RESEARCH REPORT

AND RECOMMENDATIONS
In the foregoing chapters, the investigator has made an in depth investigation into the adequacy of the existing constitutional safeguards as accorded to the civil servants, in the light of the Constitution of India, statutes and the decisional laws of the apex court. An evaluation of the hypothesis is made on the basis of a brief analysis of the research findings in the chapter.

The introductory chapter is primarily concerned with the status and role of civil servants in the constitutional framework. However, for a proper appreciation of facts, the historical development of the civil services during the British regime, spreading over the Government of India Acts of 1919 and 1935 were taken up for consideration. These two Acts played a significant role in the framing of Part XIV of the Constitution, as it is evident from the Constituent Assembly Debates.

The Constitution seeks to strike a balance between the
policy of providing security of tenure to civil servants, while conferring upon the State the power of regulating the conditions of service of its servants. This is brought about by certain rules and regulations, framed under Article 309 of the Constitution, in the matter of their conditions of service, including disciplinary matters. Such rules are, however, subject to the 'Doctrine of Pleasure', enshrined in Article 310 of the Constitution. The civil servants in their capacity as citizens also enjoy certain civil and political rights available under Part III of the Constitution. These rights are, however, subject to certain restrictions like limitations in their participation in political activities, public meetings, and joining certain associations etc.

But unlike the civil servants, employees of statutory corporations who carry out developmental functions are not entitled to similar constitutional safeguards. Such employees have a statutory status and are entitled to a declaration of being in employment, when they are dismissed or removed in contravention of the statutory provisions. However, such employees remain unprotected and without any constitutional safeguard. Similarly, the status of employees of public sector undertakings are no less different, although the distinction between Government employee and non-government
employee under state agencies have considerably been narrowed down.

Chapter II is devoted to recruitment and classification of civil services. Article 309 provides that recruitment and conditions of service of persons, appointed to public service or post in the government, should be regulated by Acts of the appropriate legislatures. But during the course of this investigation, it has been evident that many of the rules and regulations, framed by the executive are still in vogue. Many a decision are taken on the basis of administrative instructions, in the absence of a uniform set of statutory recruitment rules.

In certain cases, the Constitution provides for the recruitment process to be undertaken through the public service commissions with a view to safeguard the recruitment process. It has however, been observed that, at times the process is defeated by taking recourse to adhoc recruitment or by dispensing with such consultation with the commission.

Once recruited to a post, a civil servant is governed by the various service rules. These rules also classify the civil servants into various categories like temporary,
permanent, quasi-permanent, officiating and probationary. Besides, distinction has also been made between an employee holding a post in a substantive capacity from one holding it in a non-substantive capacity. This has resulted in a situation that a person holding a post in a substantive capacity, becomes entitled to the protection of Article 311(2) of the Constitution.

On the contrary, as a chain of decisional law indicates, temporary civil servants or those on probation are not entitled to the constitutional safeguards, unless they are visited by penal consequences. If such termination is effected under the rules, and does not involve any stigma, or evil consequences, such an employee is not entitled to the constitutional protection of Article 311(2) of the Constitution. Thus, an honest civil servant serving in a temporary capacity is not afforded with any such protection.

The effect of such an order is of enormous consequence, and is too rigid an approach to be widely accepted. Moreover, the Constitution does not distinguish between permanent and temporary civil servants in the matter of extending the constitutional safeguards. Therefore, such a distinction needs to be removed, in order to enable the civil servants to
avail themselves of the Constitutional safeguards.

In chapter III, the investigator analyses the 'Doctrine of Pleasure' by tracing its developments since the Charter Act of 1833 to the Government of India Acts of 1919 and 1935, up to the present times. The 'Doctrine', said to be based on public policy and public good is conditioned by constitutional restrictions as provided under Article 311.

The 'Doctrine' could be exercised against the civil and defence service personnel, but unlike in the case of a civil servant, restrictions as provided under Article 311(2) of the Constitution are not applicable in the case of defence service personnel. Similarly, the Doctrine of Pleasure cannot be exercised in contravention of Articles 14, 16(1) and 19 of the Constitution. This is because a civil servant is not required to waive his fundamental rights except for certain restrictions in the interest of service discipline. Still, it is considered essential to introduce certain safeguards against any possible misuse of this 'Doctrine', while assuring reasonable security of tenure to the civil servants.

