



## Doctrine of Pleasure (Article 310 and 311)

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### ABSTRACT

The study contains the concept of provisions of Doctrine of pleasure Article 310 and 311 of Indian Constitution. Researcher has described with context to rule of England. Article 310 states that member of the Defence Services or the Civil Servants of the Union or of All-India Services hold office during the pleasure of the President and member of the State Services hold office during the pleasure of the Governor. But the rule is qualified with word “except or “expressly provided by the constitution”. Article 311 provides some restrictions to the doctrine of pleasure. Researcher has also mentioned some relevant cases regarding doctrine of pleasure. Article 311 also gives safeguard to civil servants for protecting their rights so that nobody can do injustice with them. The ‘Pleasure Doctrine’ is a principle of the common law, the origins of which may be tracked back to the development of the concept in the United Kingdom. Similar provisions have been included in the Constitution of India to protect the interest of civil servants along with the protection of national security and public interest. The power to dismiss a Government servant at pleasure is subject to only those exceptions which are specified in the Constitution itself. It must be ensured that civil servants can’t make mockery of law if they are guilty and it is precisely for that reason, that the continued use of Doctrine of Pleasure is required in India. The study has used secondary data from research papers, monographs, theses, popular articles, and newspapers. Doctrine of pleasure does not allowed anybody to make scoff of the law if civil servant is guilty then he will be punished for the same.

**Keywords:** Constitutional Provisions, Recommendations, Disciplinary Action, Safeguards,

*Enquiry Proceedings, Reasonable Opportunity, subordinate authority, Termination.*

### 1. INTRODUCTION

The doctrine of pleasure owns its origin to common law. Public servants have got some special relationship with their employer that is to say to the Government which is in some aspects different from the relationship under the ordinary law, between the master and servant. Here upon, it will be appropriate to describe briefly the basic provisions of the Constitution pertaining to services. The Chief Vigilance Officers and officers handling vigilance cases will need to bear them in mind while processing disciplinary cases against Government servants. The member of Defence services or civil services of the union or All-India services hold their office during the pleasure of president and the member of state services holds the office during the pleasure of governor.

Civil Servants are considered as the back bone of the administration. In order to sustain the progress of the country it is essential to strengthen the administration by protecting civil servants from political and personal influence. Therefore, provisions have been made in the Constitution of India to protect the interest of civil servants along with the protection of national security and public interest. The provisions related to services under Union and State is contained under part XIV of the Indian Constitution.

### Rule in England

In England, the rule is that a civil servant of the crown holds his office during the pleasure of the crown which means that his service can be terminated at any time by the crown without mentioning any reason. Even if there is a contract of employment between the

crown and servant then also crown is not bound by it. And if civil servant is dismissed from his service he cannot claim remaining salary or any damage for premature termination of his service. The doctrine of pleasure is based on the public policy.

The origin of this rule in Latin phrase is “Durate bene placito” which means “serving at the pleasure of the authority or officer who appointed”.

### Rule In India

Article 310 of Indian Constitution includes the common law of doctrine of pleasure which provides that people who are member of the Defence Services or the Civil Servants of the Union or of All-India Services hold office during the pleasure of the President and member of the State Services hold office during the pleasure of the Governor. But it contradicts the English law where civil servants cannot claim arrears of salary. According to Indian Constitution civil servants could always sue Crown for outstanding salary. The rule is qualified with the words “except” or “expressly provided by the Constitution.” Here by Article 310 is limited by Article 311 (2) and it places some restrictions and limitations on the exercise of the pleasure under Article 310.

### Article 309

**Article 309 of the Constitution reads as follows: –**

“Recruitment and conditions of service of persons serving the Union or a State Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State;”

The above Article gives power to the Parliament to make laws for regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union. It also provides authorities to the President to make rules for the above purposes until any provision in that behalf is made by or under an Act of Parliament.

### Article 310-

The person who is member of the Defence Services or the Civil Servants of the Union or of All-India Services hold office during the pleasure of the

President and member of the State Services hold office during the pleasure of the Governor.

