997 SC 3269 : (1997) 7 SCC 443.

74. AIR 1974 SC 2192 : (1974) 2 SCC 831.
Also see, *Municipal Corp. Raipur v. Ashok Kumar Misra*, (1991) 3 SCC 325 : AIR 1991 SC 1402.

75. *S.B. Patwardhan v. Maharashtra*, AIR 1977 SC 2051 : (1977) 3 SCC 399.

76. *K. Narayanan v. State of Karnataka*, AIR 1994 SC 55 : 1994 Supp (1) SCC 44.

77. *Direct Recruitment Class II Engineering Officers' Association v. State of Maharashtra*, AIR 1990 SC 1607; *West Bengal v. Aghore Nath Dey*, (1993) 3 SCC 371 : 1993 SCC (L&S) 783; *S.K. Saha v.Prem Prakash Agarwal*, AIR 1994 SC 745 : (1994) 1 SCC 431; *O.P. Garg v. State of Uttar Pradesh*, AIR 1991 SC 1202.

78. *Direct Recruits, op cit.; D.N. Agrawal v. State of Madhya Pradesh*, AIR 1990 SC 1311; *Excise Commr., Karnataka v. Sreekanta*, (1993) AIR SCW 1740 : AIR 1993 SC 1564; *V. Sreenivasa Reddy v. State of Andhra Pradesh*, AIR 1995 SC 586.

to be considered as fortuitous.[79] Seniority cannot relate back to the date of temporary appointment.[80]

A temporary appointee appointed *de hors* the rules, or on an *ad hoc* basis, or in a fortuitous vacancy gets seniority from the date of regular appointment.[81]

The quintessence of the proposition is that the appointment to a post must be according to the rules and not by way of *ad hoc* or stop gap arrangement made due to administrative exigencies.

But along with this proposition, the Court has also stated another proposition, *viz.*, if the initial appointment is not made by following the procedure laid down by the rules, but the appointee continues in the post for long uninterruptedly, till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. Since the Government deliberately deviated from the rules and allowed the appointee to be in continuous service for well over 15 to 20 years, the Government must be deemed to have relaxed the rules.[82]

No one has a vested right to seniority but an officer has an interest in seniority acquired by working out the rules. It could be taken away only by operation of a valid law. As has been observed by the Supreme Court:[83]

> "Thus to have a particular position in the seniority list within a cadre can neither be said to be accrued or vested right of a Government servant and losing some places in the seniority list within the cadre does not amount to reduction in rank even though the future chances of promotion gets delayed thereby."

If the circumstances so require, a group of persons, can be treated as a class separate from the rest, for any preferential or beneficial treatment while fixing their seniority. But, whether such group of persons belong to a special class for any special treatment in the matter of seniority, has to be decided on objective consideration and on taking into account relevant factors which can stand the test of Arts. 14 and 16 of the Constitution.[84]

(e) TRANSFER

A government servant has no legal right to insist for being posted at any particular place. A person holding a transferable post has no choice in the matter of posting unless specifically provided in his service conditions. The transfer of a public servant made on administrative grounds or in public interest is not to be interfered with unless there are strong and compelling reasons rendering the

---

79. *K.C. Joshi v. Union of India,* AIR 1991 SC 284 : 1992 Supp (1) SCC 272; *Masood Akhtar Khan v. M.P.,* (1990) 4 SCC 24 : 1990 SCC (L&S) 580.

80. *D.N. Agrawal v. State of Madhya Pradesh,* AIR 1990 SC 1311 : (1990) 2 SCC 553; *V. Sreenivasa Reddy v. State of Andhra Pradesh,* AIR 1995 SC 586, 591 : 1995 Supp (1) SCC 572; *Vijay Kumar Jain v. State of Madhya Pradesh,* (1992) Supp. (2) SCC 95 : 1992 SCC (L&S) 627.

81. *Union of India v. S.K. Sharma,* AIR 1992 SC 1188 : 1992 (2) SCC 728.

82. *Direct Recruits, supra,* footnote 77; *Narender Chadha v. Union of India,* AIR 1986 SC 638 : (1986) 2 SCC 157; *Keshav Chandra Joshi v. Union of India,* AIR 1991 SC 284 : 1992 Supp (1) SCC 272.

83. *S.S. Bola v. B.D. Sardana,* AIR 1997 SC 3127 : (1997) 8 SCC 522.

84. *Ram Janam Singh v. State of Uttar Pradesh,* AIR 1994 SC 1722 : (1994) 2 SCC 622.
For Arts. 14 and 16, see, Chs. XXI and XXIII, *supra.*

transfer order improper and unjustifiable.[85] A Court would not interfere with a *bona fide* order of transfer.[86]

Transfer of a government servant in a transferable service is a necessary incident of the service matter. When a government servant is transferred to an equivalent post without any adverse consequence on his service or career prospects, the scope of judicial review is very limited—it is confined only to the grounds of *mala fides* and violation of any specific provision or guidelines regulating such transfers amounting to arbitrariness.

A public servant is bound to comply with an order of transfer. If he has any genuine difficulty, he can make a representation against such an order; but if the initial order stands, he has to comply with it, otherwise he will expose himself to disciplinary action under the relevant service rules.[87]

A transfer of a government servant may be against public interest only if the transfer was avoidable and the successor is not suitable for the post.[88]

(f) PROMOTION

Promotion means appointment of a person of any category or grade of a service or a class of service to a higher category or grade of such service or class. The Supreme Court has observed that promotion means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions, *viz.*: that the new post is in a higher category of the same service, or that the new post carries higher grade in the same service or class.[89]

Eligibility for promotion provided in rules framed under Art. 309 of the Constitution reflect the policy of the State and judicial review in such policy matters will not be entertained unless there is a clear violation of the Constitution or a statutory provision.[90]

No employee has a right to promotion but he has a right to be considered for promotion according to the rules. The right to be considered for promotion is a part of the conditions of service, but chances of promotion are not considered as conditions of service. A rule merely affecting the chances of promotion cannot be regarded as varying the conditions of service.[91] The Supreme Court has observed in *State of Maharashtra v. Chandrakant Anant Kulkarni*:[92]

> "Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not."

---

85. *Chief General Manager (Telecom), N.E. Telecom Circle v. Rajendra Chand Bhattacharjee,* AIR 1995 SC 812 : (1995) 2 SCC 532.
86. *Union of India v. S.L. Abbas,* (1993) 4 SCC 357 : AIR 1993 SC 2444.
87. *Gujarat Electricity Board v. Atmaram,* AIR 1989 SC 1433 : (1989) 2 SCC 602.
88. *N.K. Singh v. Union of India,* AIR 1995 SC 423 : (1994) 6 SCC 98.
89. *C.C. Padmanabhan v. Director of Public Instructions,* AIR 1981 SC 64 : 1980 Supp SCC 668.
90. *Dilip Kumar Garg v. State of Uttar Pradesh,* (2009) 4 SCC 753 : (2009) 3 JT 202.
91. *S.S. Bola v. B.D. Sardana,* AIR 1997 SC 3127 : (1997) 8 SCC 522.
Also, *R.S. Dhull v. State of Haryana,* AIR 1998 SC 2090 : (1998) 4 SCC 379.
92. AIR 1981 SC 1990 : (1981) 4 SCC 130. Also see, *K. Jagadeesan v. Union of India,* AIR 1990 SC 1072; *Union of India v. S.L. Dutta,* AIR 1991 SC 363 : (1991) 1 SCC 505.

An employee falling within the zone of consideration cannot be denied promotion merely because some disciplinary criminal proceedings are pending against him.[1] If a charge memo/charge sheet has been issued to him, or if he is suspended, then the sealed cover procedure can be resorted to. But this procedure cannot be resorted to when only preliminary investigation is being made into the charges against him. The reason being that many a time nothing comes out of the preliminary investigation and such an investigation may be initiated at the instance of interested parties.[2]

The above-mentioned proposition is illustrated by the Supreme Court decision in *State of Madhya Pradesh v. R.N. Mishra*.[3] In 1976, a preliminary inquiry was initiated to inquire into allegations of misconduct against the respondent. In 1977, he was promoted to a higher post while the preliminary inquiry was in progress. After a due inquiry, the State Government in 1986 inflicted on him the penalty by way of withholding his two increments. He challenged the order. His argument was that by his promotion in 1977, the allegations of misconduct against him stood condoned by the State Government and, as such, the penalty imposed on him was without jurisdiction. The Supreme Court rejected the contention with the following observation:[4]

> "….an employee/officer who is required to be considered for promotion, despite the pendency of the preliminary inquiry or contemplated inquiry against him is promoted, having been found fit, the promotion so made would not amount to condonation of misconduct which is subject matter of the inquiry."

The Court has gone on to say that the government servant after appointment as such acquires a status, as his conditions of service are regulated by statutory rules or provisions of an Act. Under the law, Government is not justified in excluding an employee from the field of consideration for promotion merely because certain disciplinary proceedings are contemplated, or some preliminary inquiry to inquire into the misconduct attributed to that employee are pending.

In the instant case, under the law, the State Government had no option but to consider the case of the respondent for promotion. The State Government could not have excluded the respondent from the zone of consideration, merely on the ground that a preliminary inquiry to enquire into the allegations of misconduct attributed to him was pending. "In such a situation, the doctrine of condonation of misconduct cannot be applied as to wash off the acts of misconduct which was the subject matter of preliminary enquiry." Accordingly, the Court ruled that in the instant case, promotion of the respondent could not amount to condonation of misconduct alleged against him which was the subject matter of the preliminary inquiry. Consequently, the punishment on the respondent by the State Government was held to be valid and legal.

When an employee substantively holding a lower post is asked to discharge the duties of a higher post, it is not regarded as promotion. In such a case, he does not get the salary of the higher post but gets only a 'charge allowance'. Such a

---

1. *New Bank of India v. N.P. Sehgal*, 1991 AIR SCW 565 : (1991) 2 SCC 220.
2. *Union of India v. Janakiraman, K.V.*, AIR 1991 SC 2010 : (1991) 4 SCC 109; *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, 757 : 1996 SCC (L&S) 80.
3. AIR 1997 SC 3548 : (1997) 7 SCC 644.
4. *Ibid*, at 3549.

person continues to hold his substantive lower post and he only discharges the duties of the higher post essentially as a stop gap arrangement.[5]

Ordinarily, the Courts/tribunals do not interfere with assessments made by departmental Promotion Committees in regard to merit or fitness of a candidate for promotion. But there may be a rare case where the Court may interfere with such assessment if it—[6]

> "is either proved to be *mala fide* or is found based on inadmissible or irrelevant or insignificant and trivial material–and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable person can reach such conclusions, or if there is illegality attached to the decision…."

Ordinarily, a Court does not interfere with assessment of a candidate made by a departmental promotion committee, but in an exceptional case, the Court can review such an assessment "within the narrow *Wednesbury* principles or on the ground of *mala fides*"[7]

Such a situation occurred in *Badrinath v. Govt. of Tamil Nadu* where assessment by a departmental committee was set aside by the Supreme Court.

(g) SUSPENSION

Suspension of an employee pending disciplinary proceedings against him is not a punishment. Its purpose is to forbid or disable an employee to discharge the duties of the post held by him. The purpose is to refrain him from availing further opportunity to perpetrate the same misconduct, or from scuttling the enquiry, or investigation, or to win over the witnesses. Suspension of a government servant pending an inquiry against him does not amount to dismissal or removal as it does not put an end to his service. He continues to be a member of the service in spite of his suspension, though he is not permitted to work and he draws only a subsistence allowance which is usually less than the salary.[8]

The authority entitled to appoint a public servant is also entitled to suspend him pending a departmental inquiry into his conduct, or pending a criminal proceeding which may eventually result in a departmental inquiry against him.[9] If the service rules so provide, an employee may be suspended and subsistence allowance paid to him during the period of suspension. But if the rules do not so provide, and if an employee is suspended in the absence of such a power, he is entitled to be paid full remuneration for the period of suspension.[10]

---

5. *Ramakant Shripad Sinai Advalpalkar v. Union of India,* AIR 1991 SC 1145 : 1991 Supp (2) SCC 733.
Also see, *State of Madhya Pradesh v. Laxmi Shankar,* AIR 1979 SC 979.

6. *Badrinath v. State of Tamil Nadu,* AIR 2000 SC 3243, 3253 : (2000) 8 SCC 395.

7. The Supreme Court has accepted the *Wadnesbury* ruling in *Tata Cellular v. Union of India,* AIR 1996 SC 11.
The Supreme Court has said that the grounds of judicial review of an administrative action are : (i) Illegality; (ii) Irrationality, and (iii) Procedural impropriety.

8. *State of Madhya Pradesh v. State of Maharashtra,* AIR 1977 SC 1466.
Also, *State of Orissa v. Shiva Parshad Das,* AIR 1985 SC 701 : (1985) 2 SCC 65; *O.P. Gupta v. Union of India,* AIR 1987 SC 2257; *M. Paul Anthony v. Bharat Gold Mines, Ltd.,* AIR 1999 SC 1416 : (1999) 3 SCC 679.

9. *R.P. Kapur v. Union of India,* AIR 1964 SC 787; *Balwantrai Ratilal Patel v. State of Maharashtra,* AIR 1968 SC 800 : (1968) 2 SCR 577.

10. *V.P. Gidroniya v. State of Madhya Pradesh,* AIR 1970 SC 1494 : (1970) 1 SCC 362, *P.R.. Nayak v. Union of India,* AIR 1972 SC 554.

It is not an administrative routine or an automatic order to suspend an employee. Each case has to be considered depending on the nature of the allegations, gravity of the situation, etc. The suspension must be a step in aid of the ultimate result of the investigation or inquiry.[11] In the instant case,[12] there were serious allegations of misconduct against the employee and the Court held that the appointing authority was justified in suspending the employee pending an inquiry against him.

In *Punjab v. Khemi Ram*,[13] the Supreme Court has ruled that in case of an order of suspension, the order is communicated as soon as it goes out of office for onward communication and the actual service of the order is not material.

No hearing need be given when an employee is suspended.[14] Art. 311(2) does not protect suspension. An order of suspension is invalid if it is actuated by *mala fides*, or is arbitrary, or has been made for an ulterior purpose.[15] An order of suspension can also be challenged in a Court on the ground that the concerned authority formed his satisfaction to suspend the employee on extraneous or irrelevant considerations, or that there was a total lack of application of mind to the question whether it was necessary or desirable to suspend him.[16]

If a suspended employee is reinstated he goes back to his service. If the order of reinstatement is set aside, the concerned employee reverts to his immediate anterior status of suspension.[17]

On the question of payment of subsistence allowance to the suspended employee, the Supreme Court has taken objection to non-payment thereof, characterising it as an "inhuman act" which has an impropitious effect on the life of the employee. Such an allowance is paid so that the employee can sustain himself during the suspension period.[18]

The Court has linked the payment of subsistence allowance with the right to life under Art. 21 of the Constitution.[19] The provision for payment of subsistence allowance to an employee made in the Service Rules only ensures "non-violation" of the right to life of the employee. On becoming a government servant, a person does not lose his Fundamental Rights including the right to life under Art. 21. Accordingly, in *State of Maharashtra v. Chanderbhan*,[20] the Court struck down a service rule which provided for payment of a nominal amount of Re. 1/- p.m. as subsistence allowance to an employee under suspension.

---

11. *V.P. Gidroniya v. State of Madhya Pradesh,* AIR 1970 SC 1494 : (1970) 1 SCC 362; *Govt. of India, Ministry of Home Affairs v. Tarak Nath Ghosh,* AIR 1971 SC 823 : (1971) 1 SCC 734; *U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan,* (1993) Supp (3) SCC 483 : (1994) SCC (L&S) 67.

12. *State of Orissa v. Bimal Kumar Mohanty,* AIR 1994 SC 2296 : (1994) 4 SCC 126.

13. AIR 1970 SC 214 : (1969) 3 SCC 28.

14. *Furnell v. Whangrei High School Board,* (1973) All ER 400.
Also, *Vasant Vaze,* Natural Justice, Unsavoury Procedure, 16 *J.I.L.I.*, 276 (1974).

15. *State of Orissa v. Bimal Kumar Mohanty, op. cit.*

16. *State of Tamil Nadu v. P.M. Belliappa,* 1985 Lab IC 51 (Mad).

17. *Baldev Raj. v. Punjab Haryana High Court,* AIR 1976 SC 2490, 2499 : (1976) 4 SCC 201.