In chapter IV, the major penalties in service jurisprudence, as provided for in the Constitution are
examined. The Judicial interpretation of Article 311 (2) of the Constitution has led to the position that permanent civil servants are entitled to the constitutional protection of Article 311(2) before the infliction of any of the major penalties is conferred on the civil servants. On the other hand, a temporary employee has the least remedy, unless his termination is founded upon misconduct, inefficiency or the like as meted out by way of penalty. The criteria and tests, laid down by the Supreme Court appears to be less than clear. In certain cases, it has held that the court would normally go behind an order of discharge of a temporary employee, while in others, it has taken the view that the court can go behind the order, in order to ascertain if it were effected as a measure of punishment.

In order to check possible misuse of powers by the disciplinary authorities, the court should lift the veil in order to find out for itself, the purpose of passing the order of termination of service against a civil servant.

Termination of service could be brought about by an order of dismissal or removal of a civil servant from service. If an order of termination of service casts a stigma on a civil servant, it has to be considered to have been
carried out by way of punishment. While such an order of dismissal renders future employment a disqualification, an order of removal, amounting to even meting out a major punishment does not disqualify the civil servant from seeking future employment. The consequences are that both the orders lead to forfeiture of rights and benefits, already earned by the civil servant. Similarly, an order of discharge of a probationer on grounds of misconduct as well as an order of compulsory retirement if effected as a mode of punishment, comes within the ambit of removal from service. It is therefore, necessary to obtain the advice of the public service commission before compulsorily retiring a civil servant, in order to assure that his case had been considered by an impartial body before he is being visited with such an order of compulsory retirement.

In order to maintain an efficient, honest and diligent civil service, it calls for effective control over their conduct through disciplinary action, by weeding out inefficient, irresponsible, unproductive, corrupt and undisciplined civil servants. They should be visited by departmental action which entails disciplinary action, subject however, to the proper procedural safeguards. It has to be ensured that disciplinary action taken by way of major
penalties is meted out in appropriate cases, otherwise, it may effect the morale and efficiency of the civil service.

In chapters V and VI, the investigator addresses himself to the aspect and scope of the procedural safeguards, as provided under Article 311 (2) of the Constitution. This being the core area of the investigation, the extent and impact of the exceptions, allowed in the framework of the procedural safeguards is also examined.

In chapter V on procedural safeguards, the researcher analyses the scope of reasonable opportunity of showing cause and that of natural justice, adopted during the course of the enquiry, including charge, the examination of witnesses, the scope of representation on the basis of the enquiry report as well as the effect of the final order. Besides, the scope of appeal and revision has also been examined. Apart from the scope of an enquiry, as contemplated under Article 311 (2) of the Constitution, an enquiry that could be instituted under the Public Servants (Inquiries) Act, 1850 has also been addressed.

The existing law in the matter of disciplinary action, taken by any subordinate authority stands without dispute.
However, during the course of the investigation it has been observed that controversy has arisen with regard to the extent and scope of reasonable opportunity.

By virtue of the Constitution forty second amendment, the civil servants have been denied the scope of the second opportunity of their showing cause at the time of the proposed punishment, thereby restricting the scope of reasonable opportunity to the first stage of the enquiry itself. This situation has led to a feeling of insecurity among the civil servants.

A chain of litigation has cropped up by challenging the departmental enquiries, as because the proper procedures are not adhered to by the enquiry officers during the course of the enquiry, or when the rules of natural justice are not followed. It is, therefore, essential that the enquiry officers be properly trained with the procedures of enquiry in order to mitigate the hardships, caused to the aggrieved civil servants.

The department, during the courses of an enquiry, should not refuse a nominee of an aggrieved civil servant to represent him, when department is represented by a presenting officer. Similarly, when a question of law is involved or the
subject matter is found to be technical in nature, or the charges are complicated or where a co-defendant is represented by a professional hand, the services of a lawyer should not be refused to the aggrieved civil servant. This apart, the disciplinary authority should provide a reasoned decision, while visiting a civil servant with any punishment. It is also essential for the appellate authority to provide a complete hearing to the aggrieved civil servant while hearing his appeal. The appellate authority should also pass a speaking order, as the power of departmental review is very restricted.

