

PROBATION

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Safeguards of Article 311- an outline

(1) No dismissal or Removal by authority subordinate to appointing authority.

(2) No dismissal or removal or reduction in rank.

without inquiry in which :-

(i) charge should be communicated to the Government Servant concerned.

(ii) he and she should be given reasonable opportunity of being heard in respect of charges, and

(iii) penalty may be imposed on the basis of evidence adduced during such inquiry.

Exceptions where inquiry as enjoined under Article 311(2) may be dispensed with

1. Where a person is dismissed or reduced in rank on the ground of **Misconduct which has led to conviction on criminal charges** {clause(a) of Article 311(2)}
2. Where in the **interest of the security of state, it is not expedient** to give such an opportunity to the civil servant {clause(b) of Article 311(2)}
3. Where it is **impracticable to give the civil servant an opportunity to defend himself** but the authority taking action against him shall **record the reasons for such action** {clause(c) of Article 311(2)}

- **Article 311 to whom it applies:-**

- (a) a member of an All India Service.
- (b) a member of a civil service of the Union.
- (c) a member of a civil service of a State.
- (d) **a person who holds a civil post under the Union or a State.**

Article 311 does not apply to

- (a) a civilian employed in a defence department.
- (b) an employee of a statutory corporation like LIC, Food Corporation of India etc. or of a Government Company.
- (c) Defence Personnel.

STATUS OF PROBATIONER - HIS POSITION

1. On Probation means on observation [a process of **testing or observing the character or abilities** of a person who is new to a role or job.] (True/False)..
2. When we say that Mr.'X' is a probationer in the context of government service, what we exactly mean is that he is on **trial**(True/False).
3. The question that arises is **what kind of trial it is?**
The answer is his **suitability** or fitness is being **assessed** with reference to the service or post to which he has been appointed on probation (True/False).

STATUS OF PROBATIONER - HIS POSITION

4. A probationer may be discharged on the ground of unsuitability or on the ground that he is *lacking in qualities essentially needed for public service.*

When the appointment of a probationer is *terminated* on the ground of unsuitability, Article 311 will have no application. In other words, the Govt. has a right to act in accordance with the contract (True/False).

5. Termination can be either discharge or dismissal/removal(T/F)

STATUS OF PROBATIONER - HIS POSITION

6. If a probationer is proposed to be dismissed or removed on account of misconduct, the mandatory procedure of Article 311 has to be followed (True/False).
7. Article 311 has no application when the action proposed to be taken is not penal at all or is *penal but not dismissal, removal or reduction in rank* (True/False).
8. **In case of misconduct, disciplinary proceeding can be initiated by the Director for dismissal or removal. However, for discharge no disciplinary proceeding can be initiated by the Director but can send a proposal for discharge and a summary enquiry needs to be conducted by Central Govt.(True/False)**

Termination

- **DISCHARGE**

Unsuitable/Unfit

(ABILITIES/CHARACTER
needed for the service)

Recommendation by Director
on the basis of record-
Summary Enquiry by CG-
Discharge by CG.

Misconduct can be a reason
for discharge and not the
sole reason

- **DISMISSAL/REMOVAL**

Misconduct/Stigma(mark
of disgrace)

Disciplinary Proceeding
by Academy

Dismissal/Removal by
Central Government

Article 311(2) applies only
for dismissal/removal(not
for censure/fine/
extending probation)

Misconduct (Exam
Copying //COURTS Don't
interfere)

Discharge/Dismissal/Removal

- **Discharge**=Unsuitable-Recommendation by Director on the basis of record-Summary enquiry by CG-Discharge by CG
- **Dismissal/Removal**=Misconduct-DP by Academy-Dismissal/Removal by CG
- **Misconduct**=either removal /dismissal or censure/fine/extending probation(Article 311(2) applies only for dismissal or removal).
- Misconduct can be a reason for discharge but not the sole reason. For discharge, the probationer's record should reveal that the probationer is unfit or unsuitable//Misconduct (Exam Copying //COURTS Don't interfere)

The Central Secretariat Service Rules, 1962

- **RULE 15/(1)** Every direct recruit to the Section Officers' Grade or the Assistants' Grade shall initially be appointed on probation, the period of probation being two years from the date of appointment.
- (2) Every person other than a direct recruit shall, when first appointed to a Grade, be on 'trial' for a period of two years from the date of such appointment.
- (3) The period of probation or trial specified in sub-rules (1) and (2) may, if the appointing authority deems fit, be extended or curtailed in any case, but the total period of extension of probation or trial shall not, save where it is necessary by reason of any departmental or legal proceedings pending against the officer, exceed one year.
- (4) During probation or trial, a member of the Service may be required to undergo such training and to pass such tests as the Central Government in the & Department of Personnel and Training in the Ministry of Personnel, Public Grievances & Pensions may, from time to time, prescribe.

Rule 16/Confirmation of probationers

- When a probationer appointed to any Grade has *passed the prescribed tests* and has completed his probation to the satisfaction of the appointing authority, he shall be eligible for confirmation in that Grade. Until a probationer is confirmed under this rule or is discharged or reverted under rule 17, he shall continue to have the status of a probationer.

