

CHAPTER IV

Reduction in Rank

The protection given under Article 311(2) of the Constitution extends to three types of major penalties which could be inflicted against a civil servant viz., dismissal, removal or reduction in rank. In the case of dismissal or removal, a civil servant stands removed from service and ceases to be a civil servant. In the case of reduction in rank, a civil servant stands removed from the class or grade of post in which he was serving and stands reverted to the specified lower class or grade of post. In other words though he is not removed from service he is removed from the post. Hence, the same amount of protection given as against the imposition of penalty of dismissal and removal is extended as against imposition of punishment of reduction in rank. It is also now well settled that protection of Article 311(2) applies not only to persons holding posts substantively but also applies to persons who are appointed on probation or officiating or temporary basis.

(1) *Meaning of "reduction in rank"* : The words 'Reduction in Rank' used in Article 311(2) of the Constitution has reference to the classification of the post which a person holds in the hierarchy of the service to which he belongs and does not mean the rank in the seniority list in the same cadre. The expression 'Reduction in Rank' suggests the reversion of a civil servant from higher rank, or class or grade of post in the hierarchy to a lower rank or class or grade of post and not merely losing some places in the seniority in the same rank, or class or grade of post to which the Government servant belongs. Therefore, protection of Article 311(2) can be invoked only when a civil servant is reverted from a higher rank, or class or grade of post to a lower rank or class or grade of post. When by an order, a civil servant loses higher salary or seniority or consequential chances of promotion to the higher post, the protection for a civil servant as against such order would be under the rules governing the conditions of service and not under Article 311(2) as such an action does not amount to 'reduction in rank' within the meaning of the said term under Article 311(2).¹

(2) *Reversion when amounts to reduction in rank* : 'Reduction in Rank' as explained above means that it must result in the reversion of a civil servant

1 (a) State of Punjab *V.* Kishandas—AIR 1971 SC 766.
(b) High Court of Calcutta *V.* Amal Kumar Roy—AIR 1962 SC 1704.
(c) Shitla Sahai *V.* N. E. Rly.—AIR 1966 SC 1197—1966(3) SCR 61.

from a higher post to a lower post. But every reversion of a civil servant from a higher post to a lower post does not amount to 'reduction in rank'. It depends upon the facts and circumstances of the case. One of the important factors is to find out whether in a given case the person was holding the higher post substantively or on officiating basis. In the case of persons officiating in the higher post, it is also necessary to find out the circumstances under which reversion was made in order to find out whether the order amounts to reduction in rank.

(3) *Reversion of persons holding the higher post substantively*: In the case of persons holding the posts substantively they have the right to hold the post and therefore any order passed against them reverting them to a lower class or grade of post except it be on account of abolition of posts amounts to imposition of penalty of reduction in rank and, therefore, at once attracts the provisions of Article 311(2) of the Constitution and unless such a penalty is imposed after complying with the provisions of Article 311(2), such a penalty imposed on a civil servant would be illegal and invalid.²

(4) *Reversion from officiating higher post to lower post*: A civil servant appointed to a higher post on officiating basis acquires no right to hold the post until he is confirmed or substantively appointed to the post. Appointment by promotion to a higher post on officiating basis is made in order to assess the suitability of an officer to discharge the duties of the higher post and if he is found suitable during the period of officiation he will be confirmed. If he is found unsuitable he is liable for reversion. Promotion on officiating basis to the higher post are also made to fill up short term vacancies arising for various reasons as also pending direct recruitment. In all cases of officiating appointments a civil servant acquires no right to hold the post. Therefore, whether an order of reversion of an officer officiating in the higher post to the lower post held by him earlier amounts to reduction in rank or not depends on the question whether the reversion was ordered in accordance with rules regulating promotion and reversions in the exigencies of public service or whether it was ordered as a measure of penalty. In such cases mere form of the order is not conclusive. If either the order or the circumstances in which the order was passed disclose that the order was issued as a measure of penalty it amounts to reduction in rank within the meaning of Article 311(2) even though the civil servant had no right to hold the higher post and such an order could be passed only after complying with procedural protection afforded under Article 311(2). If on the other hand the reversion was ordered either on grounds of unsuitability or for any other reason other than the imposition of penalty the order does not amount to reduction in rank.³