### Clause (1): Office during the pleasure of the state

Clause (1) of Article 310 corresponds to the English rule that all service, civil, or military, under the Crown is held at the pleasure of the Crown, so that the public servant may be dismissed from the office at will<sup>1</sup>, without any cause assigned<sup>2</sup>.

### Clause (2): Civil post held during the pleasure of President or Governor

Clause (2) of Article 310 states that though all service under the Government is terminable at any time, this clause provides for payment of compensation where service is held under a special contract which provides for payment of compensation and the service is terminated before the expiry of the contractual period.

This clause is, though, not applicable in the following cases:

- In the case of members of the Defence Services.
- In the case of members of All India Services.
- In the case of members of a civil service of the Union or of a State.

The scope of this clause is very narrow and is limited to those cases where the post does not belong to any of the regular services and the Government is obliged to enter into a special contract for securing the services of a person having special qualifications. The compensation is payable only for premature termination of contractual service. This clause enables the President or Governor to enter into a contract with specially qualified persons providing for payment of compensation where no compensation is payable under the doctrine “service at the pleasure of the State”.

### 2. Restrictions on the doctrine of Pleasure

The Constitution of India stated some following restrictions on the regulation of the Doctrine of pleasure in Article 311:

Article 311(1) states that pleasure of the President or governor is controlled by given provisions that is the field covered by this article is excluded from the operation of the doctrine of pleasure. The pleasure

<sup>1</sup>Union of India v. Tulsiram Patel, AIR 1985 SC 1416

<sup>2</sup> R. Venkata Rao v. Secretary of State, AIR 1937 PC 31

must be exercised in accordance with the procedural safeguards provided by Article 311.

Article 311(2) states that the tenure of the Supreme Court judges [Article 124], High Court judges [Article 218], Auditor General of the India [Article 148 (2)], The Chief Election Commissioner (Article 324), and the Chairman and members of the Public Service Commission (Article 317) are not dependent on the pleasure of the President or the Governor, as the case may be. These posts are expressly excluded from the operation of the doctrine of pleasure.

No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

It is provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply –

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

Article 311(3) states that doctrine of pleasure is subject to the fundamental rights. It is mentioned that the pleasure of the President or Governor is compiled by provisions of Article 311, so the field covered by Article 311 is excluded from the operation of the doctrine of pleasure. The pleasure must be exercised according to the procedural safeguards provided by Article 311.

### Application of the Article 311

The most noticeable point in Article 311, is that Article 311 is available only when ‘dismissal, removal, reduction in rank is by way of punishment.’ thus it is difficult to determine as to when an order of termination of service or reduction in rank amounts to punishment. It is given in case of *Parshottam Lal Dhingra v. Union of India*. The Supreme Court has laid down two tests to determine when termination is by way of punishment –

- Whether the servant had a right to hold the post or the rank?
- Whether he has been visited with evil consequences?

If a government servant had a right to hold the post or rank under the terms of any contract of service, or under any rule, governing the service, then the termination of his service or reduction in rank amounts to a punishment and he will be entitled to protection under Article 311. Articles 310 and 311 apply to Government servants, whether permanent, temporary, officiating or on probation.

The procedure laid down in Article 311 is intended to assure, first, a measure of tenure to government servants, who are covered by the Article and secondly to provide certain safeguards against arbitrary dismissal or removal of a government servant or reduction to a lower rank. These provisions are enforceable in a court of law. Where there is an infringement of Article 311, the orders passed by the disciplinary authority are void ab-initio and in the eye of law “no more than a piece of waste paper” and the government servant will be deemed to have continued in service or in the case of reduction in rank, in his previous post throughout. Article 311 is of the nature of a provision to Article 310. The exercise of pleasure by the President under Article 310 is thus controlled and regulated by the provisions of Article 311.

### Exceptions to Article 311

#### 1. Removal by Subordinate Authority:

Removal of any person from his post by subordinate authority does not mean that the dismissal or removal must be by the same authority who made the appointment or by his direct superior. It is enough if the removing authority is of the same or co-ordinate rank as the appointing authority. In case *Mahesh v. State of U P.*, the person appointed by the Divisional Personnel Officer, E.I.R. was dismissed by the

Superintendent, Power, and E.I.R. The Court held the dismissal valid as both the officers were of the same rank.

