CHAPTER I

TENURE AT PLEASURE*

Article 310 provides that except as expressly provided in the Constitution every person who is a member of the defence service or of a civil service of the union or of an all India service or holds any post connected with the defence or holds any civil post under the union, holds office during the pleasure of the President and that every person who is a member of a civil service of a state or holds any civil post under a state holds office during the pleasure of the Governor. The Parliament or legislature of states cannot make a law abrogating or modifying this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under article 310.[1] This is the general rule which operates "except as expressly provided by the Constitution". This means that the doctrine of pleasure is subject to general constitutional limitations. Therefore, when there is a specific provision in the Constitution giving to servant tenure different from that provided in article 310, then that servant would be excluded from the operation of the doctrine of pleasure.[2]

The rule that a civil servant holds office during the pleasure of the Crown has its origin in the conception embodied in the Latin phrase *durante bene placito* (during pleasure). The tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without assigning any cause. The true scope and effect of this expression is that even if a special contract has been made with the civil servant the Crown is not bound thereby. In other words, civil servants are liable to be dismissed without notice and there is no right of action for wrongful dismissal i.e., they cannot claim any relief against termination of their services.[3] The justification for this rule is that the Crown should not be bound to continue in public service any person whose conduct is not satisfactory.[4] This means that no servant of the

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1 *State of UP* v. *Babu Ram Upadhyaya*, AIR 1961 SC 751 at 761.

2 The Supreme Court judges (art. 124); Auditor General (art. 148); High Court judges (arts.217, 218), a member of the Public Service Commission (art. 317); and the Chief Election Commissioner have been expressly excluded by the Constitution from the rule of pleasure.

3 *Shelton* v. *Smith*, (1895) AC 229 at 234; *Dunn* v. *Queen*, (1896) 1 QB 116..

4 *Gould* v. *Stuart*, (1896) AC 575; *Reilly* v. *The King*, (1934) AC 176; *Chelliah Kodeeswaran* v. *Attorney General of Ceylon*, (1970) AC 1111

Crown can maintain an action against the Crown for any arrears of salary. It implies that the only claim of the civil servants is on the bounty of the Crown and not for a contractual debt[5] In practice, however, things are different since many inroads have been made now into the traditional system by legislation relating to employment, social security and labour relations. Thus, the Supreme Court in *State of Bihar* v. *Abdul Majid*[6] refused to follow the above-mentioned rule and upheld the claim for arrears of salary of the respondent sub-inspector of police who was dismissed from service on the ground of cowardice based on the reasoning *quantum meruit*, i.e., for the value of the service rendered.

The pleasure doctrine incorporated in article 310 is neither a relic of feudal age nor an inheritance of the special prerogative of the British Crown. The Supreme Court has also justified this doctrine on the basis of public policy, public interest and public good insofar as inefficient, dishonest or corrupt persons or those who have become a security risk should not continue in service.[7] Under this article the government has power to punish any of its servants for misconduct committed not only in the course of official duties but even for that committed by him in private life. The government has a right to expect that each of its servants will observe certain standards of decency and morality in his private life. Thus, disciplinary action can be taken against a police constable for his behaving very rudely and improperly with a member of the public in his private life.[8]

Limitations on pleasure under the Indian Constitution

The rule of English law relating to pleasure has not been fully adopted under the Indian Constitution. Article 311(2) places restrictions and limitations on the exercise of pleasure. Those restrictions are imperative and mandatory and must be given effect to. While articles 309 and 310 are subject to article 311, article 311 is not subject to any other provision of the Constitution. Therefore, whenever there is a breach of the restriction contained in article 311(2) of the Constitution and a civil servant is removed from the service, the matter becomes justiciable in a court of law and the party is entitled to suitable relief at the hands of the court.[9] An important limitation on the doctrine of pleasure is imposed by article 311(1). According to this constitutional provision, no civil servant is to be dismissed or removed by an authority 'subordinate' to

5 *Mulvenna* v. *The Admiralty*, AIR 1926 SC 842.

6 AIR 1954 SC 245. Also see *Om Prakash* v. *State of Uttar Pradesh*, AIR 1955 SC600; *State of Maharashtra* v. *Joshi*, AIR 1969 SC 1302.

7 *Union of India* v. *Tulsiram*, AIR 1985 SC 1416.

