I. Introduction

Judiciary discharges a vital role of control on termination of tenure at pleasure. Preventive judicial control is the sole contribution of judiciary against imminent danger of wrongful termination. No other constitutional limitations can protect the civil servant from imminent danger of wrongful termination. In other words, before actual termination, only judiciary can provide protection to the civil servants by issuing various writs, orders, directions against probable wrongful termination and hence, save the civil servants from unlawful termination and harassment.

The judiciary also has corrective judicial control. Whenever actual termination of tenure of civil servants takes place due to malafide or arbitrary intention of the Government, the civil servants can seek appropriate remedy in civil court, High Court, Administrative Tribunal and Supreme Court. If in the opinion of court, the termination is unlawful, then tenure is reinstated with consequential benefits. Here termination of tenure includes dismissal,
removal, retrenchment, compulsory retirement. In this way, the judiciary exercises its preventive control before actual termination of the civil servants and corrective control after actual termination.

Judicial control (preventive and corrective) is exercised on the basis of principles of natural justice. In other words, actions of the administrative authority are checked with the scale of principles of natural justice.

The judicial control (preventive and corrective) is also exercised on the basis of enforceable statutory provisions e.g. Article 311, Fundamental Rights, Article 166 and service statutes or statutory rules, etc. The judicial control is also exercised by considering the constitutional validity of the impugned service - statute or statutory rules.

The techniques or instruments of judicial control (preventive and corrective) are directions, orders and writs, which are also the integral part, necessary to be analysed in brief. The jurisdiction to issue directions, orders and writs, is exercised by the Supreme Court under Article 32, High Courts and Administrative Tribunals (est. under the Administrative Tribunal Act, 1985) under Article 226 in their original jurisdiction, whereas Supreme Court has also appellate jurisdiction against the decisions of High Courts and Administrative Tribunals. New development took place by enactment of the Administrative Tribunal Act, 1985 which
contains the provisions for establishment of the Administrative Tribunals having exclusive jurisdiction on service matters and which can efficaciously exercise better judicial control against the termination of tenure at pleasure. It is important to note that the jurisdiction of the Courts (i.e. civil court and High Court) will continue as regards a state public service so long as an Administrative Tribunal for the particular State is not established. After the establishment of the tribunal the civil court and High Court will cease to exercise their jurisdiction except the Supreme Court because the tribunal enjoys exclusive jurisdiction on all service matters. There is provision for establishment of separate tribunals for the Centre and the States under Article 32 A of the Constitution. Even the Central Administrative Tribunal has jurisdiction to entertain an application of a civilian employee of the Defence Service in regard to service matters. Such Administrative Tribunals have been established in many States including Karnataka, Himachal Pradesh and Orissa. Central Administrative Tribunals have also been established for the Union (w.e.f. Nov. 1, 1985). But such Administrative Tribunals has not been established for State of Haryana and Punjab, only C.A.T has been

1. 1994 (1) S.L.R. 142 (M.P.) Full Bench.
2. 1994 (2) S.L.R. 123 (CAT : CALCUTTA)
established at Chandigarh, the capital of Haryana and Punjab.

The Civil Court also exercises its control in declaratory suits filed relating to tenure under section 14 of the Specific Relief Act.

II. Preventive Judicial Control

Following are the situations in which before actual termination of tenure at pleasure, aggrieved civil servant can seek judicial remedy to save himself from greater loss of termination of tenure and harassment. Writs, orders, directions injunctions are issued by the judiciary (e.g., Supreme Court, High Court, Administrative Tribunal, Civil Court) as preventive judicial control:-

1. Where, a false F.I.R. is lodged against a civil servant which naturally resulted into disciplinary action or if conviction takes place will attract the penalty of dismissal, removal or reduction in rank according to provisions of Article 311(2)(a). In the above circumstances, such civil servant can file a writ petition for quashing of the F.I.R.

