

CONTENTS

<i>Preface</i>	iii
<i>Citations</i>	iv
<i>Table of Cases</i>	xix
<i>Introduction</i>	xcii

Part I

GENERAL

CHAPTER I	IMPORTANCE OF SERVICES	3
CHAPTER II	STATE FOR PURPOSES OF FUNDAMENTAL RIGHTS	6
	Local authority	7
	Authority entrusted with management of local fund	8
	Electricity Board	9
	University	10
	Cochin Devaswam Board	10
	Coffee Board	11
	Statutory corporations	11
	Any instrumentality or agency of the government	12
	Private educational institutions receiving substantial financial aid from the state	14
	Cooperative societies and private societies	14
CHAPTER III	SERVICES UNDER THE STATE	16
	Regulation of recruitment and conditions of service	16
	General provisions relating to tenure of service	17
	Restriction on the exercise of pleasure as against civil servants	17
	Other authorities having power to determine the tenure of civil servants	17
	Special provisions	17
CHAPTER IV	RELATIONSHIP BETWEEN STATE AND ITS SERVANTS	20
	The objectives of constitutional provisions	21
	Object of security of tenure and better conditions of service	23
	Rights and liabilities of civil servants	24

PART II**FUNDAMENTAL RIGHTS**

CHAPTER I	EQUAL TREATMENT	27
	I Equality in matters relating to employment	27
	Matters relating to recruitment	35
	Classification of services	39
	Unequal treatment accorded to civil servants dis-similarly situated valid	41
	Division of a cadre into two cadres	42
	Division of state into different recruitment units	42
	Promotion on division-wise seniority to state wide cadre	43
	Prescription of conditions of eligibility	43
	Other matters relating to recruitment	47
	Matters relating to selection and appointment	51
	II Equality in matters relating to promotions	63
	III Seniority	82
	IV Equality in the matter of pay scales	95
	V Disciplinary matters	105
	VI Retirement	108
	VII Termination of service and reversion	113
CHAPTER II	RESERVATION OF POSTS	120
	Object of reservation is to ensure equality	121
	Backward classes	122
	Classification of backward classes	123
	Judicial review of classification	132
	Principles governing reservation	134
	Extent of reservation	135
	Carry forward rule	139
	Implementation of reservation	140
	Reservation of posts on the bodies which are state under article 12	150
	Residence in a state as qualification	150
	Mandal Commission and its aftermath	151
	Post <i>Indra Sawhney</i> era	157
	Article 16(4) : a transitory provision	159
	Reservation in judicial services	159
	Constitutional amendments	160
	Religion or caste as qualification	163

CHAPTER III	RIGHT TO CERTAIN FREEDOMS	164
	Right to guaranteed under article 19	164
	Rights subject to reasonable restrictions	165
	Right to recover pay or pension	170
	Restriction on the rights of members of police force	170
	Abridging of fundamental right of members of armed forces and police force	171
	Article 21	171
	Right against exploitation (article 23)	172

PART III**REGULATION OF RECRUITMENT AND
CONDITIONS OF SERVICE**

CHAPTER I	SERVICES UNDER THE UNION AND THE STATES	177
	Recruitment and conditions of service	178
	Services under the union territories	179
	Executive power not excluded by proviso to article 309	179
	Enforceability of rules regulating recruitment and conditions of service	180
	Conditions of service regulated by executive orders	183
	Defence services	184
	Matters falling within the term 'recruitment' and 'conditions of service'	184
CHAPTER II	CONSTITUTIONAL POWERS AND LIMITATIONS	186
	Legislative competence	186
	Delegation of legislative function	187
	Delegation of rule making power	188
	Delegation of power to assess suitability	189
	Illegal orders cannot be validated	190
	Rules will have effect subject to the Acts of legislature	190
	Supersession of rules framed under proviso to article 309 by legislation	191
	Inconsistency between rules and Act of legislature	191
	Rules are subject only to a law made under article 309	191
	Power to frame rules with retrospective effect	192
	Retrospective rule by delegated authority not valid	192
	Rule impinging on the pleasure of the Governor under article 310	193
	Power to create new cadres or abolish posts	194

