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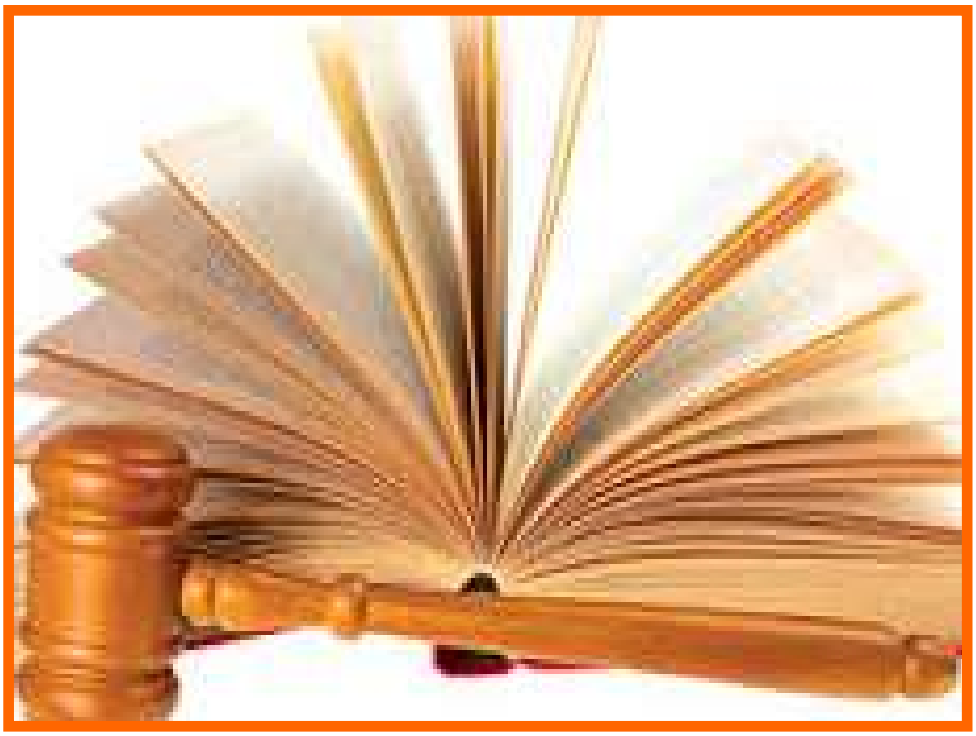
LEGISLATIVE PROVISIONS REGARDING CIVIL SERVANTS AFTER INDEPENDENCE AND THEIR RELATIONSHIP WITH DOCTRINE OF PLEASURE



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Abstract :

The' Doctrine of pleasure which was incorporated in Government of India Act, 1935, was not added to the services provisions in Draft Constitution. Only the safeguards against the dismissal as aforesaid were incorporated. A member of the constituent Assembly has pointed out that without an efficient Civil Service, it will be impossible for the government to carry on and the continuity of policy to be kept. Another member has also pointed out that with the independence of our country, the responsibilities of the services have become onerous. The final stage regarding service conditions of civil servants in India was reached in January 1950 after the commencement of the Republican Constitution of India incorporating part XIV with the heading" Services Under the Union and the States. Under the present Constitution of India, the subsection (1) of section 240 of the 1935 Act is substantially reproduced in Article 310 (1), and subsection (2) and (3) of section 240 incorporated in Article 311 (1) and (2), while section 276 of the 1935 Act, which continued the existing rules in force in embodied in Article 313.

Keywords: Doctrine of Pleasure, Civil servents, Article 310, Article 311

INTRODUCTION:

Act of 1947 provided basic safeguards for the services under the state, some of which were taken from Act of1935 Supreme Court of India in *State of Madras v. K.M. Rajgopalan,*[1] held that there was an automatic termination of service of the members of the Indian Civil Service on the transfer of powers by the British crown to the dominion of India.

