RECRUITMENT AND CLASSIFICATION OF SERVICES
CHAPTER II

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Conditions of Service

The expression 'conditions of service' is of wide amplitude and include all aspects like appointment, probation, confirmation, seniority, promotion, discipline, pension and other post retirement benefits. Keeping in view the objective of the investigation, emphasis is being laid on the aspect of recruitment and classification of the services. This is with a view to find out the extent to which the civil servants of different status enjoy the constitutional safeguards.

Recruitment and conditions of service has been provided for under Article 309 of the Constitution. It lays down that recruitment and conditions of service should be regulated by Acts of the appropriate legislature. The proviso to the Article empowers the executive to make rules, until Acts are passed by the appropriate legislatures, providing for recruitment and conditions of service.
Article 309 of the Constitution pertaining to the civil services, was inserted by the Constituent Assembly after considerable debate. During discussions on the civil services, the members of the Constituent Assembly drew richly from the working of the Government of India Acts of 1919 and 1935. Both these Acts contained provisions for recruitment and conditions of service and, therefore, acted as a model in drafting the constitutional provision.2

Section 96 of the Government of India Act, 1919 provided for the classification of the services in India. The Secretary of State for India was empowered to frame rules governing recruitment and conditions of service, besides providing for discipline and conduct of the civil servants. Section 96 B (2) also provided for delegation of those powers to the Governor-General-in-Council, or to the local government or the local legislatures. However, the ultimate control over the services was to be exercised by the Secretary of State-in-Council.

This position continued till the passing of the Government of India Act, 1935. Section 241 of the aforesaid Act, shifted the control of the Secretary of State over the recruitment and regulation of the federal services to the
Since Provisional Autonomy was provided for under the Government of India Act, 1935, the provincial Governments were to organise the services in respect of the transferred subjects.

Constituent Assembly

When the Constitution of India was being framed, the Constituent Assembly adopted the provisions of the Government of India Act, 1935 with minor modifications. While considering the first draft, prepared by Sir B.N. Rao, the Constitutional Advisor, the Drafting Committee recommended that the detailed provisions concerning recruitment and conditions of service should be regulated by Acts of the appropriate legislatures. This was in consonance with the practice prevailing in other countries, as is evident from the letter addressed by Dr. B.R. Ambedkar, the architect of the Constitution, to the President of the Constituent Assembly. Dr. Ambedkar observed that "the Committee feels that the future legislatures in this country, as in other countries, may be entrusted to deal fairly with the services."³

The Constituent Assembly addressed itself to the provisions of draft Article 282 (1), as accepted by the
drafting committee on 7.8.1949, and passed the same after rejecting all the proposed amendments. While Sri Satish Chandra Samanta suggested incorporation of knowledge of regional language as an essential qualification for recruitment to services, Brigeswar Prasad proposed that the public service commission should be empowered to make rules, instead of entrusting it to the legislatures. This draft Article eventually came to be renumbered as Article 309 of the Constitution.

The framers of the Constitution realised that since the public services should be manned by people of the highest calibre, integrity and efficiency, the method of recruitment and conditions of service should be given top priority. Only then could the government expect to attract talented individuals, to shoulder the responsibility of the civil services.

Constitutional Provisions

Apart from laying down certain general provisions under Article 309, the Constitution does not aim at providing detailed rules for recruitment or conditions of service, governing the civil servants. The detailed provisions are
left to be framed by respective legislatures, under entry 70 of list I and entry 41 of list II. Till such time the rules are framed by the legislatures, the Constitution has provided for the framing of administrative rules. Such rules framed by the executive can also be given retrospective effect, subject to certain exceptions. But these rules have to stand the test of reasonableness, and be in consonance with the constitutional provisions.

In *Accountant General Vs. Doraiswami*, the Supreme Court has held that the provisos to Article 309 of the Constitution, empowers the executive to make rules even to the extent of giving retrospective effect to such rules. But the rules so framed, have to be just, fair and reasonable. The executive could continue to frame rules till such time laws are enacted under Article 309 of the Constitution. However, such rules cannot be given retrospective effect in respect of those persons who enjoy protection under Article 314 of the Constitution. Moreover, once rules are framed by the legislatures, the said statutory rules cannot be altered by ways of administrative instructions.