18. *M. Paul Anthony v. Bharat Gold Mines Ltd.,* AIR 1999 SC 1416 : (1999) 3 SCC 679.
Also see, *O.P. Gupta v. Union of India,* AIR 1987 SC 2257 at 1423 : (1987) 4 SCC 328.

19. *Supra,* Ch. XXVI.
Also see, *State of Maharashtra v. Chanderbhan,* AIR 1983 SC 803 : (1983) 3 SCC 387.

20. AIR 1983 SC 803 : (1983) 3 SCC 387.

It was held in *Fakirbhai*,[21] that if an employee could not attend the departmental proceedings because of financial stringency arising out of non-payment of subsistence allowance to him, and thereby he could not undertake a journey away from his home to attend the departmental proceedings, then the order of punishment, including the whole proceedings, would stand vitiated.[22]

An employee was prosecuted for corruption but was acquitted. He was suspended during prosecution. On acquittal, he was reinstated. The Supreme Court ruled that since he was a man of doubtful integrity and his confidential reports were not good, he was not entitled to get back wages for the period of suspension.[23]

The appellant was suspended while he was being prosecuted for defalcation of funds and fabrication of records. The prosecution culminated in his acquittal. The Supreme Court ruled in *Krishnakant*,[24] that the appellant would not be entitled to reinstatement with grant of all consequential benefits with full back wages as a matter of course, "if the conduct alleged is the foundation for prosecution though it may end in acquittal on appreciation of evidence or lack of sufficient evidence." There are two courses open to the disciplinary authority in such a situation, *viz.*:

(1) It may enquire into the misconduct unless the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon.

(2) The authority may on reinstatement, after following the principles of natural justice, pass appropriate order including treating suspension period as period of not on duty.

When a government servant is acquitted he would be entitled to be reinstated but may not be entitled to all the consequential benefits treating the suspension period as duty period. In *Krishnakant,* interpreting the Maharashtra Civil Service Rules, the Court ruled that the employee though would be reinstated on acquittal would not be entitled to the consequential benefits. This meant that he would not be entitled to the increments for the period of suspension and he would not be treated, for purposes of pensionary benefits, *etc.*, as being on duty during the period of suspension.

When an employee is completely exonerated and is not visited with any penalty, not even that of censure, indicating that he was completely blameless, he cannot be deprived of any benefits including the salary of the promotional post, from the date he would have been promoted in the ordinary course.[25] But there may be cases where the proceedings are delayed at the instance of the concerned employee himself, or his clearance in the disciplinary proceedings, or acquittal in criminal proceedings against him, is with benefit of doubt, or on account of non-availability of evidence due to the actions of the employee concerned. In such

---

21. *Fakirbhai Fulabhai Solanki v. Presiding Officer,* AIR 1986 SC 1168 : (1986) 3 SCC 131.
22. Also see, *Ghanshyam Dass Shrivastava v. State of Madhya Pradesh,* AIR 1973 SC 1183 : (1973) 1 SCC 656; *M. Paul Anthony, supra,* footnote 18.
23. *State of Uttar Pradesh v. Ved Pal Singh,* AIR 1997 SC 608 : (1997) 3 SCC 483.
24. *Krishnakant Raghunath Bishavnekar v. State of Maharashtra,* AIR 1997 SC 1434 : (1997) 3 SCC 636.
25. *M. Paul Anthony v. Bharat Gold Mines Ltd.,* AIR 1999 SC 1416 : (1999) 3 SCC 679.

cases, the concerned authorities have power to decide whether the employee deserves to get any salary for the intervening period, and, if so, how much.[26]

(h) CENSURE

Censure is one of the penalties which may be imposed on a member of the civil service. Ordinarily, natural justice must be afforded to the person concerned which means that he must be given an opportunity to show cause against the proposed imposition of penalty of censure before the penalty is imposed on him.[27]

(i) FORFEITURE OF SERVICE

The Supreme Court has ruled that rules of natural justice must be observed when an order of forfeiture of service on ground of participation in an illegal strike is to be made.[28]

There is a difference between "reduction in rank" and "forfeiture of approved service". The expression 'reduction in rank' within the meaning of Art. 311(2) means reduction from a higher to a lower rank or post. On the other hand, "forfeiture of service" entails merely losing places in the rank or cadre to which the government servant belongs; he may lose his seniority within his cadre; he may lose a higher salary and his chances of promotion may be affected.[29]

Interpreting the Punjab Civil Service Rules, the Supreme Court has ruled that 'forfeiture of service' does not have any effect on the length of qualifying service for purposes of pension or compulsory retirement or premature retirement.[30]

(j) RESIGNATION

The services of a government servant normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority unless there is some rule to the contrary.[31] However, it is open to a government servant to make his resignation operative from a future date and to withdraw such resignation before it is accepted.[32]

(k) CHANGING THE DATE OF BIRTH

After he enters into service, a government servant acquires the right to continue in service till he reaches the age of retirement as fixed by the Government, unless his services are dispensed with on grounds contained in the service rules following the prescribed procedure. Accordingly, the date of birth entered in the service record assumes great importance for him for it determines his right to remain in service.

Usually, after several years of service, government servants seek to rectify the date of birth recorded earlier claiming to be younger than the recorded date so that they can remain in service somewhat longer. The Supreme Court declared in

---

26. *Union of India v. K.V. Janakiraman,* AIR 1991 SC 2010 : (1991) 4 SCC 109.
27. *State of Uttar Pradesh v. Vijay Kumar Tripathi,* AIR 1995 SC 1130 : 1995 Supp (1) SCC 552.
28. *Dayal Saran v. Union of India,* AIR 1980 SC 554 : (1980) 3 SCC 25; *Shiv Shankar v. Union of India,* AIR 1985 SC 514 : (1985) 2 SCC 30.
29. *State of Punjab v. Kishan Chand,* AIR 1971 SC 766.
30. *Chamba Singh v. State of Punjab,* AIR 1997 SC 2455 : (1997) 11 SCC 452.
31. *Raj Kumar v. Union of India,* AIR 1969 SC 180 : (1968) 3 SCR 857.
32. *P. Kasilingam v. P.S.G. College of Technology,* AIR 1981 SC 789 : (1981) 1 SCC 405.

Harnam Singh,[33] that a Government servant who has declared his date of birth at the initial stage of employment would not be debarred from later making a request to correct his age if he has irrefutable proof to support his claim. He should do so within reasonable time if the government has not fixed any period of limitation for the purpose.

But, lately, the Supreme Court has exhibited a more rigid stand on this question. The Court has ruled in *India v. C. Ramaswamy*,[34] that when the date of birth of the employee is entered in the service record on his representation, the principle of estoppel would apply to the employee when he asks for a change in his date of birth, and the authorities concerned would be justified in declining to alter the same.

The Supreme Court has also interdicted the Courts from granting any relief in the matter even if it is shown that the date of birth as originally recorded was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, the principle of estoppel would be clearly applicable to him and relief by way of change in his date of birth can be legitimately denied.[35]

(l) RETIREMENT

Article 311 does not apply to a case of retirement on attaining the age of superannuation as it does not amount to imposing a penalty.[36] The term 'conditions of service' used in Art. 309 includes the power to fix and reduce the age of superannuation.[37]

Termination of service of a civil servant by a change in the age of superannuation does not attract Art. 311(2), and does not amount to removal from service within the meaning of Art. 311(2) which applies only in three situations, *viz.*, dismissal, removal and reduction in rank. When a person joined the State Civil Service, the age of superannuation was fixed at 55 years; it was then raised to 58 years by the Government which lowered it again to 55 years. Consequently, he had to retire. Art. 311(2) was held inapplicable to such a situation. In the instant case, the Court also rejected the contention that the rule in question was retrospective. The Court held that there was no retrospectivity in the rule whatsoever as it applied to all uniformly notwithstanding whether they entered in service prior or subsequent to the date of the order.[38]

---

33. *Union of India v. Harnam Singh*, 1993 AIR SCW 1241, 1246 : (1993) 2 SCC 162.
Also see, *Union of India v. Kantilal Hematram Pandya*, AIR 1995 SC 1349 : (1995) 3 SCC 17; *Burn Standard Co. Ltd. v. Dinabandhu Majumdar*, AIR 1995 SC 1499 : (1995) 4 SCC 172.

34. AIR 1997 SC 2055 : (1997) 4 SCC 647.

35. *Ibid*, at 2062.
Also see, *Secretary and Commissioner, Home Dept. v. R. Kirubakaran*, AIR 1993 SC 2647 : 1994 Supp (1) SCC 155; *Burn Standard Co. Ltd. v. Dinabandhu Majumdar*, AIR 1995 SC 1499 : (1995) 4 SCC 172; *G.M. Bharat Coking Coal Ltd., W.B. v. Shib Kumar Dushad*, AIR 2001 SC 72 : (2000) 8 SCC 696.

36. *Union of India v. S.A. Razak*, AIR 1981 SC 360 : (1981) 2 SCC 74.

37. *Bishun Narain v. State of Uttar Pradesh*, AIR 1965 SC 1567 : (1965) 1 SCR 693.
Also see, *State of Andhra Pradesh v. S.K. Mohinuddin*, AIR 1994 SC 1474.

38. *Bishun Narain, op. cit.*

In 1979, the A.P. Government increased the age of superannuation from 55 to 58 years. In 1983, the age was reduced from 58 to 55 years. The order was challenged but, in *Nagaraj,*[39] the Supreme Court rejected the challenge. The Court ruled that it was open to the Government to reduce the age of superannuation and the reduction in age was not unreasonable. In reducing the age of retirement, the Government did not act "arbitrarily or irrationally". The impugned decision was actuated and influenced predominantly by the consideration of creating new avenues of employment for the youth. The reduction in age of retirement is not therefore hit by Art. 14 or 16 as it was not "arbitrary or unreasonable."

A member of the Indian Police Service was due to retire on 31st March, 1996. On 20th March, he was granted extension of service for six months, but, on 23rd March, the extension was cancelled. The Supreme Court ruled that it was not necessary to give a hearing to the concerned employee. Till the order came into force, no vested right could have arisen. If the order of the extension created no right, its cancellation could not have withdrawn any right and hence the right to hearing did not arise and there was no violation of the rules of natural justice.[40]

(m) COMPULSORY RETIREMENT

When the Service Rules so provide, compulsory retirement of civil servants, earlier than their normal superannuation is regarded as different from dismissal or removal. While dismissal or removal is a punishment as it results in the government servant concerned losing his pensionary rights which would otherwise have accrued to him in respect of the service already put in by him, compulsory retirement is not regarded as penal in nature. It does not cast any stigma or implication of misbehaviour or incapacity, nor does the employee concerned lose his retrial benefits. The government servant thus retired is entitled to pension proportionate to the period of service already put in by him.[41]

Compulsory retirement takes place, earlier than the normal age of retirement, when the Service Rules so provide. Under Art. 465-A of the Civil Service Regulations, the Government can retire an employee, who has put in 25 years' service, in public interest. Compulsory retirement arises only when the Service Rules fix one age for superannuation, and another age of compulsory retirement, and the services of a civil servant are terminated between these two points of time.

The Supreme Court has laid down the principle that the rule provising for compulsory retirement "must not only contain the outside limit of superannuation but there must also be a provision for a reasonably long period of qualified service."[42] The termination of service of a civil servant under a rule which does not prescribe a reasonably long period of qualified service in substance amounts to removal under Art. 311(2).[43] When the rules do not fix the age of compulsory retirement, retiring a person before the age of superannuation amounts to dis-

---

39. *K. Nagaraj v. State of Andhra Pradesh,* AIR 1985 SC 551 : (1985) 1 SCC 523.
40. *State of U.P. v. Girish Behari,* AIR 1997 SC 1354 : (1997) 4 SCC 362.
41. *Shaymlal v. State of Uttar Pradesh,* AIR 1954 SC 369 : (1955) 1 SCR 26.
42. *Takhatray Shivdattrai Mankad v. State of Gujarat,* AIR 1970 SC 143 : (1969) 2 SCC 120. Also, *Bombay v. Subhagchand M. Doshi,*AIR 1957 SC 892 : 1958 SCR 571.
43. *Gurdev v. State of Punjab,* AIR 1964 SC 1585.

missal. Similarly, retiring a person earlier than the age fixed for compulsory retirement would amount to dismissal or removal.[44]

The rationale underlying compulsory retirement is that in all organizations, and more so in government organizations, there is good deal of dead wood, and it is in public interest to chop off the same. The power to compulsorily retire a government servant is one of the facets of the doctrine of pleasure embodied in Art. 310. A balance is sought to be drawn between the rights of the individual government servant and the interest of the public. While a minimum service is assured to the government servant, the Government is given power to energize its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest. Compulsory retirement is therefore resorted to in public interest.[45]

As the Supreme Court has observed in *Kandaswamy*:[46] "The Government is given power to energise its machinery by weeding out deadwood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them from service." Emphasizing upon the need to compulsorily retire government servants, the Supreme Court has observed in *State of Orissa v. Ram Chandra Das*:[47]

> "….the settled legal proposition is that the Government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service."

It is for the Government to decide whether or not an employee's retirement is in public interest. The exercise of power must be *bona fide* and in public interest. If the authority concerned *bona fide* forms the opinion that it is so, then its correctness is not liable to challenge in a Court of law.[48] But the same may be challenged on the ground that the requisite opinion is based on no evidence, or has not been formed, or the decision is based on collateral grounds, or that it is an arbitrary decision.

As compulsory retirement is not considered to be dismissal or removal, and is not considered as a punishment, it does not attract the procedural safeguard contained in Art. 311(2).[49] Therefore, no opportunity of hearing need be given to the concerned government servant before exercising the power of compulsory retirement.[50]

But compulsory retirement may amount to dismissal or removal in certain situations, e.g. if the order casts a stigma on the employee retired. This happen

---

44. *Moti Ram Deka v. N.E.F. Rly.*, AIR 1964 SC 600 : (1964) 5 SCR 683; *Ram Parshad v. State of Punjab*, AIR 1966 SC 1607; *Takhatray, op. cit.; Murari Mohan v. Union of India*, AIR 1985 SC 931 : (1985) 3 SCC 120.

45. *Union of India v. J.N. Sinha*, AIR 1971 SC 40 : (1970) 2 SCC 458.

46. *K. Kandaswamy v. Union of India*, AIR 1996 SC 277 : (1995) 6 SCC 162.

47. AIR 1996 SC 2436 : (1996) 5 SCC 331.

48. *Union of India v. J.N. Sinha, op. cit.*; *T.G. Shivacharana Singh v. State of Mysore*, AIR 1965 SC 280; *N.V. Puttabhatta v. State of Mysore*, AIR 1972 SC 2185 : (1972) 3 SCC 739; *Tara Singh v. State of Rajasthan*, AIR 1975 SC 1487; *Union of India v. M.E. Reddy*, AIR 1980 SC 563; *Baldev Raj v. Union of India*, AIR 1981 SC 70; *S. Ramachandra Raju v. State of Orissa*, (1994) 3 SCC 424; *Bishwanath Prasad Singh v. State of Bihar*, (2001) 2 SCC 305.

49. *Dinesh Chandra v. State of Assam*, AIR 1978 SC 17 : (1977) 4 SCC 441.

50. *Union of India v. J.N. Sinha*, AIR 1971 SC 40 : (1970) 2 SCC 458.

when the order of retirement contains words from which a stigma, misbehaviour or incapacity may be inferred against the officer retired, or, if he is being made to lose the benefit already earned by him.[51] For example, a civil servant was retired after 28 years' service on the ground that he had outlived his utility. The Supreme Court ruled that as the order on its face stated that he was incapable of holding the post and, as this was a stigma against the employee, it amounted to dismissal and attracted Art. 311(2).[52]

An order of compulsory retirement may be couched in innocuous language without making any imputations against the concerned government servant. But, if challenged, the Court can lift the veil, look into his service record and consider whether the order was based on any misconduct of the employee, or was made *bona fide* and not with any oblique or extraneous purpose. If the Court finds that the order of compulsory retirement was by way of casting stigma on the reputation or career of the employee concerned, then the order would be regarded as being in contravention of Art. 311(2).[53] The Supreme Court has observed in the instant case: "Mere form of the order in such cases cannot deter the Court from delving into the basis of the order if the order in question is challenged by the concerned government servant."

In *Anoop*,[54] the Court has stated: "If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

An employee can be compulsorily retired if there is material to doubt his integrity.[55]

The Supreme Court has laid down the following propositions concerning compulsory retirement in Baikuntha Nath Das v. Chief District Medical Officer, Baripada[56] and Posts and Telegraphs Board v. C.S.N. Murthy:[57]

(1) An order of compulsory retirement is not a punishment as it implies no stigma nor any suggestion of misbehaviour.