8 *Madhosingh* v. *State of Maharashtra*, AIR 1960 Bom 285.

9 *State of Bihar* v. *Abdul Majid*, AIR 1954 SC 245; 1954 SCR 786; *Purushotham Lal Dhingra* v. *Union of India*, AIR 1958 SC 36; 1958 SCR 838; *Moti Ram* v. *N.E. Frontier Rly.*, AIR 1964 SC 600; 1964(5) SCR 683. *N.Ramanatha Pillai* v. *State of Kerala*, AIR 1973 SC 2641.

the authority by which he was appointed. Dismissal or removal of a civil servant by an authority subordinate to the appointing authority is invalid. [10] This requirement does not mean that the removal or dismissal must be by the appointing authority itself, or its direct superior. It is enough if the removing authority is of the same or co-ordinate rank or grade as the appointing authority.

However, the most important restriction imposed on the doctrine of pleasure is by article 311(2). According to this article, no civil servant be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. This requirement is as regards major punishments like dismissal, removal from service, compulsory retirement and reduction in rank. It does not apply to minor punishments like censure, withholding promotion and withholding increments. It can thus be said that the two important limitations on the exercise of doctrine of pleasure are that (a) a civil servant cannot be dismissed by any disciplinary authority subordinate to the authority which appointed him; and (b) major punishments like dismissal, removal from service, compulsory retirement and reduction in rank cannot be imposed on a civil servant until he has been given a reasonable opportunity of showing cause. This rule of reasonable opportunity does not, however, apply in three situations mentioned in article 311(2).

(a) Exception (i): Where a civil servant is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

Clause (a) of article 311(2) dispenses with the holding of a departmental enquiry in cases where the punishment is sought to be imposed on the basis of the conduct which has led to the conviction on a criminal charge. The reason for this clause is obvious. When an official is convicted on a criminal charge, if the conduct which results in such conviction is sufficient basis to impose the punishment, there is no necessity to give any further opportunity as he would have had the benefit of a full-fledged trial before a criminal court. However, if the court finds that the penalty imposed by the impugned order is arbitrary, or grossly excessive, or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case, or the requirements of that particular government service, it shall strike down the order. The power has to be exercised "fairly, justly and reasonably" and "the right to impose a penalty carries with it the duty to act justly.[11] One important question is can a civil servant be dismissed from service after being convicted of a serious offence by a criminal court when his appeal is pending in a higher court? The Supreme Court has held that he could be dismissed from service and the

10 *Krishna Kumar* v. *Divisional Assistant Executive Engineer, Central Railway*, 1979 SC 1912; *Sampuran Singh* v. *State of Punjab*, AIR 1982 SC 1407.

11 *Shankar Dass* v. *Union of India*, AIR 1985 SC 772.

authorities need not wait till his appeal or revision was finally decided. If his appeal/revision succeeded, the matter could be reviewed in such a manner that he suffered no prejudice.[12]

(b) Exception (ii): Where an authority empowered to dismiss or remove a civil servant or reduce him in rank is satisfied that, for some reason to be recorded by it in writing, it is not reasonable to hold such inquiry.

Clause (b) of article 311(2) dispenses with the holding of an enquiry, if disciplinary authority is satisfied for recorded reasons that it is impracticable to hold an enquiry, for instance, where the official is absconding or becomes a lunatic. In such cases after passing an order as to the impracticability of holding an enquiry the competent authority can proceed to pass an order of removal or dismissal. Whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required under the clause.[13] The disciplinary authority is the best judge to decide the practicability of holding the enquiry.[14] The reasons for dispensing with the inquiry must be germane to the issue, and in this the disciplinary authority should not act lightly, arbitrarily or out of ulterior motive or merely to avoid holding of an inquiry because its case is weak.[15]

(c) Exception (iii): 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 give to a civil servant such an opportunity.

Clause (C) of article 311(2) empowers the President or the Governor to dismiss or remove a civil servant if he is satisfied that in the interest of the security of the state, it is not expedient to hold an enquiry. This is the only instance of absolute pleasure of the President or the Governor, as the case may be, which in respect of civil servants could be exercised in the interest of the security of the state which is of paramount importance. The satisfaction here is subjective satisfaction and is not circumscribed by any objective standards.[16] Personal satisfaction of the President or the Governor is not necessary to dispense with the inquiry. Such satisfaction may be arrived at by any one authorized under the rules of business. It is the satisfaction of the President or the Governor in the constitutional sense.[17] Security of the state may comprise a situation of disobedience and insubordination on the part of

12 *Deputy Director of Collegiate Education (Administration), Madras* v. *S. Nagoor Meera*, AIR 1995 SC 1364; *Union of India* v. *Ramesh Kumar*, AIR 1997 SC 3531.