2. Where a civil servant has reasonable apprehension in his mind of the malafide intention of his superior officers to terminate him whimsically, he can approach the judiciary for appropriate direction.
Where an adhoc or temporary civil servant has completed the required service period for confirmation, according to any statute or statutory rules or precedent, he can seek stay order from the judiciary before termination takes place.

Where a civil servant gets notice of compulsory retirement, contrary to the statute or statutory rules, he can seek appropriate direction from the judiciary before actual termination of his service.

Where a civil servant has reasons to believe of his retrenchment in near future with malafide intention on the ground of religion, race, caste, colour, he can seek judicial help for issuance of stay order.

Where, a civil servant is not allowed to enter in his office and to mark presence in attendance register with the intention of constituting him absentee and in future making a ground of misconduct and inefficiency for termination, such aggrieved civil servant can seek judicial help to show his intention of presence.

Where a permanent civil servant is given one month notice of his termination, he can seek stay order from judiciary against such notice.

Where on any other justiceable grounds, the tenure of a civil servant is in danger with malafide
intention of the Government, he can seek appropriate remedy to save himself from actual termination of tenure.

9. Whenever, during disciplinary inquiry, delinquent civil servant is transferred to a distant place with malafide intention to harass, such civil servant can take judicial help in restraining the transfer.

10. Where biased inquiry officer is appointed, who is continue to proceed disciplinary inquiry with prejudice, the delinquent civil servant can approach the judiciary for change of inquiry officer.

11. Where, subsistence allowance is not paid during inquiry and the delinquent civil servant is unable to maintain his family and also cannot attend the inquiry, he can seek remedy of mandatory direction from judiciary for releasing of the subsistence allowance including back subsistence allowance which is against principles of natural justice also.

12. Where, a different procedure other than statutory procedure or where short cut procedure is adopted during disciplinary proceedings, the delinquent can seek appropriate remedy on the ground of malafide and bias attitude of the Government.

13. Where, the assistance of a lawyer is allowed according to statute or statutory rules in a given case and the delinquent is not allowed, he can seek appropriate direction from judiciary.
14. Where any other prejudicial treatment is done with the deficient during disciplinary proceedings and which is against the principles of natural justice also, such deficient can seek appropriate remedy and hence can save himself from future penalty of dismissal, removal or reduction in rank.

Whether stay by judiciary at interlocutory stage of inquiry is permitted on the grounds of merits of the charges. This question was considered by the Supreme Court in a recent case Union of India v. Upenira Singh where as soon as the memo of charges was served upon deficient officer, he approached the Tribunal for quashing the charges. The Tribunal admitted original application and passed interim order staying proceedings on charge sheet for a period of 14 days and listed the case for further consideration. The Supreme Court held that the Central Administrative Tribunal ought not have interfered at interlocutory stage. Tribunal choose to interfere on the basis of material which was yet to be produced at the enquiry. Tribunal, in fact, undertook the enquiry which ought to have been held by disciplinary authority. Therefore, Tribunal has no jurisdiction to go into the correctness or truth of the charges and order of Tribunal was set aside. Further held that judicial review cannot extend to the examination of the correctness of reasonableness of a decision as a matter of fact. Purpose of judicial review is to ensure that the individual receives fair treatment.

3. 1994 (1) S.L.R. 831 (S.C.)
It is not an appeal from a decision but a review of manner in which the decision is made. If a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, how can it do so at the stage of framing of charges. Interference at the stage of framing of charges, therefore not sustainable.

III. Corrective Judicial Control

Whenever, actual termination of tenure at pleasure of a civil servant takes place and such civil servant feels aggrieved with such impugned order, he can seek remedy by filing writs in the Supreme Court, High Court, Administrative Tribunal and suits in Civil Court. The aforesaid various courts correct the wrongful termination. (e.g. dismissal, removal, retrenchment and compulsory retirement) of tenure and reinstatement of that aggrieved civil servant is ordered with consequential benefits. (Writs, orders, directions, injunctions are issued by the above courts to correct the wrongful termination. In this way wrongful termination of the tenure is restored.) It is also necessary to know the scope of corrective judicial control on quantum of punishment awarded by the disciplinary authority. Also, whether judicial control covers review of the evidence.