## 2. Reasonable Opportunity of Being Heard:

In an important judgment in *Managing Director, ECIL v. B. Karunakar*, the Supreme Court has held that when the enquiry officer is not disciplinary authority, the doomed employee has a right to receive the copy of the enquiry officer's report so that he could effectively defend himself before the disciplinary authority. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice. It is difficult to say in advance to what extent the said findings would influence the disciplinary authority while drawing its conclusions. The Court affirmed its rulings in *Union of India v. Mohd. Ramzan*, but held that it will apply only prospectively.

In case of *Khem Chand v. Union of India*, the Supreme Court was held that the 'reasonable opportunity' means:-

1. An opportunity to deny his guilt and establish his innocence, which he can do only if he is told what the charges levelled against him are and the allegations on which such charges are based.
2. An opportunity to defend himself by cross-examining the witness produced against him and by examining himself in support of his defiance.
3. An opportunity to make his representation as to why the proposed punishment should not be inflicted on him.

## Exclusion of Opportunity to Be Heard:

Article 311(2) provides that reasonable opportunity of being heard is not applicable in the following cases:

1. where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
2. where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
3. Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

An employee who is convicted on criminal charges need not be given an opportunity to be heard, before his dismissal from service. However in *Divisional Personal Officer, Southern Railway v. T. R. Chellappan*, the Supreme Court held that the imposition of the penalty of dismissal, removal or reduction in rank without holding an inquiry was unconstitutional and illegal. The objective consideration is only possible when the delinquent employee is being heard. But in *Union of India v. Tulshiram Patel* the Court held that the dismissal, removal or reduction in rank of a person convicted on criminal charges is in public interest, and therefore not violative of Article 311 (2) of the Constitution. The Court thus overruled its earlier decision in *Chellappan* case.

## Constitutional safeguards to civil servants:

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

1. No person holding a civil post under the Union or the State shall be dismissed or removed by authority subordinate to that by which he was appointed.
2. No such person shall be "dismissed", "removed" or "reduced" in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

## Termination of Service When Amounts To Punishment

The protection given under Article 311 is available only when the dismissal, removal or reduction in rank is by way of punishment. In *Parshottam Lal Dhingra v. Union of India*, the Supreme Court has laid down two tests to determine whether termination is by way of punishment-

1. Whether the servant had a right to hold the post or the rank (under the terms of contract or under any rule)
2. Whether he has been visited with evil consequences. If yes, it amounts to punishment.

## Contradiction of Article 310 and 311 to Article 20(2) of Indian Constitution or to the Principle of National Justice

Article 20(2) of our Indian Constitution says that "no person shall be prosecuted and punished for the same offence more than once".



When a government servant is punished for the same misconduct under the Army Act and also under Central Civil Services (Classification and Control and Appeal) Rule 1965 then the question arises that **can it be brought the ambit of double jeopardy?** The answer was given by the Honorable Supreme Court in the case of UOI v. Sunil Kumar Sarkar, in which it was held that the court martial proceedings is different from that of central rules, the former deals with the personal aspect of misconduct and latter deals with disciplinary aspect of misconduct.

Ordinarily, natural justice does not postulate a right to be presented or assisted by a lawyer, in departmental inquiries but in extreme or particular situation the rules of natural justice or fairness may require that the person should be given professional help.

A five Judge Constitution Bench comprising the C. J.: M. N. Venkatachaliah and B. B. Sawant, K. Ramaswamy, S. Mohan and B. P. Jeevan Reddy, JJ., held in a case that since the denial of the report of the enquiry officer First Schedule reasonable opportunity to the employee to prove his innocence and a breach of principles of natural justice, it follows that the statutory rules if any, which deny the report to the employee, are against the principles of natural justice and, therefore, invalid. The delinquent employee will therefore be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. The reason why the enquiry officer's report is considered an essential part of the reasonable opportunity at the first and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions.

The mandate of 'reasonable opportunity of being heard' in departmental inquiry encompasses the Principles of Natural Justice which is a wider and elastic concept to accommodate a number of norms on fair hearing. Violation of Principles of Natural Justice

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

### Conclusion

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

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

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