

# ● CONSTITUTIONAL SAFEGUARDS TO CIVIL SERVANTS: AN ANALYSIS



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## **Abstract**

*This paper gives increasing attention on the rules of conduct of civil servant and legislations that control civil services, aiming at enhancing disciplined efficiency and fair service conditions. The author discussed disciplinary proceedings such as suspension, removal and dismissal from service as well as reduction in ranks etc. Main focus was on evaluating the safeguards for the security of tenure of a person and to suggest the necessary legislative and jurisprudential parameters needed for safeguards of civil servants.*

## **Introduction**

Article 311 of the Constitution of India does not alter and affect the doctrine of pleasure exercised by the President or the Governor or any person authorized on the behalf of the President or the Governor enshrined in Article 310 of the Constitution of India but only provides for limitations on it. Article 311 only subjects the exercise of that pleasure to two conditions laid down in this Article.<sup>1</sup> Article 311 protects the civil servant holding civil post by providing safeguards and protects him from arbitrary arrest<sup>2</sup>.

## **Civil Post**

'Civil post' means an office or appointment from the civil side of administration.<sup>3</sup> The Supreme court in *State of Uttar Pradesh v. A.N. Singh*<sup>4</sup> laid down certain factors to determine the relationship of employer and employee such as the employer's right to appoint, control the manner and method of doing the work of employee, the State is under duty to make payment for his work and the State has power to suspend or terminate his service.

Members of all India service, members of civil service of the Union, members of civil service of the state, persons holding a civil post under the Union or a State can claim these two safeguards.<sup>5</sup> Article 311 of the Constitution of India is not applicable to the persons in Military services, including civilians in the defense sector,<sup>6</sup> employees of

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<sup>1</sup>Moti Ram v. General Manager, North East Frontier Railway, AIR 1964 SC 600.

<sup>2</sup>Sujit Choudhary, Madhav Khosla, et.al (eds.), The Oxford Handbook the Indian Constitution, 1010 (Oxford University Press, 1st edn. 2016).

<sup>3</sup>M P Jain, Indian Constitutional Law 1482 (Lexisnexis Butterworths 7th edn. 2014).

<sup>4</sup>State of U.P. v. A. N. Singh, AIR 1965 SC 361.

<sup>5</sup>Narender Kumar, Law relating to Government Servants and Management of Disciplinary Proceedings 307 (Allahabad Law Agency 3rd edn. 2013).

<sup>6</sup>Union of India v. Chote Lal, AIR 1999 SC 376.

Statutory Public Corporation, P.G.I.<sup>7</sup> etc., the employees of government companies registered under the companies Act, 1956, or of registered societies,<sup>8</sup> or of a university<sup>9</sup> are not holders of civil post and thus do not fall under these civil servants and where a person is appointed without following the recruitment and procedure, his appointment being illegal can be terminated without complying with the safeguards.<sup>10</sup> In *J.S. Sehrawat v. Delhi Urban Shelter Improvement Board*<sup>11</sup>, Delhi Urban Shelter Improvement Board was an autonomous board and employee of board are not civil servants and thus they are not entitled for protection given under Article 311 of the Constitution of India. In *Rakesh Dhingra v. National Scheduled Castes Finance & Development Corporation and Ors.*<sup>12</sup> Court held that the employees of companies are not civil servants and they cannot claim protection in Article 311 (1) of the Constitution of India.

Article 311 reads these two conditions as follows: -

- a. "No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed. [Article 311(1)]
- b. No such person as aforesaid shall be dismissed or 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." [Article 311(2)]

## Article 311(1) of Indian Constitution

This clause ensures to the civil servant certain degree of security of tenure. The government servant can be removed or dismissed by the appointing authority or authority superior to appointing authority or authority equivalent in rank with appointing authority but cannot be removed or dismissed by authority subordinate to appointing authority.

## Appointing Authority

Appointing authority means the authority who is actually appointing the civil servant and that authority has power to remove or dismiss the service of civil servant. This power of removal or dismissal cannot be delegated to any authority subordinate to appointing authority.<sup>13</sup> Subordinate authority means subordinate in rank not in respect of powers or duties. Now the question is whether the departmental proceedings are initiated by the appointing authority only. The Supreme Court of India in *State of U.P v. Chandrapal*

<sup>7</sup>Gurjeewan v. Sumitra Dash, AIR 2004 SC 2530.