(2) Principles of natural justice do not apply to an order of compulsory retirement.

These two propositions have already been discussed above.

(3) The order is passed in its subjective satisfaction by the Government on forming the opinion that it is in public interest to retire a government servant compulsorily.

---

51. *State of Uttar Pradesh v. Shyam Lal Sharma*, AIR 1971 SC 2151 : (1971) 2 SCC 514.

52. *State of Uttar Pradesh v. Madan Mohan*, AIR 1967 SC 1260 : (1967) 2 SCR 333; *I.N. Saxena v. State of Madhya Pradesh*, AIR 1967 SC 1264.

53. *Ram Ekbal Sharma v. State of Bihar*,, AIR 1990 SC 1368 : (1990) 3 SCC 504;

54. *Anoop Jaiswal v. Government of India*, AIR 1984 SC 636 : (1984) 2 SCC 369.
Also, *State of Uttar Pradesh v. Abhai Kishore Masta*, (1995) 1 SCC 336 : 1995 SCC (L&S) 317.

55. *S. Govinda Menon v. Union of India*, AIR 1967 SC 1274 : (1967) 2 SCR 566; *Periyar and Pareekanni Rubber Ltd. v. State of Kerala*, AIR 1990 SC 2192 : (1991) 4 SCC 195; *Union of India v. A.K. Patnaik*, AIR 1996 SC 280 : (1995) 6 SCC 442.

56. AIR 1992 SC 1020 : (1992) 2 SCC 299.

57. (1992) 2 SCC 317 : AIR 1992 SC 1368.
Also see, *Gujarat v. Umedbhai M. Patel*, AIR 2001 SC 1109 : (2001) 3 SCC 314.

(4) The Government has to consider the entire record of service before taking a decision in the matter. The record to be considered would include the entries in the confidential records/character rolls, both favourable and adverse.

(5) An order of compulsory retirement is not challengable merely on the ground that while passing the same, uncommunicated adverse remarks were also taken into consideration.[58]

(6) As regards the judicial scrutiny of an order of compulsory retirement, the High Court or the Supreme Court does not act as a Court of appeal; the Court can interfere if the order is passed on any of the following grounds, *viz.*:

(a) *mala fides*; or

(b) extraneous reasons;[59] or

(c) based on no evidence;

(d) it is arbitrary which means that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order. In this connection, the Supreme Court has stated in *India v. V.P. Seth*:[60]

> "….an order of compulsory retirement can be made subject to judicial review only on grounds of *mala fides*, arbitrariness or perversity and that the rule of *audi alteram partem* has no application since the order of compulsory retirement in such a situation is not penal in nature."

A few words need be said concerning proposition (5), stated above. There has been some shift in the judicial opinion on the question whether the uncommunicated adverse entries in the service record can be considered for the purposes of compulsory retirement. In *Union of India v. M.E. Reddy*,[61] the Court had laid down that uncommunicated adverse remarks can be relied upon while passing an order of compulsory retirement. But, then, the Court took a different view in *Brij Mohan Singh Chopra v. State of Punjab*[62] and *Baidyanath*.[63] The Court ruled therein that uncommunicated entries could not legally be relied upon while making an order of compulsory retirement. It was also held in *Baidyanath* that if a representation was pending against the adverse remarks, then these remarks could not be taken into consideration unless the representation itself was considered and disposed of. But in *Baikuntha Nath*,[64] as stated above, the *Reddy* view has been adopted and reiterated and the view expressed in *Baidyanath* and *Brij Mohan* was overruled. The *Baikuntha Nath* ruling is now the prevailing norm and has been followed in a number of cases.[65] The position, therefore, is that uncom-

---

58. *State of Uttar Pradesh v. Lalsa Ram,* AIR 2001 SC 1137 : (2001) 3 SCC 389.
59. *State of Gujarat v. Umedbhai M. Patel, supra.*
60. AIR 1994 SC 1261.
61. AIR 1980 SC 563 : (1980) 2 SCC 15.
62. AIR 1987 SC 948.
63. *Baidyanath Mahapatra v. State of Orissa,* AIR 1989 SC 2218 : (1989) 4 SCC 664.
64. AIR 1992 SC 1020 : (1992) 2 SCC 299.
65. *Posts and Telegraphs Board v. C.S.N. Murthy,* AIR 1992 SC 1368 : (1992) 2 SCC 317; *Secretary to the Govt., Harijan & Tribal Welfare Dept. v. Nityananda Pati,* AIR 1993 SC 383 : 1993 Supp (2) SCC 391; *Union of India v. V.P. Seth,* AIR 1994 SC 1261 : 1994 SCC (L&S) 1052; *M.S. Bindra v. Union of India,* (1998) 7 SCC 310 : AIR 1998 SC 3058; *Gujarat v. Suryakant Chunilal Shah,* (1998) 8 JT (SC) 326; *Madan Mohan Choudhary v. State of Bihar,* AIR 1999 SC 1018 : (1999) 3 SCC 396.

municated adverse remarks may also be considered for the purpose of compulsory retirement of an employee.

The Supreme Court has emphasized in *State of Uttar Pradesh v. Bihari Lal*[66] that the entire service record should be considered before taking a decision to compulsorily retire a government servant including any adverse remarks whether communicated to him or not. "It is on an overall assessment of the record that the authority would reach a decision whether the government servant should be compulsorily retired in public interest."

While considering the entire record of the employee concerned, before taking a decision as regards his compulsory retirement, more importance is to be attached to the record of performance during the later years which would include entries in his character roll both favourable and unfavourable. If a government servant is promoted to a higher post, notwithstanding the adverse remarks, then such remarks lose their sting, more so, if the promotion is based upon selection and not upon seniority.[67]

In *Baldev*,[68] the order of compulsory retirement was held to be arbitrary when it was based on old confidential entries made 20 years earlier. The Court emphasized that such stale entries could not be taken into consideration for retiring an employee compulsorily, particularly when he had been promoted subsequent to these entries. The Court observed that on promotion to a higher post, any prior adverse entries in his service record lost all significance and such entries remained on record as part of the past history.

There was one solitary adverse entry and after this entry the employee concerned was promoted to a higher post. The order of compulsory retirement was quashed. The Court observed that his entire service record had not been taken into consideration objectively.[69]

In *State of Orissa v. Ram Chandra Das*,[70] the Supreme Court has observed that if the Government on consideration of the entire service record comes to the conclusion "as a reasonable prudentman" that the employee should be compulsorily retired, then the Court would not interfere with such a decision. The Court went on to say that merely because a promotion was given to the concerned employee after adverse entries had been made against him, it would be no ground to hold that the compulsory retirement of the employee could not be ordered. This ruling seems to modify the *Baldev Raj* and *Baikuntha Nath*,[71] rulings to some extent.

In *State of Punjab v. Gurdas Singh*,[72] the Court has reiterated the view expressed by it in *Ram Chandra Das*, and it has observed:

> "Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up

---

66. AIR 1995 SC 1161, 1162 : 1994 Supp (3) SCC 594.
67. *Baikunith Nath Das, supra; Posts and Telegraphs Board, supra.*
68. *Baldev Raj v. State of Punjab*, AIR 1984 SC 986 : 1984 Supp SCC 221.
69. *S. Ramachandra Raju v. State of Orissa*, AIR 1995 SC 111 : 1994 Supp (3) SCC 424.
70. AIR 1996 SC 2436 : (1996) 5 SCC 331.
Also see, *K. Kandaswamy v. Union of India*, AIR 1996 SC 277 : (1995) 6 SCC 162; *Union of India v. V.P. Sethi*, AIR 1994 SC 1261 : (1994) 2 LLJ 411.
71. *Supra*, footnotes 67 and 68.
72. AIR 1998 SC 1661, 1666 : (1998) 4 SCC 92.

> higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well."

As regards proposition (6), stated above, over time, the Courts have quashed a number of orders of compulsory retirement. A few examples may be cited here. Such an order was quashed in *Madan Mohan Choudhary v. State of Bihar*,[73] on the ground that it was arbitrary in the sense that no reasonable person could have come to the conclusion, on the material available, that the concerned employee had outlived his utility and become a dead wood which had to be chopped off. An order of compulsory retirement of an employee would be unjustified when there is nothing adverse against him in the service record.[74]

In *Ramaswami*,[75] charges were framed against a civil servant but were dropped and he was promoted to a very responsible post. Thereafter, he was compulsorily retired. The Supreme Court held that there was nothing even mildly suggestive of inaptitude or inefficiency after promotion, and there was no entry in the service record to his discredit, or even hinting even remotely that he had outlived his utility as a government servant, and, therefore, the order of retirement was held to be invalid.

A judge after having been allowed to cross the second efficiency bar was compulsorily retired by the High Court. The Supreme Court quashed the order of retirement as there was nothing to show that suddenly there was deterioration in the quality of his work or integrity so as to deserve compulsory retirement.[76]

The Supreme Court quashed an order of compulsory retirement in *S.R. Venkataraman v. Union of India*,[77] on the ground of abuse of power by the concerned authority. In *Sonam Lama*,[78] the reason given for issuing an order of compulsory retirement was that "the better talent which is available in the department can be used and entrusted with the functions of these officers who can be compulsorily retired….the functions of these officers can be better done by more qualified persons." The Supreme Court quashed the order as being "wholly erroneous" which could not be sustained in law. The Court observed:

> "Apparently the above reasoning cannot be the basis for compulsorily retiring any official. The report does not state that in the public interest the officers cannot be continued. The assessment of performance of the officers is only to the effect that there are better talented persons available in the department and the work performed by the officials could be better done by more qualified persons. This is wholly extraneous consideration for compulsorily retiring any official. 'The better talent' is a relative term. That does not mean that the incumbent in the office has become a dead wood."

---

73. AIR 1999 SC 1018 : (1999) 3 SCC 396.
74. *High Court of Judicature at Allahabad v. Sarnam Singh,* (2000) 2 SCC 339 : AIR 2000 SC 2150.
75. *D. Ramaswami v. State of Tamil Nadu,* AIR 1982 SC 793 : (1982) 1 SCC 510.
76. *Swami Saran v. State of Uttar Pradesh,* AIR 1980 SC 269 : (1980) 1 SCC 12.
77. AIR 1979 SC 49 : (1979) 2 SCC 491.
78. *Sikkim v. Sonam Lama,* AIR 1991 SC 534 : 1991 Supp (1) SCC 179.

On the question of compulsory retirement of a government servant, the Supreme Court has warned:[79]

> "To dunk an officer into the puddle of "doubtful integrity", it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label 'doubtful integrity'"

In the following case,[80] the respondent was suspended from service on charges of misconduct and an inquiry was ordered against him. Pending completion of the inquiry, he was retired from service. The Supreme Court concluded that the order of compulsory retirement though innocuously worded was in fact an order of his removal from service and could not thus be sustained.

In the case noted below,[81] an order of compulsory retirement was quashed as having been passed for extraneous grounds for the following reasons :

(1) There was no adverse entry in the respondent's confidential record;

(2) He has crossed the efficiency bar at the ages of 50 and 55;

(3) He had less than two years to retire;

(4) A disciplinary inquiry initiated against him was not completed within a reasonable time. The authorities did not wait for the conclusion of the inquiry and decided to dispense with his services on the basis of unproved allegations.

An employee appointed for a fixed term of five years does not superannuate; he only goes out of office on completion of his tenure. Therefore, the question of prematurely retiring him does not arise.[82]

(n) VOLUNTARY RETIREMENT

A government servant can seek voluntary retirement from service before the age of normal superannuation if he has put in the specified numbers of years of service as required by the Service Rules applicable to him.

It is a matter of interpretation of the relevant Service Rules whether an employee has a right to seek voluntary retirement—(i) without the employer having any say in the matter; or (ii) subject to the permission of the employer.

Interpreting fundamental Rule 56(c), the Supreme Court held in *Dinesh*,[83] that "there is no question of acceptance of the request for voluntary retirement by the Government, when the government servant exercises his right under FR56(c)." Under Rule 56(c), a government servant enjoys an option in absolute terms to voluntary retire with three months' previous notice, after he reaches 50 years of age, or has completed 25 years of service, and the consent of the Government is not nec-

---

79. *M.S. Bindra v. Union of India*, (1998) 7 SCC 310 : (1988) 7 SCC 310.
80. *High Court of Punjab and Haryana v. Ishwarchand Jain*, AIR 1999 SC 1677 : (1999) 4 SCC 579.
81. *State of Gujarat v. Umedbhai M. Patel*, AIR 2001 SC 1109 : (2001) 3 SCC 314.
82. *L.P. Agarwal v. Union of India*, AIR 1992 SC 1872 : (1992) 3 SCC 526.
83. *Dinesh Chandra Sangma v. State of Assam*, AIR 1978 SC 17 : (1977) 4 SCC 441.
Also, *B.J. Shelat v. State of Gujarat*, AIR 1978 SC 1109.

essary to give legal effect to the voluntary retirement of the government servant under that rule.

In *B.J. Shelat v. Gujarat*,[84] the rule in question gave a right to say 'no' to the Government to the employee's request to voluntary retire if any departmental proceedings were pending or contemplated against him. The right of the employee to seek voluntary retirement under this rule is conditional, but the government has to pass an order withholding permission to retire on one of the conditions mentioned in the rule. If no such order is made and communicated to the concerned employee, he retires at the end of the notice period.

Interpreting the Service Rules of a corporation, the Supreme Court concluded that after completion of 25 years' service, or on attaining the age of 50 years, whichever is earlier, the employee has a right to make a request for voluntary retirement, but his request becomes effective only if he is "permitted" to retire. The employee has a right to make a request to permit him to retire, but if his request is not accepted and permission is not granted, the employee cannot retire. There cannot be automatic retirement under the rules.[85]

In *Syed Muzaffar Mir*,[86] the respondent, a railway employee, was under suspension. He sought premature retirement by giving three months' notice. No order withholding retirement was passed. The notice period expired on 21-10-1985 and thereafter an order of removal was passed against him on 4-11-1985. The question arose whether the order of removal was validly passed. Interpreting the relevant Railway Service Rules, the Supreme Court ruled that the order of removal was *non-est*. Under the Rules, permission to retire could be withhled in case the employee was under suspension. In the instant case, no such order was passed.

But, then, the Court changed its position in this matter. A government employee expressed his intention for voluntary retirement and gave a three months' notice for the purpose on Sept. 20, 1993. He handed over charge on February 11, 94, even without acceptance of voluntary retirement. On February 25, 1994, the concerned authority declined to accept his request to retire.

The matter fell under Rule 5.32(B) of the Punjab Civil Services Rules. Prosecution against the petitioner for certain offences were pending trial. The Court distinguished the fact-situation in this case from that in *Muzaffar* where the respondent was under suspension and not facing criminal trial. Upholding this order in *Baljit*,[87] the Court pointed out that "when serious offences are pending trial it is open to the appropriate Government to decide whether or not the delinquent should be permitted to retire voluntarily or such disciplinary action as is available should be taken under the law. Therefore, mere expiry of three months' period of notice given, does not automatically put an end to the jural relationship of employer and employee between Government and the delinquent official. Only on acceptance by the employer of resignation or request for voluntary retirement their jural relationship ceases. It would, therefore, be of necessity that the Government takes appropriate decision, whether the delinquent would be permitted to retire voluntarily from service pending the action against him." In the instant

---

84. AIR 1978 SC 1109 : (1978) 2 SCC 202.
85. *HPMC v. Shri Suman Behari Sharma*, AIR 1996 SC 1353 : (1996) 4 SCC 584.
86. *Union of India v. Sayed Muzaffar Mir*, AIR 1995 SC 176 : (1994) 6 JT 288.
87. *Baljit Singh v. State of Haryana*, AIR 1997 SC 2150 : (1997) 1 SCC 754.

case, serious offences were pending trial against the employee. The Government, therefore, rightly refused to permit him to retire voluntarily from service. "Each case should be considered in its own backdrop of facts. Until the jural relations of employer and employee comes to a close according to law, the employer always has power to decide and pass appropriate order."

But the Court overruled *Baljit* in *Singhal*[88] interpreting the same Rule. The Court ruled that under the Rule, a government employee can seek voluntary retirement after 20 years of service by giving a three months' notice for the purpose. If the appointing authority does not refuse to grant permission for retirement *within* the notice period the retirement becomes effective from the date of expiry of the notice period. Under this Rule, the Government could say 'no' to the request of retirement within the notice period but it was not necessary for the Government to say 'yes'.