In *Satyavir Vs. Union of India* the Supreme Court has observed that since the rule making power is made expressly
subject to the Constitution, the Court would strike down any rule that violates Article 310 (1) or Article 311(2) of the Constitution. But if the rules can be construed as directory in nature, the Court normally preserves its constitutionality.

Similarly, in respect of ‘conditions of service’ the judiciary has rendered some significant judgments. Initially, in Roshan Lal Tandon Vs. Union of India, the Supreme Court held the view that conditions of service can be altered unilaterally by the Government. But a few years later, the apex Court held in N.C. Singhal Vs Director General, Armed Forces Medical Services, that the conditions of service of a person cannot be altered or modified to his prejudice by any subsequent administrative instruction, by giving retrospective effect.

On the ambit of conditions of service, the Supreme Court has held in State of Madhya Pradesh Vs. Shardul Singh that it extends from the time of appointment till retirement and beyond. It may, therefore, be said that conditions of service include important obligations, apart from advantages and disadvantages.

In the landmark judgment of P.L. Dhingra Vs Union of India...
India, the Supreme Court has held that conditions of service of a government servant, irrespective of the nature of his appointment, are regulated by the terms of contract of employment, whether express or implied and are subject to the rules applicable to members of the particular service.

Recruitment Procedure

As seen above, Article 309 of the Constitution enables the legislature to regulate recruitment of the civil servants and determine their conditions of service. It has emerged, that recruitment to various services and posts under the government is one of the very important matters relating to services under the State. The bounden duty of the State is to appoint able personnel to discharge the duties and responsibilities of office to which they are appointed.

According to Justice Rama Jois, the important aspects relating to civil servants are

(a) the prescription of qualification;

(b) the determination of sources of recruitment, that is whether by direct recruitment or by promotion or both and if so, the percentage of quota of direct recruitment and promotion and
(c) the method or procedure of selection, that is, whether by interview, \textit{viva voce} or by competitive examination or by a combination of some or all the above tests.

According to the Supreme Court\textsuperscript{17}, it is for the State to regulate these matters. This has to be done either by enacting a law and by framing subordinate legislation or rules framed under proviso to Article 309 of the Constitution. Where such service rules are in existence, recruitment must conform to such rules. But such rules has to be in consonance with the constitutional provisions. Therefore, any law or rule under Article 309 of the Constitution, in order to remain in the Statute book must conform to the Constitution. In the event of transgression of any of the fundamental rights or other constitutional provisions like Articles 98, 187 and 234, it would be considered to be \textit{void ab initio}, on being challenged before any Court.

Where the rules provide for a prescribed qualification in the matter of recruitment to a certain post, the same has to be adhered to. If a specific degree is the prescribed qualification, one possessing a general degree cannot be considered for the post. This would be so, even if one studies the specialised subject as one of the subjects in the
general course - In *Union of India Vs. Dr. (Mrs.) S.B. Kohli* 18 it was held by the Supreme Court that, no person can be appointed to a post under the State unless he possesses the prescribed qualification.

Similarly, it is not open for the recruiting authority to consider a qualification as equivalent to a specially prescribed qualification 19. Likewise, if a certain qualification is not prescribed by the rules, the same cannot be insisted upon.20.

In certain cases the rules require the filling up of certain posts in a cadre by promotion, and the rest by direct recruitment. In such cases, in respect of the direct recruit there can be limitation on their recruitment. But if quota is apportioned between direct recruitment and promotion, in pursuance of statutory rules, the same has to be adhered to. The Supreme Court has held in *Jaishinghani Vs. Union of India*21, that the appointing authority cannot appoint persons in contravention of the quota rules against vacancies reserved for another source.

But in the matter of recruitment to different categories of posts, the State can lay down the method or procedure for selection. This may be done by prescribing written tests,
interview, as well as prescribing qualification of members of the selection committee. Where the rules prescribe that specified number of members would constitute a selection committee, the absence of any one of the members in the selection committee could invalidate the selection made by such a committee.22

Public Service Commission

The Constitution, besides providing for recruitment and conditions of service has also devoted a chapter on the public service commission. The purpose of the commission is two fold; it has to conduct departmental examinations for enabling recruitment of persons to the public services and posts, as well as to examine matters like promotions and disciplinary matters.

