PRINCIPLE OF NATURAL JUSTICE WITH REFERENCE TO PUBLIC SERVANTS IN INDIA

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ABSTRACT

The civil servants are the backbone of the administration. They are a link between successive ministries and a repository of principles and practices, which endure while government comes and go. The position of public services in a democracy is critical. The civil servants are under an obligation to work without fear and favouritism. While they also enjoy certain privileges apart from the pay in the welfare state, the government on the other hand has some duties towards its employees that are enshrined in the right of employees/civil servants one of that includes safeguard from recruitment to retirement. This article deals with the constitutional rights and tenure of office of civil servants in historical retrospection. This article also deals with constitutional safeguards to civil servants with respect to the principle of natural justice and what are some exceptions to Article 311. Lastly it also talks about remedies for civil servants given under our constitution.

Keywords: Civil servant, Government, Principal of natural justice, Democracy, Constitutional rights

Introduction

The civil servants are the backbone of the administration. They keep the wheels of governmental machine going and act as agents for the fulfilment of the policy of the party in office, the policy formulated during the elections and formally endorsed by parliament. Their rigid neutrality and rigorous impartiality in the party/political issues is the first code of their official conduct and they serve with equal fidelity whatever be the compulsion of Government[1].Their first and most important obligation is to pledge undivided loyalty to the state at all times and under all circumstances. The political horizon may be full with contradictions and vicissitudes at every given moment owing to political rivalries or other causes, yet thanks to civil servants, these impediments are unlikely to disrupt the nation's regular existence. As a result, the importance of civil servants in a Parliamentary structure in an autonomous democracy has been recognised for preserving the effectiveness of the administrative apparatus, which is critical for the country's stability and progress. In ancient India, civil servants served as the rulers' personal servants; in the medieval period, they were state servants when they were employed by the state; and in British-India, civil servants took on the appearance of public servants. At this period, the civil service often became a covered service, when the first Indian Civil Service Act was enacted in 1861, providing several benefits to then-civil servants, including appointment, advancement, termination, pension, and salary payments, among other things. Modern India is democratic. For the effective and smooth functioning of government, it is essential that civil servants must work without any influence and fear.

The term 'Good governance' aptly lays down the rights and duties of civil servants. "The principles of good governance, however, are not new[2]. Good governance is anti- corruption whereas authority and its institutions are accountable, effective and efficient, participatory transparent, responsive, consensus-oriented, and equitable." Whether it imposes duty upon the civil servant to work at the will of the political bosses, the answer would be 'no'. The civil servants are under an obligation to work without fear and favouritism. While they also enjoy certain privileges apart from pay in the welfare state, the government, on the other hand, has also some duties towards its employees that are enshrined in the rights of employees/civil servants that one of them include safeguards from recruitment to retirement. But the issue of

[1]A.C. Kapoor, Constitutional History of India, 832(1970)
[2] http://www.governance.bsnn.org/good_governance.html

immediate concern in any welfare state is: Whether its civil servants or for that matter its employees enjoy 'complete protection' especially when occasions may arise when unscrupulous and disgruntled elements may vent their vengeance on honest officers through wild and baseless allegations. The provisions which are related to the services given under Union and State in our Constitution in part XIV were framed keeping in view the aforesaid principles. It has been provided under Article 310 that public servant will only hold the office at the pleasure of government i.e., President or Governor. However, for better administration certain protections were also provided under Article 311 and Article 309 that inter alia envisage the provisions of 'reasonable opportunity' and rule-making powers of Centre/State. These are the safeguards given to the civil servants against the arbitrary action of authorities at whose pleasure civil servants holds his office. The object of the present article is to analyze the safeguarded provisions for civil servants with special reference to changing trends of principles of natural justice.

CONSTITUTIONAL RIGHTS AND TENURE OF OFFICE OF CIVIL SERVANTS IN HISTORICAL RETROSPECTION

Civil servants in ancient India played the part of personal servants during the Mauryan era. During the Middle Ages, they served as public servants. They became public servants throughout the British era, and the civil service became a covered service. Their service has now been granted legal protection under the Indian Constitution[3]. Public servants have a variety of tenure options, including good behaviour tenure, legislative tenure, conditional tenure, and leisure tenure. In service law, the expression tenure has taken on a legal meaning or connotation and may refer to a set period of time over which an office is kept. The tenure of public servants is governed by the Rules regulating public servants' work conditions. However, Article 310 of the Indian Constitution contains the fundamental proviso on coping with civil servant tenure. Apart from the check of constitutional rights enunciated in Part III of the Constitution of India, dissecting Article 310 shows that it includes the enjoyment tenure and the protections given to individuals under special contract as well as to public servants under Article 311, which is one of the regulating clauses. The Indian civil service has a long background and has been through many stages of growth.