2 Purushothamlal Dhingra V. Union of India—AIR 1958 SC 36—1958 SCR 828.

(5) *Test to find out when reversion amounts to reduction in rank:* The mere fact that a civil servant has no title to the post or the rank and the Government has, by contract, expressed or implied or under the rules, the right to reduce him to a lower post does not mean that an order of reversion reverting a civil servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out as to whether the order of reversion also visits the servant with any of the following penal consequences—(i) whether the order attaches a stigma to the conduct of a civil servant, or (ii) whether the order entails or provides (a) for the forfeiture of his pay or allowances, or (b) the loss of his seniority in his substantive rank, or (c) the stoppage or postponement of his future chances of promotion. If any one of the above consequences ensue it has to be held that although in form, the Government has purported to exercise its right to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality, the Government has reduced him in rank by way of penalty. In spite of the use of innocuous expressions, the court has to find out the truth as mentioned above by examining the facts and circumstances of each case. If the case satisfies any one of the tests indicated above, then it must be held that the civil servant has been punished and if the requirement of Article 311 is not complied with, such an order is wrongful.³⁻⁴

(6) *Test to find out whether a particular order attaches a stigma:* When a person promoted to a higher post on officiating basis is reverted to the lower post whether the order really attaches a stigma to the conduct of a civil servant depends upon the circumstances under which the order of reversion came to be passed. The cases in which it has been held that the order of reversion attaches a stigma to the conduct of a civil servant are set out hereinafter:

(a) *Reversion after framing charges:* Where charges were framed against a civil servant and before the actual starting of the enquiry, the official was reverted from the officiating higher post to a lower post, the ground suggested for reversion being unsatisfactory conduct, the reversion amounts to a reduction in rank within the meaning of Article 311(2) of the Constitution as the reversion in such a case is really as a measure of penalty and attaches a stigma to the conduct of the officer.⁵

(b) *Reversion after holding enquiry:* In a case where a preliminary ex-parte enquiry was held against a civil servant on certain charges levelled against him and the officers who held the enquiry came to the conclusions that the officer was guilty of the charges, the Government accepted the finding and

3 Purushothamlal Dhingra *V.* Union of India—AIR 1958 SC 36—1958 SCR 828.

4 (a) P. C. Wadhwa *V.* Union of India—AIR 1964 SC 423—1964(4) SCR 598.

(b) State of Uttar Pradesh *V.* Sughar Singh—AIR 1974 SC 423.

5 (a) P. C. Wadhwa *V.* Union of India—AIR 1964 SC 423—1964 (4) SCR 598.

(b) K. H. Phadnis *V.* State of Maharashtra—AIR 1971 SC 998.

passed a simple order of reversion the mere form of the order is not conclusive. Though the civil servant was officiating in the higher post he is entitled to the protection of Article 311(2) when the close connection between the findings recorded in the enquiry and the order of the reversion is established the finding recorded against the civil servant constitutes the very foundation of the order of reversion. Hence, it was mandatory that an enquiry in conformity with the provisions of Article 311(2) must have been held. In such cases though the order of reversion on the face of it is innocuous it amounts to penalty and therefore, invalid for not complying with Article 311(2).⁶

(c) *Reversion on allegation of unsatisfactory work*: When the ground of reversion from an officiating higher post to the lower post is that work of the civil servant concerned was not satisfactory and that his record was not good, and that he has not given good account of himself in the higher post, attaches a stigma and therefore, the reversion without complying Article 311(2) of the Constitution would be invalid.⁷

(d) *Reversion on grounds of incompetency and inefficiency*: Similarly when a reversion is ordered from officiating higher post to the lower post on the ground that the official concerned was incompetent, inefficient and was wanting in knowledge of English and Kannada and not fit for being continued in the higher post any longer casts a stigma on the official and the order amounts to reduction in rank.⁸