The Court held that the *Baljit* ruling went against the rulings in *Dinesh and Shelat* where the Court had taken the view under similar rules that "a positive order had to be passed within the notice period withholding permission to retire and that the said order was also to be communicated to the employee during the said period."

(o) PENSION

Right to receive pension is a valuable right vesting in a civil servant. Payment of pension to a government servant depends not on government's discretion but on rules. A government servant falling within the rules is entitled to receive pension. It may be that an order is needed for quantification of the pension, but the right to receive the same flows not from the order but from the rules.

Pensionary benefits as well as any other terminal benefits constitute conditions of service. Therefore, the employer can revise these benefits and fix a date from which the revised benefits shall take effect. Such a date may be set prospectively or retrospectively so long as it is set in a reasonable manner. If questioned, the only question will be whether the prescription of the date is unreasonable or discriminatory.[89]

Pension is not a bounty depending on the sweet will and pleasure of the government, but is right to property.[90] Therefore, an order imposing a cut in the pension of a retiring civil servant cannot be passed without giving the affected employee a reasonable opportunity of being heard against the proposed reduction in the amount of his pension as the order adversely affects him.[91]

A government servant can be deprived of the whole or part of his pensionary rights only in accordance with the rules. Under R. 9(1) of the Civil Service Pension Rules, 1972, the President can withhold the whole or part of the pension of a

---

88. *State of Haryana v. S.K. Singhal,* AIR 1999 SC 1829 : (1999) 4 SCC 293.
Also see, *Tek Chand v. Dile Ram,* AIR 2001 SC 905 : (2001) 3 SCC 290.

89. *West Bengal v. Ratan Behari Dey,* (1993) 4 SCC 62 : 1993 SCC (L&S) 1123.

90. *Deokinandan Prasad v. State of Bihar,* AIR 1971 SC 1409 : (1971) 2 SCC 330; *Kerala v. Padmabhan Nair,* AIR 1985 SC 356 : (1985) 1 SCC 429; *D.S. Nakara v. Union of India,* AIR 1983 SC 130 : (1983) 1 SCC 305.
Also see, *supra,* Ch. XXXIV, under Art. 41.

91. *Punjab v. Iqbal Singh,* AIR 1976 SC 667 : (1976) 2 SCC 1; *State of Punjab v. K.R. Erry,* AIR 1973 SC 834.
Also see, *Union of India v. P.D. Yadav,* (2002) 1 SCC 405.

government employee if he is found guilty of "grave misconduct or negligence" during the period of his service. In the absence of a finding of "grave misconduct or negligence" either in a judicial proceeding, or a departmental inquiry, the President is "without authority of law to impose penalty of withholding pension as a measure of punishment." As the employee's right to pension is a statutory right, the measure of deprivation must, therefore, be correlative to or commensurate with the gravity of the misconduct.[92]

In *Union of India v. B. Dev*,[93] absence from duty by the employee concerned was found to be wilful and pre-meditated amounting to misconduct. Therefore, an order withholding from him full pensionary benefit was upheld by the Supreme Court. Divesting pensionary rights of a pensioner is not valid.[94]

The Service Rules may require "future good conduct" on the part of a pensioner. Pension may be withheld if the pensioner is convicted of any serious crime or is guilty of misconduct.[95]

A few persons were granted pensionary benefits by erroneous interpretation of the rules. The Court refused to perpetuate the same mistake. The Court could not direct something being done which was contrary to rules. "In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is *de hors* the statutory rules nor can there be any estoppel."[96]

(p) GRATUITY

Gratuity is a statutory retiral benefit earned by an employee.

The Supreme Court has ruled that the word 'pension' in R. 9(1) of the Pension Rules, stated above, covers gratuity also. Therefore, gratuity can also be withdrawn or reduced along with pension under that Rule.[97] Also, like pension, gratuity also cannot be reduced without giving the employee a reasonable opportunity of hearing.

(q) TRANSFER OF A GOVERNMENT DEPARTMENT TO A CORPORATION

Where all the functions of a government department along with posts are transferred to some government corporation, the question arises as to how to transfer the services of the government employees because of Art. 311. While Art. 311 applies to a government department it does not apply to a corporation and, therefore, government servants may not prefer the change of a department into a corporation, as their services become less secure because of the absence of Art. 311.

In *State of Mysore v. H. Papanna Gowde*,[98] it has been held that because of Art. 311, it is not open to the Government to declare even by a statutory rule that

---

92. *Jarnail Singh v. Secretary, Ministry of Home Affairs,* (1993) 1 SCC 47 : AIR 1994 SC 1484; *Union of India v. G. Gangayuthan,* AIR 1997 SC 3387 : (1997) 7 SCC 463.
93. AIR 1998 SC 2709 : (1998) 7 SCC 691.
94. *Salabuddin Mohammad Yunus v. State of Andhra Pradesh,* AIR 1984 SC 1905 : 1984 Supp SCL 399; *supra.*
95. *State of Haryana v. S.K. Singhal,* AIR 1999 SC 1829, 1832 : (1999) 4 SCC 293.
96. *Union of India v. Rakesh Kumar,* AIR 2001 SC 1877, at 1885 : (2001) 4 SCC 309
97. See, footnote 72, *supra.*
98. AIR 1971 SC 191 : (1970) 3 SCC 545.

after transfer of the department along with posts to a corporation, the holders of these posts under the Government in the department shall cease to be in the service of the Government because that will be violative of Art. 311, as civil servants cannot be dismissed or removed from service. Art. 311, as such, is not applicable to a corporation. Therefore, the procedure suggested by the Supreme Court in *S.K. Saha v. Prem Prakash Agarwal*,[1] is that the Government can give an option to the holders of such posts either to be absorbed in some other government department, or to leave the government service and opt for the service of the proposed corporation. Once he opts for service in the corporation, the government servant ceases to be in the government service. He cannot then be treated as having been deputed to the corporation holding his lien with the Government.

J. DISCIPLINARY PROCEEDINGS

(a) DISCRETION OF DISCIPLINARY AUTHORITIES

A disciplinary authority may hold an inquiry into the charges against a civil servant either by itself or may depute an inquiry officer for the purpose. The inquiry officer after holding the inquiry submits his report to the disciplinary authority. The disciplinary authority has discretion to accept the findings of the inquiry officer. But, the authority can disagree with those findings and come to its own conclusions on the basis of the evidence tendered at the enquiry.

The disciplinary authority is regarded as the final fact finding authority. This point has been emphasized again and again by the Supreme Court. In *B.C. Chaturvedi v. Union of India*,[2] the Supreme Court has observed:

> "The disciplinary authority is the sole judge of facts where appeal is presented; the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment."

In the case mentioned below,[3] in an enquiry against the respondent, the enquiry officer came to the conclusion that the respondent molested a female employee and that he acted against moral sanctions and his acts did not withstand the test of decency and modesty. The disciplinary authority, agreeing with the report of the enquiry officer, imposed the penalty of removing him from service.

The respondent challenged his removal through a writ petition in the High Court. The High Court ruled that on the basis of evidence produced before the enquiry officer, it was not possible to come to the conclusion that the respondent attempted to molest.

On appeal, the Supreme Court reversed the High Court saying that the High Court over-looked the settled position that in departmental proceedings, "the disciplinary authority is the sole Judge of facts". The High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. With these remarks, the Supreme Court set aside the order of the High Court and restored the punishment imposed by the disciplinary authority on the respondent.

---

1. AIR 1994 SC 745 : (1994) 1 SCC 431.
2. (1995) 6 SCC 749 : AIR 1996 SC 484.
3. *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759 : (1999) 1 SCC 759.

After finding the facts, if the concerned officer is held to be guilty and the charges against him are held to have been established, then the disciplinary authority can impose the punishment on the delinquent officer. In the matter of punishment, the disciplinary authority has the final say.

Nevertheless, it needs to be emphasized that the disciplinary authority exercises its discretion subject to Arts. 14 and 16.[4] The Supreme Court has emphasized in *Nepal Singh v. State of Uttar Pradesh*:[5] "In dealing with a government servant the state must conform to the constitutional requirements of Arts. 14 and 16 of the Constitution. An arbitrary exercise of power by the state violates those constitutional guarantees." Arts. 14 and 16 guarantee fair and just treatment. "When a government servant satisfies the Court *prima facie* that an order terminating his services violates Arts. 14 and 16, the competent authority must discharge the burden of showing that the power to terminate the services was exercised honestly and in good faith, on valid considerations, fairly and without discrimination."

As a sequel to the police agitation, the State Government dismissed 1100 members of the police force for participation in the agitation. Later, 1000 of these persons were reinstated. The Government was not able to explain the criteria which were applied to distinguish between those who were reinstated and those who were not. The Court ruled that the petitioners had been arbitrarily weeded out for discriminatory treatment as compared to others who were similarly situated. The treatment meted out to the appellants was held to be arbitrary which amounted to denial of equal treatment under Art. 14.[6]

Further, the disciplinary authority has to exercise its discretion subject to the principles of Administrative Law governing the exercise of discretionary powers.[7] Thus, *mala fides* on the part of the disciplinary authority vitiates the inquiry, but there must be positive evidence of *mala fides* on record. For example, in *Partap Singh v. State of Punjab*,[8] the Supreme Court quashed the government's order suspending the appellant civil servant and ordering an inquiry against him on the ground that the order was vitiated by *mala fides* insofar as it was motivated by an improper purpose which was outside the purpose for which the discretion to punish had been conferred on the Government.

In *State of Punjab v. V.K. Khanna*,[9] the Supreme Court quashed the charge sheet issued by the Government against a senior civil servant with the following observation:[10]

> "….in the event there is an element of malice or *mala fide* motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law Courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official".

---

4. *Supra*, Chs. XXI and XXIII.
5. AIR 1985 SC 84 : (1985) 1 SCC 56.
6. *Senghara Singh v. State of Punjab*, (1983) 4 SCC 225.
7. JAIN, *A TREATISE ON ADM. LAW*, I, Ch. XIX; JAIN *CASES & MATERIALS ON INDIAN ADM. LAW, II*. Ch. XVI.
8. AIR 1964 SC 72.
9. AIR 2001 SC 343 : (2001) 2 SCC 330.
10. *Ibid*, at 357.

In *Kalra,*[11] the Supreme Court held the order of dismissal to be arbitrary as the facts established did not amount to misconduct warranting dismissal.

(b) COURTS AND DISCIPLINARY PROCEEDINGS

There is an immense amount of case-law in this area. An analysis of these cases show that under Art. 226, roles of the High Courts and of the Supreme Court under Art. 32 are rather limited in disciplinary proceedings. The Court does not act as a Court of appeal against the order of the disciplinary authority. The disciplinary authority is regarded as the sole judge of the facts if the inquiry is properly conducted.

The Courts have really three principal functions to discharge in this area:

(1) to decide whether a civil servant is entitled to the protection of Art. 311 or not;

(2) to ensure that enquiries against civil servants are held according to the principles of natural justice, or according to the statutory rules, if any, framed for the purpose; and

(3) to ensure that the inquiry officer and the disciplinary authority function according to the principles of Administrative Law.

The Courts are extremely reluctant to intervene beyond these points.[12]

A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.[13]

The Courts do not go into the adequacy or reliability of evidence in support of a particular finding by the inquiry officer. The only question which the Courts consider is whether or not the findings of fact by the inquiry officer are supported by any probative evidence. The Courts thus apply the 'no evidence' rule and quash a finding of fact if there is no evidence at all to support it.[14] The Courts do not re-appreciate the evidence tendered at the inquiry and arrive at their own findings, or assume the position of a Court of appeal from the inquiry officer.[15] If there is some legal evidence on which the findings can be based then adequacy or even reliability of that evidence is not a matter for judicial interference.

The Supreme Court has observed in *Goel,*[16] in this connection:

> "If the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of *certiorari* could be issued."[17]

---

11. *A.L. Kalra v. P & E. Corporation of Union of India,* AIR 1984 SC 1361 : (1984) 3 SCC 316.
12. See below.
13. *Union of India v. Sardar Bahadur,* 1972 Lab IC 627 : (1972) 4 SCC 618.
14. *State of West Bengal v. B.K. Barman,* AIR 1971 SC 156 : (1970) 3 SCC 612; *Nand Kishore v. State of Bihar,* AIR 1978 SC 1277 : (1978) 3 SCC 366; *supra.*
15. *State of Madras v. G. Sundaram,* AIR 1965 SC 1103; *Union of India v. H.C. Goel,* AIR 1964 SC 364 : 1964 (4) SCR 718; *High Court of Judicature v. Shashikant S. Patil,* (2000) 1 SCC 416 : AIR 2000 SC 22.
16. *Union of India v. H.C. Goel,* AIR 1964 SC 364; *Union of India v. S.L. Abbas,* (1993) 4 SCC 357 : AIR 1993 SC 2444.
17. *Supra,* Ch. VIII, Sec. E (iv), for discussion on *Certiorari.*

Thus, the Court will interfere with the findings of fact by the disciplinary authority if there is a finding which shocks the judicial conscience of the Court.[18]

A Court, however, interferes if the departmental authorities have taken into account some considerations extraneous to the evidence and the merits of the case, or have been influenced by extraneous or irrelevant considerations, or where the conclusions appear to be arbitrary or perverse.[19]

The inquiry officer should arrive at his conclusions on the basis of some evidence. Suspicion cannot be allowed to take the place of proof even in disciplinary enquiries. The Court does not interfere with disciplinary proceedings merely on the ground that it was based on evidence which would be insufficient for conviction of the delinquent on the same charge at a criminal trial. If the enquiry is properly held, then the disciplinary authorities are the sole judge of facts and the Courts do not substitute their own opinion on the merits or the facts even if they differ from those of the inquiry or the punishing authorities.

Whether the evidence is sufficient for the authority to impose the punishment, or whether the evidence is such as is legally admissible in terms of the Evidence Act, are not the questions into which the Courts would go.[20] The review Court is not concerned with the correctness of the findings of fact so long as those findings are reasonably supported by evidence. Judicial review is directed not against the decision, but is confined to the examination of the decision-making process.

The Supreme Court has stated in this connection in *State of Andhra Pradesh v. S. Sree Rama Rao*:[21]

> "The High Court is not constituted in a proceeding under Art. 226 of the Constitution as a Court of appeal over the decision of the authorities holding a departmental inquiry against a public servant: it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence."

The Supreme Court has observed in this connection in *B.C. Chaturvedi v. India*:[22]

> "When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent officer or whether the rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings."

Similarly, the Supreme Court has emphasized recently in *Kuldeep Singh*,[23] that while in exercise of its power of judicial review, the Court would not interfere

---

18. *Apparel Export Promotion Council v. A.K. Chopra,* AIR 1999 SC 625.
19. *Bhagat Ram v. State of Himachal Pradesh,* AIR 1983 SC 454 : (1983) 2 SCC 442.
20. *State of Orissa v. Murlidhar,* AIR 1963 SC 404; also, *supra*, footnote 14.
21. AIR 1963 SC 1723 : 1964 (3) SCR 25.
22. AIR 1996 SC 484 : (1995) 6 SCC 749.
23. *Kuldeep Singh v. Commissioner of Police,* AIR 1999 SC 677, at 679 : (1999) 2 SCC 10.

with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer "as a matter of course," yet the Court can interfere with the conclusions reached therein "if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority."[24]

In *Shashikant*,[25] the Supreme Court has emphasized that the disciplinary authority is the sole judge of the facts "if the inquiry has been properly conducted". The Court has observed further:

> "The settled legal position is that if there is some legal evidence on which the findings can be based then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Art. 226 of the Constitution."

Head (3), mentioned above, would include such grounds as: the decision of the disciplinary authority is vitiated by extraneous considerations, or is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion.

In *V.S. Menon v. Union of India*,[26] the disciplinary proceedings were quashed as the charges levied were such as could not be sustained under the Civil Services (Safeguarding of National Security) Rules, 1949, under which the disciplinary action was sought to be taken. This was a case of *ultra vires*, *i.e.*, going outside the purview of the law. When a tribunal of enquiry functions beyond its jurisdiction (as laid down in the rules), then the enquiry by it could not be regarded as falling under Art. 311(2) and no order of dismissal could be founded on it. Lack of jurisdiction in the tribunal vitiates the entire proceedings.[27]

While, ordinarily, a Court does not interfere with the charge sheet at the initial stage of a disciplinary proceeding, yet:

> "in the event there is an element of malice or *mala fide*, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law Courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official."