1. Scope of corrective judicial control on quantum of punishment

The question came before Punjab and Haryana High Court in a recent case, Mahipal Ex. Constable v. State of Haryana.  

where the petitioner remained unauthorised absent from duty. It has been held neither the punishing authority nor the appellate authority considered the length of service either specially or impliedly while awarding the punishment. The order of dismissal was set aside.

In a recent case Neela Devi Bai v. State of West Bengal, the Division Bench of Calcutta High Court held that according to Doctrine of disproportionality, punishment of dismissal from service on the ground of unauthorised absence from duty was disproportionate to the alleged misconduct especially when the Enquiry Officer recommended for regularisation of period of absence as extra ordinary leave. Therefore quantum of punishment must be reasonable.

Whether judicial review can interfere on the question of penalty. The Supreme Court observed in A.B. Gandhi v. M/s Gopinath and Sons:

"On the question of punishment, learned counsel for the respondent submitted that the punishment is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgement of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review.

5. 1994 (4) S.L.R. 236 (Calcutta D.B.)
6. 1992 Suppl. (2) S.C.R. 312."
It is not an appeal from a decision, but a review of the manner in which the decision was made." Per Lord Brightman in Chief Constable of North Wales Police v. Evans (1982(3) All E. R. 141 at 155)

In a recent case State Bank of India and others v. Samarendra Kishore Endow and another, the Supreme Court after following the above observations held -

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is made malafide, is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

The Supreme Court in above case also distinguished the present decision with Union of India v. Tulsiram Patel


regarding the scope of judicial review over punishment awarded in a case under Article 311(2)(a) (where no inquiry is needed) and cases in which punishment is imposed after regular inquiry. The Supreme Court observed:

"It would perhaps be appropriate to mention at this stage that there are certain observations in Union of India v. Tulsiiram Patel (AIR 1985 S.C. 1416) which, at first look appear to say that the Court can interfere where the penalty imposed is "arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service. It must however, be remembered that Tulsiiram Patel dealt with cases arising under proviso (a) to Article 311(2) of the Constitution. Tulsiiram Patel overruled the earlier decision of this Court in Chalil PM (AIR 1975 S.C. 2216). While holding that no notice need be given before imposing the penalty in a case dealt with under the said proviso, the Court held that if a disproportionate or harsh punishment is imposed by the disciplinary authority, it can be corrected either by the Appellate Court or by High Court. These observations are not relevant to cases of penalty imposed after regular inquiry." 9

In other words, the Supreme Court observed in Samarendra Kishore's case that under judicial review the quantum of penalty cannot be interfered if in a case penalty was imposed after regular inquiry whereas interference is permitted in cases under clause (a) to Article 311(2).

It has been observed that in the following circumstances only, the interference of courts is permitted regarding quantum of punishment:

9. See also Shanker Dass v. Union of India 1985(2) SCC 358; 1985 (2) SLR 109 S.C. which too was a case arising from proviso (a) to Article 311(2).
A. Where disciplinary authority had no jurisdiction to the punishment awarded under the rules and such punishment was later on enhanced by the appellate authority.

B. Where after awarding the punishment, it is communicated to the delinquent officer, cannot be changed at the will of the punishing authority.

C. Where the penalty is arbitrary or grossly excessive or out of proportion to the offence committed or was not warranted by the facts or circumstances of the case or requirements of the particular service to which the petitioner belonged or is not guilty of such misconduct as to be liable for the penalty of dismissal removal or reduction in rank.

