CHAPTER VI

Exceptions to Article 311(2)

1. Imposition of Penalty on the Basis of Conviction by a Criminal Court

(1) *No enquiry necessary when convicted for an offence :* Proviso (*a*) to Clause (2) of Article 311 of the Constitution provides that where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, the protection afforded under Clause (2) of Article 311 of the Constitution has no application. Therefore, when a civil servant is prosecuted for offences before a criminal court and is convicted for an offence, there is no requirement of holding an enquiry as contemplated under Clause (2) of Article 311 of the Constitution. It is competent for the disciplinary authority to straightaway impose any punishment on a civil servant on the basis of the conduct which has led to the conviction and provision is made in the rules regulating disciplinary proceedings also to that effect.[1]

(2) *Conduct basis for disciplinary action and not conviction:* Under Article 311(2) Proviso (*a*) conduct is the criteria for disciplinary action and not the conviction. Proviso (*a*) to Clause (2) of Article 311 provides that the enquiry contemplated under Clause (2) of Article 311 is not required to be followed in cases where the punishment is inflicted on a civil servant on the basis of the conduct which has led to the conviction. Therefore, the basis for imposing departmental penalty should be the conduct which has led to the conviction and not mere conviction. A civil servant may be convicted for minor offences as well as major offences involving moral turpitude. Therefore, it is for the disciplinary authority to come to the conclusion as to whether the conduct of the civil servant concerned which has led to his conviction is such which deserves the imposition of the penalty of removal, dismissal or reduction in rank or any other departmental penalty. Therefore, any imposition of penalty on a civil servant on the basis of the mere conviction without there being a finding by the disciplinary authority to the effect that the conduct of the civil servant concerned which led to his conviction requires the imposition of the penalty imposed, is invalid.[2-3]

(3) (a) *Section* 12 *of Probation of Offenders Act no bar for departmental action :* Whenever a Government servant is convicted for an offence, it is

1 (*a*) C.C.S. (CCA) Rules 1965—Rule 19.
(*b*) M.C.S. (CCA) Rules 1957—Rule 14.
2 Settappa *V.* State of Mysore—1963(2) *Mys. L. J.* 28.
3 Gangaiah Veeraiah Kashimutt *V.* Commissioner, Hubli—SLR 1974(1) (Mys.) 281.

competent for the disciplinary authority to impose the punishment of dismissal unless in a given case the authority considers that the conduct which has led to the conviction is of a trivial or technical nature. But when a civil servant is convicted of an offence of a serious nature, it is normally considered that it is undesirable to retain such a person in Government service. Section 12 of the Probation of Offenders Act provides that when a person is convicted and dealt with under the provisions of the said Act it shall not be regarded as a disqualification arising out of a conviction. But the provisions contained in Section 12 of the Probation of Offenders Act cannot qualify or has the effect to altering the provisions of Article 311(2) of the Constitution which is a constitutional provision. Therefore, when a person is convicted and is dealt with under the provisions of the Probation of Offenders Act, it is competent for the disciplinary authority to impose the punishment of dismissal on the basis of the conduct which has led to the conviction. Any conduct which has led to the conviction is sufficient to enable the punishing authority to dismiss the convict employee. The dismissal is based on the conduct and not because he is convicted. The conviction only indicates that the conduct which is alleged against a civil servant is proved. Once that is proved, there is no necessity for the departmental authority to record a finding on the same charge. Therefore, the benefit given under Section 12 of the Probation of Offenders Act does not entitle a civil servant to contend that no punishment of dismissal under Article 311 may be imposed on the basis of such a conviction.[4]

(b) *Probation of Offenders Act—Section 12 does not wipe out the misconduct:* Where a person convicted for an offence is dealt with under the provisions of the Probation of Offenders Act is a Government servant, he is not exempted from departmental punishment. Departmental proceedings are not taken on the basis of the conviction. The departmental proceedings are directed against original misconduct of the Government servant which resulted in the conviction. Section 12 of the Probation of Offenders Act does not wash away the misconduct of the Government servant and it does not afford immunity against disciplinary proceedings for misconduct.[5]

2. Dispensing with the Inquiry When Impracticable

(1) Proviso (*b*) to Clause (2) of Article 311 of the Constitution provides that where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by the authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause against the proposed punishment, the provisions of Clause (2) of Article 311 of the Constitution shall not apply. It is well settled that Clause (2) of Article 311 contemplates opportunity at two stages—(i) the stage

4 Director of Postal Services *V.* Dayanand—SLR 1972 Delhi 325 (FB).

5 Om Prakash *V.* Director of Postal Services—AIR 1973 P & H 1 (FB)—SLR 1971(1) P & H 648.

of inquiry and (ii) the stage where the show cause notice about the proposed punishment is issued after the inquiry. Situations may arise where the disciplinary authority may have to dispense with both the stages or the 2nd stage alone if it is satisfied that it has become reasonably impracticable to hold an enquiry against a civil servant. Proviso (*b*) to Article 311(2) requires that the said satisfaction should be recorded in writing.