(e) *Reversion from a tenure post before expiry on the ground of low standard of performance*: Where an officer who is appointed to a tenure post until further order is asked to choose one of the three alternatives, namely, that he should accept a lower post at the Central Government or to go back to a post carrying a lower pay scale in the State or to take leave preparatory to retirement and such a choice was given to the officer stating that the Government considered that at the top level of administrative posts persons who were capable of meeting the new challenges alone should be continued, clearly goes to show that Government was bent upon removing him from the present post. The further communication to the officer stating that his representation was rejected in view of the standard of performance of the official concerned also makes manifest that it was a reduction in rank accompanied by a stigma. Hence, such an order passed without complying with Article 311(2) of the Constitution is invalid.⁹

(7) *Order of reversion resulting in penal consequences*: An order of reversion may or may not attach a stigma to the conduct of an officer but still

6 Appar Apar Singh *V.* State of Punjab—SLR 1971 SC 71—1971(2) SCR 890.

7 Malhar Rao K. Gadgoli *V.* State of Mysore—1967(2) Mys. L. J. 140.

8 Mir Mohamad Ali *V.* State of Mysore—1967(2) Mys. L. J. 582.

9 Debesh Chandra *V.* Union of India—AIR 1970 SC 77.

if it brings about certain penal consequences the order in reality amounts to imposition of penalty of reduction in rank. In a case where an officer is reverted from officiating higher post to the lower post even if the order does not attach a stigma, it will still amount to reduction in rank if such an order brings about the following penal consequences.

- (i) Loss of pay or seniority in the substantive post.
- (ii) Postponement of the future chances of promotion.¹⁰

(a) *Loss must be with reference to substantive post*: In finding out whether such an order has brought about penal consequences, the question of penal consequences in the matter of forfeiture of pay or loss of seniority must be considered in the context of his substantive rank and not with reference to his officiating rank from which he is reverted because, every reversion may necessarily result in the reduction of pay and continuance of juniors in the higher post. Therefore, mere reduction of officiating pay or continuance of juniors in the higher post is no indication of penal consequence. It is the loss of pay or seniority in the substantive cadre that amounts to penal consequences.¹¹

(b) *Reversion for a specified period*: If the order of reversion states that the official concerned is reverted for a specific period, the effect of such a reversion is that it would affect his emoluments present as well as future, and that his consideration for promotion to the next higher post is withheld during the period specified, and result is postponement of future chances of promotion. Such an effect is a penal consequence and therefore amounts to reduction in rank. In such circumstances, non-compliance with Article 311(2) of the Constitution while passing such an order of reversion renders the order illegal.¹²⁻¹³

(c) *Loss of seniority and postponement of promotions*: In a case where a civil servant is reverted from an officiating higher post to his substantive post and by such reversion, the official concerned has not merely suffered a loss of pay which is inevitable on reversion but the circumstances disclose that he has also suffered loss of seniority as also postponement of future chances of promotion to the higher grade, such a circumstance establishes that reversion was by way of punishment involving penal consequences and therefore Article 311(2) is attracted.¹⁴

10 *P. C. Wadhwa V. Union of India*—AIR 1964 SC 423—1964(4) SCR 598.

11 *P. C. Wadhwa V. Union of India*—AIR 1964 SC 423—1964(4) SCR 598.

12 *Madhav Lakshman Vaikunthe V. State of Mysore*—AIR 1962 SC 8.

13 *M. Ramaiah V. State of Mysore*—AIR 1965 Mys. 164.

14 (a) *P. C. Wadhwa V. Union of India*—1964 SC 423—1964(4) SCR 598.

(b) *Ramaiah V. State of Mysore*—AIR 1965 Mys. 164.

(c) *Mahadev Bhudhi Raj V. State of Haryana*—SLR 1968 P & H 574.

(d) *Amrit Rao V. State of Madhya Pradesh*—SLR 1970 MP 577.