13 *Union of India* v. *Tulsiram Patel*, AIR 1985 SC 1416.

14 *Kuldip Singh* v. *State of Punjab*, AIR 1997 SC 79.

15 *Arjun Chaubey* v. *Union of India*, AIR 1984 SC 1356.

16 *Jagdish* v. *State of Bombay*, AIR 1958 Bom 283.

17 *Shamsher Singh* v. *State of Punjab*, AIR 1974 SC 2192; *Union of India* v. *Sripati Ranjan*, AIR 1975 SC 1755.

the members of the police force. In *Union of India* v. *Balbir Singh*[18] the respondent who was one of the accused in the assassination of Prime Minister Indira Gandhi was dismissed from Delhi police without holding an inquiry. The dismissal was based on the recommendations of a high-powered committee of advisors constituted according to the directive of the central government. The committee considered the information and documents collected by the Intelligence Bureau having a bearing on the security of the state. The court upheld the dismissal observing that this was not a case where there was absolutely no material relating to the activities of the respondent prejudicial to the security of state. Though the respondent was acquitted in criminal trial against him his dismissal was not interfered with by the court since the material recovered from him, as per the authorities, was prejudicial to the security of the state.

Absolute pleasure of the President in respect of defence personnel: The pleasure doctrine under article 310 is applicable to the members of the civil service as well as defence services. But article 311(2), which places a restriction on the pleasure, is applicable only to the members of civil service. Therefore, in the case of persons in the defence services or civilians in defence services they hold their office under the pleasure of the President; in other words the pleasure of the President, insofar it relates to the tenure of office of the members of defence services is absolute.[19] Therefore non compliance with the rules before determining the tenure of a member of the defence service furnishes no basis for setting aside the order.[20]

Pleasure cannot be curtailed in any other manner: Subject to the following of the procedure contained in article 311(2), the pleasure of the President or the Governor under article 310 to bring about the termination of a civil servant at any time for good and sufficient reason is absolute. This pleasure of the President or the Governor, as the case may be, cannot be curtailed by rules framed under article 309 or even by legislation.[21]

Illustration: If by a provision made by enactment or by rules the decision of a disciplinary authority is made final and is not liable to review by the President or Governor, such a provision will be invalid and not binding on the President or the Governor, as the case may be.

18 AIR 1998 SC 2043.

19 *J.M. Ajwani* v. *Union of India*, SLR 1967 SC 471; *Hazara Singh* v. *Union of India*, SLR 1976(1) Del.340; *Union of India* v. *K.S Subramanian*, (1989) 3 SLR 713; *Ranjit Kumar Majumdar* v. *Union of India*, (1996) 1 SCC 51; *Director General of Ordinance Services* v. *P.N. Malhotra*, AIR 1995 SC 1109; and *Lekh Raj Khurana* v. *Union of India*, AIR 1971 SC 2111.

20 *Union of India* v. *KS Subramaniam*, SLR 1976(2) SC 519.

21 *State of U.P.* v. *Baburam*, AIR 1961 SC 751.

In view of this proposition, we find that specific power for review is reserved for the President under the Central Civil Services (Classification, Control and Appeal) Rules, and there are similar provisions in the corresponding rules framed by the states reserving power of review for the Governor.[22]

Similarly, if by such a provision it is provided that no civil servant is liable for removal from service unless he puts in 10 years of service, such a provision impinges on the pleasure of the President or Governor and so is invalid and unenforceable. This aspect is fully expounded in the judgment of the Supreme Court in *Tulsiram*.[23]

Pleasure relates to tenure and not to other conditions of service: The pleasure of the President or the Governor under article 310 only relates to tenure of office and does not extend to other matters relating to conditions of service. Therefore, every rule regulating recruitment and conditions of service framed under article 309 of the Constitution which confers rights on civil servants is enforceable.[24] As the power to prescribe rules regulating conditions of service under article 309 is subject to the other provisions of the Constitution, no rule framed by the Governor or law made by the legislature can impinge upon the power for the President or the Governor, as the case may be, regarding the exercise of his pleasure subject to article 311(2) of the Constitution. Subject to this conditon, the rules regulating conditions of service are enforceable.[25]