	Power to validate invalid actions	194
	Constitution of joint cadre of IAS for union territories	195
	Power to alter conditions of eligibility with retrospective effect	195
	Rules violative of article 311(2)	196
	Rules regulating conditions of service of India Audit and Accounts Department	197
	Effect of striking down of an amendment to the rules	197
	Whether rules framed under article 309 exclude the provisions of the Industrial Disputes Act	198
	Commencement of rules	199
	Limitations on the executive power	199
	Effect of amendment of executive order by rules	202
	Orders issued under statutory rules	202
	Power to issue directions to a statutory corporation	202
	Power of statutory corporations to regulate conditions of service	202
CHAPTER III	LIMITATION ON THE POWER OF A REORGANISED STATE	203
	Limitations imposed under the States Reorganisation Act	203
	Enquiry into misconduct in parent state	210
	Liability for wrongful dismissal of a civil servant in the parent state	211
	Central government's power to issue directions	212
PART IV		
TENURE OF OFFICE		
CHAPTER I	TENURE AT PLEASURE	217
	Limitations on pleasure under the Indian Constitution	218
CHAPTER II	SECURITY OF TENURE	224
	Authority competent to remove or dismiss a civil servant – article 311 (1)	224
	Applicability of article 311	227
	Defence services	232
	Right to hold the post and protection of article 311(2)	232
	Termination of tenure	236
	Abolition of post	238
	Providing alternative employment owing to physical incapacity	241
	Reduction in rank	242

CHAPTER III	REMOVAL, DISMISSAL AND REDUCTION IN RANK	244
	Reasonable opportunity	245
	Reasonable opportunity during the enquiry	248
	Effect of amendment of article 311(2) by the constitution 42 nd Amendment Act	259
	Final order	261
	Other matters relating to departmental enquiry	263
CHAPTER IV	REDUCTION IN RANK	264
CHAPTER V	TERMINATION OF TEMPORARY SERVICE	274
	Motive for passing the order not relevant	275
	When termination is punitive	276
	Other aspects relating to terminations	277
CHAPTER VI	EXCEPTIONS TO ARTICLE 311(2)	279
	Doctrine of pleasure in public interest	279
	Opportunity of hearing ruled out by the second proviso	281
	The scope and purport of the three exceptions	282
	Imposition of penalty on the basis of conviction by a criminal court	285
	Dispensing with the inquiry when impracticable	290
	Validity of criticism of the judgment in <i>Tulsiram's</i> case	296
	Dispensing with the inquiry when invalid	298
	Power of appellate authority	300
	Dispensing with the enquiry in the interest of security of state	300
CHAPTER VII	RETIREMENT	304
	Right to continue in service till retirement	304
	Retirement when illegal	305
	General order extending services	307
	Premature retirement	308
	Order must be by prescribed authority	311
	Notice not a condition precedent	312
	Does not involve civil consequences	313
	Principle of natural justice has no application	313
	Extent of judicial review of an order of premature retirement	314
	Right to retire after qualifying service	319
	Premature retirement rule and security of tenure	319
	Termination of a 'tenure post'	324

CHAPTER VIII	LIMITATION IMPOSED BY ARTICLE 311(2) ON THE LEGISLATIVE POWER OF THE STATE	325
PART V		
	SPECIAL PROVISIONS	336
CHAPTER I	JUDICIAL SERVICE	337
	The object of special provisions	338
	Appointment and posting of district judges	340
	Recruitment of persons other than district judges	353
	Control over subordinate courts	364
	Protection to acts done in judicial capacity	382
	Position of officers and servants of subordinate courts	385
	Composition of judicial service	388
	Application of the provisions of this chapter to certain class or classes of magistrates	389
CHAPTER II	ALL-INDIA SERVICES	392
	Object of formation of all-India services	393
	Initial constitution of all-India services under the Constitution	393
	Regulation of recruitment and conditions of service	396
	Method of recruitment	397
	Procedure for selection and appointment	399
	Fixation of seniority	405
	Posting of cadre officers	410
	Disciplinary proceedings	413
	Suspension pending enquiry	414
CHAPTER III	OFFICERS AND SERVANTS OF THE SUPREME COURT AND THE HIGH COURTS	418
	Scheme and object	418
	Direct recruitment	419
	Recruitment by promotion exclusively vested in the chief justice	419
	Power of the chief justice to regulate conditions of service	420
	Power of Parliament and state legislature	422
	Government cannot interfere with appointments	422
	Disciplinary matters outside the purview of public service commission	422
	Scope of power under article 229 regarding matters involving finance	423
	Power of appointment—wider amplitude	427

