Protection of the Interests of Public Servants:

In the world of today the concept of the state has undergone a change. It is no more a juridical person whose only task is to maintain law and order. Today it has to discharge a complex of duties towards the individual. Today it is demanded of it to cater to every interest of the individual whether that interest be social, economic or political. In practice, however, these demanding duties are implemented by the administration, the state being a fictitious person or say an abstract entity and the craftsmen of administration are not ministers but public servants. A government in fact can not be run without an efficient civil service which requires men of integrity, high morale, who are fearless and possess independence of thought. To secure men of such calibre, it is imperative that their interests are protected constitutionally. The framers of the Constitution were mindful of this fact. Consequently, they devoted Part XIV of the

1. "Parliament is a tool in the hands of ministers and ministers are a tool in the hands of permanent civil service." Ramsay Muir, How Britain is Governed, (1933) p.40.

2. H.V. Kamath, a prominent member of the Constituent Assembly, speaking on the need of constitutional safeguards to be given to the services, observed: "A country without an official civil service can not make progress inspite of the earnestness of the people at the helm of affairs in the country. Wherever, democratic institutions exist, experience has shown that it is essential to protect the public services as far as possible from political or personal influence and to give it that position of stability and security which is vital in its successful working as an impartial and efficient instrument by which government of whatever political complexion, may give effect to their policies." See Constituent Assembly Debates, Vol.IX, p. 585.

3. Articles 308-323.
Constitution to the services under the Union and the States. This part is divided into two chapters. The first chapter deals with recruitment, conditions and tenure of service, and the second chapter relates to the Public Service Commissions. The most important Articles of this part are Articles 310 and 311. Article 310 incorporates the British 'doctrine of pleasure', that the public servants shall hold office during the pleasure of the President or the Governor as the case may be. Article 311, however, provides procedural safeguards against the dismissal, removal or reduction in rank of government servants. These Articles are discussed in some detail in the following pages.

Interpretation of Articles of the Constitution on Public Services:

As under Section 240(1) of the Government of India Act, 1935, the person specified therein held office "during the pleasure" of the Crown, so under Article 310(1) the public servants hold their office "during the pleasure" of the President or the Governor as the case may be. The opening words of Article 310(1), namely, "Except as expressly provided by this Constitution", reproduce the opening words of Section 240(1) of the Act of 1935, substituting the word "Constitution" for the word "Act." The exceptions contemplated by the opening words of Article 310(1) refer inter alia to Articles 124, 148, 218 and 324 which respectively provide that Supreme Court Judges, Auditor General, High Court Judges, and the Chief Election Commissioner, shall not be removed from his office except by an order of the President passed after an address by each House of Parliament, supported by the requisite majority therein specified, and presented to him in the same session for such removal on the ground of proved misbehaviour or incapacity.
Subject to these exceptions Article 310(1) embodies the English doctrine of 'pleasure' and it rules out the judicial scrutiny of the exercise of this power by the President or the Governor. Nevertheless, the doctrine of pleasure as embodied in the Indian Constitution is not of absolute nature as its operation is restricted by the succeeding Article 311 which provides for certain procedural safeguards. The procedural safeguards contained in Article 311 however, are available only in cases of removal and dismissal. The said Article gives a two fold protection to persons who come within this Article, namely, (1) against dismissal or removal by an authority subordinate to that by which they were appointed and (2) against dismissal or removal or reduction in rank without giving them reasonable opportunity of showing cause against the action proposed to be taken in regard to them.

1. Article 311(1) which embodies this safeguard lays down: "No person who is a member of a civil service of the Union or an all-India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

2. Article 311(2) incorporates this safeguard. It provides that "No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:

Provided that this clause shall not apply -
(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that or some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.
Before these safeguards are discussed in detail it may be pointed out that the above safeguards are not available to all government servants but only to persons who are members of a civil service of the Union or of an all-India Service or of a civil service of a State or holds a civil post under the Union or a State.