(2) *Requirements of an order dispensing with the enquiry:* (a) An order passed by the disciplinary authority dispensing with the reasonable opportunity as guaranteed under Article 311(2) by exercising the power under proviso (*b*) to Clause (2) of Article 311 in respect of a civil servant must be made by the application of the mind to the question and giving reasons for holding that it is not reasonably practicable to hold an enquiry. Such an order which has the effect of depriving a civil servant of the reasonable opportunity guaranteed under Article 311(2) is open for judicial review.[6] Therefore, an order passed without applying the mind to the question and without recording reasons for dispensing with the reasonable opportunity, should be held to be not in conformity with proviso (*b*) to Article 311(2) and therefore, the removal of the civil servant concerned is unconstitutional as contravening Article 311(2).[6]

(b) It is obligatory for the punishing authority to pass a separate and independent order about his satisfaction to dispense with the reasonable opportunity guaranteed under Article 311(2) while exercising the power under Sub-clause (*b*) of proviso to Clause (2) of Article 311. When the records disclose that except the allegation contained in the office note that the delinquent Government servant was not co-operating and was delaying in respect of the departmental enquiry against him and the said office note after having been signed by hierarchy of officials was signed by the disciplinary authority and there was no separate or independent order by the disciplinary authority to the effect that it was not reasonably practicable to give an opportunity to the Government servant concerned as contemplated under Clause 2 of Article 311 of the Constitution, it is clear that such a case is not covered by Sub-clause (*b*) of proviso to Article 311(2) and the compliance with the requirement of Article 311(2) cannot be dispensed with. Any order of removal so passed without complying with Article 311(2) is invalid.[7]

3. Dispensing with the Enquiry in the Interest of Security of State

Proviso (*c*) to Clause (2) of Article 311 of the Constitution confers power on the President in respect of all persons appointed under the Union and on the Governor in respect of persons appointed to the State services to remove them from service after dispensing with the requirement of Clause (2) if the President or the Governor, as the case may be, is satisfied that it is not expedient

6 State of Orissa *V.* Krishnaswamy—AIR 1964 Orissa 29.

7 Union of India *V.* Rajinder Prakash—SLR 1970 Delhi 392.

to hold such inquiry in the interest of security of State. The power conferred under Clause (*c*) of the Article 311(2) of the Constitution is only an instance of an absolute pleasure conferred on the President or the Governor and the pleasure under Article 311 of the Constitution which can be exercised by the President or the Governor is conferred personally on them and is not delegable. Therefore, in exercising the power under Article 310 read with Article 311 (2)(*c*) of the Constitution it is for the President or the Governor, as the case may be, to examine the case of an individual to satisfy himself whether his removal from service is called for, for the reasons mentioned in Clause (*c*) of Article 311(2) of the Constitution. Any order passed purporting to be under Article 311(2)(*c*) of the Constitution without such personal application of the mind by the President or the Governor and recording his satisfaction thereof, would be not authorised under Article 311(2)(*c*), and therefore it will be invalid.[8]

(b) Where the President or the Governor, as the case may be, has applied his mind and has come to the conclusion that it is not safe to continue the person in the interest of the security of the State, the mere defect in the order by referring to the words of unamended Article 311(2) of the Constitution does not render the order invalid. When the Governor has clearly come to such a conclusion, the protection guaranteed under Article 311(2) of the Constitution stands excluded. The order in such circumstances cannot be said to be illegal and cannot be set aside.[9]

(c) Where an order issued under Article 310 read with Article 311(2)(c) by the Governor is challenged on the ground that the satisfaction required under Article 311(2)(*c*) was not reached and it was so proved the order contravenes Article 311(2).[10] Such an order is also liable to be challenged on the ground that it is Mala-fide.[11]

8 Sardari Lal *V.* Union of India—AIR 1971 SC 1547—1971 SLR 168.
9 Bhagabanchandra *V.* State of Assam—AIR 1971 SC 2004.
10 Khariat Hussain *V.* Union of India—AIR 1969 All. 422.
11 Eshwaraiah *V.* State of Andhra—AIR 1958 SC 288.