2. Whether corrective judicial control covers review of evidence

The question came before the Supreme Court in State of A.P. v. Rama Rao. It has been held:

"... it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.... But the departmental authorities are, if the

inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Constitution.

Supreme Court also observed in Kabirole v. Union of India that the Court is not concerned with the sufficiency of evidence.

The Court cannot enter into a re-appraisal of the evidence, as if sitting in appeal over the findings of the Inquiry Officer.

Though the proceedings under Article 311(2) is of a quasi penal nature, it does not follow that a Government servant cannot be punished in a disciplinary proceeding unless the charges are proved beyond reasonable doubt.

It was also held that though the technical rules of criminal trials may not apply to disciplinary proceedings, yet, mere suspicion cannot take place of proof even in domestic inquiries.

IV. Judicial Control on the basis of Natural Justice

Enunciation and expansion of principles of natural justice is the exclusive field of judicial wisdom. Judicial

trends has been to explore new principles to be observed by the disciplinary and inquiring authority in disciplinary proceedings. Whenever violation of principles of natural justice appears in domestic inquiry which endangers security of tenure of an employee, the judicial control plays its role in vitiating such an inquiry.

'Rules of natural justice' are not embodied rules. The purpose of natural justice is to secure justice or to prevent miscarriage of justice. The area of operation of these rules is where law is silent. In this way, these rules do not supplant the law but supplement it. Some times, in a given statute, rules of natural justice are expressly or by necessary implications excluded for a justiceable cause in public interest depending upon nature of subject matter. Whether the exercise of a power conferred should be made in accordance with any of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.18

In recent years, the concept of natural justice has undergone a great deal of change. (In the past, it was brought that it covers two rules only e.g. (i) no one shall be a judge in his own case (homo debat case in de propria causal) and (ii) no decision shall be given against a party without

affording him a reasonable hearing (audi alteram partem).

But later on, a third rule was envisaged i.e. quasi-judicial inquiries must be held in good faith, without bias and not arbitrarily or unreasonably. Also subsidiary rules came to the light. Whenever a complaint is put before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case19. But as regards the rule of audio alteram partem the Supreme Court has held that this rule must be invariably followed under the statute expressly excludes the same. As a general rule, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decisions.20

It is well established that the rules of natural justice are not rigid but flexible and their applications depend upon the setting and background of statutory provisions.

When an administrative authority should apply rules of natural justice. If there is power to decide and determine to the prejudice of a person, duty to act judicially is

implicit in the exercise of such power. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed, hence, it need not be shown to be superadded. In other words, if the ingredients of justice are ignored and an order to the prejudice of a person is made the order is against the principles of natural justice. The principles of natural justice can be invoked only when the function to be discharged are 'judicial' or 'quasi judicial'. The dividing line is thin between administrative power and a quasi judicial power. For determining whether a power or a quasi judicial power, one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from exercise of that power and the manner in which that power is expected to be exercised.

Dass, C.J., in R. v. State of M.P. cited the celebrated definition of quasi judicial body given by Atkin C.J. in Rex v. Electricity Commissioner. It has been held:

"It will be noticed that the definition insists on three requisites each of which must be fulfilled in order that the act of the body may be quasi judicial act, namely, that the body of persons (1) must have legal authority, (2) to determine questions affecting the rights of parties, and (3) must have the duty to act..."

23. A.I.R. 1959 S.C 107
24. (1924) 1 K.B. 171.
judicially. Since a writ of certiorari can be issued only to correct the error of a Court or a quasi judicial body, it would follow that the real and determining test for ascertaining whether an act authorised by a statute has expressly or impliedly imposed upon the statutory body the duty to act judicially as required by the third condition in the definition given by Atkin, C.J."