<sup>8</sup>Rajasthan S.R.T.C v. Zakir Hussain (2005) 7 SCC 447.

<sup>9</sup>Sher Singh v. State of Punjab, AIR 1969 P&H 391.

<sup>10</sup>State of Jharkhand v. Manshu Kumbhkar (2008) 1 SLR 1(SC).

<sup>11</sup>J.S. Sehrawat v. Delhi Urban Shelter Improvement Board (2017) SCC OnLine Del 7219 (Del HC).

<sup>12</sup>Rakesh Dhingra v. National Scheduled Castes Finance & Development Corporation And Ors. 2018 SCC OnLine Del 13096.

<sup>13</sup>State of U.P. v. Ram Naresh, (1970) 3 SCC 173 (SC).



*Singh*,<sup>14</sup> case it was held that the government is open to make rules prescribing that any other authority can initiate the disciplinary proceeding provided he is not subordinate to the appointing authority. If under rule any authority is empowered to make appointment but that authority has not made actual appointment doesn't make that authority the appointing authority.<sup>15</sup> In *Smt. Kanti Devi v. Union of India*<sup>16</sup>, the power to make appointments to the subedars was made under the CRPF rules, 1955 under the Reserve Police force Act, 1949 which vested with the commandant general or inspector general. The SC upheld that where the power to make the appointments is vested in a statutory provision in one authority, to be exercised on the advice of another officer, then the former officer is considered as the appointing authority. Thus, in this case, the appointing authority is the commandant and just because IG's approval is required, the position of Commandant as appointing authority is not changed.

### Meaning of Dismissal and Removal or Reduction in Rank

The Constitution of India has not defined terms Dismissal and Removal. Thus, according to the departmental Rules, while a person "dismissed" cannot be reappointed under the government whereas no such disqualification is attached to the "removal". The common for these punishments is both are awarded for the misconduct or deficient or inefficiency in service and both entail penal consequences, such as the forfeiture or postponement of future chances of promotion or of the right to salary, allowance or pension. Reduction in rank means reduction or demotion in status or position not in duties or powers. In *Hussain Sasansaheb v. State of Maharashtra*,<sup>17</sup> the SC held that a person appointed to direct post cannot be reverted to lower post which was not held by him. Only the promote can be reverted back to lower post from which he was promoted. In *Debesh Chandra v. Union of India*<sup>18</sup>, the appellant who was the chief secretary of Assam was appointed as the secretary in the central government, on a tenure post which was to expire on July, 1969. In 1966, he was asked to choose between reversion to service of his parent state or compulsory retirement. He contended that the order amounted to reversion with stigma attached to it. The SC held that the order of reversion could not be sustained as the appellant was reduced in rank without complying with Article 311. If government servant is promoted in officiating capacity and he is reverted to his original substantive post because of unsatisfactory work. The Supreme Court in *State of Mysore v. M.K. Godgoli*<sup>19</sup>, held that the reversion to his original post does not amount to reduction in rank as the person promoted in officiating capacity has no right to hold the post.

### Article 311(2) of Indian Constitution

Article 311(2) is attracted only when a civil servant is "reduced in Rank", "Dismissed" or "removed" against his will before the expiration of period of his tenure. Civil servant is entitled to the safeguard given under clause 2 of Article 311 only when the "reduced in

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<sup>14</sup>State of U.P. v. Chandrapal Singh, (2003) 3 JT 533 (SC).

<sup>15</sup>Ikramudin v. Suptd. of Police, Darrang, AIR 1988 SC 2245.

<sup>16</sup>Smt. Kanti Devi v. Union of India, 2003 JT 165 (SC).

<sup>17</sup>Hussain Sasansaheb v. State of Maharashtra, AIR 1987 SC 1627.

<sup>18</sup>Debesh Chandra v. Union of India, AIR 1970 SC 77.

<sup>19</sup>State of Mysore v. M.K. Godgoli, AIR 1977 SC 1617.

