

Constitutional Protection of Civil Servants in India and Chances of Misuse

Kushal Srivastava¹

Introduction

Whenever we talk about Indian Administration, the first thing cultivate in our mind is the facet of Civil Servants. They are the backbone of the entire Administration. It's true that in the case of India, it is the ministers who enact laws, frame different provisions and policies. But the task to see those laid down provisions being executed in a practical sense, the one solution comes to rescue i.e. the Civil Servants. We cannot deny that fact that an able structure of the administration leads to an able nation. And thus able administration can only be possible if its civil servants are able. The Constitution of India through various provisions primarily the Part XIV depicts the need of the Civil Servants in India. And it also talks about the need for Constitutional Protection to Civil Servants. Through various articles within this part, the civil servants are given protection. It is true that there is the existence of Doctrine of Pleasure which talks about the expulsion of servants on the discretion of the Parliament or the Governor. This in a way puts a limitation on the civil servants but on the same hand, there is Article 309 which talks about giving Reasonable opportunity to the officials so that they are not given treated on a biased platform. Thus, indeed there is protection but they are made responsible also. So it is of great important to ponder upon the fact that whether this protection provided by the Constitution of India act as reasonable protection or it is a chance for them to misuse this provision.

Civil Services Key to Welfare State

We are aware of the fact that India is a democratic country; it's a nation where the people are utmost value because they are the one who elects representatives, and these representatives govern the country. India is truly a welfare state where the state itself plays a vital role in the protection of its citizens through every possible measure. Now, there is a very popular model of a Welfare state i.e. the United States. This particular model primarily envisages of a state which is need of bureaucratic control over its people. The second model which is important to discuss is the model followed by the Scandinavian countries. This model enjoys the

¹ Student, National Law University and Judicial Academy, Assam

concept of limited bureaucracy; wherein there is little or no interference of bureaucrats. Now, taking both concepts of welfare states into consideration, we configure out the fact that bureaucrats are given important in both the scenarios. It is the bureaucrats who are the one on whom the sole responsibility of the administration of the nation depends. It is they who according to their knowledge, expertise hold responsibilities. They help in the implication of effective policy for the welfare of the society. Parliamentary democracies are a vehicle whose control is in the hand of Civil Servants. It is the civil servants who aid the political policymaker and in a way contribute to the welfare state by strengthening the governance. If we look at the Indian situation, the scenario is more or less the same. Here also the government is aided by the bureaucrats to a great extent. They are basically, a key to the success of a welfare state without which a government with a dream of a welfare state cannot function. Civil Servants are real administrators. It was the British who brought in the concept of Civil Servants because very well knew that it is only the civil servants who can aid in promulgating a welfare State. Thus we cannot deny the fact that indeed Civil Servants are a key to Welfare State.

Tenure System versus Spoil System

It is the Political Party on whom the 'Spoil System' can be accredited. It was the political parties who by bringing their near and dear ones in the party during their tenure introduced this topic. whenever a person is appointed to a high post, it is seen that he tries to ward off all persons who are not close to him and tries to bring in people who are his well-wishers. When this concept is compared to the facet of Civil Servants, there are laid down provisions like Article 311 which talks about dismissal and removal of ranks of persons who are employed as civil servants. Moreover, there is Article 317 which also talks about the removal of a member of Public Service Commission. These two provisions are contrary to the spoil system because this is based on true merit and there is no element of favoritism. These provisions are based on a tenure basis. However, there are circumstances where some Civil Servants forget their innate nature are influenced by the political drive. Moreover on the same note, with the growing society and its intellect, there has been a shift from the spoil system to the tenure system.

Part XIV of the Constitution of India

The Constitution of India, through Part XIV, elaborates on the aspect of Services under the Union and the State. There are two chapters within it which are on Services and Public