Following are the cases in which the Courts have held the domestic inquiry as invalid due to violation of principles of natural justice and stressed the necessity of application of these principles:

1. Before the services of an employee are terminated on ground of unsuitability resulting into forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned.²⁶

2. Where prosecution witnesses were examined in the absence of a delinquent officer or opportunity of cross-examination was not given.²⁶

3. Where materials relied upon against the delinquent officer and opportunity to explain was not given.²⁷

4. Where sufficient particulars of alleged misconduct were not furnished.²⁸

5. Where inquiry officer has a personal bias against the

²⁶ Khem Chand v. Union of India, (1958) S.C.R. 1080(1098)
6. Where denial of opportunity of examining defence witnesses or adducing other defence material.

7. Where a copy of the application which resulted into initiation of inquiry, was not furnished or the statements of prosecution witnesses, including previous statements were not furnished to the delinquent.

8. Where the termination or removal from service of an employee whether temporary or regular on account of misconduct on unsatisfactory work, cannot be done without observing the principles of natural justice.

9. Where the impugned order, being quasi-judicial does not give reasons in its order. Hence, it is also one of the principle of natural justice that reasons should be given in support of orders passed by the domestic tribunal or authority. The Supreme Court in *Madhya Pradesh Industries v. Union of India* has opined about this principle of natural justice.

35. AIR 1966 S.C. 671.
to be followed by domestic tribunal or authority and courts. It has been held:

"If Tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. It is said that this principle is not uniformly followed by appellate courts, for appeals and revisions are dismissed by appellate and revisional Courts in limine without giving any reasons. There is an essential distinction between a Court and an administrative tribunal. A judge is trained to look at things objectively, uninfluenced by consideration of policy or expediency; but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties and the least they should do is to give reasons for their orders. Even in the case of appellate Courts invariably reasons are given except when they dismiss an appeal or revision in limine and that is because the appellate or revisional court agrees with the reasoned judgement of the subordinate court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons. That apart, when we insist upon reasons, we do not prescribe any particular form or scale of the reason. The extent and the nature of the reasons depends upon each case. Ordinarily, the appellate or revisional tribunal shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the
appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depends upon the facts of each case."

Hence, preventive and corrective judicial control is exercised on the basis of principles of natural justice. It is submitted that in addition to the above principles of natural justice, other principles are mentioned in Chapter Six.

V. Judicial Control on the basis of Statutory provisions

1. Violation of requirements under Article 311

Courts also exercise their judicial control where impugned order of dismissal, or reduction in rank or reversion was made in contravention of the requirements of Article 311(2). In other words, 'reasonable opportunity' of hearing is the mandatory pre-requisite for effecting dismissal, removal or reduction in rank of civil servants. Article 311(1) also adheres the requirement that dismissal or removal authority should not be subordinate to that by which he was appointed. It is submitted that detailed discussion about requirements under Article 311 has been given in Chapter Five and Six of this work.

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2. **Violation of Fundamental Rights**

Where termination of tenure takes place on the ground which is in violation of Fundamental Rights, judiciary exercises its control by vitiating such an order and restores the tenure with consequential benefits. Mostly, in many cases, concept of equality enshrined in Article 14, 15, 16 of the Constitution restraints the wrong termination of tenure. In this way judicial control is exercised on the basis of Fundamental Rights.

The test of equality is applicable even in procedure of inquiry. Therefore if the two sets of rules were in operation at the material time when the enquiry was directed against the public servant and by the order of the Governor the enquiry was directed under the Tribunal Rules which are 'more drastic' and prejudicial to the interests of the respondent, a clear case of discrimination arises and the order directing the enquiry against the public servant and the subsequent proceedings are liable to be struck down as infringing Article 14 of the Constitution of India. In other words, equal treatment among equals will have to be followed unless unequal treatment is justified according to reasonable classification.

Therefore, Courts would exercise their judicial control where impugned order has violated fundamental rights of the petitioner. It is submitted that detailed study of fundamental rights has been given in Chapter Four of this work.

3. Violation of the provisions under Article 166.

It is also a ground, in the hands of an aggrieved government servant to establish that the impugned order was not passed as required by Article 166 of the Constitution. Article 166 provides about conduct of business of the Government of a State.