(A) Ancient period

[3] Rao, K. Rama Joga, Article 311 of The Constitution Magna Carta for Civil servant, Supreme Court Journal, 4-7 (1999).

In ancient India, there was a monarchy system of government. The office of the King was hereditary. During ancient times India was divided into various independent states and each State the King was the supreme authority. The King with the assistance of his Chief Priest (Purohita) and military commander (Senani) carried on the administration of his kingdom. Each state was divided into provinces and further these are into divisions and districts. For each province or districts a separate Governor according to their status was appointed with different designations. Most often, they are related to King and in certain places their appointment was hereditary. The District Officers were entrusted with the Judicial and Administrative functions[4]. Regarding the administration of justice the Court of Kings was the highest Court. Preferably, Brahmin was appointed as Chief Judge or Judge and standard was also laid down for Judges and Magistrates. In ancient law, the principles of fair hearing were often adhered to and same is evident from the judicial procedure. It describes four stages that i.e., suit, reply, trial and decision by Judges. Ordinarily, evidence was based on any or all the three sources, namely documents, witnesses and the possession of incriminating objects. It has been discussed in details and ordeal was also prevalent when both the parties were agreeable and when the complainant or the plaintiff surrenders to accept the punishment. Now, the concept of plea bargaining has been introduced in the criminal procedure code on the same analogy. The principles of natural justice were not in existence in the absolute form as they are available today. But, their existence can be inferred from Dharamsutras, Arthasastra, Samritis and Ordinances of Manu also. The main feature of Arthasastra polity was that official conduct was governed by Rules and regulations as is now and salaries are paid to officers in cash. In case of dereliction of duty punishments were imposed. The pension Rules were humane and reasonable.

(B) Medieval period

Muslim period which is also known to mark the new beginning of a era in the legal history of India. Arabs were known to be as the first Muslims who entered to India. The Civil administration of the Sultanate which was headed by the Sultan and his Chief Minister (Wazir). During the medieval period (1000-1600 AD), Akbar the Great founder had nurtured the civil service. During his period, he initiated about the land reforms (1457 AD), and also established the land revenue system which later became an important constituent called as the Indian taxation system. His approach for public service was welfare and a regulatory oriented. Akbar

[4] A.L. Basham, The wonder that was India, 102-106 (2005)

had taken the task to reorganize the Civil Administration. The grades of ranks were revised and everyone was given an appropriate rank in accordance with the number of men to be supervised by him and his devotion to the emperor. There were thirty grades of the officers. This was known as Mansabadari system. All Mansabdars were recruited by the Emperor. The number of new recruits was added every year. The Mughals were more generous to their Mansabdars. The pensions were also given to them.

The law which the Muslim Rulers brought was of Arab origin. The Quran being of absolute authority therefore all the controversies centered around its interpretation. They were influenced by two sects namely Sunnis and Shias. In India, the law of the Rulers had always been Hanifi law of Suni sect with the exception of Golkunda and Bijapur in South India where the Rulers were Shias. The law which was adoptee by the Courts can be divided as: Religious or Cannon law, The Common law, King's Farman, Customs, Precedents, Equity and good conscience. The Courts were generally presided over by a single judge or Kazi. Therefore, the principles of natural justice were followed as the person had a right to raise his grievance in the Court and Courts were working on tie aforesaid principles.

(C) British period

During the end of the fifteenth centaury some European nations entered India as trading merchants. "The British Civil Service came on the Indian scene after the takeover of the East India Company in the 1860s. Initially the British civil service was a part of a police state, where its major task was that of carrying out law and order functions. It was disjointed as the different provinces had different civil services. There was no code of conduct developed by any of the British India provinces[5]. The functionaries of the different provinces were free to appoint people of their choice. Officials were handpicked both from the army and non-army fields. Their pay and allowances were subject to the discretion of the Government. However, these used to be very high according to the standards prevailing then. The term civil service is an Indian contribution to the discipline of public administration". The conditions of services of civil services were to be determined by the secretary.