This is with a view of not shielding any misdeed, but to maintain due of process of law in the society.[28]

Article 311(2) imposes only procedural safeguards and no substantive restrictions. Therefore, the quantum of punishment awarded to a delinquent employee lies within the discretion of the disciplinary authority. The Constitution merely guarantees reasonable opportunity of showing cause against the proposed punishment, but does not say that the punishment should not exceed any prescribed

---

24. See, *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759: AIR 1999 SC 625.
25. *High Court of Judicature at Bombay v. Shashikant S. Patil*, AIR 2000 SC 22, at 26 : 2000 (1) SCC 416.
26. AIR 1963 SC 1160 : 1963 Supp (2) SCR 404.
27. *B.N. Singh v. State of Uttar Pradesh*, AIR 1960 All 754.
28. *State of Punjab v. V.K. Khanna*, AIR 2001 SC 343 : (2001) 2 SCC 330.

standard.[29] The disciplinary authority is invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The reviewing Court does not normally substitute its own judgment on penalty for that of the disciplinary authority. The Court would not normally interfere with, and change, the punishment imposed by the disciplinary authority.

In the following case,[30] the Governor passed a dismissal order on the basis of five charges which were held to have been substantiated by the enquiry tribunal. Later, the Supreme Court held that the tribunal's findings on two charges were vitiated because of failure of natural justice, but other findings of the tribunal were not so vitiated. Nevertheless the Court refused to interfere with the order of dismissal or direct the Governor to reconsider the matter.

The Supreme Court pointed out that had the Governor's order been based solely on the two vitiated findings, then the order would have been illegal. But when the rest of the findings of the tribunal stood, and these findings established that the servant was *prima facie* guilty of grave delinquency, the Court could not then direct the Governor to reconsider the order of dismissal. The reasons which induce the punishing authority to impose the punishment if there has been a proper inquiry, or the penalty imposed, are not justiciable. If some of the findings of the tribunal were unassailable, then the Governor's order, on whose powers no restrictions were attached to determine appropriate punishment, would be final.

The same view has been reiterated in another case[31] in which punishment was imposed on the basis of two charges, of which one was held unsustainable by the Court. The Supreme Court ruled that it could not quash the punishment imposed and stated the principle that if the order could be supported on the basis of any finding of substantial misdemeanour for which the punishment could lawfully be imposed, then it was not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question.

An order removing a government servant from service should be a speaking order.[32]

Normally the Supreme Court does not interfere with the punishment imposed by the disciplinary authority on the delinquent employee as the matter falls within the ambit of the discretion of the authority. The Supreme Court does however maintain that the punishment imposed should be consonant with the gravity of the offence, and if the punishment was disproportionate to the misconduct proved, then the Supreme Court ruled that it would interfere.

The Supreme Court has emphasized in *Tulsiram Patel*:[33]

> "The disciplinary authorities are expected to act justly and fairly after taking into account all the facts and circumstances of the case and if they act arbitrarily and impose a penalty which is unduly excessive, capricious or vindictive, it can be set aside in a departmental appeal. In any event, the remedy by way of judicial review is always open to a government servant."

---

29. *A.N. D'Silva v. Union of India*, AIR 1962 SC 1130 : 1962 Supp (1) SCR 968; *U.R. Bhatt v. Union of India*, AIR 1962 SC 1344 : 1962 (1) LLJ 656.
30. *Orissa v. Bidyabhushan*, AIR 1963 SC 779 : 1963 Supp (1) SCR 648.
31. *Railway Board v. N. Singh*, AIR 1969 SC 966 : (1969) 1 SCC 502.
32. *Nand Kishore v. State of Bihar*,, AIR 1978 SC 1277 : (1978) 3 SCC 366.
33. *Supra*, footnote 87, at 2094.

At another place, the Court has said: "Where the Court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the Court will also strike down the impugned order."

There are cases where the Supreme Court has reduced the punishment imposed by the disciplinary authority. In *Shankar Das v. Union of India*,[34] the order of dismissal was set aside on the ground that the penalty was whimsical and the concerned government servant was ordered to be reinstated with full back wages.

The Court may not however always order reinstatement. It may substitute a penalty which in its opinion would be just and proper in the circumstances of the case.

In *Dasayan*,[35] the Supreme Court reduced the punishment of dismissal to compulsory retirement as the co-accused had also been given the same punishment.

In *Dr. Anil Kapoor v. Union of India*,[36] the Supreme Court refused to interfere with the punishment of removal from service although the Court did say that "it is possible to take another view in this matter", but that "that will not be a ground for interfering with the orders passed by the disciplinary proceedings."

In *Ram Kishan v. Union of India*,[37] an employee was dismissed after inquiry for using abusive language towards his superior authority. The Supreme Court set aside the dismissal order holding it to be "harsh and disproportionate to the gravity of the charge…."

In *Ram Avtar Singh v. State Public Service Tribunal*,[38] the punishment of dismissal of a police constable who remained absent for one day on hunger strike for opposing his transfer was held to be disproportionate by the Supreme Court. The Court set aside his dismissal and ordered his reinstatement in service on only 50% of backwages as he remained jobless since 1991 when he was dismissed and on tendering a written apology for what he had done.[39]

In *Kartar Singh Grewal v. State of Punjab*,[40] the concerned employee had put in unblemished service for 29 years. Three days before retirement, the disciplinary authority imposed on him the punishment of dismissal after a departmental enquiry. The Public Service Commission did not agree with the punishment; the evidence in support of the charges against him was not very strong; the employee had died leaving behind him his widow who was in bad health. In these circumstances, the Supreme Court reduced the punishment to compulsory retirement. The Court thought that this will meet the ends of justice in the instant case.[41]

---

34. AIR 1989 SC 1137 : 1989 Supp (1) SCC 686.
35. *Director-General of Police v. G. Dasayan*, AIR 1998 SC 2265.
36. AIR 1999 SC 1528 : (1998) 9 SCC 47.
37. AIR 1996 SC 255 : (1995) 6 SCC 157.
Also see, *Union of India v. Iqbal Singh Cheema*, AIR 1996 SC 426 : 1995 Supp (4) SCC 84.
38. AIR 1999 SC 1542 : (1998) 9 SCC 666.
39. Also see, *V.R. Kartaki v. State of Karnataka*, AIR 1991 SC 1241 : 1991 Supp (1) SCC 267.
40. AIR 1991 SC 1067 : (1991) 2 SCC 635.
41. Also see, *Laxmi Shankar Pandey v. Union of India*, AIR 1991 SC 1070 : (1991) 2 SCC 488.

In *Mohal*,[42] the Court reduced the punishment from removal from service to compulsory retirement in the interest of justice. The inquiry against the employee was *ex parte* as he could not attend the inquiry because of financial stringency arising due to non-payment of subsistence allowance to him owing to a technicality.

In this connection, an interesting fact may be noted. Until 1996, there existed a dichotomy between the powers of the Supreme Court and the High Courts to interfere with the punishment imposed on a civil servant by the disciplinary authority. As stated above, the Supreme Court ruled that while it was empowered to interfere with the punishment imposed, the High Courts were not so authorised.

As early as 1963, in *State of Orissa v. Bidyabhushan Mohapatra*,[43] the Supreme Court ruled that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Art. 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassailable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final.[44]

This situation continued till 1996 when in *B.C. Chaturvedi v. Union of India*,[45] the Supreme Court ruled that normally, in exercise of its power of judicial review, the High Court does not substitute its own conclusion on penalty and impose some other penalty. But, observed the Court:

> "If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Thus, if the penalty imposed shocks the conscience of the High Court, it can appropriately mould the relief. If the punishment imposed on the delinquent servant is shockingly disproportionate to the charges held proved against the employee, it will be open to the High Court to interfere.[46]

In *Chaturvedi*,[47] after an inquiry, an ITO was found to have assets disproportionate to his known sources of income. The disciplinary authority imposed on him the penalty of dismissal. The tribunal changed it into compulsory retirement on the ground that he was "no longer fit to continue in government service" as he had reached the age of 50 years. But the Supreme Court quashed the tribunal order saying that the reasoning was wholly unsupportable, "not relevant nor germane to modify the punishment". The Court observed:

---

42. *A.V. Mohal v. Senior Supdt. of Post Office,* AIR 1991 SC 328 : 1991 Supp (2) SCC 503.
43. AIR 1963 SC 779 : 1963 Supp (1) SCR 648.
44. In *Krishna Chandra v. Union of India,* AIR 1992 Ori 261, HANSARIA, C.J., raised the question as to why the power to do complete justice had been denied to the High Courts.
45. AIR 1996 SC 484 : (1995) 6 SCC 749.
46. *B.C. Chaturvedi v. Union of India,* (1995) 6 SCC 749 : AIR 1996 SC 484; *Colour-Chem Ltd. v. A.L. Alaspurkar,* (1998) 3 SCC 192 : AIR 1998 SC 948; *U.P. State Road Transport Corpn. v. Mahesh Kumar Mishra,* (2000) 3 SCC 450 : AIR 2000 SC 1151.
47. *Ibid.*

> "In view of the gravity of the misconduct, namely, the appellant having been found to be in possession of assets disproportionate to the known source of his income, the interference with the imposition of punishments was wholly unwarranted."

Again, it has been emphasized by the Supreme Court in *State of Uttar Pradesh v. Nand Kishore Shukla*,[48] that a High Court not being a Court of appeal from the disciplinary authority, cannot go into the question of imposition of punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a government servant based on his proved misconduct.

In the case mentioned below,[49] the disciplinary authority imposed the punishment of removal from service on the respondent for seeking to molest a subordinate female employee in the work place. A writ petition was filed in the High Court challenging this decision, the Court reduced the punishment. The Supreme Court, on appeal, objected to the High Court ruling with the following observation:

> "The High Court should not have substituted its own discretion for that of the authority: what punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court".

On the whole, it would seem that under Art. 136 (read with Art. 142), the Supreme Court enjoys far more discretion to interfere with the punishment imposed by the disciplinary authority on the delinquent employee than does either High Court under Art. 226, or the Administrative Tribunal.

When the disciplinary action against an employee is held to be vitiated, it is quashed, and, usually, *status quo ante* is restored, but it may not always be so because the High Court/Supreme Court has power to mould relief according to the specific facts and circumstances of each case.

In *Banerjee*,[50] termination of the service of a probationer was quashed because no regular departmental inquiry was held. The Court ordered his reinstatement with back wages as there was no material to show that he had been gainfully employed after termination. On the other hand, in *Haryana v. Jagdish Chander*,[51] although the inquiry was quashed yet the employee was not reinstated in service.

The difference between *Jagdish* and *Bannerjee* was this: In *Bannerjee*, no inquiry was held at all, whereas in *Jagdish*¸ an inquiry was held but was found deficient in one respect, *viz.*, theinquiry report had not been given to him as required by the Supreme Court decision in *Karunakar*.[52] Accordingly, in *Jagdish* the Court directed the report to be given to the concerned employee, and the proceedings from that stage were set aside and the Court stated that no order for reinstatement or backwages, needed to be passed at that stage because the rest of the inquiry proceedings were yet to go on and had not finally concluded.

---

48. AIR 1996 SC 1561 : (1996) 3 SCC 750.
49. *Apparel Export Promotion Council v. A.K. Chopra,* (1999) 1 SCC 759 at 773 : AIR 1999 SC 625.
50. *D.P. Bannerjee v. S.N. Bose National Centre for Basic Sciences, Calcutta,* AIR 1999 SC 983, 993 : (1999) 3 SCC 60.
51. (1995) 2 SCC 567 : AIR 1995 SC 984.
52. *Managing Director, ECIL v. B. Karunakar,* (1993) 4 SCC 727 : 1993 SCC (L&S) 1184.

(c) SERVICE TRIBUNALS

The 42nd Constitutional Amendment introduces an innovation in the Constitution in the form of a new Article 323A.[53] It provides that Parliament may establish tribunals for adjudication of disputes concerning recruitment and conditions of service of persons appointed to public service under Central, State or any local or other authority, or a corporation owned or controlled by Government. The law made by Parliament for the purpose may specify the jurisdiction and procedure of these tribunals and exclude the jurisdiction of all Courts, except that of the Supreme Court under Art. 136, with respect to the service matters falling within the purview of these tribunals.

The justification for Art. 323A lay in the fact that massive case-law was being generated in the country in relation to service matters and too much time of the Courts, especially of the High Courts, was being consumed on this type of litigation. Art. 323A seeks to relieve the High Courts which used to take cognizance of service matters under Art. 226.

Article 323A is an enabling provision. Its scope is very wide, and is synonymous with Art. 309.[54] The expression 'conditions of service' used in Art. 323A also occurs in Art. 309 and means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in such matters as pension etc., and includes matters of dismissal or termination of the service of government servants. Therefore, the tribunals can be endowed with comprehensive jurisdiction in relation to service matters.

An interesting question which arises is whether the setting up of these tribunals will be merely for purposes of holding inquiries against government servants or also for imposing punishment. The use of the expression 'adjudication of disputes' indicates that wider frame of reference is envisaged. It will be for Parliament to settle all the intricate questions in the law to be enacted.

Another interesting aspect of Art. 323A is that Parliament has been given power to establish service tribunals not only for the Central employees, but also for the employees of the States, local governments and of the government corporations. This will effect quite a drastic change in the present system where each of these units has control over the disciplinary proceedings relating to its servants.

While the States are subject to Art. 311(2), the local governments are not, and in their case only principles of natural justice are applicable. Similarly, in case of government undertakings, natural justice may apply.[55]

The Indian Parliament has enacted the Administrative Tribunals Act, 1985, establishing administrative tribunals for adjudication of service disputes in civil services under the Centre as well as the States. The Central Government is to establish the Central Administrative Tribunal (CAT) for central services. An appeal

---

53. *Supra*, Ch. VIII, Sec. I..
54. *Supra*, Sec. B.
55. JAIN, THE LEGAL STATUS, etc., see *supra*.
Also, JAIN and JAIN, PRINCIPLES OF ADM. LAW, Ch. XXV (1986).

from CAT lies to the Supreme Court under the Act. A detailed discussion of these tribunals falls legitimately under Administrative Law.[56]

CAT exercises jurisdiction equivalent to that of the High Courts under Art. 226. It is thus more of a supervisory, rather than, an appellate body. It has therefore been held that—

(1) CAT cannot interfere with an order of transfer made *bona fide* by the concerned authority;[57]

(2) the tribunal is not an appellate authority and cannot thus substitute the role of authorities to clear the efficiency bar of a public servant;[58]

(3) The tribunal could not appreciate the evidence before the inquiry officers and substitute its own conclusion for that of the disciplinary authority.[59]

The Supreme Court has laid emphasis upon this aspect in several cases. For example, in *State of Tamil Nadu v. S. Subramaniam,*[60] the Court has observed:

> "In Judicial review, it is settled law that the Court or the tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion….When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence….The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."[61]

In the instant case, the Court quashed the order of the Tribunal with the remark: "The Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is *ex facie* illegal."

But if the findings are perverse and based on no evidence, the reviewing Court or tribunal can quash the same.[62]

(4) It is not the province of the Tribunal to go into the truth or otherwise of the charges; the tribunal is not an appellate authority over the departmental authorities. Therefore, the tribunal exceeds its jurisdiction when it enters upon a discussion whether the charges are established on the materials available.[63]

---

56. JAIN, *A TREATISE ON ADM. LAW*, I, Ch. XIII; JAIN, *CASES & MATERIALS ON INDIAN ADM. LAW*, II, Ch. XII

57. *Union of India v. S.L. Abbas*, (1993) 4 SCC 357 : AIR 1993 SC 2444.

58. *Administrator of Dadra & Nagar Haveli v. H.P. Vora*, AIR 1992 SC 2303 : 1993 Supp (1) SCC 551.

59. *State Bank of India v. Samarendra Kishore Endow*, (1994) 1 JT (SC) 217 : (1994) 2 SCC 537; *Union of India v. A.N. Rao*, AIR 1998 SC 111 : (1958) 1 SCC 700.

60. (1996) 7 SCC 506.

61. Also see, *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749 : AIR 1996 SC 484; *State of Tamil Nadu v. T.V. Venugopalan*, (1994) 6 SCC 302; *Union of India v. Upendra Singh*, (1994) 3 SCC 357 : 1994 (1) LLJ 808; *State of Tamil Nadu v. Rajapandian*, (1995) 1 SCC 216 : AIR 1995 SC 561; *High Court of Judicature at Bombay v. Uday Singh*, AIR 1997 SC 2286 : (1997) 5 SCC 129.

62. See, *supra*, Ch. VIII, Sec. E(iv)(c).

63. *State of Tamil Nadu v. Thiru K.V. Perumal*, AIR 1996 SC 2474 : (1996) 5 SCC 474.