In State of Rajasthan v. Sripal the order was not expressed in the name of the Governor. The Supreme Court observed that where the rules of business authorise a matter to be disposed of by a Minister, an order of the Minister, constitutes an order of the State Government under Article 166(1), even without putting up the matter before the Governor.

The Supreme Court explained more clearly in Bachhitar v. State of Punjab. It was held:

"...Constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor...... is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister


or the Council of Ministers say in regard to a matter does not become the action of State until the advice of the Council is accepted or deemed to be accepted by the Head of the State."

Hence the Supreme Court put the emphasis that though the rules of business may empower a minister alone to deal with, a particular matter but it should not be forgotten that such act is supposed to be done by the Governor as required by Article 166.

Therefore, compliance of Article 166 is fulfilled if the impugned order is passed personally by the Head of the State i.e. Governor or the order is drawn up in the form of an order expressed in the name of the Governor and authenticated by a person authorised by the Governor or where the order is not in the name of the Governor but is signed by a Secretary to the Government.\(^\text{41}\)

But the impugned order is liable to be quashed, if it is not duly authenticated or if authenticated by a person who was not authorised in this behalf.

The Governor in the exercise of the power under Article 166, clause (3) of the Constitution can pin point the Authorities, who could exercise the power on behalf of the Government and the exercise of power by such functionaries would amount to the exercise of such functions by the Government.

The Governor is authorised by Article 166 of the Constitution to make rules for the more convenient


\(^{42}\) Union Territory v. Gopal, (1963) 6 F.L.R. 330(333)S.C.
transaction of the business of the Government of the State and for the allocation among Ministers of the said business.

4. Violation of statutes or statutory rules

The Courts exercise their judicial control whenever, it is found that violation of either statutes or statutory rules has taken place. It has been held that where reasons given in impugned order are extraneous to the rule relied upon or where the authority did not apply his mind to the statutory requirements of the relevant provision or where the charge or the rule applied are unconstitutional, the courts would constitute such an order as invalid. Because these statutes or statutory rules are enacted under Article 309, therefore these are enforceable.

5. Constitutional validity of the statute or statutory rule

Judicial control also covers to test the Constitutional validity of the impugned statute or statutory rule. Because the Constitution is Grundnorm, therefore each and every statute or statutory rule is to be enacted according to the wishes of the provisions of the Constitution, otherwise safeguards provided under the Constitution for civil servants


would become meaningless, if the infringement of these safeguards are not checked.

And when an order of termination of service is challenged on the ground that the rule which authorised termination of service without assigning any reason itself was violative of Article 14 and 16, would be a case involving constitutional validity of the law for, unless the rule is held to be void, the termination of service cannot be set aside.

It accordingly follows that the Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws or service rule as offending Article 14 and 16 (1) of the Constitution.

Administrative Tribunal is now fully competent to entertain and adjudicate what the High Court could under Articles 226-227, including to decide the constitutionality of Acts or Service Rule. In other words, whether such Act or Rule is violative of Article 14 or 16. The Supreme Court,


in *Sampath v. Union of India* has well established the jurisdiction of the Administrative Tribunal. It was held that the jurisdiction under Article 226 has been taken not merely by the Act but by the provisions in Article 323A(2)(d), which empowers Parliament to exclude the jurisdiction of all Courts except that of the Supreme Court. Hence, the provision in section 28 of the Act cannot be challenged as unconstitutional. Nor can the Act be challenged as destructive of a 'basic features' of the Constitution, viz. judicial review, because the Act does not totally bar judicial review but substitutes an effective alternative machinery, subject to the control of the Supreme Court under Article 136.

The Supreme Court is also empowered to test the constitutional validity of a statute or statutory rule.

Hence, preventive and corrective judicial control is exercised on the basis of existing statutory provisions.