The administration set up during this period was governed under the Charter Act passed by British parliaments and evolution of civil services under Charter Act can be classified as Under Charter Act of 1600, the management of the company was vested in a Governor and twenty-

[5] Chesney, George, Indian Polity, Concept Publishing House, New Delhi, (1986).

four committees, who were the individuals and the predecessors of the elected Directors of the company. The Indian civil service has its origin in the body of men who carried on the trade of the East India Company and who were known as its civil servants and were distinct from its naval and military officers. The mercantile employees became administrators and the term civil service acquired its present name. Under The Charter of 1793 put its seal of approval on the policy of Lord Cornwallis by providing that all vacancies arising in any of the offices, places or employments in the civil line of the company's service in India would be subject to certain specified restrictions and were to be filled from among the company's civil servants. The act further endorsed fait accompli by providing that all positions in the civil service below the rank of council must be held by the company's covenanted servants belonging to the presidencies where vacancies occurred. Thus, all the posts were to be filled in by the board of directors of the company. However, in 1800, Lord Wellesley decided to start a regular training for the civil servants. However, Lord Cornwallis had insisted that an honest administration of British India by the company's servants could be ensured only by paying them adequate salaries; Wellesley urged that efficiency must be combined with honesty by giving the company's servants an adequate training and education. Thereupon, the foundation of college of Fort William in Calcutta was laid down in May, 1800 for training of civil servants, but this scheme was not liked by the directors. Ultimately, 'East India College' was established at Haileybury in 180625. The purpose for its establishment was to provide for instructions to the civil servants in those branches of education which were most likely to be useful in their official career in India. Under Charter Act (here-in-after to referred as 'Act of 1833') of year 1833 was passed and it brought tremendous changes in the previous system. It took away from the Court of Directors the right of patronage and laid down that henceforth patronage be exercised in accordance with the regulations framed by the Board of control. It was mentioned in the 'Act of 1833', that henceforth, for every vacancy in the covenanted civil service, a preliminary examination would be conducted. The nominations and the appointments would be finally made from amongst these selected candidates. The 'Act of 1833', had brought about mainly two types of changes. Firstly, the imperial control of the company's civil service became direst and exercisable immediately by the Board of control, a parliamentary body and secondly, the disciplinary control of the Government of India over civil servants became for more pronounced than ever before. The principle of training on jobs was recognized as an important norm of Indian administration, it became essential that the controlling officers should be vested with authority enough to place their subordinates amenable to their advice and responsive to their instruction.

CONSTITUTIONAL SAFEGAURDS TO CIVIL SERVANTS

The Constitution of India provides safeguards regarding the public service conditions of civil servants. Basically, these are the limitations upon the doctrine of pleasure under Article 310 of Constitution of India. Whenever, a penal action is taken against the civil servant, the employees i.e., civil servants, derive their rights of protection from the provisions of Constitution of India, i.e., from Article 311 along with the respective service Rules framed under Article 309 of Constitution of India, which empowers the Union as well as the State to frame the statutory Rules governing the service conditions of employees. The scope of Article 311 is restricted to the terms like dismissal, removal and reduction in rank, whereas under the Rules, other penalties are also classified as major and minor penalties. The defence employees are not entitled for the protection under Article 311 of the Constitution of India, but they are protected under the Rules and regulations framed under Army Act. The language of Article 309 is clear itself, which indicates the promulgation of Rules for the services and posts in connection with the affairs of state or union. The persons must be appointed to public services and posts in connection with the administration of the Union or any State. However, Article 310 qualifies these as 'defence service' and 'civil service' and in Article 311 these are defined as 'civil service' and 'civil post'. Since both the words 'civil service' and 'civil post' have same connotation these give birth to the term 'civil servant.

(a) Meaning of the term 'CIVIL POST' & 'CIVIL SERVANTS'

The expression 'Civil Post' prima facie means an appointment or office on the civil side of the administration as distinguished from a post under the defence post. The basic element to determine the nature of post is to see the relationship between State or Union and employee[6]. The relationship of master and servant must exist between state or union and the employee. The term 'Civil post' is not defined anywhere in the constitution of India. The term civil servant includes member of a civil service of the Center or a State or of an All India Services or all those who hold civil posts under the Center or State. There are certain factors from which we can determine the nature of the post vis:

- Powers and right of State to select/appoint, suspend and dismiss a person.
- Control and supervision of State under the service Rules governing the service conditions.