The establishment of the public service commission under Article 315 of the Constitution is significant in itself, as no other Constitution has provided for public service commission. The primary reason for the creation of the commission has been to safeguard the recruitment process against political and other forms of interferences. This constitutional sanction was considered essential to provide
for its independent functioning.

During the discussions in the Constituent Assembly, a special committee was set up to consider the provisions relating to the public service commission. It emerges from the debates, that some members were in favour of replacing the chapter on the public service commission as provided for in the first draft. They suggested a general provision to empower the respective legislatures to create such Commissions. But this view did not find favour, as it was feared that in such an eventuality, it would be at the whims and caprice of the legislatures, to decided whether to constitute the commission and to continue with it.

The members of the Constituent Assembly were benefited from the working of the public service commission prior to independence, particularly under the Government of India Act, 1935. This was because the Commission created under Section 96 C of the Government of India Act, 1919 remained only a pious wish, as the provisions were not given effect to. Only in the year 1924, the proposal came to be revived by the Royal Commission on Superior Civil Services, popularly known as the Lee Committee. The Commission was eventually set up in the year, 1926. In accordance with the recommendations of
the Lee Committee, the public service commission came to be provided with various functions. These included matters pertaining to recruitment, disciplinary appeals, claims for compensation and matters pertaining to conditions of service. Only three years later, the first provincial public service commission was set up at Madras during the year, 1929.

The public service commission continued to render primarily advisory services till the coming into force of the Government of India Act, 1935. This Act provided for the setting up of the federal public service commission as well as the provincial public service commissions. It further provided for a common public service commission under Section 264 (3) of the Act. Another notable feature of the Act was the provision empowering the Governor General as well as the Governors to exclude any matter from the public service commission. However, Section 267 of the Act provided for discharge of additional functions, if so entrusted by the provincial governments.

In view of the detailed provisions under the Government of India Act, 1935 the Union and Provincial Constitution Committees did not have much say in the matter. It simply made summary recommendations to the effect that
constitutional provisions relating to the public service commissions should generally conform to similar provisions of the Government of India Act, 1935. The only significant departure was that the discretionary powers of the Governor under the Act was replaced, requiring him to act on the aid and advice of his ministry.

The primary duty of the Commission is to conduct examinations for recruitment to the services. Other functions pertain to conduct of departmental examinations for promotions to higher posts in conformity with service rules. Moreover, apart from advising the Government on disciplinary matters, the commission has to tender advice to the Government on practically every aspect of civil service. These include transfers, settling claims of costs, incurred by civil servants in courts of law.

The advice of the commission deserves due respect, even if the some is not binding upon the Government. In P.C. Maheswari Vs. Zila Parishad, the Supreme Court has emphasised the fact that although the Government is under a duty merely to consult the public service commission, yet, such consultation should be real and effective. The object of such consultation is to assure the services of independent
advice, and to afford unbiased advice to the Government on matters vitally affecting the morale of public services.35

It may, therefore, be said that non-compliance with the provisions of Article 320 (3) (1) of the Constitution is not fatal. This is because the provision is not in the nature of a rider or proviso to Article 311 of the Constitution. Article 320 (1) of the Constitution provides for assessing the suitability of a candidate for any public service or post through the conduct of examinations. Such an examination normally includes interview and Viva-Voce examinations to assess the first hand knowledge of the candidate.

In view of the above, it is considered pertinent to quote the observation of the Punjab and Haryana High Court in J.L. Nair Vs. State of Punjab 36:

No doubt the advice of an advisory body as a public service commission is not binding and no doubt further that it is settled that the absence of such an advice does not invalidate the action taken where such advice is expected to be had before action is taken, but according to Article 320 (3) (b) of the Constitution, a State public service commission has to be consulted in making appointments and on suitability of candidates promoted. It is a constitutional duty which a public service commission performs. Even if its advice is not binding and the absence of its advice does not invalidate an order where it is expected to be consulted, its advice is not utterly meaningless and beside the consideration relevant
in the matter of appointments for promotions. Even if it is considered as a provision not enforceable in a Court, but advice given under it is entitled to due respect and it is an eminently relevant consideration for the State Government in promoting or continuing the promotion of an Officer. If after considering the advice and other relevant materials, the State Government takes a decision, it cannot be said that the decision is malafide.