Power to make rules with retrospective effect	428
Jurisdiction of Andhra Pradesh special tribunal	428

PART VI

CHAPTER I	PUBLIC SERVICE COMMISSION	431
	Composition of the public service commission	431
	Term of office and security of tenure	432
	Prohibition on further employment (re-employment)	433
	Conditions of service of members and staff of the commission	434
	Functions of the public service commission	435
	Consultation	437
	Procedure for selection	441

PART VII**RECRUITMENT AND CONDITIONS OF SERVICE**

CHAPTER I	RECRUITMENT	447
	Qualification	447
	Sources of recruitment	451
	Selections and appointments	454
	Selections—validity of selections	455
	Interview and viva-voce	458
	Appointment after selection	463
	Appointment by transfer	467
	Other matters relating to recruitment	468
	Absorption	470
CHAPTER II	PROMOTIONS	473
	Importance of seniority for promotion	473
	Meaning of promotion	476
	Method and procedure for promotion	477
	Qualification for promotion	498
	Confidential report	503
	Other matters relating to promotion	507
	Next below rule	511
	Retrospective promotion	512
	Reconsideration of promotions	513
	Reversion	514
CHAPTER III	PROBATION AND OFFICIATION	516
	Probationary period	516

	Discharge of probationer	520
	Right to be reverted	525
	Officiation	525
CHAPTER IV	SENIORITY	529
	Principles governing fixation of seniority	530
	Seniority of direct recruits	536
	Seniority of promotees	537
	Seniority between direct recruits and promotees	539
	Seniority on transfer to a separate unit	558
	Fixation of seniority—procedure	559
	Other matters relating to seniority	562
CHAPTER V	TEMPORARY SERVICE	566
	Temporary appointments	566
	Declaration of quasi-permanency	567
	Acquisition of permanency	568
	Termination	568
CHAPTER VI	DISCIPLINARY PROCEEDINGS	573
	Rules regulating disciplinary proceedings	573
	Departmental enquiry	576
	Procedure for imposition of major penalties	578
	Procedure for imposition of minor penalty	579
	Authority competent to initiate disciplinary proceedings	581
	Statutory restrictions	585
	Preliminary enquiry	586
	No vested right in procedure	586
	Joint enquiry	586
	Appointment of enquiry officer	587
	Enquiry officer must be free from bias	587
	Article of charges	590
	Legal assistance	591
	Rule of evidence for departmental enquiries	592
	Natural justice	593
	Findings in departmental enquiries	602
	Show cause notice	603
	Final order in disciplinary proceedings	605
	Enquiry into charges once exonerated	607
	Enquiry into matters before crossing of efficiency bar	608

	Appeal	608
	Appellate order	609
	Deprivation of right of appeal	611
	Review	613
	Revisional power	615
	De novo enquiry	615
	Abandonment	617
	Departmental enquiry and criminal trial	618
	Disciplinary proceedings after retirement	621
	Avoiding of inquiry by temporary employee	622
	Right to full salary	623
	Court martial powers	623
	Review	623
CHAPTER VII	SUSPENSION	625
	Power to order suspension	625
	Payment of subsistence allowance	630
	Suspension order lapses with the final order	631
	Right for full salary during the period of suspension	631
	Effect of termination by giving notice	633
	Reinstatement order necessary	634
	Increment during suspension	634
	Other matters relating to suspension	634
	Validity of rule authorizing payment of nominal subsistence allowance during the pendency of appeal against conviction	637
	Communication of order of suspension	638
CHAPTER VIII	PROSECUTION OF CIVIL SERVANTS	639
	Safeguards regarding prosecution of civil servants	639
	Safeguards regarding investigation	642
	Burden of proof on the civil servants	644
	Other matters relating to prosecution of civil servants	645
CHAPTER IX	MISCELLANEOUS MATTERS	648
	Administrative order	648
	Appointment	650
	Assurance by government	652
	Badli employees	653
	Bigamy	653
	Break in service	653
	Cadre	654