Third draft Constitution included the service chapter for the first time. Doctrine of pleasure was later incorporated on the suggestions of home ministry and the defence ministry under Article 282-A. This was for the first time when the doctrine appeared in the Third draft Constitution. The same pleasure of doctrine has been enshrined in the Indian Constitution. The Articles are renumbered and the chapter on the services is dealt under Article 308 to 314. Article 310 contains doctrine of pleasure and the safeguards on this doctrine are provided in Article 311.

UNDER THE DRAFT CONSTITUTION

The first Draft Constitution2 contained the service provisions in its 10th part. In these service provisions the doctrine of pleasure was absent. In the All-India Civil Service, President was authorized to create such posts. Their respective governors did by the President and to the provincial Civil Services, appointment to the federal civil posts. But the conditions for their regulation were to be provided by the legislative Acts. So they were i.e. the President and the Governor, were under the control of this legislative power. A second draft was an improvement on the 1st draft but in the service provision there was no improvement at all. The service provisions were kept under part -XII of the Draft Constitution.3 Only three Articles were incorporated in the services part of the Draft. of the servants. Under this draft, civil servants were protected from the arbitrary dismissal or reduction in rank. Such penalties were not possible until they were given a reasonable opportunity of showing cause, against the action proposed to be taken.

The' Doctrine of pleasure which was incorporated in Government of India Act, 1935, was not added to the services provisions in third Draft. Only the safeguards against the dismissal as aforesaid were incorporated. This draft was criticized by the ministry of home affairs and by the judges of the federal court and Chief Justices of the various High Courts. Then Deputy Prime Minister Vallabhbhai Patel wrote a letter on October 15, 1948 to the constituent Assembly on behalf of the ministry of home affairs. It contained the various proposals regarding the services. The major amendment, it wanted was, to replace Indian Civil Service and Indian Police Service, with Indian Administrative Service and Indian Police Service.

At a subsequent stage the drafting committee prepared a draft containing a clause that civil servant should hold office," during the pleasure" of the president and covered under it not only the civil servant but every person who is a member of defence service or of a Civil Service of Union or of an All¬ India Service or holds any post connected with defence or any civil post under the Union. So, the' Doctrine of Pleasure which had lost its existence in the first two drafts again showed its appearance. On this pleasure matter the view of the defence ministry was also taken. Article 282-AA only the civil servants were kept and defence servants were excluded.

Basis for Incorporation of Doctrine of Pleasure

To dismiss the servant at pleasure has remained the practice of the various monarchs since as long as the society originated. A member of the constituent Assembly has pointed out that without an efficient Civil Service, it will be impossible for the government to carry on and the continuity of policy to be kept. The importance of governmental administration has been in fact that there is continuity and unless there is continuity there is chaos. On the contentment of the Civil Services lies the safety of the country.4 Another member has also pointed out that with the independence of our country, the responsibilities of the services have become onerous. They make of mark of efficiency of the machinery of administration, machinery so vital for the peace and progress of the country. A country without an efficient Civil Service cannot make progress in spite of earnestness of the people at the helm of affairs in the country. Wherever democratic institutions exist, experience has shown that it is essential to protect the public service, as for as possible from political or personal influence and to give it that position of stability and security which is vital in its successful working as an impartial and efficient instrument by which government of whatever political complexion, may give effect to their policies .5

Framers of the Constitution, wanted to save the servants from the Acts of the legislatures, they wanted that safeguards should be provided in the Constitution itself. It was expressly provided by the wording of the Article 310 (1) that it will be having an over- riding effect on the Acts of the parliament which take away the right of President or the Governor to dismiss the servants at pleasure and such enactment's should be invalid. The incorporation of ' Doctrine of Pleasure' in the Constitution is for the benefit of the servants. To save the servants from the arbitrary dismissal by the executive, the founding fathers have incorporated the 'Doctrine of Pleasure' and its safeguards in the Constitution itself. Keeping this thing in the view, the framers of the Constitution have incorporated the' Doctrine of Pleasure' and its safeguards under the present Constitution.