The Constitution provides for further safeguards to a civil servant by providing for consultation with the public service commission on all disciplinary matters, subject to any regulation doing away with such consultation as required. But the delegation of powers to subordinate officials under Central Civil Services (Classification, Control and Appeal) Rules, 1965 obviates the need for such a consultation in respect of officers, other than those holding Class I posts. This in effect, covers only a very limited number of officers, who may be brought within the purview of the commission in respect of disciplinary matters. The constitutional nature of the commission’s advice needs to be
implemented effectively, in order to impart a sense of feeling of confidence in the civil service, that an independent body has considered the case impartially.

The Constitution has also provided for dispensation of enquiry under certain circumstances, as laid down in the provisos of Article 311 (2). Chapter VI is the result of an analysis of the exceptions, which provide for dispensation of an enquiry under certain circumstances. From the study of a string of case laws as analysed, it may be pointed out that they have been subject to abuse, and thus, certain preventive measures are called for, in order to check their possible misuse by the departmental authorities. What is missing here is the inner safety value of the mechanism to deter possible abuse of power.

Under the existing provision, a civil servant may be visited with a major penalty even for his commission of a minor offence, which may not even be remotely associated with his official works. Therefore, there is a need to restrict the invocation of proviso (a) to specific cases of misconduct. Even in respect of proviso (b), it is evident that it has been used rather liberally to the detriment of civil servants. Scope of misuse is further accentuated by clause (3)
of Article 311 of the Constitution, which provide for 'administrative finality' of such action. Proviso (c) may be amended, so that it may include only those cases where disclosure of facts might endanger the security of the State, and nothing more, thereby limiting the scope of its possible misuse. As of now, an aggrieved civil servant may be subjected to capricious policy of pick and choose in the matter of infliction of the punishment.

The functioning of the Central Administrative Tribunal is analysed in Chapter VII. It may be observed that the rules connected with the tribunal needs to be amended for speedy disposal of cases, and all statutory corporations should be brought within the jurisdiction of the tribunal, so as to bring about uniformity in administering their judicial redress. Further, it calls for a complete judicial colour to fulfill the constitutional promise of an equally efficacious substitute of the High Courts.

In chapter VIII, the investigator analyses the role of the judiciary in the matter of protecting the constitutional safeguards, as extended to civil servants. Apart from seeking constitutional remedy, a civil servant can also seek civil remedy by seeking reliefs like Declaration, Injunction and
In spite of the wide paraphernalia of legal redress, it has been observed that a lot of controversies have arisen in service jurisprudence. This situation may be attributed to the shifts as witnessed in decisional laws, occasioned by constitutional amendments as well. Analysis of some of the 'majority' and 'dissentient judgments' of the Supreme Court, specially in the area of 'Doctrine of Pleasure', delegated legislation, reasonable opportunity, and in respect of provisos to Article 311 (2) which deny the procedural safeguards, has indicated that there has been a considerable shift in the directions pro-offered by the decisional laws.

Positive suggestions have been made in order to bring about effective changes and to render appropriate meaning and effect to the existing constitutional safeguards of the civil servants, in the form of recommendations. Certain grey areas that have been traced out in the service jurisprudence call for clear and succinct enunciation by the concerned authorities.

After a study of the decisional laws, it is evident that the civil servants have been occasionally denied the procedural safeguards or have been subjected to malafide
action of the disciplinary authorities.

Hypothesis

In the basic hypothesis, as postulated at the inception of this investigation, it has been hypothesised that the existing safeguards available to the civil servants need to be strengthened. In the course of this investigation, it has been observed that the existing security of tenure of the civil servants has at times been put to jeopardy, because of the failure of the departmental authorities to follow the procedural safeguards, as provided for. Further, the forty second constitutional amendment passed in the year, 1976, has also reduced the scope and ambit of reasonable opportunity to be provided to civil servants under Article 311 (2) of the Constitution. The amendment has caused a severe setback to the process of affording reasonable opportunity available to a civil servant in the event of institution of any enquiry.

The investigation clearly brings out the limitations of the existing procedural safeguards, as provided in Article 311 (2) of the Constitution. The procedural safeguards have to be made a reality an effective by taking recourse to certain changes.
In view of the above, the hypothesis stands reaffirmed that the civil servants have to be provided with real and effective safeguards, which otherwise could have been susceptible to abuse by the departmental authorities.

The investigator therefore, makes the following recommendations on the basis of his research findings.