[6] Avasthy, Public Administration, Lakshami Narian Aggarwal, Agra, (2009)

- Source of remuneration.
- Relationship between the State and its employee is of master and servant.
- Nature of duties.
- The authority authorised to give the directions.

In State of Assam v. Kanak Chandra Dutt, their Lordships of the Hon'ble Apex Court had taken into consideration the above said factors while deciding the question: Whether 'Mauzadars' appointed for collection of land revenue under the Mauzadari system prevailing in the Assam Valley for collecting land revenue and other government dues are holding civil post.

(b) Exceptions to the Term 'CIVIL POST'

There are certain exceptions to the term 'Civil Post'. Employees, who hold their posts at the pleasure of the President of India, or the Governor of the State, as the case may be, do not hold civil posts. Such employees are not entitled to the protection of Article 311, and they can be safely categorized under two heads:

1) **Defence Personnel and Civilian Employees** : The members of defence services hold their office during the pleasure of the President as they do not hold civil post. The safeguards provided under Article 311 are not available to defence personnel or even civilian employees working in defence service.
2) **Employees of Statutory Bodies i.e. Banks, Universities etc**: The employees of statutory Corporation or government Company registered under the companies Act, employees of Universities, Banks and Municipal Corporations, which have been set up by the State at the pleasure of The Governor, do not hold 'Civil Posts', and are not entitled for safeguards provided under Article 311.

(c) Substantive Safeguard or Protection Qua Appointing Authority

There are two types of safeguards provided to the employee under Article 311 of the Constitution of India namely: substantive rights and procedural rights. Article 311(1) deal with the substantive rights whereas Article 311(2) gives the procedural safeguards.

- Article 311(1) provides that an employee holding civil post can only be dismissed, removed by the appointing authority. The punishing authority should not be subordinate to the appointing authority. The Article 311(1) reads as under: No person who is a member of civil services of the union or an All India Services or a civil service of a

state of or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

- Articles 311(2) provides protection in cases of dismissal, removal and reduction in rank the former protection is It becomes crystal clear that in order to attract Article 311(2) the termination of the service must be against the will of the civil servant i.e., while he is willing to serve. The order may be passed because of misconduct, negligence, inefficiency.

EXCEPTIONS TO ARTICLE 311 AND JUDICIAL ATTITUDE

There was a lot of discussion in debate in the constituent assembly of India regarding the incorporation of exceptions to the safeguards to the civil servants. Now, there are three situations in which special procedure may be adopted to impose a penalty of dismissal, removal or reduction in rank without giving a 'reasonable opportunity' of being heard in respect of charges and consequently without holding an inquiry. The Central Government as well as various States have framed rules by adopting these provisions i.e. proviso clause (2) of Article 311 of Constitution of India. These provisos can be termed as limitations upon the limitations of Doctrine of pleasure. These situations are covered under provisos to Article 311(2) and these can be categorized as exceptions to Article 311. These eventualities may arise when civil servant is convicted in a criminal case, if it is not reasonably practical to hold inquiry or it is not expedient to hold such inquiry in the opinion of President or Governer.

(a) The second proviso to Article 311(2) in clause (a) provides the situation that the conviction itself is sufficient for imposing any penalty and it reads as under: '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'. However, the language of this clause shows that the conduct of the civil servant which led to his conviction is more important. The authority is empowered to decide after taking into consideration his entire conduct, the judgment of criminal Court, the gravity of the offence and the impact of the offence i.e. as to whether the offence involves moral turpitude or is of trivial in nature. The disciplinary action is taken under the rules for the conduct which has led to conviction of the employee on a criminal charge and the second condition is that such conduct must constitute misconduct under the service Rules. Thus, if a government servant assaults his neighbour and is convicted for the same, it may or may not culminate into departmental action against him depending upon the facts and circumstances of the

case. But if the official is convicted for assaulting his immediate officer in office, he would be liable to be dealt with departmentally. That is the reason why the rule making authorities have not provided for disciplinary action being taken for every case of conviction and have left the matter to be decided by the competent authority in relation to the original conduct and not the conviction.