Similarly, the Bombay High Court in State of Bombay Vs. N.T. Advani 37 has held that an appointment does not become invalid in the absence of consultation with the public service commission. That apart, the Commission does not have any power or authority to give ex post facto sanction to an appointment.

Classification of Services

Once a person gets inducted to the civil service under the Union or a State Government, he or she comes to be governed by various conditions of service. These government servants come to be classified under various categories like permanent, quasi-permanent, temporary, officiating and probationary. The service rules further distinguishes between an employee working in a substantive post and one in a non-substantive capacity. Such classification has been recognised as a valid one by the Supreme Court, the apex judiciary 28.
Permanent Service

The status of civil servant holding a substantive post does not give rise to much controversy, as to their entitlement to the constitutional safeguards. Their status has been settled by the apex court by significant judgments. The Supreme Court has had occasion to examine the extent to which the civil servants are entitled to the constitutional safeguards and whether they have been able to avail these safeguards.

In P.L. Dhinra Vs Union of India, it was held that termination of service of a person who has a right to hold a post would be deemed to be penal attracting the provisions of Article 311(2) of the Constitution. In other words, in case of termination of service of a person who has a right to hold a post under the terms of a contract, express or implied or under the rules governing his conditions of service is effected, the procedural safeguards have to be provided.

The status of a permanent civil servant was put on a firm footing by the decisions of the Supreme Court in Motiram Deka Vs. General Manager, N.F.Railway. The apex court held, that neither the terms of service contract nor the
service rules, except those relating to superannuation and compulsory retirement could validate the termination of service of a civil servant without observing the procedural formalities of Article 311(2) of the Constitution. A civil servant appointed substantively to a post can be dismissed, removed or reduced in rank only after complying with the constitutional requirements of Article 311(2) of the Constitution. Till such time a permanent civil servant is visited with one of the major penalties, he is entitled to hold the post as well as a corresponding scale of pay.

Probation

The general procedure adopted for appointment on a permanent post of any personnel is to appoint such a person on probation for a certain period. The idea behind appointing an employee on probation is to test the conduct or character of the person. Probation may be described as suspension of a final appointment to an office till a person temporarily appointed, has by his conduct proved himself to be fit to fill it. Probationary appointment is made to find out whether the appointee is a fit person for the post he is holding.

Sometimes, the service rules provide for an automatic
confirmation of the probationer, after the expiry of the period of probation. At times, period of probation of an appointee is extended, if the initial period of probation is not found to be satisfactory enough. The object of extending the period of probation is to see whether the probationer has made good his deficiencies, in order to be fit for confirmation. Since a probationer has no right to a post until he is confirmed, it is clear that the Government can terminate his services\textsuperscript{45}. During the period of probation, the status of a probationer is, therefore, similar to a temporary servant.

In \textit{Punjab Vs. Dharam Singh},\textsuperscript{46} Justice Das of the apex Court held that "where there is no rule, for extending the period of probation, I think in the absence of a rule giving the power to extend the period of probation, the period fixed by the ... rule cannot be extended." Similarly, in \textit{Samsher Singh Vs. State of Punjab},\textsuperscript{47} the Supreme Court observed that "in the absence of any rules governing a probationer, the authority may come to conclusion that on account of inadequacy for the job or for any temperament or other object not involving moral turpitude, is [sic] unsuitable for the job and hence may be discharged". In other words, where the rules do not provide for extending the period of probation,
the probationer has either to be confirmed or discharged from service.

It is obvious that the probationers are generally discharged because they are not found to be competent or suitable for the post they hold. At the same time, the departmental authority may have to examine whether to retain him in service, in the event of any allegations or complaints against the probationer. But in such a case, the employee should be given an opportunity to explain by way of a preliminary enquiry. The discharge of a probationer may be effected after a preliminary enquiry if such probationer is found unsuitable to be confirmed. It is, therefore, seen that a preliminary enquiry cannot be equated with a regular departmental enquiry and therefore, the same does not come within the purview of Article 311(2) of the Constitution. Where the maximum period of probation is specified, a probationer cannot be continued on probation beyond the said period. In such a case, the officer would stand confirmed in service, after expiry of the period of probation. In State of Gujrat Vs. Akhilesh C. Bhargava and ors, an Indian Police Service probationer was discharged under probationary rules without being formally confirmed, in spite of maximum period of probation stipulated in Government notification. The
Supreme Court struck down the order of discharge on the ground that the respondent stood confirmed in the cadre on the relevant date of discharge. For an officer whose service has been confirmed in the cadre, probationary rules do not apply. Therefore, proceedings in accordance with law are necessary to terminate the service of such an official. This was exactly the ratio in Motiram Deka Vs- General Manager, N.F. Railway 50.

