

# Services Safeguard to Civil Servant under the Constitution of India

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**Abstract:** A country without an efficient Civil Service cannot progress in spite of the earnestness of the people at the helm of affairs in the country. Whatever democratic institutions exist, experience has shown, that it is essential to protect the public services as far as possible from political or personal influence. The independence of our country made the responsibilities of services more onerous.

**Keywords—** Constitution of India, Services Safeguard, Civil Servant.

## I. INTRODUCTION

The arrangement of Democratic Government in India may be divided into three parts i.e. to say, the executive, the judiciary and the legislature. The executive power of the Union as well as the States vests in the President and the Governor respectively. Clause I of Article 53 provides that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinates to him in accordance with this Constitution. Similarly Clause I of Article 154 provides that the executive power of the state shall be vested in the Governor and shall be exercised by him either directly or through officers subordinates to him in accordance with the Constitution.

Civil Servants and holders of civil posts are assigned to the task of giving concrete shape to governmental policies and directives and the responsibilities of playing active part in the formulation of those policies and directives are also imposed upon them. Since they occupy high position at the helm of affairs, their service conditions demand on the one hand that it should be possible to remove them summarily if they transgress bounds of propriety or act in fashions detrimental to the public interest. On the other hand, it is equally essential that they should be given a security of tenure so that they are able to take correct stand and stand by it, without fear of evil consequences brought about by Ministers, Senior Officers or Public action groups.

The public servants remain though Ministers may come in and go out of the Cabinet with bewildering rapidity. Since the political heads are bound to change in a representative democracy, it is not possible for the public servants to give proper advice to different party governments and to maintain the continuity of administration unless they are ensured a security of tenure, so long as there is no misconduct calling for their

removal in the interests of the public. The foundation of our national life can be secured, if the public servants are assured of their security, if they get the conviction that their will be no ministerial interference. Thus to lay the foundation of our civil services on sound and scientific basis, Civil Servants must be removed from the despotic control of Ministers. Shri Brajeshwar Prasad in Constituent Assembly in India on September 1959 had stated-

Public servants usually occupy a place in treatises on Constitutional Law because they have got a special relationship with their employer, viz., the Government, which in some respect is different from the relationship that exists under the ordinary law between master and servant. Thus, while it is essential in the national interest that the State should have a reserve of power to get rid of a public servant wherever the exigency of the public administration so requires, it is at the same time essential in the national interest itself to provide for a reasonable degree of security of tenure and prospects in order to draw the best available talents to the services.

Two limitations- one substantive and the other procedural- regarding the operation of Article 311 should be noted. In the first place, the Article applies only to the members of civil services or holders of civil posts in the Union or a State; the employees of statutory authorities and statutory corporations cannot claim the protection because they do not hold any post under the Union or the State, *Gurushantappa v. Anwar*,<sup>1</sup> Of course, they can still claim constitutional protection available to any person under Arts. 14, 15, 16 and 226, because the definition of 'State' for the purposes of the part relating to Fundamental Rights, as given in Article 12, covers all instrumentalities and agencies of the Government and would cover most statutory corporations owned or controlled by the Government, *Rajasthan State Electricity Board v. Mohan Lal*,<sup>2</sup> Secondly, coming to the aspect of

<sup>1</sup> (1969) 1 S.C.C. 466

<sup>2</sup> A.I.R. 1967 SC 1856.

procedure, it is to be noted that under Article 323-A has been enacted the Administrative Tribunals Act, 1985 to deal with service matters of the employees governed by that Act. Broadly speaking, the Central Government employees, except certain excluded categories, have now to approach the Tribunal constituted under the Act; where the provisions of the Act have been adopted by a particular State (like that of Himachal Pradesh), the employees of the State also must approach the Tribunal constituted there under for the State. Such employees cannot take out a writ in the High Court or file a civil suit to enforce the rights conferred by Article 311 or by the law or rules regulating the conditions of their service. The Tribunals constituted under the Act now exercise the entire jurisdiction in such matters as was earlier exercisable by the High Court or the ordinary civil Courts. The jurisdiction of the Supreme Court, however, remains unaffected by the Act.

The protection provided the members of Civil services and All India Services under Article 311 are the corollary of natural justice with certain exceptions. The concept of natural justice has its various dimensions within the scope of Article 311 to be interpreted in different circumstances, terms and conditions of service, gravity of penalty in different circumstances be awarded to the Civil servants and certain other similar factors.