Again Article 311 is applicable to both permanent and temporary employees. Prior to the Supreme Court decision in Purshottam Lal Dhirgra v Union of India¹ to the effect, the High Courts differed in their opinion². The Supreme Court set the controversy at rest in the above case where it held that Article 311 did not make any distinction between the two classes, both of which were, therefore, within its protections³.

Article 311(1) protects the civil servants against their dismissal or removal by an authority subordinate to that by which they are appointed. The word subordinate here means, subordinate 'in rank' and not 'in functions.' The Court rejected the content-ion in a case that the dismissal or removal must be by the very same authority who made the appointment or by his direct superior⁴. The Court held that it was enough that the removing authority was of the same rank or grade.

Article 311(2) provides another major limitation on the operation of the "doctrine of pleasure", that no person holding a

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2. Allahabad, Calcutta, Bombay, Madhya Bharat and Patna High Courts held the view that Article 311 was applicable to both whereas Nagpur, Punjab and Rajasthan High Court were of the opinion that the safeguards contained in Article 311 were available only to permanent government servants.
civil post shall be dismissed, removed or reduced in rank without being given a reasonable opportunity to defend himself. This opportunity is to be afforded at two stages. Firstly at the stage of enquiry, when the charges are levelled against the employee. Secondly, when certain conclusions as to those charges have been reached and the punishment to follow, has been provisionally determined. The reasonable opportunity envisaged in Article 311(2) includes: "(a) an opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based; (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witness in support of his defence; and finally (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted, which he can do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant."  

The protection guaranteed under Article 311(2), can however, be sought only if the dismissal, removal or reduction in rank is by way of punishment*. The Supreme Court affirmed this in many

1. Proviso to Article 311(2) excludes certain categories of persons to whom the safeguards in this Article are denied, please see p. 369 footnote 2.
* Emphasis is mine.
cases\textsuperscript{1} and in Purshottam Lal Dhinnga v Union of India\textsuperscript{2}, it laid down two tests to determine whether the government servant has been dismissed, removed or reduced in rank by way of punishment or otherwise. The two tests are namely: (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences. The Court held in this case that if a case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or reversion in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of service or reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant\textsuperscript{3}.

In the present case the petitioner was appointed to the higher post on an officiating basis from which he was reverted on ground of unsatisfactory work. The petitioner sought the protection of Article 311 on the ground that he had been punished by being reduced in rank without being given an opportunity to show cause against the action proposed in regard to him. The Court applied the two tests to the case and held that since the petitioner was appointed to the higher post on officiating basis, he had no right to continue in that post, and therefore, his reduction


\textsuperscript{2} A.I.R. 1958 S. C. 36.

\textsuperscript{3} Ibid p. 50.
did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment. The provisions of Article 311(2) were not therefore attracted to this case.

The Court has further held that if the termination of service is founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. But where the termination of service is found on the right flowing contract or service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences to attract the provisions of Article 311(2).

In cases of compulsory retirement, the Court had earlier upheld the power of the government to retire its servants after a certain period of age or service without assigning any reasons, since it was not punitive in nature\(^1\). The Court, however, held otherwise in Moti Ram v N.E. Frontier Railway\(^2\). Justice Subba Rao observed that compulsory retirement was also a mode of terminating the employment of an employee at the discretion of the appointing authority and it was a punishment imposed upon him. Such a termination was only dismissal or removal within the meaning of Article 311 of the Constitution\(^3\).

The protection under this Article however can not be sought if the person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal

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charge or where the authority concerned feels for reasons to be recorded, not possible to hold inquiry. Also the protection of the said Article can be sought where the President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.

Conclusion:

It is obvious that the protection of interests of Public Servants is imperative to maintain an efficient civil service to run the government machinery. Accordingly, though the English doctrine of pleasure has been incorporated in the Constitution of India, it is not without limitations. These limitations which are in the nature of procedural safeguards guaranteed to the Public Servants against their arbitrary dismissal, removal or reduction in rank contemplate the role of the Supreme Court. The jurisdiction of the Court to protect the interests of Public Servants is however, not of wide amplitude. It is restricted to the cases specified in Article 311 of the Constitution with provisos of course. The Court is required to see that due procedure has been followed as laid down and beyond that the Court can not go.