Similarly, in Ajit Singh Vs. State of Punjab, 51 Justice Desai of the Supreme Court held that when an increment is released in favour of a person, on completion of probation, it implies that he has satisfactorily completed his probation. The sudden termination of service, therefore, cannot be justified on the ground that the conduct during probation was not satisfactory 52.

In P.L. Dhingra Vs. Union of India 53 it was held that a probationer or a person officiating against a post does not acquire any substantive right to the post. Consequently, such a person cannot complain any more than a private servant employed on probation, or on an officiating basis can do, if his service is terminated. But if a probationer is discharged on the ground of misconduct, or inefficiency or for similar
reasons, it amounts to a penal action. Therefore, in such cases, one has to be given a reasonable opportunity of showing cause against his discharge. In other words, if there is a discharge *simpliciter*, without any *malafide*, the probationer has no remedy. On the contrary, when any enquiry is instituted imputing any stigma, a probationer has to be afforded a proper opportunity to defend himself, in accordance with the provisions of Article 311(2) of the Constitution.  

Earlier, in *Triphuyan Nath Pandey Vs. Government of India*, the Nagpur High Court emphatically held that wherever the services of a probationer are discharged, on the ground of unsuitability for service, he is entitled to the protection of Article 311(2) of the Constitution. Therefore, the burden should lie on the State to prove that the employee is unfit to be retained in service.  

It is the substance of the matter which determines the character of termination of service. Where after instituting a formal departmental enquiry, the same is not proceeded with and an order of discharge is served on the probationary employee, it would ostensibly amount to an order of dismissal. In case of such dismissal, the fact that the
order by which his services are terminated, ostensibly purports to be an order of discharge cannot disguise the fact of dismissal. Such an order in substance and in law amounts to dismissal. If an order of discharge effected amounts in reality to a penal order, solely aimed at punishing a probationer, the same cannot withstand legal scrutiny. In the case of Hardeep Singh Vs. State of Haryana and ors, the apex Court struck down the order of discharge of a probationary police constable, since the same was actually effected only to punish the petitioner for having participated in a strike call given by his association.

It emerges from the above cases, that a probationer civil servant can be discharged simpliciter if his services are unsatisfactory. But one cannot be penalised under the guise of an order of discharge simpliciter, in which case, the probationer would be entitled to an enquiry under Article 311 (2) of the Constitution.

**Officiating Appointment**

In P.L. Dhingra Vs. Union of India, the apex Court held that an appointment of a civil servant on an officiating basis does not confer any substantial right on him to the post. He stands on a some footing as a probationary
government servant. Such a civil servant does not possess the same rights in respect of the higher post and, in the event of his unsuitability or exigencies of Public service, or in bonafide exercise of powers under the rules, he may be reverted. On the other hand, if he is reverted for any other reason, by way of penalty, he is entitled to claim the protection of Article 311(2) of the Constitution. It is apparent, that a civil servant does not have a right to the post to which he is officiating. Therefore, under normal circumstances, reversion to his original post or parent department cannot be considered to attract the provisions of Article 311(2) of the Constitution. If however, reversion to the original post or 'reduction in rank' is by way of punishment, or such reversion casts aspersion upon the integrity, conduct or efficiency of the employee, he is entitled to the constitutional safeguards which he deserves.

An important aspect of the facets of an officiating civil servant is that, if any reversion is to be made, it has to be effected only to the substantive post, and not to any lower post. Further, before affecting senior persons by such an order of reversion, junior persons serving in an officiating capacity has to be reverted. In State of Uttar
Pradesh Vs. Suhagar Singh,\(^61\) of the 200 officers appointed on an Officiating bias, the respondent was reverted to his substantive post without reverting persons junior to him in service. Prima facie, the order of reversion did not appear to be penal in character, but the attendant circumstances were such, that the reversion seemed to be by way of punishment. Therefore, the order of reversion was considered to be bad.