VI. Judicial Control through issuance of directions, orders and writs.

Various writs e.g. habeas corpus, mandamus, prohibition, quo warranto and certiorari are issued by the Supreme Court. The Supreme Court is also empowered to issue directions, orders under Article 32. Hence whenever wrongful termination of tenure at pleasure is noticed, the Supreme Court may exercise its control under Article 32.

49. A. 1987 S.C. 386 (paras 14-17)
Article 32 provides remedy as write petition in case of violation of fundamental rights. Hence violation of the rights enshrined in Article 311 are not fundamental, therefore remedy under Article 32 cannot be availed in case of violation of Article 311.

Where such as order of termination violates some fundamental rights, e.g., Article 14 or 16, then remedy under Article 32 is available. For instance, where termination of service is effected of a temporary employee arbitrarily, leaving others and a ban is also imposed against re-employment, it is case of violation of fundamental right under Article 14.

High Court also exercises its control under Article 226 against wrongful termination of tenure by issuing directions, orders and various writs. In Union of India v. H.C. Goel, the Supreme Court observed the control of the High Courts under Article 226 in cases of dismissal. It has been held:

"In dealing with writ petitions filed by public servants who have been dismissed or otherwise dealt with so as to attract Article 311 (2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the


53. AIR 1964 S.C. 764; State of Madras v. A.Sundaram,
AIR 1965 S.C. 1103; State of A.P. v. S.Sree Ram Rao,
AIR 1963 S.C.1723.
the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence. The High Court cannot, however, consider the sufficiency or adequacy of the evidence, but has only to enquire whether the order is justified "if the whole of the evidence led in the enquiry is accepted as true."

In State of A.P. v. Rama Rao, the Supreme Court has appropriately opined about the scope of the High Court exercising under Article 226. It was held:

"The High Court is not constituted under Article 226 of the Constitution a Court of Appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and whether the rules of natural justice are not violated. Whether there is some evidence which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge... or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced..."

by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds....''

Where the termination order is invalid the High Court can grant declaratory relief as available in suit while proceedings under Article 226. The High Court also empowered under Article 227 to have superintenoe over all subordinate Courts.

The Administrative Tribunal also exercises its control under Article 226 in its original jurisdiction in cases of wrongful termination of service at pleasure. In Chopra v. Union of India56, The Supreme Court observed that the jurisdiction of the Tribunal over service matters is not supplemental to but a substitute for that of the High Court.

Whenever an application is filed under section 19 of the Act before Administrative Tribunal, the tribunal may exercise any of the powers of a Civil Court, or a High Court under Article 226 in the same proceedings.

Administrative Tribunal is not barred by the provisions of the Evidence Act, also not fettered with Civil Procedure

Code and shall have the power to regulate its own procedure according to section 22(1) of the Act. But the only condition is that there should not be violation of principles of natural justice.

The Supreme Court has opined in H.N.Patro v. Ministry of Information and Broadcasting and ors. that the order of the Central Administrative Tribunal not open to challenge before the High Court because the provisions contained in the Administrative Tribunal Act, 1985 which read with 323A of the Constitution of India, bars the jurisdiction of the High Court.

Judicial control is exercised in declaratory suits filed by civil servant that dismissal order was illegal and that he continued to be in service, where his tenure has been terminated illegally. Under section 14 of the Specific Relief Act, a declaration can be granted to the effect that the man continue to be in service.