(d) *Reversion of senior on adverse confidential report while continuing juniors*: Though outward indicia of an order shows it is a mere order of reversion, in a case where it is established that large number of juniors promoted to the higher posts are retained in the higher posts and a senior official is picked up for reversion on the basis of an adverse entry in the character roll, the circumstances clearly indicate that the order amounted to imposition of penalty of 'reduction in rank'. Such an order is invalid for non-compliance with the provisions of Article 311(2).¹⁵

(e) *Reversion and deletion of name from eligibility list*: When a person is reverted from the officiating higher post to the lower substantive post on grounds of unsuitability and there is also a further direction that his name should be removed from the eligibility list for promotion it cannot be said that the order in question has penal consequence against the civil servant on the ground that it results in the postponement of future chances of promotion so long he is not debarred from once again being included in the select list. Such a reversion from an officiating post does not attract Article 311(2) of the Constitution as it does not amount to reduction in rank.¹⁶

(f) *Reversion after satisfactory completion of probation or officiation in the higher post*: Reversion order though not made in the form of punishment entails penal consequences if it has the effect of debarring the future chances of promotion. Therefore, in a case where a civil servant was promoted and kept on probation for a specified period his reversion made after the expiry of probationary period not on the ground of unsuitability but on account of certain instructions issued by the Government changing the criteria for promotion would result in penal consequences as he would be debarred from getting further promotion. Such an order of reversion amounts to reduction in rank and is illegal when Article 311(2) is not complied with.¹⁷

(8) *Form of the order not conclusive*: (a) In finding out whether a reversion from officiating higher post to a lower post amounts to reduction in rank or not the mere form of the order is not conclusive. The order is not conclusive of its nature because, it may merely be a cloak or camouflage for an order found on misconduct. All the circumstances must be looked into. When an order reverting an official from officiating higher post to a lower post is passed against a civil servant is challenged before the court, it is the duty of the court to examine all the circumstances in finding out whether the order really amounts to reduction in rank or is passed only in the exigencies of public service.¹⁸

15 State of Uttar Pradesh *V.* Sughar Singh—AIR 1974 SC 423 at 431 para 20.

16 State of Haryana *V.* Mulraj—SLR 1970 P & H 323 (FB).

17 Ajeeb Singh *V.* State of Punjab—SLR 1969 Punjab & Haryana 400.

18 (a) Appar Apar Singh *V.* State of Punjab—1971 SLR SC 71.

(b) Debesh Chandra *V.* Union of India—AIR 1970 SC 77.

(c) State of Bihar *V.* S. B. Misra—AIR 1971 SC 1011.

(d) State of U.P. *V.* Sughar Singh—AIR 1974 SC 423 at 431 para 10.

(b) Where the records reveal that the reversion was made on the basis of report made by the superior officer, the order of reversion can be said to be directly and proximately based on such report about the conduct of the civil servant concerned. Therefore, the proper view to take in such a case is that the very foundation of the order is the misconduct or misbehaviour referred to in the report in pursuance to which the order of reversion is issued.¹⁹

(9) *Reversion from deputation* : (a) A person who is on deputation does not hold the said post. He holds the post on which he has a lien in the parent department. Therefore, reversion to his post in the parent department by terminating the deputation does not normally attract Article 311 of the Constitution.²⁰

(b) But when such deputation was to a higher post carrying higher emoluments and was for specific period and the circumstances of the reversion before the expiry of the period indicate that it was as a measure of penalty such a reversion amounts to reduction in rank and attracts Article 311(2) of the Constitution. Noncompliance with the said Article renders order invalid.²¹

(10) *Transfer to an equivalent post affecting special pay* : (a) When a person is transferred to another equivalent post, there is no reduction in rank. The mere fact that a person was posted to a particular post and was getting some special pay attached to the post cannot be the basis to hold that the transfer which results in the deprivation of special pay amounts to reduction in rank. The right of a civil servant is to hold the post to which he is appointed substantively and not a particular position to which a special pay is attached. Transfer in such circumstances does not amount to reduction in rank.²²

(b) Similarly where a head of the department is transferred to a post carrying the same scale of pay and rank, but not status of being a head of the department, does not amount to reduction in rank. The mere fact that the latter post to which he is posted is not designated as that of the head of the department is of no consequence as the rank of the Government servant does not depend upon the mere circumstance that the Government servant in discharge of his duties has certain powers.²³

19 State of Bihar *V.* S. B. Mishra—AIR 1971 SC 1011.

20 (a) Bhagwandas *V.* State of Punjab—1967 SLR 240.
(b) Sohan Singh *V.* State of Punjab—SLR 1970 P & H 291.