In *Government of Tamil Nadu v. A. Rajapandian*,[64] the Supreme Court has ruled that the Tribunal cannot sit as a Court of appeal over a decision based on the findings of the enquiring authority in disciplinary proceedings. The Court has stated:

> "Where there is some relevant material which the disciplinary authority has accepted and which material *reasonably supports the conclusion* reached by the *disciplinary authority*, it is not the function of the Administrative Tribunal to review the same and reach different finding than, that of the disciplinary authority."

In *Union of India v. S.L. Abbas*,[65] the tribunal interfered with the order of transfer. The Supreme Court ruled that the tribunal was not an appellate body and, therefore, it could not substitute its own judgment for that of a *bona fide* order of transfer.

The power of the tribunal to interfere with the quantum of punishment imposed by the disciplinary authority on the delinquent employee is *pari passu* with that of the High Court under Art. 226. Normally, the Tribunal does not substitute its own conclusion on penalty for that of the disciplinary authority and impose some other punishment. The Supreme Court has emphasized that the tribunal cannot, while exercising the power of judicial review, normally speaking, substitute its own conclusion on penalty and impose some other penalty. But if the punishment imposed "*shocks* the conscience" of the Tribunal, it could appropriately interfere with it by moulding relief either by referring the matter to the disciplinary authority to reconsider the penalty imposed, or, in an exceptional and rare case, with a view to shorten litigation, it may itself impose appropriate punishment giving cogent reasons in support thereof.[66]

In *Ganayutham*,[67] the disciplinary authority, after inquiry, imposed the punishment of withdrawal of 50% pension and gratuity on the employee on the ground that the government suffered substantial loss of revenue due to the misconduct of the employee. The Tribunal held that the punishment was too severe and reduced the punishment to withholding of 50% pension for ten years instead of on a permanent basis. On appeal, the Supreme Court restored the punishment imposed by the disciplinary authority saying that the Tribunal could interfere with the punishment awarded to the employee by the disciplinary authority only if it is irrational which means that it is in outrageous defiance of logic or moral standards. The Tribunal would not interfere if the authority has reasonably arrived at its decision as to punishment.

In *Om Kumar v. Union of India*,[68] the Supreme Court has elaborately considered the question of scope of judicial review of the punishment imposed on an employee by the concerned disciplinary authority. The Court has now ruled that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Art. 14, the Court is confined to the *Wednesbury*

---

64. (1995) 1 SCC 216 : AIR 1995 SC 561.
65. AIR 1993 SC 2444.
66. *State Bank of India v. Samarendra Kishore Endow,* (1994) 2 SCC 537 : 1994 SCC (L&S) 687; *B.C. Chaturvedi v. Union of India,* AIR 1996 SC 484 : (1995) 6 SCC 749.
Also, *Indian Oil Corp. v. Ashok Kumar Arora,* (1997) 3 SCC 72 : AIR 1997 SC 1030.
67. *Union of India v. G. Ganayutham,* AIR 1997 SC 3387, 3390 : (1997) 7 SCC 463.
68. AIR 2000 SC 3689.

principles.[69] This means that the discretion of the punishing authority can be challenged on such grounds as—the order was contrary to law; relevant factors were not considered, irrelevant factors were considered, the decision was one which no reasonable person could have taken.[70] But when administrative action is challenged under Art. 14 as being discriminatory, the question to consider is whether it is excessive.

(d) INQUIRY AGAINST JUDGES OF SUBORDINATE COURTS

Article 235 provides that the control over district Courts and Courts subordinate thereto is vested in the High Courts.[71] The word 'control' in this provision includes disciplinary control as well.[72] Besides Art. 235, superintendence vested in a High Court by Art. 227 over all subordinate Courts in the State also imports control, as there can be no superintendence without control.[73]

The vesting of disciplinary control over members of the subordinate judiciary in a State in the High Court ensures maintenance of the independence and integrity of the judiciary and protection from executive interference. As the Supreme Court has observed in *Shamsher*,[74] the members of the subordinate judiciary are not only under the control but also under the care and custody of the High Court.

Article 235 means that it is for the High Courts to hold inquiries into the conduct of judicial officers who are entitled to the protection of Art. 311(2). The Supreme Court has laid emphasis on the protective role of the High Courts in these words:[75]

> "….the High Court while exercising its power of control over the subordinate judiciary is under a constitutional obligation to guide and protect judicial officers from being harassed or annoyed by trifling complaints relating to judicial orders so that the Officers may discharge their duties honestly and independently unconcerned by the ill-conceived or motivated complaints, made by unscrupulous lawyers and litigants".

Article 235 vests in the High Court the power to hold inquiries, impose punishments, initiate disciplinary proceedings, suspend any member of subordinate judiciary. The Supreme Court has observed in this regard:[76]

> "Article 235, therefore, relates to the power of taking a decision by the High Court against a member of the subordinate judiciary. Such a decision either to hold enquiry into conduct of a judicial officer, subordinate or higher judiciary, or to have the inquiry conducted….and to consider the report of the enquiry officer for taking further action is of the High Court. Equally, the decision to consider the report of the enquiry officer and to take follow up action and to make

---

69. *Associated provincial Picture Houses v. Wednesbury Corporation*, (1948) 1 KB 223.
70. For a detailed discussion on this topic, see, JAIN, *A TREATISE ON ADM., LAW*, I, Ch. XIX (1996); JAIN, *CASES & MATERIALS ON INDIAN ADM. LAW*, Ch. XVI.
71. *Supra*, Ch. VIII, Sec. G.
72. *Mohd. Ghouse v. Madras*, AIR 1957 SC 246 : 1957 SCR 414; *Chief Justice of A.P. v. L.V.A. Dikshitulu*, AIR 1979 SC 193 : (1979) 2 SCC 34.
73. *Supra*, Ch. VIII, Sec. C(iv).
74. *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192 : (1974) 2 SCC 831.
75. *Registrar, High Court of Madras v. R. Rajiah*, AIR 1988 SC 1388 : (1988) 3 SCC 211.
76. *High Court of Judicature at Bombay v. Shirish Kumar R. Patil*, AIR 1997 SC 2631, 2636 : (1997) 6 SCC 339; *Madan Mohan Choudhary v. State of Bihar*, AIR 1999 SC 1018 : (1999) 3 SCC 396.

appropriate recommendation to the Disciplinary Committee or the Governor, is entirely of the High Court."

The appointing authority in respect of the State judicial service is the Governor. He is, therefore, the actual authority to impose a major punishment of dismissal, removal or reduction in rank under Art. 311(1). The High Court itself cannot pass such an order.[77] But in view of Art. 235, the Governor is not entitled to conduct disciplinary proceedings, or set up an enquiry or disciplinary tribunal, apart from the High Court. It is the High Court alone which has to conduct an inquiry into the charges against a judicial officer and send its report with its recommendations to the Governor. In imposing punishment, the Governor is to have regard to this report. In such a case, the High Court is only a recommendatory authority and cannot itself pass the order; such an order is passed by the State Government on the recommendation of the High Court.

On this point, the Supreme Court has emphasized that, in such cases, the Constitution contemplates that the Governor will act in harmony with the recommendations of the High Court. The recommendation of the High Court is binding on the Government. The Supreme Court has emphasized that the Governor cannot take any action against a member of Subordinate judicial service without, and contrary to, the recommendations of the High Court.[78] If the High Court's recommendations were not to be binding on the State, then unfortunate consequences will follow. It is in public interest that the State accepts the High Court's recommendations. Thus, the State could not pass an order of compulsory retirement on a judicial officer when the High Court had made no such recommendation.[79]

This point has been emphasized again by the Supreme Court in *Baldev Raj v. Punjab and Haryana High Court.*[80] The High Court after enquiry recommended removal of a sub-judge. The Government referred the matter to the State Public Service Commission for advice and, on its advice, the Sub-Judge was reinstated. The Supreme Court quashed this order saying that the sole and exclusive disciplinary control over subordinate judiciary is vested in the High Court and its recommendation is binding on the Government. The Government does not have to consult any other body except the High Court in this area, not even the Public Service Commission.

Unfortunately, there have been cases where the Supreme Court has had to quash the enquiries made by the High Courts against the subordinate judges for one reason or another, such as, lack of *bona fides* on the part of the High Court in instituting disciplinary proceedings against a member of the Higher Judicial Service in the State,[81] or the High Court's advice is arbitrary and is not supported by any material,[82] failure of natural justice.[83]

---

77. *Baradakanta Mishra v. High Court of State of Orissa,* AIR 1976 SC 1899 : (1976) 3 SCC 327.

78. *The Registrar, High Court of Madras v. R. Rajiah,* AIR 1988 SC 1388; *High Court of M.P. v. Mahesh Prakash,* AIR 1994 SC 2595 : (1995) 1 SCC 203; *Registrar (Administration) High Court of State of Orissa, Cuttack v. Sisir Kanta Satapathy,* AIR 1999 SC 3265 : (1999) 7 SCC 725.

79. *State of Haryana v. Inder Prakash,* AIR 1976 SC 1841 : (1976) 2 SCC 977.
Also, *supra,* Ch. VIII, Sec. G(e).

80. AIR 1976 SC 2490.
Also, *West Bengal v. N.N. Bagchi,* AIR 1966 SC 447 : 1966 (1) SCR 771.

81. *R.C. Sood v. High Court of State of Rajasthan,* 1994 (Supp) 3 SCC 711 and AIR 1999 SC 707 : (1958) 5 SCC 493.

82. *Madan Mohan Choudhary v. State of Bihar,* AIR 1999 SC 1018 : (1999) 3 SCC 396.

83. Ch. VIII, Sec. G(e).

The Supreme Court has emphasized that an independent and honest judiciary being a *sine qua non* for the Rule of Law, the High Court should seek to protect honest judicial officers against ill-conceived or motivated complaints. The Supreme Court has laid down some guidelines for initiating a disciplinary action against a judicial or a quasi-judicial officer :

(i) where he has conducted in a manner reflecting on his reputation or integrity or good faith or devotion to duty;

(ii) there is *prima facie* material to show recklessness or misconduct in the discharge of his duty;

(iii) that he has acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(iv) that he had acted in order to unduly favour a party;

(v) that he had been actuated by corrupt motive.[84]

K. PUBLIC SERVICE COMMISSIONS

For proper and efficient working of a democracy, it is very necessary that civil service be free of political pressures and personal patronage. It is therefore necessary to ensure that the best available person be selected for appointment to a post so as to avoid arbitrariness and nepotism in the matter of appointment. This objective can be achieved if civil servants are appointed solely on the basis of merit without any favouritism or nepotism or political pressures. A difficult task in any country, it becomes all the more difficult in a multi-lingual, multi-religious country like India which has a number of minority groups and backward classes and where the state is the most significant employer and government service has a prestige of its own.

This role and objectives are reflected in the opinion of the Supreme Court to the effect that Public Service Commissions are institutions of utmost importance created by the Constitution and for efficient functioning of a democracy it is imperative that such Commissions are manned by people of the highest skill and irreproachable integrity, so that selections to various public posts can be immunized from all sorts of extraneous factors like political pressure or personal favouritism and are made solely on considerations of merit. It was also held that since PSCs are a constitutional creation, principles of service law that are ordinarily applicable in instances of dismissal of government employees cannot be extended to proceedings for removal and suspension of PSC members.[85]

To achieve these objectives, the Constitution creates Public Service Commissions which are autonomous bodies and are immunized from various pressures so that they can function independently, fairly and impartially. Being a constitutional authority, it cannot be by passed by way of circular or otherwise.[86]

A Commission constituted in terms of Art.315 of the Constitution is bound to conduct examinations for appointment to the services of the State in terms of the

---

84. See, *Union of India v. A.N. Saxena,* AIR 1992 SC 1333; *Union of India v. K.K. Dhawan,* AIR 1993 SC 1478; *P.C. Joshi v. State of Uttar Pradesh,* AIR 2001 SC 2788.

85. *Ram Kumar Kashyap v. Union of India,* (2009) 9 SCC 378.

86. *State of Uttaranchal v. Alok Sharma,* (2009) 7 SCC 647, 657 : (2009) 6 JT 463.

Rules framed by the State. It is, however, free to evolve the procedure for conduct of examination. While conducting the examination in a fair and transparent manner as also following known principles of fair play, it cannot completely shut its eyes to the constitutional requirements of Article 335 of the Constitution of India.[87]

The independence of the members of these commissions is secured by several constitutional provisions as noted below. In this connection, the Supreme Court has observed:

> "The values of independence, impartiality and integrity are the basic determinants of the constitutional conception of Public Service Commissions and their role and functions".

Investigation into the affairs of the Public Service Commission even though it might affect the image of the Commission, cannot be a ground to stall investigation. On the other hand, the investigation has to be done in a transparent manner.[88]

It is through these Commissions both at the Centre and in the States that the bulk of government servants are recruited and, thus, the guarantee given by Art. 16(1) is sought to be concretised.[89] These Commissions also advise Governments in matters of discipline pertaining to civil servants. This ensures that disciplinary action is not taken on extraneous considerations.

The appellant Commission which has been constituted in terms of Art. 315 of the Constitution of India is bound to conduct examination for appointment to the services of the State in terms of the Rules framed by the State. It is, however, free to evolve procedure for conduct of examination. While conducting the examination in a fair and transparent manner as also following known principles of fair play, it cannot completely shut its eyes to the constitutional requirements of Article 335 of the Constitution of India.[90]

How such a Commission would judge the merit of the candidates is its function. Unless the procedure adopted by it is held to be arbitrary or against the known principles of fair play, the Courts will not ordinarily interfere therewith.[91]

The significance of the role played by a Public Service Commission has been underlined by the Supreme Court in *Ahok Kumar Yadav v. State of Haryana,*[92] in the following words:

> "….the Public Service Commission occupies a pivotal place of importance in the State and the integrity and efficiency of its administrative apparatus depends considerably on the quality of the selections made by the Public Service Commission. It is absolutely essential that the best and the finest talent should be drawn in the administration and the administrative services must be composed of men who are honest, upright and independent and who are not swayed

---

87. *Andhra Pradesh Public Service Commission v. Baloji Badhavath,* (2009) 5 SCC 1 : (2009) 5 JT 563.
88. *Seema Dhamdhere, Secretary, Maharashtra Public Service Commission v. State of Maharashtra,* (2008) 2 SCC 290 : (2007) 13 JT 658.
89. *Supra*, Ch. XXIII, Sec. A.
90. *Andhra Pradesh Public Service Commission v. Baloji Badhavath,* (2009) 5 SCC 1 : (2009) 5 JT 563.
91. *Andhra Pradesh Public Service Commission v. Baloji Badhavath,* (2009) 5 SCC 1 : (2009) 5 JT 563.
92. AIR 1987 SC 454, 477 : (1995) 4 SCC 417.

> by the political winds blowing in the country. The selection of candidates for the administrative services must therefore be made strictly on merits, keeping in view various factors which go to make up a strong, efficient and people oriented administrator."
>
> "To achieve these objectives, it is necessary that the chairman and members of the Public Service Commission are eminent men possessing a high degree of calibre, competence and integrity, who would inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them."

The Court has, therefore, exhorted every State Government "to take care to see that its Public Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merit…."

Unfortunately, the opposite of what the Supreme Court has envisaged is happening in practice. The State Governments seek to pack the Service Commissions with pliable persons.

(i) UNION PUBLIC SERVICE COMMISSION

(a) COMPOSITION

The U.P.S.C. consists of a Chairman and a number of members who are appointed by the President who, of course, acts in this matter, as in all other matters, on the advice of the concerned Minister [Arts. 315(1) and 316(1)].

No qualifications are prescribed for the Commission's membership except that, as nearly as may be, one-half of the members should be persons who have held offices for at least ten years either under the Government of India or that of a State [Proviso to Art. 316(1)]. This provision envisages that such persons as are well versed in the internal exigencies of the public service are given adequate representation on the Commission, so that suitable, experienced and fit persons may be appointed to the civil services.

The President may appoint an acting Chairman of the Commission if the office of the Chairman falls vacant, or if the Chairman is unable to discharge his functions due to absence or some other reason. The acting Chairman functions till the chairman is able to resume his duties, or the person appointed as Chairman enters on the duties of the office [Art. 316(1-A)].

The Constitution does not fix the number of members of the Commission. This task has been left to the Central Government. Thus, according to Art. 318, the President may, by regulations, determine the number of members of the Commission and their conditions of service. The power of the Central Government to determine the conditions of service of a member of the Commission is, however, subject to the restriction that they cannot be varied to the disadvantage of a member after his appointment.