Recommendations

1. With a view to bringing about uniformity and consistency in the service rules, the adhoc rules, as framed by the executive should be replaced by statutory rules under Article 309 of the Constitution.

2. In the interest of the probationary employees, the service rules should provide for a maximum permissible limit of probation, instead of permitting extension of probationary periods for an indefinite period. The objective is to check possible abuse of service conditions of probationers by the departmental authorities.

3. Article 310 (1) of the Constitution should be amended so as to provide for judicial review of the 'Doctrine of Pleasure' to the defence service personnel, in order to check
any malafide exercise of power by the departmental authorities.

4. The scope of the second opportunity of showing cause, as provided in Article 311 (2) prior to the forty second constitutional amendment needs to be restored. The scope of second opportunity which was snapped needs to be restored by way of suitable amendment, so as to provide for a reasonable time limit within which the second opportunity of showing cause may be availed by the civil servant.

5. Many a civil service litigation has been occasioned as the consequence of faulty enquiries. Therefore, it should be made incumbent on the departmental authorities to entrust enquiries to officials possessing a legal background. This mechanism would enable an enquiry officer to make a fair appreciation of the evidence on record and ensure the enquiry officer’s adherence to proper procedures.

6. In enquiries involving technical issues or the interpretation of law, or in a case, where the aggrieved civil servant has to face a legally trained mind during the course of the enquiry, the civil servant should be allowed the assistance of a lawyer.
7. The Supreme Court has observed in a number of cases, that there has been a tendency to avoid the public service commission on disciplinary matters. Therefore, effective consultation by the departmental authorities with the commission on all disciplinary matters pertaining to major penalties should be made mandatory. This would induct a sense of confidence to the aggrieved civil servant, besides providing him with a cause of action in a court. Further, classification of the alleged misconduct should be based upon the gravity of the offence, alleged to have been committed and not on the status of the civil servant.

8. In cases of compulsory retirement of civil servants, provision should be made so as to seek the advice of the public service commission on the matter and the government should adhere to such advice. Further, in consonance with the accepted principles of natural justice, the departmental authority should communicate the confidential report to the civil servant, before visiting a civil servant with the order of compulsory retirement.

9. A parliamentary or legislative sub-committee should be constituted for the purpose of scrutinising the memorandum of the government, containing the reasons of non-acceptance
of the advise of the public service commission.

10. Provision should be made for permitting an aggrieved civil servant to question any punishment proposed to be inflicted on him, before the disciplinary authority himself, in respect of any disciplinary action contemplated by the disciplinary authority under the provisions to Article 311 (2) of the Constitution.

11. Proviso (a) to Article 311 (2) should be amended with a view to confining application of the proviso to cases of conduct involving moral turpitude of the civil servants.

12. Proviso (c) of Article 311 (2) of the Constitution should be amended in order to confine it to matters endangering the security of the state, and the proviso should also be made subject to judicial review. The materials upon which if any privilege by the government is claimed, should be made available to the judges for their personal satisfaction. The proposed measure would impart a sense of confidence in the minds of civil servants.

13. After considering the Supreme Court rulings, which state that clause (3) of Article 311 which provides for finality of administrative action should be subject to
judicial review, the aforesaid clause (3) needs to be deleted, if the safeguards as provided for by Article 311 are to be literally effective and made a reality.

14. The Administrative Tribunals Act, 1985 calls for amendment in order to make the tribunals an equally effective substitute mechanism of the High Courts. Such an amendment would remove the controversy relating to the competence of the tribunals in deciding upon the constitutional validity of any statutory law pertaining to civil servants.

15. Provision should also be made for the speedy disposal of cases before the administrative tribunals. Besides, the aforementioned Act should also provide for increase in the strength of the tribunals apart from alleviating the conditions of service of its members on par with that of the High Court Judges.

16. Identical constitutional safeguards should be extended to employees of statutory corporations and public sector undertakings, as many of these corporations pursue developmental activities akin to that as performed by the government servants. Further, such a set of employees should be brought under the purview of the administrative tribunals.
Conclusion

The constitutional safeguards, made available to the civil servants under the Constitution are found to be inadequate and hence, the political and legislative authority of the country should ensure their political resolve towards improving the existing constitutional safeguards made available to civil servants on the lines, as suggested in the recommendations, which are based on the research findings of this enquiry.