

Article 311: Indian Polity

What is Article 311?

Article 311 deals with the provisions related to the dismissal, removal or reduction in rank of a person employed in civil capacities under the Union or a State.

Article 311 (1):

No person who is a member of a civil service of the Union or an all-India service or a civil service of a State 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.

Article 311 (2):

No civil servant shall be dismissed or removed or reduced in rank except after an enquiry in which s/he has been informed of the charges and given a reasonable opportunity of being heard in respect of those charges.

Doctrine of Pleasure

- According to Article 310, members of the defence services, the civil services of the Centre and the all-India services or persons holding military posts or civil posts under the Centre, hold office during the **pleasure of the president**.

What does 'civil posts' mean?

A 'civil post' means an appointment or office or employment on the civil side of the administration, as distinguished from the military side.

- Similarly, members of the civil services of a state or persons holding civil posts under a state, hold office during the pleasure of the governor of the state.
- However, there is an exception to this general rule of dismissal at pleasure.

- The President or the governor may (in order to secure the services of a person having special qualifications) provide for the payment of compensation to him in two cases:
 - if the post is abolished before the expiration of the contractual period,
 - if he is required to vacate that post for reasons not connected with misconduct on his part.
- Notably, such a contract can be made only with a new entrant, that is, a person who is not already a member of a defence service, a civil service of the Centre, an all-India service or a civil service of a state.

Significance of Article 311

- The purpose of Article 311 is to safeguard Civil servants. Further, it places two restrictions on the 'doctrine of pleasure'. In other words, it provides safeguards to civil servants against any arbitrary dismissal from their posts [Article 311 clause (1) and (2)].
- It helps them to respond to charges in an enquiry so that the Civil servant is not dismissed arbitrarily from the service.
- Article 311(2) [holding inquiry] is not available in the following three cases:
 - 2 (a) - 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; or
 - 2 (b) - Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or
 - 2 (c) - Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such enquiry.

The opportunity of being heard

- Originally, the opportunity of being heard was given to a civil servant at two stages - at the inquiry stage, and at the punishment stage.
- But, the 42nd Amendment Act of 1976 abolished the provision for second opportunity (that is, the right of a civil servant to make representation against the punishment proposed as a result of the findings of the inquiry).
- Hence, the present position is that where it is proposed (after inquiry) to impose upon a civil servant the punishment of dismissal, removal or reduction in rank, it may be imposed on the

basis of the evidence adduced at the inquiry without giving him any opportunity of making representation on the penalty proposed.

- The Supreme Court held that the expression '**reasonable opportunity of being heard**' envisaged to a civil servant (in the second safeguard mentioned above) includes:
 - an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
 - an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and
 - the disciplinary authority must supply a copy of the inquiry officer's report to the delinquent civil servant for observations and comments before the disciplinary authority considers the report.

Who is protected under Article 311 of the constitution?

People who are protected under Article 311 of the constitution are the members of:

1. Civil service of the Union.
2. All India Service.
3. Civil service of any State.
4. People who hold a civil post under the Union or any State.

Note:

The protective safeguards under Article 311 are **applicable only to civil servants(public officers)**. They are **not available to defence personnel**.

Process of a Departmental Enquiry in Civil Services

1. The civil servant is given a formal charge sheet of the charges after an enquiry officer is appointed.
2. The civil servant can choose to have a lawyer or represent himself/herself.
3. Witnesses can be called during the departmental enquiry, following which the enquiry officer can prepare a report and submit it to the government for further action.

The government employee dismissed under the above provisions can approach either tribunal like the Central Administrative Tribunal (CAT) or state administrative tribunal or the Courts.

Constitutional Provisions Related to Civil Services

The following are the constitutional provisions related to the civil services:

- **Articles 53 and 154:** The executive power of the Union and the States vests in the President or Governor directly or through officers subordinate to him. These officers constitute the **permanent civil service** and are governed by **Part XIV of the Constitution** (Services under the Union and States (Article 308-323)).
- **Article 309:** It empowers the Parliament and the State legislature to **regulate the recruitment, and conditions of service of persons appointed**, to public services and posts in connection with the affairs of the Union or of any State respectively.
- **Government of India (Transaction of Business) Rules:** The manner in which the officers are required to help the President or Governor to exercise his/her executive functions is governed by these Rules.
- **Article 311** – Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.
- **Article 312** – All India Services.

Frequently Asked Questions on Article 311

Q 1. What is the Doctrine of Pleasure in India?

Ans. The Doctrine of pleasure in India provides that people who are members of the Defence Services or the Civil Servants of the Union or of All-India Services hold office during the pleasure of the President and members of the State Services hold office during the pleasure of the Governor.

Q 2. Which article of the Indian Constitution mentions the doctrine of pleasure?

Ans. Article 310 of the Indian Constitution includes the common law of doctrine of pleasure.

