

CHAPTER IV

REDUCTION IN RANK*

Article 311(2) protection extends to three types of major penalties viz., dismissal, removal or reduction in rank. 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 is conferred in cases of reduction in rank by article 311(2) as in cases of dismissal or removal. It is also now well settled that protection of article 311(2) applies not only to persons holding posts substantively but also to persons appointed on probation or officiating or temporary basis. The expressions 'dismissed', 'removed', and 'reduced in rank' are technical words taken from the service rules where they are used to denote the three major categories of punishments.¹

Meaning of "reduction in rank": 'Reduction in rank' 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. 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 against such order should be sought under the rules governing the conditions of service and not under article 311 (2) since such an action does not amount to 'reduction in rank.'² Reversion from a higher post to a lower post may be under exigencies of situation or by way of punishment. The expression 'reduction in rank' occurring in article 311(2) covers only such reversions which are by way of punishment. The expression

* Revised by Thomas Paul, Associate Research Professor, I.I.I.

1 *Khem Chand v. Union of India*, AIR 1958 SC 300.

2 *State of Punjab v. Kishandas*, AIR 1971 SC 766; *High Court of Calcutta v. Amal Kumar Roy*, AIR 1962 SC 1704. *Shitla Sahal v. N.E. Rly.*, AIR 1966 SC 1197; 1966 (3) SCR 61; *Union of India v. Jagdish Prasad*, AIR 1982 SC 773 (if an order of promotion fails to disclose that it is on an officiating basis, any reversion would be reduction in rank).

'reduction in rank' within the meaning of that article, as the expression itself suggests, means reduction from a higher to a lower rank or post.³

Reversion and reduction in rank: Not every reversion of a civil servant from a higher post to a lower post amounts to 'reduction in rank'. It depends upon the facts and circumstances of each case. An important factor is 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 ascertain the circumstances under which reversion was made in order to determine reduction in rank. Reduction in rank has a wider connotation than reversion inasmuch as while the concept of the former includes the latter, vice versa is not always true. Though reduction in rank, in one sense, might connote the idea of reversion from a higher post to a lower post, all reversions from a higher post are not necessarily reductions in rank. A person working in a higher post, not substantively, but purely on an officiating basis may, for valid reasons, be reverted to his substantive post. That would not, by itself, be reduction in rank unless circumstances of the reversion disclose a punitive element.

Though the idea of reduction may not be fully equivalent with 'reversion', there are certain assumptions basic to service law which brings in the limitations of the latter on the former. The penalty of reduction in rank of a government servant initially recruited to a higher time scale, grade, service or post to a lower time scale, grade, service or post virtually amounts to his removal from the higher post and the substitution of his recruitment to lower post, affecting the policy of recruitment itself.⁴

Reversion of persons holding higher post substantively: Persons holding the posts substantively have the right to the post. Any order passed against them reverting them to a lower class or grade of post, except on account of abolition of posts amounts to imposition of penalty of reduction in rank and, at once attracts the provisions of article 311(2). Unless such a penalty is imposed after complying with the provisions of article 311(2), it would be illegal and invalid.⁵ There are two objective tests to determine whether the reduction of post or rank of a government servant is by way of punishment, viz., (a) whether the servant had a right to the post; and (b) whether he has been visited with evil consequences.⁶

Reversion from officiating in higher post to lower post: A civil servant appointed to a higher post on officiating basis acquires no right to hold the

3 *P.V. Srinivasa Sastry v. Comptroller and Auditor General*, (1993) 1 SCC 419].

4 *Nyadar Singh v. Union of India*, (1988) 4 SCC 170.

5 *Purushothamlal Dhingra v. Union of India*, AIR 1958 SC 36; 1958 SCR 828; *State of Mysore v. M.K. Gadgoli*, AIR 1977 SC 1617; *State of Punjab v. Balbir Singh*, AIR 1977 SC 629; *SP Vasudeva v. State of Haryana*, AIR 1975 SC 229.

6 *K.H. Phadnis v. State of Maharashtra*, (1971) 1 SCC 790.

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. If he is found unsuitable, he is liable to reversion. Promotions 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 the post. Therefore, whether an order of reversion 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 it was issued as a measure of penalty, it amounts to reduction 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. The test for attracting article 311(2) of the Constitution in case of reversion of a government servant holding an officiating post on the ground of unsuitability is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary employee.⁷

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 to reversion 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 further 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 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 expression, the court has to find out the truth

7 *Union of India v. R.S. Dhaba*, (1969) 3 SCC 603.

as mentioned above by examining the facts and circumstances of each case. If the case satisfied 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.⁸

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, the determination that order really attaches a stigma to the conduct of a civil servant depends upon the circumstances under which the reversion is made. The cases in which it has been held that the order of reversion attaches a stigma to the conduct of a civil servant are as follows:

(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 is really as a measure of penalty and attaches a stigma to the conduct of the officer.⁹

(b) *Reversion after holding enquiry:* In a case where a preliminary *ex-parte* enquiry held against a civil servant adjudged that the officer was guilty, a simple order of reversion amounts to penalty and therefore, invalid for not complying with Article 311 (2).¹⁰

(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, reversion without complying with article 311 (2) would be invalid.¹¹

(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.¹²

8 *Purushothamlal Dhingra v. Union of India*, AIR 1958 SC 36; *P.C. Wadhwa v. Union of India*, AIR 1964 SC 423; 1964 (4) SCR 598; *State of Uttar Pradesh v. Sughar Singh*, AIR 1974 SC 423; *Regional Manager v. Pawan Kumar*, SLR 1976 (2) SC 44; AIR 1976 SC 1766.

9 *P.C. Wadhwa v. Union of India*, AIR 1964 SC 423; *K.H. Phadnis v. State of Maharashtra*, AIR 1971 SC 998.

10 *Appar Apar Singh v. State of Punjab*, SLR 1971 SC 71; 1971 (2) SCR 890

11 *Malhar Rao K. Gadgoli v. State of Mysore*, 1967 (2) Mys LJ 140.

12 *Mir Mohamad Ali v. State of Mysore*, 1967 (2) Mys LJ 582.

(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 orders is asked that he should accept a lower post at the central government or go back to a post carrying a lower pay at the central government or go back to a post carrying a lower pay scale in the state or take leave preparatory to retirement because 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) is invalid.¹³

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 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.¹⁴

(a) *Loss must be with reference to substantive post*: In finding out whether such an order has brought 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 consequences. It is the loss of pay or seniority in the substantive cadre that amounts to penal consequences.¹⁵

(b) *Reversion for a specified period*: If the order of reversion states that the official concerned is reverted for a specific period, and as a result thereof it affects his emoluments present as well as future, his consideration for promotion to the next higher post is withheld during the period specified, his future chances of promotion is postponed, it entails penal consequence and therefore amounts to reduction in rank. In such circumstances, non-compliance

13 *Debesh Chandra v. Union of India*, AIR 1970 SC 77.

14 *P.C. Wadhwa v. Union of India*, AIR 1964 SC 423.

15 *Ibid.*

with article 311 (2) while passing such an order of reversion renders the order illegal.¹⁶

(c) *Loss of seniority and postponement of promotions:* In a case where a civil servant is reverted from an officiating higher post to this substantive post and by such reversion the official concerned has not merely suffered a loss of pay but also loss of seniority and postponement of future chances of promotion to the higher grade, it is clear that reversion was by way of punishment and therefore, article 311 (2) is attracted.¹⁷

(d) *Reversion of senior on adverse confidential report while continuing juniors:* Though the outward indicia of an order shows it is a mere order of reversion, 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 selected 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).¹⁸

(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 or 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) as it does not amount to reduction in rank.¹⁹

(f) *Reversion after satisfactory completion of probation or officiation in the higher post:* A reversion order 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 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

16 *Madhav Lakshman Vaikunthe v. State of Mysore*, AIR 1962 SC 8; *M. Ramaiah v. State of Mysore*, AIR 1965 Mys 164.

17 *P.C. Wadhwa v. Union of India*, 1964 SC 423; *Ramaiah v. State of Mysore*, AIR 1965 Mys 164; *Mahadev Bhudhi Raj v. State of Haryana*, SLR 1968 P&H 574; *Amrit Rao v. State of Madhya Pradesh*, SLR 1970 MP 577.

18 *State of Uttar Pradesh v. Sughar Singh*, AIR 1974 SC 432 at 431; *Union of India v. S.B. Chatterji*, AIR 1980 (2) Raj 365.

19 *State of Haryana v. Mulraj*, SLR 1970 P&H 323 (FB).

amounts to reduction in rank and is illegal when article 311 (2) is not complied with.²⁰

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 an officiating higher post to a lower post is challenged, it is the duty of the court to examine all the circumstances and to determine whether the order really amounts to reduction in rank or is passed only in the exigencies of public service.²¹

(b) Where the records reveal that the reversion was made on the basis of report made by the superior officer, the 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 misbehavior referred to in the report in pursuance to which the order of reversion is issued.²²

(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 311.²³

(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 a measure of penalty such a reversion amounts to reduction in rank and attracts article 311 (2).²⁴

Transfer to an equivalent post affecting special pay: (a) No reduction in rank occurs when a person is transferred to another equivalent post. The mere fact that a person who posted to a particular post and was getting some

20 *Ajeeb Singh v. State of Punjab*, SLR 1969 P&H 400.

21 *Appar Apar Singh v. State of Punjab*, 1971 SLR SC 71; *Debesh Chandra v. Union of India*, AIR 1970 SC 77. *State of Bihar v. S.B. Misra*, AIR 1971 SC 1011; *State of U.P. v. Sughar Singh*, AIR 1974 SC 423 at 431.