POSITION OF CIVIL SERVICE UNDER THE CONSTITUTION OF INDIA

The final stage regarding service conditions of civil servants in India was reached in January 1950 after the commencement of the Republican Constitution of India incorporating part XIV with the heading" Services Under the Union and the States.6 Under the present Constitution of India, the subsection (1) of section 240 of the 1935 Act is substantially reproduced in Article 310 (1), and subsection (2) and (3) of section 240 incorporated in Article 311 (1) and (2), while section 276 of the 1935 Act, which continued the existing rules in force in embodied in Article 313.

As under section 96- B (1) of the 1919 Act and section 240 (1) of the 1935 Act, The persons specified their held office during the pleasure of crown, so under Article 310 (1) they hold their office during the pleasure of the president or of the governor, as the case may be. The opening words of section 96 - B (1) or section 240 (1) of the Acts 1919 and 1935 respectively, were reproduced in Article 310 (1), substituting the word' Constitution' for the work' Act'. Hence, Article 310 (1) clearly refers, interalia to Articles 124, 148, 218 and 324 of Constitution of India which respectively provide expressly that Supreme court judges, the Auditor-General, the High court judges and the chief election commissioner shall not be removed from their offices except by an order of the president passed after an address to each house of parliament supported by the requisite majority specified there in presented to him in the same session for such removal on the ground of proved misbehaviour or incapacity.7

Under Article 310, the government has power to punish any of its servants for misconduct committed.8 The Article 311 is designed to promote a sense of security in the civil servants. The proviso to Article 311 is not to exclude a government servant from exercising his right but to provide protection of principles of natural justice alike to other citizens. Article 311 give dual guarantee to a civil servant as, clause (1) of the Article 311 provides that no authority lower than the appointing authority can dismiss or remove civil servant at pleasure of President or Governor and clause (2) provides affording of reasonable opportunity being heard to the charged officer.

In an important judgement in *Managing Director, Ecil v. B. Karunkar 9* the Supreme Court held that when the enquiry officer is not disciplinary authority, the delinquent employee has a right to receive the copy of the enquiry officer's report so that he could effectively defend himself before the disciplinary authority. The suspension of a government servant from service is neither dismissal nor removal nor reduction in rank, therefore, if a government servant is suspended he cannot claim the Constitution guarantee of reasonable opportunity under Article 311 (2).

In India, though the Union and the State have their own Public Service, there is no clear-cut bifurcation in the administration of the Union and the State law as in the U.S.A. The State official and Minister the State laws as well as the Union laws applicable in the State, and the Union officials working with in a State, also implement State laws in so far as they may be applicable, whereas, in U.S.A. their Constitution provides separate terms and conditions for civil servants than those for State servants. The second peculiarity of the Indian federal system of administration is that though the Union and the State have civil servants of their own to manage their own household, yet certain services like All India Services are common to both to elaborate.

The Constitution of India mention two types of all India service viz. the Indian Administrative Service and the India Police Service under sub-clause (2) of Article 312 and give power to parliament to create any service in the nation interest under sub-clause (1) of the said Article common to Union and the States. The only distinction between All- India service and the Central Civil Services is that the term 'All India Services' is used in a technical sense just to indicate the services created Under Article 312 of the Constitution though the servants of both the services are liable to servancy anywhere in India. Besides the Central Civil Services and All-Indian Services; there is a Central Secretariat Service to which manages the affairs of the Central Government.

Provisions Relating to Civil Servants Under Indian Constitution

Article 308 to 323 deals with the services under the Union and the State. The Articles, which deals with the 'Doctrine of pleasure' empowers the Parliament to make laws to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union. It also authorizes the President to make rules for the above purposes until provision in that behalf is made by or under an Act of Parliament.

Parliament has not so far passed any law on the subject. Recruitment and the conditions of service of Central Government servants in general continue to be governed by rules made by the President under Article 309. The rules made under the Article which are relevant for the present purpose are:

i)The C.C.S. (Conduct) Rules, 1964.
ii)The C.C.S. (C.C.A) Rules, 1965.
iii)The Railway (D. &A.) Rules, 1968.
iv)The C.C.S. (T.S.) Rules, 1965.

