
AMENDMENT PROPOSED TO ARTICLE 311: A STUDY ON PROCEDURAL FAIRNESS IN CIVIL SERVANT DISMISSAL

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INTRODUCTION

With changing societal needs, the Indian Constitution has undergone various amendments. This project proposes an amendment to Article 311 (2)¹ of the Indian Constitution to give more protection to civil servants, and to ensure fairness in the disciplinary proceedings against them.

The following sections will examine the current provisions of Article 311², identify its limitations, and provide justification for the proposed amendment. The goal is also to demonstrate that this change aligns with constitutional principles of natural justice and good governance.

ARTICLE 311 – DISMISSAL, REMOVAL OR REDUCTION IN RANK OF PERSONS EMPLOYED IN CIVIL CAPACITIES UNDER THE UNION OR A STATE

Article 311 consists of 3 clauses:

1. Clause (1) says that no civil servant shall be dismissed or removed by an authority subordinate to that by which they were appointed.
2. Clause (2) states that no civil servant shall be dismissed, removed, or reduced in rank except after an inquiry. In this inquiry, the civil servant must be:
 - a) Informed of the charges against them.
 - b) Given a reasonable opportunity to be heard in respect of those charges.

However, this clause also includes 3 exceptions where an inquiry is not necessary:

¹ INDIA CONST. art. 311, cl. 2.

² INDIA CONST. art. 311.

- a) When the civil servant is convicted of a criminal charge.
- b) When it is not reasonably practicable to hold such an inquiry.
- c) When the President or Governor is satisfied that, in the interest of state security, it is not expedient to hold such an inquiry.
- d) Clause (3) provides that if a question arises about whether it is reasonably practicable to hold an inquiry, the decision of the dismissing authority shall be final.

AMENDMENT PROPOSED

Amend Article 311(2) to include a provision that any order of dismissal, removal, or reduction in rank shall be subject to review by an independent **Civil Service Tribunal**.

THE RATIONALE BEHIND INTRODUCING THE AMENDMENT

The current article more or less aims to protect civil servants from being unfairly dismissed or reduced from rank, but it has its limitations, the main being the **lack of an independent review mechanism**. Currently, the disciplinary inquiries and decisions are made within the same department or closely related authorities. This raises concerns about potential bias or unfairness, as the decision-makers may not be fully impartial.

So, the introduction of an *independent Civil Service Tribunal* in the article through an amendment would address this concern. By subjecting any order of dismissal, removal, or reduction in rank to review by an impartial body, it would be ensured that the disciplinary process is not only fair but also seen to be fair by all parties involved. This would help to rebuild trust in the system and provide civil servants with an extra layer of protection against any possible unfair treatment.

It also aligns with practices followed in other countries, for example, the Civil Service Tribunal in **UK**, which deals with recruitment and disciplinary actions w.r.t civil servants, or the Public Service Labour Relations and Employment Board (PSLREB) in **Canada**, which handles similar issues.

And even in the case of *T.P. Senkumar v. Union of India & Ors.*³ the court said that there is a need for fairness and due process in actions taken against civil servants. It shows that there is a need to have an independent body to review such actions.

The creation of an independent Civil Service Tribunal also reinforces the separation of powers doctrine, as it provides a check on executive power in matters of civil service discipline.

In summary, the rationale behind this amendment is to strengthen the safeguards within Article 311 by introducing an independent review mechanism, meaning – to ensure that the disciplinary actions are fair and transparent.

EXPLANATION OF THE AMENDMENT

As mentioned before, the amendment is proposed so as to ensure fairness in the disciplinary process. It introduces an independent Civil Service Tribunal, which will require a careful approach to ensure its smooth functioning and that it meets its intended objectives. This could be laid down through a subsequent legislation or through guidelines, the key aspects of which are mentioned below:

- **Structure and Composition of the Tribunal:** The Civil Service Tribunal should be an independent body which is composed of members who have expertise in administrative law and civil service matters, and these members should be appointed through a transparent process which is based on clear criteria.
- **Jurisdiction and Powers:** The tribunal will have jurisdiction over disciplinary actions involving dismissal, removal, or reduction in rank, and it should have the authority to overturn, modify, or uphold disciplinary actions based on its review.
- **Procedural Safeguards:** Needless to say, civil servants should the right to legal representation before the tribunal, so that they can represent their cases.

To prevent delays and inefficiencies, the tribunal should operate under strict timelines, completing reviews within 60 to 90 days (depending on the complexity of the case).

³ T.P. Senkumar v. Union of India & Ors., 2017 (6) SCC 801.

- **Appeals Process:** The tribunal should have the authority to dismiss frivolous appeals, so that only serious cases are heard, and to also prevent civil servants misusing the tribunal to delay disciplinary actions. Appeals to High Court and Supreme Court should be allowed only on specific legal grounds.
- **Resource Allocation:** Establishing the tribunal will require a lot of resources, including funding and the recruitment of qualified personnel, so the government should make sure that the tribunal is properly funded to function effectively.

The members of the tribunal should also go under a specialized training in civil service law etc.

- **Precedents and Reports:** The tribunal should establish clear precedents, and should submit an annual report which has details about its cases, decisions etc.

IMPACT

The proposed amendment is expected to have the following impacts:

- Increased job security may lead to improved morale among civil servants. □ It could increase public trust in the civil service system.
- Initially, there may be some delays as the new system is implemented, but in the longterm, it could lead to more efficient operations as civil servants may feel more secure in their positions.
- There could be a reduction in cases reaching higher courts as many disputes may be resolved at the tribunal level only.
- Civil servants may be more willing to implement controversial but necessary policies, as they know they have some protection against arbitrary dismissal.

CONCLUSION

In conclusion, this amendment to Article 311 (2) aims to make the disciplinary processes fairer, and that the decisions regarding dismissal, removal, or demotion are impartial. By doing so,

the amendment aims to protect civil servants from unfair treatment. Implementing this change with clear guidelines will help build a more trustworthy and consistent system.