Service Commission respectively. The first Chapter on Services opens with Article 308 which is basically an Interpretation clause which says that the word “State” uses in the following articles does not include the state of Jammu Kashmir. There is a provision which talks about the Recruitment and Conditions of Services of persons who serve under the State and the union. There is a discussion on the Tenure of the office of such persons. In the same part, there is an elaboration on the Doctrine of Pleasure followed by the provision of Dismissal and removal/reduction of the rank of such persons. Furthermore, there is a provision which establishes the creation of All India Services. It said that the Parliament through law in the national interest can create such services. Parliament is also given the power to revoke any conditions of the service of officers in certain services. The Second chapter within this Part talks about the Public Service Commissions. Firstly, there is a provision for appointment members and their term of office. Appointments of members and Chairmen of the Public Service Commissions are talked in this particular provision. Having said about the appointment, another Article in this Chapter of Part XIV elaborates on the procedure of Removal and Suspension of such members. There is also a provision which talks about the power to initiate regulations regarding the conditions of service of the concerned members. Subsequent to this there are Articles which talk about the facets of different function of the Public Service Commissions. The various duties, operating schemes etc. is elaborately taken into consideration under Articles. There is also an Article explaining the extension of the functions of the Public Service Commissions. Lastly, under this Part of the Constitution, Articles regarding the Public Service Commission’s Expenses and presentation of Reports are also inculcated.

Implications of Article 309

It is Article 309 which empowers the President or the Governor whatever the case may be, to regulate the recruitment of persons appointed to the public services or to posts under State or the Union. If such legislation is pending, either the President or the Governor or any person authorized by them can make rules in this regard. These rules can be in regard o regulating the concerned recruitments, conditions of services of persons. Thus, as long as the Legislative does not act, it is the Executive who exercises power in accordance with this Provision. The element of retrospectively gets attached with the rules made under this Article. But under Article 309, the right to make the rules retrospective does not thrive with the President or the Governor.² It was held in the case of *State of Mysore v. Bellary*³ that

² RN Nanjundappav. T. Thimmaiah, AIR 1972 SC 1767

supposing if there is a breach of the rules lays down under Article 309 then the government servant who has been aggrieved can seek the assistance of Court for redressal. This article highlights the limited power of the executive to the extent that even if there is executive order under Article 162 of the Constitution, it cannot alter or amend rules under Article 309.

The Doctrine of Pleasure: Article 310

An example of Common Law, the existence of Article 310 is the outcome of British Rule in India. This doctrine exists in the same manner as it exists in England. It is a well-known fact that in England, persons hold a particular post subject to the pleasure of the crown. The same is the condition with the All India Services and services both under the Union as well as the States in India. In England, it is the Crown and in India, it is the Hon'ble President. Here, persons holding any civil post either under the state or the Union hold that office in accordance with the pleasure of the President or the Governor in case of posts under a state. Earlier when India was the Colony of Britain, the Civil Servants appointed by the Crown were subject to the pleasure of the Crown. The Crown could remove the post holders with reasons best known to the crown itself. In general terms, it meant that the servant holds office at the discretion of the sovereign. The Article 310 of the Constitution of India, 1950 clearly states that a person who is a member of the Civil Service under the Union or the State, or of the defence Service or of All India Service holds the said post at the pleasure of the President or the Governor as the case may be. Ultimately the insertion of this particular Article is a legacy of the English which we Indians still wish to continue or primarily it is one of the examples of many colonial hangovers within the Indian Constitution.

Constitutional Safeguards to Prevent Abuse of Article 310

Though there is a lot said about Article 310 of the Constitution of India, 1950. But the Constitution through Article 311 tries to depict various limitations to the Doctrine of Pleasure. Constitutional Provisions like the Article 14, 15 and 16 are present which stands firm and tries to curb the negative notion of Article 310. When a person is terminated from his/her service then these fundamental Rights come into the picture and tries to figure out any malafide reason of termination (if any). Unfortunately, if there is any disciplinary matter which is affecting the service of a person, be it under the state or the Union; in such cases, the Union or the State Public Services Commission is deemed fit to be considered. In case there is a contractual appointment, after the completion of the prescribed period their

³ State of Mysore v. Bellary, AIR 1965 SC 868

services comes to an end. Thus in order to prevent the abuse of Article 310 in the hands of officials, there was a need for the introduction of Article 311. Firstly, this article points out that in case a civil servant is to be removed from his/her office, the same cannot be initiated by any subordinate authority as compared to the concerned civil servant. Secondly, that particular servant should be informed and given a reasonable opportunity to be heard. Any penalty imposed, should have nexus with the evidence pointed out during inquiry.