## II. MEANING OF CIVIL SERVICES

The concept of civil services as being an undefined term and a little bit complicated for its proper understanding. To understand the concept the 'Civil Servants', one has to take resort of historical development, the nature and method of appointment of the civil servants and their terms and conditions of service. The term 'Civil Servants' is not a new concept, but has been used in the Constitution. The term was known in the pre-constitutional period, when the provision of the Government of India Act, 1935 and the other laws regulating the service condition of the Government servants were applicable.

M.P. Jain in his book 'Indian Constitutional Law' has specifically drawn attention to the requirement that the master servant relationship must exist, to bring about a civil post "under the Government". The master servant relationship is itself characterized by certain indica, among them being: who selects the employee, pays him the remuneration on wages, or contracts the method of his work or has the power to suspend or remove him from employment? It is not necessary that all these indica must co-exist to create the master-servant relationship.

In State of Gujrat Vs. Raman Lal Keshav Lal Soni, (AIR 1984 SC) the Apex Court while considering the question as to whether the Panchayat service constituted under

section 203 of the Gujrat Panchayat Act was a Civil service of the State and members of the service are Government servants held that:

"There are several factors which indicate the relationship of master and servant. No single factor is to be considered absolutely essential. The presence of all or some of the factors such as the right to select of appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid; Resultantly, it is a question of fact whether a person is servant of the State or not."

## III. RECRUITMENT AND REGULATION OF CONDITIONS OF SERVICES

Article 309 empowers Parliament and The State Legislature to regulate the recruitment and the conditions of services of the persons appointed to public services and posts under the Union and the States respectively. Until provisions in that behalf is made by an appropriate legislature under Article 309, the President and the Governors may make rules for regulating the recruitment and conditions of services of persons appointed to such services and posts.

The mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the Executive. These are the matters of the policy and the courts cannot sit in judgment over the wisdom of the Executive in these matters.

Persons not falling in the category of Civil Servants:- The term 'Civil Servant' does not include a member of a defence service, or even a civil employee in defence service who is paid salary out of the estimates of the Ministry of Defence<sup>3</sup>. Although these persons come within the purview of Article 309 and 310, but they do not enjoy the protection of Article 311.

However, a member of the police force is a civil servant<sup>4</sup>. The employees of the statutory public corporations or of Government companies registered under the companies Act or of a local authority within the territory of a State are not employees of the Government and do not therefore fall within the purview of the term 'Civil Servant'. Although most of the bodies fall within the extended meaning of State under Article-12, they do not fall under constitutional provisions relating to state services. The local bodies are 'State' only to the extent their actions, if

<sup>3</sup> Lekh Raj Vs. Union of India AIR, 1971 SC 2111.

<sup>4</sup> Jagan Nath Vs. U.P. AIR 1961 SC 1245.

affect the Fundamental rights guaranteed by the Constitution. Their being 'State' it does not confer upon the employees the status of civil servants of civil posts to attract the Constitutional protection of Article 311.

#### IV. CONCLUSION

The position that emerges from this study is that Article 311 is both a cure and a blessing for a Civil servant. In the preceding chapters a number of aspects relating to the relevance of Article 311 to Civil servants have been discussed in detail. However, matter discussed in the preceding chapters, in order to facilitate a full view at a glance of the subject undertaken, may be summarized as under :-

On the question of relevance of Article 311 in service matters it is clear that it is applicable only to civil servants. The civil servant occupies a special status and privileges

in the Government as well as in the society but he is bound with certain limitations of service conditions.

The Civil servants are required to maintain absolute integrity and devotion towards their duties and to avoid improper and rudeness in their behaviour.

Suspension of an employee does not come under the purview of Article 311 as it is applicable only in case of dismissal, removal or reduction in rank of a Civil servant. The court has established the law that in order to attract the operation of Article 311.

Constitutional safeguard enshrined in Article 311 of the Indian Constitution are limited in scope, Firstly because they afford protection only to the civil servants of the Union of India or States and secondly they don't afford a general protection against all forms of penalties that can be imposed under civil service rules.

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<sup>1</sup> P.P. Subbaraya-Constituent Assembly Debates, p.962