21 Debesh Chandra *V.* Union of India—AIR 1970 SC 77.

22 Ramakrishna Reddy *V.* State of Mysore—1964 *Mys. L. J.* Suppl. 689.

23 K. Gopaul *V.* Union of India—AIR 1967 SC 1864.

(11) (a) *Reversion of direct recruits to a post lower than the one to which they were recruited whether permissible* : One of the 3 punishments which is authorised under Clause (2) of Article 311 of the Constitution against a civil servant is the punishment by way of reduction in rank. Reduction in rank has been interpreted as reversion from a post of a higher class or grade to a post of a lower class or grade by way of penalty. It is well settled that a person promoted to a higher post on officiating basis can be reverted to a lower post on the ground of unsuitability or for want of post and such other similar administrative reasons and it does not amount to reduction in rank, and that even in such a case, reversion from officiating higher post to a substantive lower post held earlier by an official as a measure of penalty, it amounts to reduction in rank.

One important aspect relating to penalty of reduction in rank which requires examination is, whether the punishment of reduction in rank can be imposed against a civil servant so as to reduce him to a post lower than a post to which he was initially appointed. There are no reported decisions on the point. However, it appears that the punishment of reduction in rank specified as one of the major penalties under Article 311 does not contemplate the imposition of the said penalty against a directly recruited Government servant so as to revert him to a post lower than the one to which he was recruited for the following reasons:

- (a) While the punishment of removal and dismissal can be inflicted as against any civil servant, the punishment of reduction in rank cannot be inflicted against all civil servants. For instance, in the case of persons who have been directly recruited to the lowest category of posts in the services of the State and continuing to hold the same post there can be no punishment of reduction in rank as there would be no lower class or grade.
- (b) Similarly, in the case of officers like the lowest category of judicial officers, lowest category of doctors, lowest category of engineers, etc., the posts lower to them would be entirely of different category like ministerial posts or posts with entirely different kinds of duties and responsibilities and consequently, it is impossible to contemplate the imposition of reduction in rank on such officers by reverting them to the lower posts of entirely different category.
- (c) Likewise it is impossible to contemplate the reversion of a person directly recruited to a Class I, Class II or Class III post as the case may be to a lower class of post which he never held or even to Class IV posts.

Therefore, it is reasonable to take the view that a civil servant earns promotion by exhibiting his merit and ability and suffers reduction in rank

instead of removal or dismissal for misconduct or inefficiency during his service in the higher post unless he is unworthy of being retained in the service and that the word 'reduction in rank' is used in Article 311 in this sense. Therefore, it appears that the punishment by way of reduction in rank can be inflicted only against a civil servant who held a lower post and who has been promoted to the higher post so as to bring him down to the substantive post held earlier by him and there could be no reversion of a person to a post lower than to which he was directly recruited.

(b) *Reversion for want of post—direct recruit cannot be reverted*: When a particular cadre is filled up both by direct recruitment and promotion and if certain reversions become necessary for want of posts in the higher cadre, the persons who should be reverted are those who are promoted from the lower cadre. A person directly recruited to the higher post cannot in the circumstances be reverted to the lower post.²⁴

(12) *Cases of reversion not constituting reduction in rank*: Except where the order of reversion from an officiating higher post is made as a measure of punishment or when the order of reversion attaches a stigma, or it has adverse effect on the substantive pay or seniority, or has the effect of postponement of chances of promotion, as indicated above, in all other cases where reversion of an official is ordered on account of mere unsuitability for continuance in the higher post and for other administrative reasons, reversion does not amount to reduction in rank, and the provisions of Article 311(2) are not attracted to such cases. For cases of reversions which do not fall within the category of reduction in rank within the meaning of Article 311(2) see Chapter relating to promotions and reversions.