Assessment Reports On The Probationer

- i. Confirm the probationer/issue orders regarding satisfactory termination of probation, as the case may be, if the probation has been completed to the satisfaction of the competent authority; or
- ii. **Extend the period of probation or discharge the probationer or terminate the services of the probationer as the case may be, in accordance with the relevant rules and orders, if the probationer has not completed the period of probation satisfactorily.**

PROBATION

- A person is appointed on probation in order to *assess his suitability for absorption in the service* to which he has been appointed. Probation should not, therefore, be treated as a mere formality. No formal declaration shall be necessary in respect of appointment on probation. The appointing authority may declare successful completion, extend the period of probation or terminate the services of a temporary employee on probation, on the basis of evaluation of performance.
- The probation shall stand successfully completed on issue of orders in writing//DIRECT RECRUITMENT=2

EXTENSION OF PROBATION PERIOD

- If during the period of probation, a probationer has not undergone the requisite training course or passed the requisite departmental examinations (proficiency in Hindi, etc.), if any prescribed, the period of probation may be extended by such period or periods as may be necessary, subject to the condition that the total period of probation does not exceed double the prescribed period of probation.

NOT EXCEEDING MORE THAN DOUBLE THE NORMAL PERIOD

CONFIRMATION

- On completion of the period of probation or any extension thereof, officers shall, if considered fit for permanent appointment, be retained in their appointments on regular basis and be confirmed
- If the appointing authority considers that the work of the officer **has not been satisfactory or needs to be watched for some more time**
- If, during the period of probation or any extension thereof, as the case may be Government is of the opinion that an officer is **not fit for permanent appointment, Government may discharge** or revert the officer to the post held by him prior to his appointment in the service, as the case may be.

CONFIRMATION = ONLY ONCE

- Confirmation will be made only once in the service of an official which will be in the entry grade post/service/cadre provided further confirmation shall be necessary when there is fresh entry subsequently in any other post/service/cadre by way of direct recruitment or otherwise.
Confirmation is de-linked from the availability of permanent vacancy in the grade. In other words, an officer who has successfully completed the probation, as prescribed under relevant rules, may be considered for confirmation.
- A specific order of confirmation will be issued when the case is cleared from all angles.

Confirmation =6 to 8 weeks

- The decision to confirm the probationer or to extend the period of probation as the case may be should be communicated to the probationer normally within 6 to 8 weeks. *Confirmation of the probationer after completion of the period of probation is not automatic but is to be followed by formal orders. As long as no specific orders of confirmation or satisfactory completion of probation are issued to a probationer, such a probationer shall be deemed to have continued on probation.*

TERMINATION OF PROBATION

- The decision whether an employee should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period, that is **within six to eight weeks**, and communicated to the employee together with the reasons in case of extension. A probationer who is not making satisfactory progress or who shows himself to be inadequate for the service in any way **should be informed of his shortcomings well before the expiry of the original probationary period so that he can make special efforts at self-improvement.**

Appointed By Transfer

- Where, however, a Government servant who has not already been confirmed in the old post is appointed by transfer, it would be necessary to confirm him in the new post. In such cases, he may be considered for confirmation after watching him for two years.
- Within that period of two years, the officer would earn two reports in the new grade and the DPC may consider his case for confirmation on the basis of these APARs.

LEAVE TO PROBATIONER

- A person appointed to a post on probation shall be entitled to leave under the rules as a temporary or a permanent Government servant according as his appointment is against a temporary or a permanent post. Where such person already holds a lien on a permanent post before such appointment, he shall be entitled to leave as a permanent Government servant.
- If an employee does not complete 75% of the total duration prescribed for probation on account of availing any kind of leave, probation period may be extended by the length of leave availed

LIEN

1. Job Security
2. **Only for Permanent**
Employees
3. **No benefits** carried from
Previous Employment
4. Except **Leave as a
permanent Central Govt
Employee**

- ✓ State Govt. to Central Govt
- ✓ Public Corporations to Central
Govt

TECHNICAL RESIGNATION

1. Job Security/with ifs/buts
2. Temporary Employees also
3. Benefits carried from Previous
Employment (Past Service
/LTC /Gratuity/EL)

- (X) State Govt. to Central Govt
- (X) Public Corporations to Central
Govt

Doctrine of pleasure in the Indian context

- The Civil Services in India are modelled upon the British pattern, though there are important differences between the two. **The doctrine of pleasure has been adopted in India subject to certain exceptions, that is, in a modified form.** The rigour of the British concept of “Doctrine of Pleasure” has been toned down in India.
- Here, in India, a **Govt. servant holds his office during the pleasure of the President or the Governor,** as the case may be - President if he is an employee under the Central Government and Governor, if he is an employee of any State Government. **There are restrictions imposed upon the doctrine of pleasure in India.**

Restrictions on the Doctrine of Pleasure

The *doctrine of pleasure is subject to the safeguards provided by Article 311. In other words, Art. 311 is a proviso to Art.310* (1).

The doctrine of pleasure is controlled by the Fundamental Rights.

There are certain constitutional functionaries who do not hold their offices during the pleasure of the President or the Governor, such as Judges of the Supreme Court and High Courts, the Chief Election Commissioner, Election Commissioners and Regional Commissioners and the CAG.

IAS (Probation Rules), 1954/IPS

1954/IFOS1968

Rule 12 – Discharge of a probationer:- A probationer shall be liable to be **discharged** from Service, or reverted to the permanent post on which he holds lien.....,If

- he fails to pass the re-examination under Rule 9; or
- if the Central Government is satisfied that the probationer was ineligible for recruitment or is ***unsuitable*** for being a member of the service; or
- in the opinion of the Central Government he has **willfully neglected his probationary studies or duties; or**
- ***he is found lacking in qualities of mind and character needed for the service; or***
- he fails to comply with any of the provisions of these Rules.
- Provided that except in a case falling in clause (a) above, the Central Government shall hold a summary enquiry before passing an order under the Rules.