It may, therefore, be said that an order of reversion will be bad and in violation of Article 311(2) of the Constitution, if it visits the civil servant with evil consequences. If an order of reversion adversely affects one's seniority, or leads to forfeiture of increments or casts aspersion on integrity or character, it amounts to a penal consequence\(^62\). On the other hand, reversion from an officiating post on grounds of unsuitability may be effected if it does not attract any penal consequences\(^63\). But a reversion so effected for a collateral or legally extraneous purpose is illegal and invalid\(^64\).

Similarly, a civil servant who continues to officiate for an unduly long period cannot be considered to be in the nature of a temporary\(^65\), local or stop gap arrangement, even though the order of appointment may state so. The Supreme
Court has held in *Union of India v. Pratap Singh and Ors.* that in such circumstances, the entire period of officiation has to be counted for seniority. Denying such persons the right to regularisation and consequent benefits, is contrary to established principles of service jurisprudence.

**Temporary Appointment**

Having considered the status of probationary and officiating civil servants, it would be apposite to consider the position of temporary civil servants. There are a large number of civil servants serving in a temporary capacity and therefore, it is considered essential to look into their status in the matter of extension of the constitutional safeguards.

In the landmark case of *P.L. Dhingra vs. Union of India*, the Supreme Court has held that Article 311 (2) of the Constitution extends protection to all persons in permanent appointment as well as those appointed on temporary basis. But a temporary civil servant does not enjoy a right to the post, and his service may be terminated at any time after giving the stipulated or reasonable notice, without assigning any reasons. Similarly, the Madhya Pradesh High Court in *Suresh Chand vs. Principal, Government Girls*
College, Khandwa, has held that a person appointed to a temporary post is to be deemed to be in temporary service only. Even if the post held by a temporary employee is made permanent, it does not confer the status of permanency to a temporary employee, unless specifically provided. Subsequently, the apex Court has observed in State of Uttar Pradesh Vs. Nand Kishore Tandon, that a temporary civil servant can become permanent either under the rules, or if so declared by the Government.

It may, therefore, be observed that services of temporary civil servants are liable to be terminated in accordance with the rules or in exigencies of public service. Such civil servants, unless visited with penal consequences are not entitled to the procedural safeguards under Article 311(2) of the Constitution. Normally, in their case it is neither dismissal nor removal.

On the other hand, if such termination is brought otherwise, on the basis of alleged misconduct, such an employee is entitled to the constitutional safeguards. An order of termination of service of a temporary government servant for misconduct, without the holding of any enquiry or affording a reasonable opportunity offends Article 311(2)
of the Constitution 70. Such an order of termination on a government servant is therefore, considered to be void and inoperative.

Similarly, in Jagadish Mitter Vs. Union of India 71 the Supreme Court has held that if an order of termination visits the civil servant with any evil consequences, or attaches a stigma against his character, integrity or efficiency, the provisions of Article 311 (2) of the Constitution are attracted. In this case, the services of a temporary postal clerk were terminated without serving any charge sheet and without holding any enquiry. By pointing out the distinction between 'dismissal' and 'discharge', the apex court considered it to be a case of 'discharge', not attracting the provisions of Article 311(2) of the Constitution. But the court pointed out that where the services are terminated in a punitive manner, by depriving the government servant of his accrued benefits, it would be a case of 'dismissal'. A purported order of 'discharge' may, in reality, amount to an order of dismissal, if it is based on the recommendation of a formal enquiry into charges like bribery 72.

If a temporary government servant is discriminated against and singled out for harsh treatment, it amounts to an
arbitrary action, being in violation of Articles 14 and 16 of the Constitution. Similarly, if any stigma is attached or a temporary civil servant is visited with any evil consequences, he becomes entitled to seek constitutional redress. Likewise, if any enquiry is held on the basis of misconduct of a temporary civil servant, he becomes entitled to the constitutional safeguards. In such a case, the disciplinary authority has to abandon his authority to take disciplinary action simpliciter, and undertake disciplinary proceedings within the protective umbrella of Article 311(2) of the Constitution.