Reasonable Opportunity to Defend

When any Civil Servant is accused of any Offence, the principle of natural justice should be taken into consideration. Article 311 through clause 2, depicts that a civil servant cannot be removed or dismissed without being informed and been given reasonable opportunity to defend himself. Article 311(2) clearly paves way for the elements of natural justice. This principle cannot be violated. His voice cannot be curbed. Since there is a laid down principle that no one can be left unheard. It was held⁴ that it is for the court to decide as to whether the laws and rules have provided a reasonable opportunity or not. There should be a proper inquiry into the case before any award of punishment. Thus a fair inquiry should be guaranteed to the civil servant. He should be informed about the charges implicated so that he gets ample opportunity to establish his innocence and ward off him from the guilt. The court held in the case of *Chandra Tewari v. UOI*⁵ that the opportunity to be heard should be an effective opportunity and not a mere simulation.

No Termination by Subordinate Authority

The Constitution of India through Article 311 (1) tries to portray an act which in a way limitation to the doctrine of pleasure. As per the Article, if any civil servant is removed or dismissed by any authority; that particular authority cannot be a subordinate authority and it cannot initiate with the Removal of a Civil Servant.⁶ It kind of provides security to Civil servants and in a way strengthens the position of the Civil Servant and makes the dismissal clause certainly not like icing on the cake. It is true that it does not debar any superior authority from making an inquiry to a subordinate person. Ultimately it is understood that no person being a civil servant under the Union or the State or an All India Service holder

⁴ KS Hemrajsinhji Pravinsinhji Ins General Police, AIR 1961 Guj. 63.

⁵ AIR 1988 SC 117.

⁶ Krishna Kumar v. Divl Assistant, EE Central Railway, AIR 1979 SC 1912.

shall not be removed or dismissed by any authority which is subordinate in nature to the concerned civil servant.

Landmark Cases Including High Profile Ones

Krishna Kumar v. Div Assistant, EE Central Railway, AIR 1979 SC 1912

Here, in this case, the focus was given on Article 311 (1) which tries to put a limitation on the doctrine of Pleasure. It was highlighted in this case that when a question about the dismissal of a civil servant is initiated, the same cannot be dealt with by a person who has subordinate authority as compared to the concerned civil servant. We cannot deny the fact that the President and the Governor have restrictions in this regard.

Kuldeep Singh v. The Commissioner of Police, AIR 1999 SC 677

The court emphasized the element of Reasonable Opportunity. The concerned Civil Servant should be given a chance to be heard in nexus with the principle of Natural Justice. The Departmental inquiry should be examined cautiously. There should be a presence of delinquents who should be given a chance to cross-examine so that the situation is well understood and the genuine outcome is reached. The evidence involved should be bonafide and authentic.⁷

Conclusion

The Constitution of India provides for the protection of the Civil Servants through various Articles inscribed in it. No doubt that the persons holding the posts of services under the State and the Union enjoy the privilege and are the backbone of the Indian Administrative System. But their privilege has some limitations too attached to it. Firstly as already discussed, there is a principle of the doctrine of Pleasure which is one of the important limitations put on the Civil Servants. The official can go to any extent in light of their power but they can never deny the fact that there is a President/Governor who holding the grip of the limitation of the extent of their power. In contemporary society, there have been increasing circumstances of Corrupt Civil Servants which raises the question on their genuine Service. There have been circumstances where civil servants are accused of being politically motivated. But Part XIV shows the entire nation that the Constitution has a solution to every hurdle. Everything about civil servants is discussed within the Article 309 to

⁷ M.P. Jain, Indian Constitutional Law 1557 (8thEd. 2018)

323 and within this various questions have been answered which a citizen would raise in this regard. Elements like Departmental Inquiry and Criminal Prosecution establishes the fact that though civil servants are real administrators, they are not left unfettered. But on the same hand, there is the presence of Article 311 which acts as a protection for the innocent civil servants. This Article in a way gives way for a reasonable opportunity to be heard and establish innocence and come out of the guilt. It also maintains the security of officers as in giving them an upper hand as compared to subordinate authorities. Overall there is the existence of the principle of Natural Justice, and nobody can alter the concept of this celebrated principal. Nevertheless, we as citizens of India should be really thankful that there has already been the existence of provisions which are there to cater situation when the civil servants go wrong. The framers of Constitution had then already envisaged the element of Corruption, Chances of Misuse in near future and thus had included such provisions. Thus we should have confidence in the Constitution that it will not let the citizens and their faith down.