(b) The Proviso to Article 311 (2)(b), which is peri material with Rule 19 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 enunciates that: 'Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reasons, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, the clause 311(2) would not be applicable'. The Article 311(3) is also related to this clause and it reads as: '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 dismiss or remove such person or to reduce him in rank shall be final'. The expression 'not reasonably practicable to hold an inquiry' means there should be a physical or legal impediment to the holding of the inquiry and the reasons should be assessed objectively by the competent authority before taking the decision to dispense with the inquiry.

REMEDIES FOR CIVIL SERVANTS

The civil servants get their redressal against their punishment order by challenging the order on the grounds of violation of departmental Rules, judicial precedents, parity principles and the Constitutional safeguards but these violations are checked on the touchstone of principles of natural justice as and when confronted by the Courts, quasi-judicial tribunals or administrative authorities. Therefore, the principles of natural justice assume great significance when discussed in relation to disciplinary proceedings[7]. The expression reasonable opportunity referred in Article 311 of the Constitution of India is infact a codification of principles of natural justice. It is the duty of Courts, quasi-judicial tribunal/departmental authorities or administrative authorities is to follow the law as enacted by the Legislature, they are not debarred from reading into it the principles of natural justice if these can be read in consonance with the provisions of the law. If, however, the law provides for procedures which excludes the principles of natural justice either by a specific provision or by necessary implication, these

[7] Ramesh, Judicial Interpretation of Article 12 of the Indian Constitution, Supreme Court Journal, 43 (2000).

principles cannot be read into the law by the Courts/quasi-judicial tribunals or administrative authorities.

1) **Departmental Remedies:** civil servant has a right to file appeal, revision, review and memorials against the impugned orders and if these rights are conferred by the statute only then the civil servant has right to avail it. The right of departmental remedies is an independent statutory right and is not a part of natural justice. It is held in Vijay Parkash D. Mehta v. Collectors of Customs, by Supreme Court that the right to appeal is a statutory right and it is not an absolute right or right conferred by the principles of natural justice.
2) **Judicial Remedies:** There are mainly two grounds upon which administrative decision can be challenged:
   - Statutory Ground: These are based upon the violation of statutory Rules and regulations and punishment order can be declared ultra-vires of statutory Rules. If the order passed by the disciplinary authorities is challenged upon the grounds of violation of Constitutional provisions, statutory Rules and regulations then punishment order can be declared ultra-wires of statutory Rules.
   - Non-Statutory Ground: These grounds are in addition to statutory grounds and these are as under:

i. Principles of Natural Justice
ii. The Wednesbury Principle
iii. Doctrine of Proportionality of Punishment
iv. Doctrine of Legitimate Expectation

CONCLUSION

The innovation of the new principles and the inventive application of the old principles is the only way, the quasi-judicial /administrative authorities/ judiciary can function in the altering circumstances. "The principles of natural justice must conform, grow and be tailored to serve the public interest and respond to the demands of developing and growing society. These cannot therefore, be rigid and their application has to be flexible taking into consideration all aspects of the case. By and large, these principles require that a person should be heard before a decision is taken. However, under certain circumstances, it may not be possible to hear the person before deciding his case. This is due to the fact that natural justice should not produce

unnatural results". The basic aim of following principles of natural justice, after all, is to have good administration[8]. Hence, these principles cannot be pressed into service to defeat that purpose by insisting on the impossible. When prompt action is needed for the general good or in public interest, the persistence on a preceding hearing may frustrate the very purpose of the action and make natural justice.

Constitutional safeguards of civil servants as enshrined under the Constitution of India and the changing dimension of natural justice, as is evident from the judicial trends, have made the disciplinary authorities more powerful through the innovated incorporation of the concepts of prejudice, ratification, useless formality theory and curative justice, thereby comprehensively and conclusively negating the boulders of a fair and just governance, wherefore the cardinal principles of transparency and accountability were wilfully massacred for political gains, consequent upon which even after years, thence from the Constituent Assembly Debates of 1949, the country still vacillates and is yet to find a firmer ground of good governance.

[8] Baha, Miss Lai, N.W.F.P., Administration under British Rule 1901 - 1919, Nat. Commission on Historical & Cultural Research, Islamabad, (1978).

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