Where the service of a temporary employee is terminated on the ground of his undesirable conduct, such an order imposes a stigma on the particular civil servant, and therefore, amounts to a penalty. However, termination of service of a temporary government servant cannot be sustained, if based on allegations already rejected by the judiciary. In Mukesh Chandra Jain Vs. Union of India, the service of the petitioner who was serving as a doctor was terminated on the allegation of his participation in a doctor’s strike. Since he was already exonerated judicially from the allegation, the termination of his service was considered to be bad by the tribunal.
The position of the temporary civil servants in the matter of extension of constitutional safeguards has been clearly stated by the Supreme Court in Nepal Singh Vs. State of Uttar Pradesh and Ors. In view of the significance of the judgment, the relevant portion is quoted in extenso:

It is now settled law that an order terminating the services of a temporary government servant and ex facie innocuous in that it does not cast any stigma on the government servant or visits him with penal consequences must be negated as affecting a termination simpliciter but if, it is discerned on the basis of material advanced that although innocent in its terms the order was passed infact with a view to punishing the government servant, it is a punitive order which can be passed only after complying with Article 311(2) of the Constitution.

Quasi Permanent Service

A temporary government servant assumes a quasi permanent character, if he completes more than three years of continuous service, and is declared by the appointing authority as fit for employment in a quasi-permanent capacity. The mere fact of completion of three years of continuous service does not confer a temporary civil servant a quasi-permanent status. Quasi-permanent status can be obtained, only on it being explicitly declared by the appointing authority. Not withstanding the length of service,
in the absence of a declaration the government servant concerned continues to be in temporary service. Normally in declaring an employee to be quasi-permanent, his performance, conduct and character are taken into account by the appointing authority. Once appointed as such, a quasi-permanent civil servant is entitled to the constitutional safeguards, similar to that enjoyed by a permanent civil servant. However, if any reduction in the number of posts is ordered by the Government on policy considerations, the safeguards are not available.

Lien

A permanent civil servant, besides being entitled to constitutional safeguards is also entitled to avail lien under the service rules. Fundamental Rule 9(13) of the Fundamental Rules and Service Rules define lien as "a title of a government servant to hold substantively either immediately or on the termination of a period or periods of absence, a permanent post, including tenure posts to which he has been appointed substantively. Such a person continues to retain his lien until he is substantively appointed to some other post, or removed or retired from service. Such lien cannot be terminated even with ones consent, as it would
result in his being without a lien or suspended lien upon his permanent post.

In *B.S. Birthare Vs. State of Madhya Pradesh*, the Madhya Pradesh High Court has held that refusal to take back a person after removing his lien is bad in law and cannot be sustained. However, lien is lost by subsequent appointment.

Lien may be considered as equivalent to a right of a civil servant to hold a post substantively, to which he is appointed. As such any service rule providing for automatic cancellation of lien amounts to removal of a civil servant. On the same ground, an employee’s pension cannot be withheld as he will be entitled to pension and other retirement benefits on the basis of his past service.

**Appraisal**

The Constitution while providing for recruitment and conditions of service under Article 309, has entrusted the appropriate legislatures to frame detailed rules governing the various services. Yet, long after Indian independence, such rules are yet to be framed by many a State. Rules framed by the executive continue to govern recruitment to the various services. Many a decision are taken by the
departments concerned, on the basis of administrative instructions. Therefore, an uniform set of recruitment rules as far as practicable, should be framed by the legislatures for the various categories of civil services.

In respect of certain services, the Constitution provides that the public service commission should select candidates for recruitment to various posts. Presently, such consultation is not mandatory as the President or Governor may dispense with such consultation. It is, therefore, highly desirable that such consultation should not be avoided, in order to impart a sense of confidence and satisfaction to the civil services.

The most important aspect of security of tenure of civil servants is that of extension of the constitutional safeguards against major punishment. But so far government servants on probation, temporary government servants and those officiating against higher post are concerned, they may be discharged by an other *simpliciter* on grounds of unsuitability, if no stigma is attached. The various rulings of the Supreme Court analysed above, lead to the conclusion that under guise of discharge *simpliciter*, many a government servants have been dismissed from service. Persons found to
have been inconvenient to the authorities have at times been dismissed from service under innocuous looking orders of discharge. While the accountability in civil service is very much required, civil servants should not be dismissed under the guise of discharge.