In State of Bihar v. Abdul Majid, the Supreme Court overruled the decision of the Privy Council and followed the view of the Federal Court. It was held by the Supreme

60. (1951) S.C.R. 786; See also Union of India v. Verma, A.1957 S.C. 882 (894).
62. The view of Federal Court had been reversed by The Privy Council.
Court that in case of a wrongful termination of service in contravention of the constitutional requirements in Clause (1) or (2) of Article 311, the aggrieved Government servant is entitled to relief in a Court of Law like any other person, under the ordinary law, in as much as the doctrine of 'service at pleasure' has been subjected to constitutional limitations in India. Such relief must be regulated by the Code of Civil Procedure. Hence, a suit for declaration can be instituted in civil court that the order of dismissal is void and inoperative and that the plaintiff remained a member of the service at the date of institution of the suit. Where an order of removal passed against a Government servant after a departmental inquiry and the same is challenged by a suit for a declaration that the order of removal was unconstitutional, illegal and inoperative, the Court cannot sit in judgement over the domestic tribunals and state that on the evidence adduced in the departmental proceedings, the charges were not brought home and that the findings of the domestic tribunal were wrong. Courts are concerned in such suits only with the question whether reasonable opportunity was given to the plaintiff in the enquiry to meet the charges brought against him and, if principles of natural justice were observed in the inquiry.

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It is well settled that if the discretion is not exercised by the lower court in the spirit of the statute or fairly or honestly or according to the rules of reason and justice, that the order passed by the lower court can be reversed by the superior court. The Supreme Court also opined that a decision in a writ proceeding under Article 32 or 226 bars a regular suit on the same matters in controversy under the doctrine of res-judicata.

Regarding tenure following suits can be instituted:

(i) where termination order is in contravention of clause (1) or (2) of Article 311.

(ii) where contravention of mandatory statutory rule relating to service.

(iii) where termination order in contravention of the contract of employment.

(iv) where as a penalty, compulsory retirement is imposed, without requirements of Article 311(2).

Following relief may be provided for the aggrieved civil servant:

The relief, in such declaratory suit may be given of reinstatement in case of wrongful dismissal. The plaintiff was never deemed to have been lawfully dismissed from service and the necessary consequences will follow from the decree. He will be entitled to be posted to the office from which he had been dismissed or to another office of the same status, seniority and all other consequential benefits he was entitled to before the impugned order was made.

Hence, the Courts (e.g. Supreme Court, High Court, Administrative Tribunal and Civil Court.) have corrective judicial control upto only extent to determine:

(a) whether the inquiry is held by an authority competent in that behalf;

(b) whether due procedure of inquiry followed;

(c) whether rules of natural justice followed;

(d) whether there is some evidence which reasonably support the conclusion of guilt of the delinquent officer.

But it is not the function of the Courts to review the evidence and to arrive at an independent conclusion;


whether violation of statutes or statutory rules has taken place in any order or procedure;

whether violation of any fundamental rights has taken place in any order or procedure;

whether requirements of Article 311 has been complied with by the disciplinary authority;

whether violation of Article 166 has taken place;

whether the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence;

whether authorities have influenced by irrelevant considerations;

whether the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at conclusion;

whether the statute or statutory rule in question is constitutionally valid.

whether there are errors apparent in the face of record;

whether the findings involves non-application of mind to the issues and the evidence on record;


It is also the judicial trend to observe that where the alternative remedy provided in the statute, the parties should await it. The writ without availing of the alternative remedy is not maintainable. But this rule requiring the exhaustion of statutory remedies before the writ is granted is a rule of policy, convenience and discretion rather than a rule of law. Yet the writ is not totally barred in the presence of alternative remedy available according to statutory provisions. But it is judicial trend only. Hence preventive and judicial control is exercised by issuance of directions, orders and writs.

In a nutshell, it is submitted that the judiciary plays dual role in respect of the doctrine of pleasure. Firstly, by exercising preventive and corrective judicial control, it puts limitations on the malafide and arbitrary exercise of the pleasure in the manner stated above. Secondly, it also interprets the constitutional provisions, other statutes and statutory rules. Specifically determines the true scope and extent of 'reasonable opportunity' of hearing with the wishes of principles of natural justice, 'concept of equality' etc. Hence, new dimensions of various aspects of the doctrine of pleasure are evolved by judiciary and depicts the true picture of the doctrine.