A member of the Commission is to hold office for six years from the date he takes charge of his office, or until he attains the age of sixty-five years, which-

ever is earlier [Art. 316(2)]. A member may, however, resign from his office by writing to the President [Art. 316(2)(a)].

(b) REMOVAL OF A MEMBER

Provisions exist in the Constitution for the removal of the Chairman or a member before the expiry of his term [Arts. 316(2)(b) and 317]. He can be removed only by the order of the President on the ground of misbehaviour. Such an order can be passed after—(1) the President makes a reference to the Supreme Court, and (2) the Court, after holding an inquiry, reports to the President that the person concerned ought to be removed from office [Art. 317(1)]. These procedural safeguards envisaged in Art.317 are to protect PSC members from undue political pressures or personal facvouritism and vendetta, so that a Public Commissions is able to discharge their constitutional obligations in full measure.[1]

At the stage of clause (1) of Art. 317 a tentative conclusion that, if not rebutted, the charges of misbehaviour would stand made out and it is not necessary to consider in detail the evidence on record to reach a conclusion as to whether the charges stood proved.[2]

In a reference made by the President under Article 317(1) of the Constitution, the question relating to misbehaviour by the Chairman/Chhattishgarh Service Commission came up for consideration before the Supreme Court. On facts, the Court found that the evidence did not warrant any conclusion of misbehaviour. But in the course of the judgment, the Court expressed certain views regarding the object behind the provisions of Article 315 and 317 of the Constitution. In relation to Article 315. The Court held that the object of the Article is to ensure that the Commission should be independent and impartial body as indicated by their salary etc. being charged on the Consolidated Fund of the State and their removal by following the procedure laid down in the Constitution i.e. their offices were constitutionally protected. The Court also noted that misbehaviour is not defined in Article 317 but what constitutes misbehaviour in the these words :

> "The Chairman of the Public Service Commission is expected to show absolute integrity and impartiality in exercising the powers and duties as Chairman. His actions shall be transparent and he shall discharge his functions with utmost sincerity and integrity. If there is any failure on his part, or he commits any act which is not befitting the honour and prestige as a Chairman of the Public Service Commission, it would amount to misbehaviour as contemplated under the Constitution. If it is proved that he has shown any favour to the candidate during the selection process, that would certainly be an act of misbehaviour."[3]

There have been a few references made to the Supreme Court by the President under Art. 317(1) as regards the members/Chairmen of State Public Service Commissions.[4] The Supreme Court has ruled that in a reference under Art. 317(1), it can go into questions of fact, summon witnesses, and record their evi-

---

1. *Ram Kumar Kashyap v. Union of India*, (2009) 9 SCC 378.
2. *S.S. Joshi Re*, (2005) 8 SCC 501.
3. (2009) 8 SCC 41, reference under Article 317(1) of the Constitution of India, Chhattisgarh Public Service Commission—Ref. No. 1 of 2006, decided on 8th July, 2009.
4. See, *infra*, for provisions regarding State Public Service Commissions.

dence. Upon the facts found, the Court can pronounce whether the charge of misbehaviour or incapacity has been established against the member/Chairman.[5]

The Supreme Court has ruled in the under-mentioned case[6] that the issue of misconduct of a member of the Commission does not come to an end even after the expiry of his term.

Hearing or an opportunity to show cause against a proposed reference is not contemplated.[7] There is, however, an indication of a qualification in the Court's subsequent observations to the effect that it is not necessary that principles of audi alteram partem rigorously followed in domain of service law need to be applied with same degree of rigour in proceedings involving removal and suspension of members of State Public Service Commission.[8]

In a reference against a member of the Haryana P.S.C., the Supreme Court delegated the task of recording evidence to the additional district and sessions judge at Delhi.[9]

In *Ref. Punjab Public Service Commission,*[10] two questions were referred to the Supreme Court: (1) Had the respondent-member slapped the lady chairperson of the Commission; (2) whether he should be removed from office? The Supreme Court answered in the affirmative. The Court pointed out that persons occupying high public offices should maintain irreproachable behavior and a certain minimum standard of code of conduct is expected of them. In the circumstances of this case, the member concerned miserably failed to maintain the standard of conduct expected of a member of the Public Service Commission and, so, he was held to be guilty of misbehaviour under Art. 317(1).

In a reference made by the President against a member of the Haryana Public Service in 1995, the Supreme Court answered the reference in the affirmative holding that the member be removed from the office of the member of the Commission on the ground of misconduct.[11]

In a reference made by the President against the Chairman of the Bihar Public Service Commission, the Court, after hearing the matter and the charges levelled against him, found that the Chairman could not be held to be guilty of any misbehaviour within the meaning of Art. 317(1) inviting action for his removal from office. Nevertheless, the Court adversely commented on his conduct as Chairman, B.P.S.C. He did not, at times, exhibit exemplary behaviour or conduct expected of him. There were many lapses on his part. The Court underlined the significance of impartiality and objectivity on the part of these Commissions in the following words:[12]

---

5. For these reference, see: *In the matter of: Ref. under Art. 317(1),* AIR 1983 SC 996 : (1983) 4 SCC 258; *Ref. Punjab Public Service Commission,* (1990) 4 SCC 262; *Ref. Sher Singh, Member, State of Haryana, P.S.C.,* AIR 1997 SC 906; In *R/o. Dr. Ram Ashray Yadav, Chairman, State of Bihar, Public Service Commission,* AIR 2000 SC 1448 : (2000) 4 SCC 309.

6. See, *Ref. Punjab PS, supra.* Also, *Ram Ashray Yadav v. State of Bihar,* AIR 1998 Pat 125.

7. *H.B. Mirdha Re,* (2005) 6 SCC 789.

8. *Ram Kumar Kashyap v. Union of India,* (2009) 9 SCC 378.

9. In the matter of: Ref. under Art. 317(1), AIR 1983 SC 996 : (1983) 4 SCC 258.

10. *Ref. Punjab Public Service Comm.,* (1990) 4 SCC 262.

11. *Re: Sher Singh, supra,* footnote 5.

12. In *R/O Ram Ashray Yadav,* AIR 2000 SC 1448 at 1456 : (2000) 4 SCC 309.

> "The credibility of the institution of Public Service Commission is founded upon faith of the common man on its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the chairman and members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not loose confidence in the Commission. The high constitutional trustees, like the Chairman and Members of the Public Service Commission must for ever remain vigilant and conscious of these necessary adjuncts."

In this reference, the Court concluded that no charge of misbehaviour was established against Dr. Yadav, although, at times, he "did not exhibit exemplary behaviour or conduct, expected of him." There were "lapses" on his part but not "misbehaviour" within the meaning of Art. 317 of the Constitution inviting action of his removal from office under Art. 317(1).

In *Joshi*[13] the President made a reference to the Supreme Court in relation to the conduct of a member of Maharashtra Public Service Commission. Referring to its earlier decisions[14] the Court noticed the high character of the institutions and laid down the approach to be as to whether the materials disclosed conduct of the member (a constitutional functionary) which would be misbehaviour within the meaning of Art. 317(1) of the Constitution. Several charges were framed against her including that she did not inform the Commission that her daughter was a candidate for the examination. Her plea that the daughter ultimately did not appear for the examination was considered to be irrelevant by the Supreme Court. The Court answered the reference by opining that the member had not behaved in a manner befitting a member of constitutional body like the Public Service Commission.

The President may suspend the Chairman or a member in respect of whom a reference has been made to the Supreme Court until he passes final orders [Art. 317(2)]. The issuance of suspension orders is as per the "procedure established by law" and not in derogation of the same. Hence petitioners were not entitled to any opportunity to show cause or to be heard before orders of suspension were passed by Governor under Art. 317(2), after the President had referred a matter to Supreme Court.[15]

Further, the President is empowered to remove a member or the Chairman of the Commission [Art. 317(3)], without reference to the Supreme Court, if he—(*a*) is adjudged an insolvent; or (*b*) engages during his term of office in any paid employment outside the duties of his office; or (*c*) is, in the opinion of the Presi-

---

13. *Sayalee Sanjeev Joshi (Smt.) Member, Maharashtra Public Service Commission, In Re*, (2007) 11 SCC 547 : AIR 2007 SC 2809.

14. In the Matter of Reference under *Article 317(1) of the Constitution of India*, (1983) 4 SCC 258; Reference under Article 317(1) of the Constitution of India regarding *Enquiry & Report on the Allegations against Sh. M. Megha Chandra Singh, Chairman, Manipur Public Service Commission*, 1994 Supp (2) SCC 166 : (1994) 2 JT 63; *In Re : Reference under Article 317(1) of the Constitution of India*, (1990) 4 SCC 262 : AIR 1997 SC 906; *Sher Singh, in Re*, (1997) 3 SCC 216 : AIR 1997 SC 906; In *R/O Dr. Ra, Ashray Yadav, Chairman, Bihar Public Service Commission*, (2000) 4 SCC 309 : AIR 2005 SC 1448.

15. *Ram Kumar Kashyap v. Union of India*, (2009) 9 SCC 378.

dent, unfit to continue in office by reason of infirmity of mind and body [Art. 317(3)].

Infirmities referred to in Art. 317(3)(c) must be such as disable the member from efficient discharge of his functions. Further, the infirmity must be post-appointment. When a blind university professor was appointed as a member of the State Public Service Commission, he could not be removed on the ground of infirmity under Art. 317(3)(c) because his infirmity was pre, and not post, appointment.[16]

The question whether a member ought to be removed on the ground of infirmity is left solely to the President [*i.e.* the Central Executive] for determination. It is for him to determine in his subjective satisfaction whether the infirmity is of such a nature as to in capacitate the concerned member from discharging the functions of his office.[17]

According to Art. 317(4), if the Chairman or a member of the Commission becomes in any way concerned or interested in a contract or agreement made by or on behalf of the Central or the State Government, or participates in any way in the profit thereof or in any benefit or emolument arising therefrom, otherwise than as a member and in common with other members of an incorporated company, he is to be deemed to be guilty of misbehaviour for purposes of Art. 317(1).

(c) OTHER PROVISIONS

A person who holds office as a member of the Commission cannot be re-appointed to that office on the expiry of his term of office [Art. 316(3)], nor is he eligible for any other employment under the Central or the State Government [Art. 319(c)]. He can, however, be appointed as the Chairman of the Union Public Service Commission, or a State Public Service Commission [Art. 319(c)].

Article 319(c) bars "any other employment". This phrase includes even an employment by contract.[18]

The Chairman of the Commission is not eligible for any further employment either under the Government of India or under the Government of a State [Art. 319(a)]. Appointment of the Chairman of the Commission as the chairman of a statutory board which is not under the Government does not violate Art. 319(a).[19] These restrictions have been imposed on a member or the Chairman of the Commission because the Commission serves the Government and decides matters in which the Government is directly interested, *viz.*, recruitment of persons to civil service. A Minister might possibly influence a member of the Commission by promising him something else after retirement if he recommends a certain candidate in whom the Minister may be interested.

Between the Executive and the Commission, the relation is a very close and integral one, and so the necessary precautions have to be taken.[20] Thus, to ensure that the members of the Commission discharge their duties with impartiality, it is

---

16. *Jai Shankar Prasad v. State of Bihar*,, (1993) 2 SCC 597 : AIR 1993 SC 1906.
17. *Ibid.*
18. *Union of India v. U.D. Dwivedi*, AIR 1997 SC 1313 : (1997) 3 SCC 182.
19. *Sher Singh, Member State of Haryana, P.S.C.*, AIR 1997 SC 906 : (1997) 3 SCC 216.
20. VIII *CAD*, 259-60; IX *CAD*, 574.

necessary that they ought not to be able to look up to the Executive for any favour.

The Supreme Court has ruled that when a member of a Commission is appointed as its Chairman, he shall hold the new office for six years, or until the age of superannuation, whichever is earlier.[21]

The expenses of the Union Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members of the staff of the Commission, are charged on the Consolidated Fund of India [Art. 322].[22] This provision frees the Commission from parliamentary pressure.

The President may by regulations make provisions with respect to the number of the staff of the Commission and their conditions of service [Art. 318].

It is clear from the above provisions that every precaution has been taken by the framers of the Constitution to ensure independence of the members of the Commission and to immunize the Commission from political pressures. The expenses of the Commission have been charged on the Consolidated Fund, and so the Commission has been rendered free from Parliamentary pressure. Provisions immunizing the Commission from the Executive influence are: restriction on varying the conditions of service to the disadvantage of a member after his appointment; fixed tenure of the members; removal of the members only after a verdict of the Supreme Court; and restrictions on their re-employment after retirement from the commission.

(d) FUNCTIONS OF THE COMMISSION

It is the duty of the Union Public Service Commission to conduct examinations for appointment to the services of the Union [Art. 320(1)]. This does not mean that the examination should always be competitive and not selective. The object of holding the examination is to test the capacity of the candidates and just to have an idea whether a particular candidate is fit for the proposed appointment or not. In addition to the results of the examination, other considerations may also be kept in view in making appointments, *e.g.*, the *viva voce* test.[23]

PSCs must scrupulously follow the statutory rules during recruitment and in making appointment.[24]

The Commission, if requested for the purpose by two or more States, has to assist those States in framing and operating schemes for joint recruitment for any services for which candidates possessing special qualifications are required [Art. 320(2)].

Under Art. 320(3), the Commission has many advisory functions to discharge. It is to be consulted on—

(*i*) All matters relating to methods of recruitment to civil services and for civil posts [Art. 320(2)(a)].[25]

---

21. *State of Mysore v. R.V. Bidap*, AIR 1973 SC 2555 : (1974) 3 SCC 337.
22. *Supra*, Ch. II, Sec. J(ii)(h).
23. *Kesava v. State of Mysore*, AIR 1956 Mys 20.
On *viva voce* test see, *supra*, Chs. XXI and XXIII, Sec. B(b).
24. *Inder Parkash Gupta v. State of J&K*, (2004) 6 SCC 786 : AIR 2004 SC 2523.
25. See Art. 146(1), Proviso, regarding appointment of officers and servants of the Supreme Court, *supra*.

The provision is directory and not mandatory and any appointment by the Government without consulting the Commission would not be invalid.[26]

(*ii*) The principles to be followed in making appointments to civil services and posts, in making promotions and transfers from one service to another, and on the suitability of candidates for such appointments, promotions or transfers [Art. 320(3)(b)].[27]

(*iii*) All disciplinary matters affecting a person serving under the Government in a civil capacity, including memorials or petitions relating to such matters [Art. 320(3)(c)]. This provision has been discussed below.

(*iv*) Any claim by or in respect of a person in government service in a civil capacity, that any costs incurred by him in defending proceedings instituted against him in respect of acts done or purported to be done in execution of his duty should be paid out of the Consolidated Fund of India [Art. 320(3)(d)].

(*v*) Any claim for the award of a pension in respect of injuries sustained by a person while in a government service, in a civil capacity, and any question as to the amount of any such award [Art. 320(3)(e)].

It is the duty of the Commission to advise the President on any matter referred to it by him. However, the President is empowered to frame regulations specifying the matters in which either generally, or in any particular class of cases or circumstances, it is not necessary to consult the Commission [Proviso to Art. 320(3)]. Such regulations are to be laid before each House of Parliament for not less than 14 days as soon as possible after they have been made. The regulations are subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament may make during the session in which they are so laid [Art. 320(5)].

The Commission need not be consulted in the following cases:

1. While making reservations of appointments or posts in favour of any backward class of citizens which, in the opinion of the Government, is not adequately represented. Such a power has been conferred on the Government under Art. 16(4) [Art. 320(4)].[28]

2. While taking into consideration, under Art. 335, the claims of the Scheduled Castes or Scheduled Tribes in making appointments to the Central Services [Art. 320(4)].

3. Under proviso to Art. 320(3), the President as respects the all-India services and other services or posts for the Centre, may make regulations specifying the matters in which either generally, or in any particular cases, it will not be necessary to consult the Public Service

---

26. On the analogy of Art. 320(3)(c), see below; *Dambarudhar v. State of Orissa*, AIR 1960 Ori 62; *H.S. Bedi v. Patiala*, AIR 1953 Pepsu 196.

27. See, *B.N. Nagarajan v. State of Mysore*, AIR 1966 SC 1943 : (1966) 3 SCR 682; *Md. Israils v. State of West Bengal*, AIR 2002 SC 511 : (2002) 2 SCC 306.

28. *Supra*, Ch. XXIII, Sec. E.

Commission. Similarly, the Governor can do in relation to the State Services.