Rank", "Dismissal" or "removal" is by the way of penalty. The two tests- a) Whether the employee has right to hold the post? b) Whether the employee has been visited with evil consequences? (evil consequences mean civil or penal consequences) were laid down by the Supreme Court in *Parshotam Lal Dhingra v. Union of India*,<sup>20</sup> to determine whether the dismissal or removal or reduction in rank is by the way of punishment.

In *Union of India v. Raghuwar Pal Singh*<sup>21</sup>, the Apex court held that the order being termination simpliciter is no reflection on the conduct of the respondent. It merely explicates that his appointment was illegal having been made without prior approval which was required by the competent authority. The order is not stigmatic. If there is any irregularity in the appointment process that could have been enquired into by the department but without taking recourse to any inquiry, the termination order has been issued was violative of principles of natural justice and Article 311 (2) of the Constitution of India. Court further held that giving opportunity of hearing to the respondent before issuance of the subject office order was not an essential requirement and it would be an exercise in futility.

Termination of service or reduction in rank of contractual or permanent employee amounts to punishment which attracts Article 311(2) of the Constitution of India because both have right to hold post. Contractual employee has right to hold post till the termination of contractual period and permanent employee has right to hold post till the last date of his superannuation.<sup>22</sup>

Rule 6 of Central Civil Services (Temporary Services) Rules, 1965 also provides that the termination of services of persons in "quasi -permanent" services amounts to punishment and it attracts Article 311(2) of the Constitution of India.

In all cases irrespective of the form of the order if an order made against an employee holding civil post in effect amounts to 'removal', 'dismissal' or 'reduction in rank', such an order to be valid must be preceded by an enquiry and a reasonable opportunity guaranteed under Article 311(2).<sup>23</sup>

In *Gang Ram Bhatia v. Union of India*,<sup>24</sup> the Supreme Court of India held that 'withholding of an increment' is merely of loss of prospects of earning more than what the government servant may be earning at the time. If charges have been levelled against the employee, he will be given a reasonable notice to make his defence during the course of inquiry and after inquiry the proposed action 'withholding of increment' is decided to be taken against him. He would not be entitled to the right conferred by Article 311(2).

'Reversion' generally means the posting of a government servant to officiate in a higher post to his original or substantive post. The civil servant who has right to hold post will be given safeguards under Article 311 of the Constitution of India on his reversion to the lower post or grade if that reversion attaches stigma.<sup>25</sup> Reversion to a lower post does not

<sup>20</sup>Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36.

<sup>21</sup>Union of India v. Raghuwar Pal Singh, (2018) 15 SCC 463.

<sup>22</sup>J.N.Pandey, The Constitutional Law of India 726 (Central Law Agency 54th edn. 2017).

<sup>23</sup>Supra note 20 at 36.

<sup>24</sup>AIR 1959 Punj 643.

<sup>25</sup>M. Rama Jois, Services under the State 242 (Indian Law Institute, New Delhi 2007).



per se amount to a stigma.<sup>26</sup> If the order for reverting the civil servant to lower post or grade does not contain any imputation but it seems innocuous on the face, the appropriate authority will see whether it was made by the way of punishment. It is tested by whether the misconduct is a mere motive or is the very foundation of the order.<sup>27</sup>