Civil court—jurisdiction	654
Compulsory waiting	655
Confidential report	656
Control	657
Court martial	657
Date of birth	657
Declaratory relief	659
Demobilized army personnel	660
Departmental promotion	660
Deputation	660
Discharge	661
Dismissal	662
Education appellate tribunal	662
Efficiency bar	663
Equitable estoppel	663
Equivalent post	664
Executive order	664
Extension/re-employment	666
Foreign service	666
Gratuity	666
Increments	667
Head of department	668
Independent charge	669
Insurance	669
Leave	670
Lien	671
Limitation	673
Local candidate	675
Loss caused to government	681
Misconduct	681
Natural justice	686
Next below rule	691
Note below a rule	693
Option	693
Pay fixation	694
Penal rent	697
Penalty not prescribed cannot be imposed	697

Pension	697
Post-graduate training	701
Post-graduate qualification	701
Project allowance	701
Provident Fund	702
Regularization	703
Reinstatement	703
Repatriation	704
Resignation	705
Res judicata	708
Review of promotion	709
Retrenchment	709
Rotational transfer	709
Selection committee	709
Select list	710
Selection grade	710
Service examination	711
Standing orders	711
Strike	711
Tenure at pleasure	712
Substantive appointment	712
Supernumerary post	714
Teaching experience	715
Termination of service	715
Transfer	715
Under-graduate college	718
Upgradation	719
Voluntary retirement	720
Warning	720

PART VIII

INTEGRATION OF SERVICES

CHAPTER I	RE-ORGANISATION	723
	Object and method	723
	Special provision in context of reorganization of states	724
	States Reorganisation Act, 1956	725

CHAPTER II	CREATION OF ADMINISTRATIVE MACHINERY	727
	Allotment of civil servants	727
	Effect of sections 115 and 116 on the rights of allottees	728
CHAPTER III	EQUATION OF POSTS AND SENIORITY	731
	Principles and procedure	731
	Power vested in the central government	732
	Review of promotions	734
	Scope of judicial review	736
	Right to make representation	738
	Fixation of seniority	740
	Amalgamation of two cadres	743
	Absorption of non-government servants in government service	744
	Effect of integration on the recruitment rules of erstwhile states	744
	Other matters relating to reorganization	748
 PART IX CONSTITUTIONAL REMEDIES		
CHAPTER I	ENFORCEMENT OF RIGHTS	753
	Scope of power under article 226	755
	Discretion to refuse relief on account of delay	762
	Matters of procedure	766
	Alternative remedy to be exhausted	769
	Locus standi	772
	Necessary parties	773
	No power to accept compromise in a case where validity of appointments is challenged	777
	Death of a civil servant during pendency of writ petition	778
	Futile writs will not be issued	778
	Dismissal in limine	779
	Provision of order 2, rule 2, CPC does not apply to claims arising out of a writ issued by the high court	779
	Common judgment by the high court : appeal in one case—effect	779
	Judicial review of administrative decisions	780
	Review of orders in disciplinary proceedings	782
	Quantum of punishment	784
	Enforcement of other conditions of service	788
	Quo warranto	792

Power to give appropriate directions	793
Limitation	793
Mala fides as ground for interference	793

PART X**LITIGATION BETWEEN STATE AND ITS SERVANTS**

CHAPTER I	CAUSES AND PREMEDIAS	797
	Causes	797
	Remedies	802

PART XI

CHAPTER I	ADMINISTRATIVE TRIBUNALS	807
	Scope of articles 323A and 323B	807
	Similarities in scope and purport of the two articles	810
	Distinction between articles 323A and 323B	810
	Salient aspects of the Administrative Tribunals Act	811
	Does the jurisdiction to decide disputes and complaints in service matters include the jurisdiction to decide constitutional validity of service laws?	815
	Creation of administrative tribunal does not affect basic structure	826
	Whether law declared by high court is binding on administrative tribunal or not?	829
	Application of 'doctrine of precedent' to administrative tribunals	830
	Whether power of superintendence of high courts under articles 226 and 227 is excluded in respect of administrative tribunals?	832
	Jurisdiction of the administrative tribunal does not extend to members of subordinate judiciary and officers and servants of subordinate courts	833
	Jurisdiction of administrative tribunal in the absence of an order	834
	Power to reduce penalty	836
	Power to punish for contempt of itself	837
	The Administrative Tribunals (Amendment) Bill, 2006	839