In *K. Narayan v. State of Karnataka10* the court held that' Recruitment' is a comprehensive term and includes

any method provided for inducting a person in public service. In another case in *AB Krishna v. State of Karnataka 11* the court held that once the power has been exercised by the appropriate legislature, the executive is excluded from exercising its rule- making power. However, it may continue to have the rule- making power in areas, which have not been powered by legislation. The view was uphold in *State of Rajasthan v. Rajmal Mehta.12* In *union of India v. Tulshi Ram Patel 13* the supreme Court held that the opening words of Article 309" subject to provisions of this Constitution" make it clear that the conditions of service, whether laid down by the legislature or prescribed by the rules, must conform to the mandatory provisions of the Constitution as laid down, for example, in Article 310, 311 and 320, or in part III.7o The rules should also satisfy such conditions as equal pay for equal work under Article 39(d). The view was opined in *Bhagwan Das v. State of Haryana.14*

An important proposition laid down in *Union of India v. Tulsiram Patel 15* and approved in *Satyavir Singh v. Union of India 16* is that the Acts or rules made in pursuance of Article 309 are subject to the doctrine of pleasure laid down in Article 310 (1) and except to the extent the doctrine of pleasure has been restricted by the provisions of the Constitution, such as Article 311. No restriction can be placed on that doctrine by an Act or rules framed under Article 309. Thus the restriction on the doctrine of pleasure imposed by Article 311 (1) and (2) and relaxed by the second proviso to article 311 (2) can not be reintroduced by an Act or rules framed under Article 309. If they are so reintroduced they have to be treated only as directory and not mandatory so as to avoid their unconstitutionality.

In *State of Bihar v. Abdul Majid 17* the supreme court held that The rule of English law that a civil servant cannot maintain a suit against the State or against the Crown for the recovery of arrears of salary does not prevail in this country and the provisions of the statutory law in India have negative it. There are certain posts described in the Constitution the tenure of which has not been made dependent upon the head of the State. Thus, under the Constitution, the tenure of the judges of the High Court, (Art. 218) and Supreme Courts, (Art. 124), of the Comptroller and Auditor-General of India,(Art.198(2)], of the chief Election commissioner (Art. 324) , and the chairman and members of the public service commission (Art. 317), is not at the pleasure of the government.

In *State of UP* v. *A.N. Singh18* 18the court said that the distinction implied by the expression "a Civil Service of the Union" and "a Civil Post under the Union" is explained by the fact that all civilian employees of the Union are not in the established service. The Supreme Court, in *State of U.P. v. Babu Ram Upadhya 19,* observed that the power of the governor to dismiss at pleasure, subject to the provisions of Article 311, is not an executive power under Article 154, but a Constitutional power and is not capable of being delegated to officers subordinate to him. Later, in *Sardari Lal v. State of Punjab 20,*it also Stated that the executive functions of the nature entrusted by certain Articles in which the president has to be satisfied personally about the existence of certain facts or State of affairs cannot be delegated by him to anyone else in support of this view, the court relied on the observation in *Jayantilal Amritlal v. F .N. Rana 21,* that the powers of the President under Article 311 (2) cannot be delegated.

Thus, it now been clearly established that the pleasure of the president or the governor under Article 310(1) is exercised not in any personal capacity but as head of the Government acting on the aid and advice of the Council of Ministers.

Constitutional safeguards to Civil servants:

Article 310 enacts the general principle that a government servant holds office during the pleasure of the government. This Article, which has been called 'unique in world Constitutionalism places two restriction on the prerogative of dismissal at pleasure. These are such as.

No removal by subordinate authority

Clause (1) Article 311 provides that no person who is a member of a Civil Service of the Union or an All India service or holds a civil post under the Union shall be dismissed or removed by an authority subordinate to that by which he was appointed. The appointing authority cannot delegate his power of dismissal and removal to a subordinate authority.