22 *State of Bihar v. S.B. Mishra*, AIR 1971 SC 1011. Similarly, when reversion is ordered on receipt of and pursuant to a complaint against the officer, by the vigilance commissioner, containing allegations of misconduct against the officer without inquiry, the allegation constitutes the very foundation of the order and therefore violative of article 311 (2). Likewise, reversion after framing charge and placing the civil servant under suspension indicates the reversion is penal in nature. *Nirmal Kumar v. Union of India*, SLR 1975 (2) Cal. 103.

23 *Bhagwandas v. State of Punjab*, 1967 SLR 240; *Sohan Singh v. State of Punjab*, SLR 1970 P&H 291.

24 *Debesh Chandra v. Union of India*, AIR 1970 SC 77.

special pay attached to it 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 substantively appointed and not a particular position to which a special pay is attached. Transfer in such circumstances does not amount to reduction in rank.²⁵

(b) Similarly, a transfer of a head of the department to a post carrying the same scale of pay and rank, but not status does not amount to reduction in rank.²⁶

Reversion on the basis of adverse remarks about misconduct: Reversion made on the basis of adverse remarks which do not pertain to efficiency and performance but to disrespectful and disobedient behaviour attaches stigma to the conduct. And, therefore, a reversion would be bad when it is not preceded by an inquiry and a finding against a civil servant.²⁷

There is no magic formula or uniform set of facts which could convert an apparently innocuous order into a punitive one. It is, however, well established that even an apparently inoffensive order may fail by the tests imposed by article 311 (2). Dealings of superior officers with their subordinates in government service in a welfare state must be shown to be based on fairplay and reason, when facts are actually proved which indicate that their requirements may be lacking.²⁸

Adverse remarks prior to selection not relevant: If a civil servant is selected for promotion on the basis of merit and suitability even though he had a few adverse remarks, it means on an overall consideration of his merit and service record he deserved selection and promotion. In such a case such adverse remarks prior to selection and promotion could not constitute the basis for adjudging his suitability.²⁹

Reversion of direct recruits to a post lower than the one to which they were recruited whether permissible: One important aspect relating to penalty of reduction in rank which requires examination is whether the penalty 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. 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 such a penalty against a directly recruited government servant for the following reasons:

(a) while the punishment of removal and dismissal can be inflicted against any civil servant, the punishment of reduction in rank cannot be inflicted

25 *Ramakrishna Reddy v. State of Mysore*, 1964 Mys LJ Suppl. 689

26 *K. Gopal v. Union of India*, AIR 1976 SC 1864.

27 *Regional Manager v. Pawan Kumar*, SLR 1976(2) SC 44.

28 *Ramakrishna v. High Court of M.P.*, SLR 1981 (2) MP 47.

29 *Satischandra v. State of U.P.*, SLR 1975 (1) All 65.

against *all* civil servants. For instance, persons who have been directly recruited to the lowest category of posts in the services of the state cannot be punished by reduction in rank as there is no lower class or grade to which they may be reduced;

(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. 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 difficult 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 post.

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. 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; there could be no reversion of a person to a post lower than to which he was directly recruited. In any event, the penalty of reduction in rank from a higher post to a lower post could be imposed against a civil servant, if only the post from which a civil servant is sought to be reverted is a promotional post. In other words, no penalty of reduction in rank can be imposed against a civil servant from which he has no opportunity of securing promotion, under the rules, to the post from which he was reverted. Therefore, reversion of clerks in the office of the accountant general to the post of peons, by way of penalty is illegal, as under the rules there was no provision for promotion to the post of clerks.³⁰

Reversion for want of post – direct recruit cannot be reverted: In a particular cadre filled up both by direct recruitment and promotion necessary reversions for want of posts in the higher cadre should be from 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.³¹

Cases of reversion not constituting reduction in rank: Reversion does not amount to 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

30 *Srinivasa Sastry v. Comptroller and Auditor General*, SLR 1979(3) Kar 509; *Shivalingaswamy v. State of Karnataka*, ILR 1985 Kar 1453.

31 *Sudhakar Kulkarni v. Deputy Commissioner*, 1972 (2) Mys LJ SN 108.

of reversion attaches stigma, or has adverse effect on the substantive pay or seniority, or has the effect of postponement of chances of promotion, as indicated above. Reversion based on mere unsuitability or other justified administrative grounds does not amount to reduction in rank, and the provisions of article 311 (2) are not attracted to such cases.³²

32 For cases of reversions which do not fall within the category of reduction in rank within the meaning of article 311 (2) see chapter II of part VII relating to promotions and reversions. As regards the scope of the power of the court to decide as to whether, an order of reversion, which innocuously worded is punitive in nature, *see* chapter III of part VII under the head discharge of probationer.