## Inquiry and Reasonable Opportunity

Civil servant cannot be dismissed or removed or reduced in rank unless he is given the opportunity to make his defense. The preamble of the Constitution of India secures social, economic and political justice and also the liberty of thought, belief and equality of opportunity and this equality of opportunity also includes the equality is given to every employee to make his defense against the charges framed against him<sup>28</sup> in order to ensure fairness in administrative action which is based on "the principles of natural justice."<sup>29</sup> Article 14 of the Constitution of India provides 'the equality before law and equal protection of law'. Equality before law means among equal law should be equal, it means like should be treated alike. Equal protection of law means all persons are not equal but they are different in their nature, attainments and circumstances so they need different treatment. The law or rule which makes classification giving different treatment is justified on the basis of two tests laid down by the Supreme Court in *Dalmia case*.<sup>30</sup> Article 14 of the Constitution of India is connected with the principles of natural justice. If any principle of natural justice is violated by the deciding authority while taking an action, the action will be considered arbitrary and equality enshrined in Article 14 of the Constitution of India is always anti-thesis to arbitrariness.<sup>31</sup> A rule of procedure laid down by law comes within the purview of Article 14 of the Constitution of India. The procedure adopted for making a classification must be just, fair and reasonable. The classification will not be considered reasonable if it is done without observing the principles of natural justice. If the service of a government employee is terminated without giving reasons on three months' notice is the denial of giving him a full opportunity of being heard which violates Article 14 of the Constitution of India and principles of *Audi Alteram Partem*. *Audi Alteram Partem* which contains the procedure from right to notice to final determination of complaint filed against an employee and this procedure is equally applied to every employee and gives the full opportunity of being heard. Article 21 of the Constitution of India provides that no person can be deprived of his life or liberty except according to procedure established by law and if service of government employee is terminated without giving him the full opportunity of being heard is the violation of Article 21 of the Constitution of India.

The 'reasonable opportunity of being heard' means all aspects of principles of natural justice are not left unaddressed to give the employee a full opportunity to make his own

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<sup>26</sup>Debash Chandra Das v. Union of India, 1969 SLR 485.

<sup>27</sup>State of Bihar v. Shiv Bhikshuk, 1970 SLR 863.

<sup>28</sup>The Constitution of India, preamble.

<sup>29</sup>Principles of Natural Justice In Indian Constitution, Available at [http:// www.legalservicesindia.com/article/1519/Principles-of-Natural-Justice-In-Indian-Constitution.html](http://www.legalservicesindia.com/article/1519/Principles-of-Natural-Justice-In-Indian-Constitution.html) (last visited on July 15, 2018)

<sup>30</sup>Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279

<sup>31</sup>I.P Massey, Administrative Law 186 (Eastern book Company, 8th edn. 2012).

defence.<sup>32</sup> It will be difficult to lay down the general principles to decide whether the employee concerned is given reasonable opportunity.<sup>33</sup> The general statement which is accepted is that an enquiry was followed after observing the principles of natural justice and it is conducted in fair manner.<sup>34</sup>

As to the rules of natural justice in relation to Article 311(2), Venkatarama Aiyer J Said:

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. It is hardly necessary to emphasize that the right to cross-examine the witnesses who give evidence exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that the enquiry has not been held in accordance with the rules of natural justice.<sup>35</sup>

The SC in *Khem Chand v. Union of India*<sup>36</sup> held that the opportunity of being heard means the employee concerned is given an effective opportunity to establish his innocence when the charge sheet is issued to him and for this he will be allowed to cross-examine the witnesses produced in the support of charge sheet and also for examining the witnesses produced in the support of his defence. An opportunity to make representation on proposed punishment can be given only when the competent authority after applying his mind on enquiry report submitted by an enquiry officer after completion of enquiry proposes to inflict any of major penalties i.e. dismissal, removal or reduction in rank.

Article 311(2) of the Constitution of India provides that an employee cannot be imposed with any of major penalties (dismissed or removed or reduced in rank) unless he has been given a reasonable opportunity to make his defence against the action proposed to be taken against him.<sup>37</sup> Prior to the Constitution (42nd Amendment) Act, 1976 the opportunity to make his own defence was at both stages (i) at inquiry stage where inquiry officer is given the opportunity to make his own defence and (ii) at punishing stage where the employee concerned is given the opportunity to make his representation against the penalty proposed to be imposed by the disciplinary authority.

Now after the Constitution (42nd Amendment) Act, 1976, has abolished the second opportunity of being heard at the punishing stage.

The clause (2) of article 311 of the Constitution of India after amendment reads:

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<sup>32</sup>Principles of Natural Justice In Indian Constitution, Available at <http://www.legalservicesindia.com/article/1519/Principles-of-Natural-Justice-In-Indian-Constitution.html> (last visited on July 15, 2018)

<sup>33</sup>Mahendra Pal Singh, (Revised) V.N. Shukla's Constitution of India, 952 (Eastern Book Company, U.P, 13th edn. 2017)

<sup>34</sup>U.P. Govt. v. Sabir Hussain, AIR 1975 SC 2045.