Parliament may by law confer additional functions on the Commission regarding services of the Union, public institution, or a corporation created by law [Art. 321]. It has been held that besides the functions conferred on the Commission by the Constitution, other functions can be conferred on the Commission only by way of legislation and not by way of a departmental arrangement between Government and the Commission.[29]

Every year, the Commission presents to the President a report of the work done by it. The report, together with the Government's memorandum explaining the cases where the Commission's advice was not accepted, and the reasons for such non-acceptance, is to be laid before each House of Parliament. This constitutes a safeguard against arbitrary action on the part of the Executive in rejecting the Commission's advice [Art. 323(1)].

The Mysore High Court has held that since the Commission is an advisory or a consultative body to the Government, and also because under Art. 323 the Government has to explain the reasons for non-acceptance of the Commission's advice, it is not open to the Commission to withhold any information wanted by the Government.[30]

An important function of the Commission is that of giving advice in matters of discipline affecting a civil servant. The relevant provision is Art. 320(3)(c) according to which the Commission 'shall' be consulted on all disciplinary matters affecting a person serving under the Government of India in a civil capacity.

Consultation with the Commission on disciplinary matters affecting the civil servants has been provided for in order, first, to assure the Services that a wholly independent body, not directly concerned with the making of orders adversely affecting public servants, has considered with an open mind, the action proposed to be taken against a particular public servant; and, secondly, to make available to the Government an unbiased advice and opinion on matters vitally affecting the morale of the public services.

The phrase "all disciplinary matters affecting a person" in Art. 320(3)(c) is sufficiently comprehensive to include any kind of disciplinary action proposed to be taken in respect of a particular person.[31] The advice of the Commission is not however binding on the Government. But even so, the Government should consult the Commission, when it proposes to take any disciplinary action against a public servant, not as a mere formality, but with a view to getting proper assistance in assessing the guilt or otherwise of the person proceeded against and the suitability and adequacy of the penalty proposed to be imposed. Once Government takes action against a servant in consultation with the Commission, it is not necessary to consult it again when the servant files a review petition with the higher authorities.[32]

---

29. *Mira Chatterji v. Public Service Comm.*, AIR 1958 Cal. 345.
30. *Kesava v. State of Mysore*, AIR 1956 Mys. 20.
31. *Pradyat Kumar v. Chief Justice, Calcutta High Court*, AIR 1956 SC 285 : 1955 (2) SCR 1331.
32. *Joseph John v. Travancore-Cochin*, AIR 1955 SC 160 : 1955 (1) SCR 1011.

The Supreme Court has held in *State of Uttar Pradesh v. Manbodhan Lal Srivastava*[33] that Art. 320(3)(c) is not mandatory. In that case, the Government of U.P. had reduced an officer in rank. The officer alleged that there was irregularity in the consultation of the State Commission by the Government. The Supreme Court was, therefore, called upon to decide whether irregularity in, though not complete absence of, consultation with the State Public Service Commission could enable the officer concerned to challenge the order passed by the Government. The procedure adopted in the case fulfilled the requirements of Art. 311.

The Supreme Court held that Art. 320(3)(c) does not confer any rights on a public servant so that the absence of, or any irregularity in, consultation would not afford him a cause of action in a Court of law. The main reasons for this view are:

(1) The opinion of the Commission has not been made binding on the Government. In the absense of such a binding character, it is difficult to see how non-compliance with this provision could have the effect of nullifying the final order passed by the Government. If the opinion of the Commission were binding on the government, it could have been argued with some force that non-compliance with the rule for consultation would have been fatal to the validity of the order proposed to be passed against a public servant.

(2) The Constitution does not provide for the contingency as to what is to happen in the event of non-compliance with this provision. It does not either expressly or impliedly provide that non-compliance will invalidate to the final order of the Government.

(3) The proviso to Article 320 itself indicates that in certain cases or classes of cases, the Commission need not be consulted. The President may make regulations to take away the protection of Art. 320(3)(c) in certain cases or classes of cases.

Though *Manbodhan* referred to the State Commission yet the same principle would apply to the Union Commission as well because Art. 320(3)(c) is common to both. The *Manbodhan* ruling has been reiterated by the Supreme Court in several cases.[34]

The efficacy of Art. 320(3)(c) has been very much diluted by the Supreme Court's decision in *Manbodhan*. There have been cases where action has been taken by the Government against its servants without consulting the Commission, and the Courts have had occasion to pass strictures against such a practice of ignoring Art. 320(3)(c) and not consulting the Commission. This has happened mostly at the State level.[35]

Not only Art. 320(3)(c), but the whole of Art. 320(3) has been held to be directory and not mandatory.[36] The recommendations made by the Commission are only advisory and it is for the Government to accept them or not. The only safe-

---

33. AIR 1957 SC 912 : 1958 SCR 533.

34. See, *U.R. Bhatt v. Union of India,* AIR 1962 SC 1344 : 1962 (1) LLJ 656; *Ram Gopal v. State of Madhya Pradesh,* AIR 1970 SC 158 : (1969) 2 SCC 240.

35. See, for example, *Durga v. State of Punjab,* AIR 1957 Punj 97.

36. *A.N. D'Silva v. Union of India,* AIR 1962 SC 1130 : 1962 Supp (1) SCR 968; *State of Haryana v. Subash Chander Marwaha,* (1974) 2 SCC 220 : AIR 1973 SC 2216; *Jatinder Kumar v. State of Punjab,* (1985) 1 SCC 122 : AIR 1984 SC 1850.

guard is Art. 323 which makes the Government answerable to the legislature for departing from the Commission's recommendation.

The ruling in *Manbodhan* needs to be contrasted with the ruling in *Dinakar*.[37] A rule (Rule 4A) made by the Maharashtra Government said that the Government "may, in consultation with the Maharashtra Public Service Commission" (MPSC) make appointments in relaxation of the percentage fixed for promotees and directly appointed persons. The Supreme Court was called upon to consider the question whether under this rule consultation with the Commission was "directory" or "mandatory". The Court ruled that the word "may" in the rule ought to mean "shall" making consultation mandatory.

The Court made no reference to *Manbodhan.* Rejecting the argument that "may" used in the Rule is "directory", the Court observed that "….to give such a meaning would render the very object of consultation with MPSC wherever necessary nugatory. It would give unbridled power to the Government to dispense with the consultation with MPSC which may result into arbitrary exercise of powers by the authority." "This could never be the object of Rule 4-A. In our considered view, the word 'may' must mean "shall"…."[38]

There seems to be no reason as to why the logic of *Dinakar* ought not to be applied to the interpretation of Art. 320(3)(c). In view of *Dinakar*, the *Manbodhan* ruling calls for reconsideration by the Supreme Court.

(e) STAFF OF THE SUPREME COURT

The members of the staff of the Supreme Court do not fall within the purview of Art. 320(3)(*c*). Though they are the persons appointed to the public services and posts in connection with the affairs of the Union (as their salaries are paid out of the Consolidated Fund of India), yet they are not persons serving 'under the Government of India in a civil capacity' which phrase has reference to such persons in respect of whom the administrative control is vested in the Central Government functioning in the name of the President.

The administrative control in respect of the staff of the Supreme Court is vested in the Chief Justice who has the power to appoint, remove, and make rules for their conditions of service.[39] While the constitutional safeguards under Art. 311 are available to every person in the civil service including persons employed in the Supreme Court, the safeguard in Art. 320(3)(*c*) is not available to the staff of the Supreme Court, otherwise it would be contrary to the implications of Art. 146.[40]

(ii) STATE PUBLIC SERVICE COMMISSION

(a) COMPOSITION

The Constitution establishes a Public Service Commission in each State [Art. 315(1)]. It is possible for two or more States to have a Joint Public Service Commission [Art. 315(2)].

---

37. *Dinakar Anna Patil v. State of Maharashtra*, (1999) 1 SCC 354 : 1999 SCC (L&S) 216.
38. *Ibid* 365. Also, *Keshav Chandra Joshi v. Union of India*, (1992) Supp (1) SCC 272 : AIR 1991 SC 284.
39. *Pradyat Kumar v. Chief Justice*, AIR 1956 SC 285 : 1955 (2) SCR 1331.
40. *Supra*, Ch. IV, Sec. I.

The basic policy of the Constitution is that each State should have its own Public Service Commission, but if for administrative or financial reasons it is not possible for each State to have a Commission of its own, two or more States may have a Joint Public Service Commission.

A Joint Commission for several States may be established by Parliament by law if a resolution to that effect is passed by each State Legislature concerned [Art. 315(2) & (3)]. Even the Union Public Service Commission, if requested by a State Governor to do so, may, with the approval of the President, agree to serve all or any of the needs of a State [Art. 315(4)].

The composition of the State Commissions is governed by the same constitutional provisions as apply to the Union Commission. Thus, a State Commission consists of a Chairman and several members who are appointed by the Governor [Art. 316(1)]. In case of a Joint Commission, the President makes these appointments [Art. 316(1)]. Like the U.P.S.C., as nearly as may be, one half of the members of a State Commission should be persons who have held a government office for at least ten years at the date of their appointment to the Commission [Proviso to Art. 316(1)].[41]

The Governor of the State (the President in case of a Joint Commission) may by regulations determine the number of members of the Commission and their conditions of service [Art. 318]. The conditions of service of a member cannot be varied to his disadvantage after his appointment [Proviso to Art. 318].

All provisions regarding the tenure of a member of the Union Commission apply *mutatis mutandis* to a member of a State Commission except with the following differences:

(1) The age of retirement of a member of a State Commission is 62 years instead of 65 years as in the case of a member of the U.P.S.C.

(2) To resign, a member of a State Commission writes to the Governor and a member of a Joint Commission to the President [Arts. 316 and 317].

The expenses of the State Commission are charged on the Consolidated Fund of the State [Art. 322].[42] The Governor makes provisions with respect to the number of the Commission's staff and their conditions of service.

Under Art. 317(1), the President makes a reference to the Supreme Court the question of misbehavior committed by the Chairman or a member of the State Public Service Commission for inquiry and report. If the Court reports that he should be removed from office on any such ground, then the President shall remove him.[43]

An interesting point concerning the State Public Service Commissions may be noted. While appointment of the Chairman or members of the State Commission is made by the State Governor (Art. 316(1)), the power to remove any of these

---

41. *Supra*, Sec. K(i)(a).
42. *Supra*, Ch. VI.
43. For discussion on Art. 317(1), see, *supra*, 1753.

persons on the ground of misconduct vests in the President, and not the Governor. It is the President who makes a reference to the Supreme Court under Art. 317(1).

Under Art. 317(2) the governor has power to suspend a member/chairman of the State Public Service Commission in respect of whom a reference has been made to the Supreme Court under Art. 317(1).[44]

In *Sayalee Sanjeev Joshi*[45] the Court has propounded the approach to its exercise of jurisdiction on a reference. Its task is to find out as a fact whether materials disclosed conduct on the part of a member which, would constitute 'misbehaviour' within Art. 317 (1) of the Constitution. It has to consider admissibility and relevance of evidence adduced and cannot proceed on the basis of suspicion instead of proof.

A person holding office as a member of a State Commission is not to be reappointed on expiry of his term [Art. 316(3)]. The Chairman of a State Commission can be appointed as the Chairman or member of the Union Public Service Commission, or as the Chairman of any other State Commission, but not to any post under the Central or the State Government [Art. 319(b)]. A member, other than the Chairman, of a State Commission is eligible for appointment as the Chairman or member of the Union Public Service Commission, or as the Chairman of that State Commission, or of any other State Commission, but is not eligible for any other employment either under the Central or the State Government [Art. 319(d)].

It has been ruled by the Supreme Court in *Hargovind Pant v. Raghukual Tilak*,[46] that a member of a State Public Service Commission can be appointed as the Governor of a State. The main reason for this ruling being that the office of the Governor, is a high constitutional office and cannot be said to be under the Government of India.

(b) FUNCTIONS OF THE STATE COMMISSION

A State Public Service Commission discharges all those functions in respect of the State Services as does the Union Commission in relation to the Union Services. Therefore, the discussion under this heading for the U.P.S.C. holds good *mutatis mutandis* for a State Commission as well with this difference, however, that instead of the 'Union', 'President', and 'Parliament' the 'State', 'Governor' and the 'State Legislature' may be substituted [Art. 320].

The protection of Art. 320(3)(*c*) does not apply to the staff of the High Court and, therefore, the Chief Justice need not consult the State Public Service Commission when he dismisses a High Court employee.[47]

In case of subordinate judges, the Governor is to act on the recommendation of the High Court and need not consult the Public Service Commission for removal

---

44. *Ram Ashray Yadav v. State of Bihar,* AIR 1998 Pat. 125
45. (2007) 11 SCC 547 : AIR 2007 SC 2924.
46. AIR 1979 SC 1109.
Also see, *su*pra, Ch. VII, Sec. A(I)(b).
47. *Pradyat Kumar v. C.J. of Calcutta H.C.,* AIR 1956 SC 285 : 1955 (2) SCR 1331; *supra*, 709.

of any such officer.[48] "There is no room for any outside body between the Governor and the High Court." In the instant case, the order of the Governor passed on the advice of the Commission (contrary to the advice of the High Court) was held to be constitutionally invalid and was thus quashed.[49]

The State Legislature may impose additional functions on the State Commission regarding the State Services, local authority, public institutions or any other corporate authority constituted by law [Art. 321].

The State Commission is to be consulted by the Governor while framing rules for appointment to judicial service other than the posts of District Judges [Art. 234].

The State Commission is to present to the Governor an annual report of the work done by it. The report and the Governor's memorandum explaining as respects the cases where the Commission's advice was not accepted and the reasons for such non-acceptance, are to be laid before the State Legislature [Art. 323(2)]. A Joint Commission presents a similar report to each of the concerned State Governors and each Governor then takes the action as detailed above [Art. 323(2)].

In *Hariharan*[50] a statutory provision requiring the Electricity Board to consult the State Public Service Commission in the matter of appointment of assistant engineers has been held to be mandatory.

The Supreme Court has ruled that a member of the Commission could not question the validity or correctness of the functions performed or duties discharged by the Public Service Commission as a body. A member is regarded as a party to the function discharged or duty performed by the Commission, even though the member concerned might have been a dissenting member, or a member in a minority, or a member who abstained from participation in the function performed or duty discharged.[51]

From time to time, the Supreme Court has cautioned the State Public Service Commissions to work as independent institutions without being pressurized by any one. For example, the Court has observed in *State of Uttar Pradesh v. Rafiquddin*:[52]

> "The Public Service Commission is a constitutional and independent authority. It plays a pivotal role in the selection and appointment of persons to public services. It secures efficiency in the public administration by selecting suitable and efficient persons for appointment to the services. The Commission has to perform its functions, and duties in an independent and objective manner unin-

---

48. *State of Haryana v. Inder Prakash*, AIR 1976 SC 1841 : (1976) 2 SCC 977; *Baldev Raj v. Punjab & Haryana High Court*, AIR 1976 SC 2490 : (1976) 4 SCC 201.

49. *Supra*, Ch. VIII, Sec. G.

50. *R. Hariharan v. K. Balachandran Nair*, AIR 2000 SC 2933 : (2000) 7 SCC 399.
Also see, *State of Jammu & Kashmir v. Mrs. Raj Dulari Razdan*, AIR 1979 SC 586 : (1979) 1 SCC 461.

51. *Bihar Public Service Commission v. S.J. Thakur*, AIR 1994 SC 2466 : 1994 Supp (3) SCC 220.

52. AIR 1988 SC 162, 177 : 1987 Supp SCC 401.

> fluenced by the dictates of any other authority. It is not subservient to the directions of the Government unless such directions were permissible by law…."

The Public Service Commission is expected to be fair and impartial and to function free from any influence from any quarter. Unfortunately, these bodies have not always maintained these high standards in some of the States. This comes out clearly from the number of cases referred to the Supreme Court under art. 317(1).[53] All these cases refer to the State Public Service Commissions.

The Supreme Court has suggested that the Public Service Commissions must be made more functional, their efficacy be streamlined by appointing thereto people of eminence, experience and competence with undoubted integrity; recruit the candidates for posts in accordance with the rules and backdoor entry by nepotism be put an end to. The Court has also advised that the power under the proviso to Art. 320(3) be used sparingly. Free play of exercise of the power under the proviso to Art. 320(3) would undermine the efficacy of constitutional institutions, *viz.*, the Public Service Commissions.[54]

53. *Supra*, Sec. K(i)(b).
54. *V. Sreenivasa Reddy v. Govt. of A.P.*, AIR 1995 SC 586 : 1995 Supp (1) SCC 572.