No power to continue after superannuation: Pleasure does not empower continuance of a civil servant beyond the age of superannuation. A civil servant holds office during the pleasure of the President or the Governor, as the case may be. But when according to the conditions of service, he has reached the age of superannuation; he ceases to hold office from that date. The pleasure of the President or the Governor, as the case may be, does not empower to continue the civil servant beyond the age of superannuation for purposes of holding disciplinary proceedings.[26]

22 Rule 20 of the CCS (CCA) Rules, 1965; Rule 26 of the KCS (CCA) Rules, 1957.

23 *Union of India* v. *Tulsiram Patel*, AIR 1985 SC 1416; rule 10 of the CCS (CCA) Rules, 1965, rule 34 of the Railway Servants (Discipline and Appeal) Rules, 1968 and rule 37 of the Central Industrial Security Force Rules, 1969 which require the question of quantum of penalty separately even in cases falling under the second proviso to article 311(2) declared invalid; also see *Ranganath* v. *Deputy Inspector General of Police*, W.P. 4114 of 1980 D 15-9-1981 (Kant); see also 1983(2) LLJ 330 at 334.

24 *State of Bihar* v. *Abdul Majid*, AIR 1954 SC 245; *Lachman Prasad* v. *Superindent G.H. & S Factory*, AIR 1958 All.345; *Malleshappa H.Bellary* v. *State of Mysore*, 1961 Mys LJ 1(FB); *State of U.P.* v. *Baburam*, AIR 1961 SC 751; *State of Mysore* v. *M.H.Bellary*, AIR 1965 SC 868.

25 See, *Baburam, ibid.*

26 *State of West Bengal* v. *Nripendranath*, AIR 1966 SC 447; *Pratap Singh* v. *State of Punjab*, AIR 1984 SC 72.

Distinction between power of disciplinary authority and pleasure under article 310: Under article 310 the tenure of a civil servant in the service of the Union or the state is subject to the pleasure of the President or the Governor, as the case may be. The power to remove or dismiss a civil servant at pleasure is outside the general executive power of the union which is vested in the President under article 73 and the general executive power of the state which is vested in the Governor under article 154. The power to remove a civil servant at pleasure is committed personally to the President and the Governor. Therefore, this power cannot be delegated.[27] Apart from the power conferred on the President or the Governor, as the case may be, to remove or dismiss at pleasure a civil servant of the union or the state respectively, the power to dismiss or remove a civil servant can be exercised by the authority empowered to appoint the civil servant concerned under the rules regulating recruitment as also by any other authority authorised by the provisions made under article 309 which authority should not however be lower in rank than the appointing authority in view of article 311(1). The power so conferred is separate and distinct from the power to remove a civil servant at pleasure conferred on the President and the Governor under article 310. The power exercisable by the appointing authority or any higher authority to remove or dismiss a civil servant is the power available under article 309 read with article 311(1) and not under article 310. For instance, the power under article 311(2) can be exercised only by the President or the Governor and not by the authority named in article 311(1).

Exception to the pleasure tenure: Even the pleasure doctrine with the restriction contained in article 311 is made inapplicable to certain very important offices under the state. The opening words of article 310 expressly make it clear that the principle that a government servant holds office during the pleasure has no application to cases for which specific provision has been made in the Constitution itself. The specific provisions made in the Constitution are with reference to the tenure of office of (i) the judges of the Supreme Court (vide article 124), (ii) the Auditor General of India (vide article 148), (iii) judges of the high courts (vide articles 217 and 218), (iv) chairman and members of the Public Service Commission (vide article 317), and (v) the Chief Election Commissioner, Election Commissioner and Regional Election Commissioner (vide article 324 of the Constitution). These articles provide a special procedure for removing persons appointed to those posts. The provision of article 310 has no application to those cases.[28]

27 *State of Uttar Pradesh* v. *Babu Ram*, AIR 1961 SC 751: 1961 (2) SCR 679.

28 *P.L. Dhingra* v. *Union of India*, AIR 1958 SC 36 at 41.