<sup>35</sup>Union of India v. T.R. Varma, AIR 1957 SC 882.

<sup>36</sup>Khem Chand v. Union of India, AIR 1958 SC 307.

<sup>37</sup>Supra note 22; at 725



No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such persons any opportunity of making representation of the penalty proposed.

In *Keya Kar v. The State of West Bengal*<sup>38</sup>, petitioner not was afforded with an opportunity to defend herself against the order of punishment. Rules indicate that the employee concerned is not given second opportunity to make his defence on the proposed punishment. She was given due opportunity to defend herself in the enquiry. So, no violation of principles of natural justice.

#### Exclusion of Inquiry

Article 311 (2) of Indian Constitution provides that no person should be condemned unheard but this is not absolute but provides some exceptions where there is no need to give the opportunity of being heard and it does not amount to violation of principles of natural justice. These are as follows:

Exception I: "Conviction on a Criminal Charge" [proviso 2(a), Article 311(2)]

Proviso (a) to Clause (2) of Article 311 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.

When the employee concerned is prosecuted for any offence under criminal law and he is convicted by the criminal court for that offence, he is not given the opportunity of being heard under Article 311(2) of the Constitution before imposing any of major penalties. To apply this proviso, it is not necessary for the government to wait until the disposal of appeal or revision presented against the conviction.<sup>39</sup> But if the conviction is subsequently set aside then the order of dismissal will cease to exist.

Exception II: "Where Inquiry is not Reasonably Practicable" [proviso 2(b), Article 311(2)]

Proviso (a) to Clause (2) of Article 311 provides that "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 reasonably practicable to hold such inquiry".

In *Union of India v. Tulsiram Patel*<sup>40</sup>, Explaining the scope of the clause, the Supreme Court has said,

- a. "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 at the satisfaction of the disciplinary committee. It is not a total or absolute impracticability which is required by clause (b).

<sup>38</sup>Keya Kar v. The State of West Bengal, 2018 (5) SLR 559 Cal.

<sup>39</sup>Kunwar v. Union of India (1969) Lab.I.C. 990 (SC).

<sup>40</sup>Union of India v. Tulsiram Patel, AIR 1985 SC 1479.

- b. What is requisite is that the Holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.
- c. The disciplinary authority is to record the reasons in writing for dispensing with the inquiry. There is no obligation to communicate the reasons to the government servant.
- d. The decision of the disciplinary authority is final by Article 311(3). However, it is not binding upon the courts so far as its power of judicial review is concerned."<sup>41</sup>

Application of Second proviso was involved in *Southern Railway Officers Association v. Union of India*<sup>42</sup>, before the SC. In this case, Shri Krishnan acted as the disciplinary authority for workmen working in the workshop. A disciplinary proceeding was initiated against one Arputharaj and on the basis of it he was dismissed from his services but was reinstated in services. One day, when Shri Krishnan was waiting for a train on railway station, then the delinquent servant abused and used filthy language with him and threatened to kill him. Subsequently, on the basis of documents available with the disciplinary committee, the delinquent was dismissed from his service, without holding an inquiry. This was held proper by the SC.

In *Satyavir Singh v. Union of India*<sup>43</sup>, the appellant who had taken part in disturbances was removed from service without an inquiry. The SC held that this was validity passed as it led to a very grave situation in the RAW as a protest.

In *Dashrath Lal (Deceased) through LRs v. DVB (Now BSES Rajdhani Power Ltd.) And Another*<sup>44</sup>, in para 33 Court observed that

"It is a matter of common knowledge, and it would be proper to take judicial notice of the fact, that a large number of terrorists came to be acquitted during the period in question, on account of the fact, that witnesses did not appear to depose against them on account of fear, or alternatively, the witnesses who appeared before the concerned courts, for recording their deposition, turned hostile, for the same reason.

The situation presented in the factual narration noticed in the impugned order, clearly achieves the benchmark, for the satisfaction at the hands of the competent authority, that it would not have been reasonably practicable, to hold a departmental proceeding against the Appellant/Petitioners, in terms of the mandate contained Under Article 311 (2) of the Constitution of India."