The Constitution does not distinguish between a permanent and temporary servant, but the Supreme Court through its judicial renderings have created such a distinction. As of now, whereas a delinquent civil servant is entitled to the procedural safeguards, an honest government servant serving in a temporary capacity is not afforded any such protection. The termination of service of such a government servant without the least opportunity of showing cause cannot, in all fairness be supported.

The consequence of such discharge from the view point of a government servant needs to be given serious consideration. It is argued on their behalf, that termination of service is but 'removal' from service without observing any procedural formalities, which is contrary to the rules of natural justice. Government service not being a contractual service, such termination implies punishment. However innocuous the language of the notice of discharge may seem to be, what
actually matters is the effect of such an other. Besides causing loss of the job, it leads to loss of prospects of future employment as well. The penal consequences that follow from termination, cannot be brushed away on the ground that since a temporary servant has no right to a post, so there cannot be any loss of his prospects. It is too rigid an approach and needs a re-thinking.

Probationers and officiating government servants should not be allowed to continue at the mercy of the departmental authorities. Instead of providing for extension of probationary period for indefinitely long time, a maximum period of probation should be stipulated under the rules. Similarly, service rule should incorporate the judgements of the Supreme Court, holding that employees officiating for long periods should not be reverted. It is essential that a person serving for a certain length of time on an officiating basis should be provided with the consequential service benefits.

Only when civil servants are assured that they can fearlessly discharge their duties, will the government be able to provide an efficient administration. Security of service will bring about a sense of self confidence and inject a sense of purpose in the due discharge of official duties.
NOTES

1. Appendix B.

2. Constituent Assembly Debates Vol IX pp.1083


4. Supra n.2 pp.1083,1084,

5. ibid. p 1083

6. ibid p. 1084


8. Schedule VII of the Constitution of India.

9. AIR 1981, SC 783 (786)


11. AIR 1986, SC 655 para 41.


15. AIR 1958, SC 36.


23. Supra n 2 Vol IV p 344.


28. ibid. section 266 (3)

29. Supra. n. 3 Vol II. pp 584, 662-663

30. ibid. II 1(III) p. 41.

31. Supra. n.2 p. 574.


33. Article 320 (3) of the Constitution of India.

34. AIR 1971, SC 1696.


36. AIR 1968, Punj 324 (328)

37. AIR 1963, Bom 13

39. Supra n.15 and Motiram Deka Vs General Manager, N.F.Railway AIR 1964, SC 600.

40. Supra n. 15

41. Supra n.39


43. Revenue Superintendent Eastern Railway Vs.C.N.Kashi , AIR 1974, SC 1889.


46. AIR 1968, SC 1210

47. AIR 1974, SC 2192 (2193 C)


49. AIR 1987, SC 2135 (2137)

50. Supra n. 39

51. AIR 1987, SC 494 (499)

52. ibid p. 500

53. Supra n. 15

54. Supra n. 47 p 2205

55. AIR 1963, Nagpur 138
56. State of Punjab Vs. P.S. Cheema, AIR 1975, SC 1096
57. (1988) ISLJ 207 (SC)
58. Supra n. 15
60. Hartwell Prescott Singh Vs. State of Uttar Pradesh, AIR 1957, SC 886
62. Supra n. 42 p. 63.
63. Union of India Vs. Gajendra Singh, SCR 1972, SC 537.
64. State of Mysore Vs. P.R. Kulkarni, AIR 1977, SC 2170.
65. N.K.S. Nayar and Qrs Vs. Union of India and Qrs, AIR 1992, SC 1574.
66. AIR 1972, SC 1363
67. Supra n. 15
68. SLR 1972, MP 564
69. AIR 1977, SC 1267
70. Madan Gopal Vs. State of Panjab, AIR 1963, SC 531
71. AIR 1976, SC 449
72. ibid
74. Anoop Jaiswal Vs. Union of India, AIR 1985, SC 636
75. Commodre, Commanding Southern Naval Area Vs. V.N. Rajan, AIR 1981, SC 965 (968)
76. (1986) I ATC 689
77. AIR 1980, SC 1459 (1460)

78. Rule 3 Central Civil Services (Temporary Service) Rules, 1965.

79. Champklal Vs. Union of India, AIR 1964, SC 1854

80. ibid

81. AIR 1969, M.P. 60


84. Dayal Saran Vs. Union of India, AIR 1980, SC 554