In S*uraj Narain Anand v. North-West Frontier Province 22* case federal court held that a case under the Government of India Act, 1935 as the plaintiff had been appointed by the Inspector- General of Police, the Deputy Inspector- General of police being only a subordinate authority, was under Section 240 of the Act not competent to dismiss him. The view was uphold in *Santosh Kumar Dutt v. Commissioners of Police 23* likewise, dismissal by the deputy Secretary of a government servant, who appointed by the Secretary, was set aside under Article 311 (1). In another case in *State of U.P. v Ram Naresh Lal 24* it was held that the power of dismissal can be exercised by any officer other than the appointing authority provided he is not subordinate in rank.

Reasonable opportunity to defend

The substantive part of clause (2) of Article 311 provides that" 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 charge." High courts and the Supreme Court on a number of occasions have considered what constitute 'reasonable opportunity'. According to the prescribed procedures, the disciplinary authority should hold an inquiry, hear and weigh the evidence and consider the merit of the case before coming to conclusion. These constitute elements of a judicial approach and therefore, in discharging its functions in disciplinary inquiries, the disciplinary authority acts in a quasi- judicial capacity. It has been held that for a proper compliance with the requirement of 'reasonable opportunity' as envisaged in Article 311 (2), a government servant against whom action is proposed to be taken should, in the first instance be given an opportunity to deny the charge and to establish his innocence. In *Union of India and Others v. Mohd. Ramzan Khan 25* it has held that even though the second stage of the inquiry in Article 311 (2) has been abolished by 42nd amendment of the Constitution, the delinquent inquiry officer is still entitled to represent against the conclusion of the inquiry officer, holding that the charges or some of the charges are not established. The laid down in Ramazan Khan case has been further clarified and strengthened in *Managing Director, E.C.I.L. Hyderabad v.B. Karunakar 26. In Khem Chand v. Union of India 27*, the Supreme Court held that the 'reasonable opportunity' envisaged by Art. 311 includes: An opportunity to deny his guilt and establish his innocence; An opportunity to defend himself by cross- examining the witnesses and An opportunity to make his representation as to or why the proposed punishment should not be inflicted on him. The Supreme Court in *Union of India v. Verma 28* has summarized the principles of natural justice thus ¬by narrating that stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross- examining the witness examined by that party and that no material should be relied on against him without his being given an opportunity of explaining them. In Kuldeep Singh Vs. Commissioner of Police where the complainant's witnesses were not produced before the inquiry officer but only their written statements were produced on the plea that the delinquent civil servant had removed them from the scene, the court held that the requirement of reasonable opportunity was not satisfied because the delinquent could not test the truth of the statements through cross examination.

CONCLUSION

After discussing the various legislative provisions regarding civil servants it seems that Article 309 to 311 deals with civil servants broadly. Along with the doctrine of pleasure various safeguards are provided under Article 311. In order to reach to the conclusion, there is a dire need to study about the ambit and scope of doctrine of pleasure.

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1 A.I.R. 1955, S.C. 817
2 Part -X, Chapter- I, Clause 215(1)
3 B. Shiva Rao, page 625, VoL III. Draft Constitution, February 21, 1948. Part-XII.
4 C.A.D. IX, P. 962
5 H.V. Kamath C.A.D. IX P. 585
6 The constitution of India, Article 308 – 314
7 K.D. Srivastva, Disciplinary Action against government servants and its remedies Edition 1977 at P. 92
8 Madho Singh v. State of Maharastra AIR 1960, Bom. 28
9 (1993) 4 SCC 72
10 1994 supp (1) SCC 44
11 AIR 1998, SC 1050
12 (1999) 9 SCC 593
13 AIR 1985 SC 1416
14 AIR 1987 SC 2049
15 AIR 1985 SC 1416
16 AIR 1986 SC 555
17 AIR 1954, SC 245
18 AIR 1965 SC 360
19 AIR 1961 SC 751
20 AIR (1997) I SCC 411
21 AIR 1964 SC 648
22 1941 FCR 37
23 AIR 1955. Cal. 81
24 AIR 1970, SC 1263
25 AIR 1957 , SC 882

26 AIR 1991, SC 471
27 (1993) 4 SCC 727
28 AIR 1958, SC 300