Exception III: "Holding of Inquiry not Expedient in the Interest of State" [proviso 2©, Article 311(2)]

This exception provides that "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".

<sup>41</sup>M P Jain, Indian Constitutional Law 1509 (Lexisnexis Butterworths 7th edn. 2014).

<sup>42</sup>*Southern Railway Officers Association v. Union of India*, AIR (2010) SC 1241.

<sup>43</sup>*Satyavir Singh v. Union of India*, AIR 1986 SC 555.

<sup>44</sup>*Dashrath Lal (Deceased) through LRs v. DVB (Now BSES Rajdhani Power Ltd.) And Another*, 2019 SCC OnLine Del 7732.





Explaining the true purport and scope, the Supreme Court in *Union of India v. Tulsiram Patel*<sup>45</sup> observed that the satisfaction of Governor or President was with respect to "expediency or in expediency of holding and inquiry in the interest of the security of the state". Expediency involved matters of policy. The satisfaction mentioned here is subjective and is not circumscribed by any objective standards.

In *Union of India & Anr. v M. M. Sharma*<sup>46</sup>, an Indian employer working in China. He gave certain confidential photos to their government. The SC held that his termination was in the "interest of the security of the state".

Clause D: Art. 311(3)

It states that "If in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to discuss or remove such person or to reduce him in rank shall be final."

This finality clause refers mainly to the situation covered by Art.311 (2) (b), proviso II, mentioned above. The Supreme Court has however ruled that Art. 311(3) do not completely bar judicial review of the action taken under Clause 2(b) of Art.311, second proviso. In *Jaswant Singh v. State of Punjab*<sup>47</sup>, the Supreme Court has reiterated the proposition that in spite of Art. 311(3) the "finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or *mala fide* or motivated by extraneous consideration or merely a ruse to dispense with the inquiry.

## Conclusion

The Constitution of India through Article 311 protects and safeguards the rights of civil servants in Government service against arbitrary dismissal, removal and reduction in rank. Such protection enables the civil servants to discharge their functions boldly, efficiently and effectively. The purpose underlying these safeguards is to ensure a certain amount of security to a civil servant which is also required. Article 311(2) imposes a limitation on the power of the President or the Governor to determine the tenure of a civil servant by exercise of pleasure, as also the power of the authorities on whom the power to impose penalty of removal, dismissal and reduction in rank might be conferred by the law made under Article 309. None of the three major penalties specified in the clause could be imposed by any authority including the President or the Governor except after giving a reasonable opportunity against the imposition of such of penalty. The public interest and security of India is given more importance than the employee's right of being heard. The principles of natural justice must conform, grow and be tailored to serve the public interest and respond to the demands of developing and growing society. These cannot, therefore, be rigid and their application has to be flexible taking into consideration all aspects of the case. By and large, these principles require that a person should be heard before a decision is taken. However, under certain circumstances, it may not be possible to hear the person before deciding his case. This is due to the fact that natural justice should not produce unnatural results. So conviction

<sup>45</sup>Union of India v. Tulsiram Patel, AIR 1985 SC 1483.

<sup>46</sup>Union of India & Anr v. M.M.Sharma S.L.P (C) No. 9032 of 2011.

<sup>47</sup>Jaswant Singh v. State of Punjab, AIR 1991 SC 385.

on criminal case, impracticability to hold the inquiry and inexpediency in the 'interest of the security of the State' are recognized as exceptions to principle of natural justice. On many occasions, the civil service litigations have been occasioned as the consequence of faulty enquiries. Therefore, they should be made compulsory for the departmental authorities to entrust enquiries to officials who possess a legal background. In cases of enquiries that involve complex technical issues or deal with the interpretation of law; or in a case, where the aggrieved civil servant has to face legal issues, the civil servant should be allowed to take the assistance of a professional lawyer. There is a pervasive tendency to avoid the Public Service Commission's advice on disciplinary matters. Therefore, the effective consultation by the departmental authorities with the Public Service Commission on disciplinary matters should be made mandatory. This would impart the aggrieved civil servant with a sense of confidence while fighting his case in a court of law. Further, proper classification of the alleged misconduct should be solely based upon the gravity of the alleged offence, without any regards to the status of the civil servant.