



Services under State

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Services & their Role in Modern times

- Indispensable to governance and progress of country
- Implementation of Government policies & laws
- Welfare of people
- Vital for Democracy

Service Matters



- All matters relating to conditions of service in connection with Union or any State or any local authority or other authority etc.
- Including recruitment, remuneration, pension & retirement benefits
- Tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation
- Leave , disciplinary matters etc

Law Governing Service Matters



- Constitution of India- Art.309-311
- Service Rules framed by appropriate Government
- The Service Contracts (Standard Form)
- Judicial Precedents



Services under Constitution

- **Art.309** – Power of Parliament & State Legislatures to regulate recruitment and conditions of service in connection with affairs of Union and States
- Subject to provisions of Constitution – **E.g.** F.Rts, Art.311 etc



Services under Constitution

- Art.310 – **Doctrine of Pleasure**
- Every member of Defence/ All India Service/Civil service or person holding civil post under Union- holds such post during pleasure of President
- Every member of Civil service of State or person holding civil post under State holds such post during pleasure of governor
- Exception – contractual appointments Art.310(2)

Services Under Constitution

■ Art.311 – Safeguards to Civil servants

- 1) No dismissal/removal from service by authority subordinate to appointing authority
- 2) No dismissal/removal/reduction in rank except after inquiry & giving reasonable opportunity of being heard in respect of charges (**not in respect of proposed penalty**)

Exceptions -1) **dismissal/removal/reduction in rank on ground of conduct leading to conviction on criminal charge; or**

2) satisfaction of authority for reasons to be recorded that it is not reasonably practicable to hold such enquiry; or

3) satisfaction of President/Governor that it is not expedient to hold such inquiry in interest of security of State

Leading Cases and Settled Law



- **Government Servants have no right to strike** — T.R.Rangarajan v. Govt. of Tamil Nadu , AIR 2003 SC 3032
- **When enquiry officer is not disciplinary authority, delinquent employee has right to receive E.O.'s report, to defend him self before disciplinary authority.**
M.D.,ECIL v. B.Karunakar, (1993) 4 SCC 727

Leading Cases and Settled Law

- Termination of service amounts to punishment when Govt.servant had a right to post/rank under any rule of service /contract & will be entitled to protection U/A 311 – [[Purushotham Lal Thingra v. Union of India](#) , AIR 1958 SC 36 - given higher post on officiating post – reverted back subsequently on ground of unsatisfactory work-upheld by court]

Leading Cases and Settled Law



- **Suspension** - not punishment [Sukbans Singh v.State of Punjab, AIR 1962 SC 1711]
- **Suspended employee** – entitled to normal subsistence allowance State of Maharashtra v. Chandrabhan , AIR 1983 SC 803 (Rs.1/-p.m.-held to be unconstitutional)

Leading Cases and Settled Law



- **Compulsory Retirement - simpliciter is not punishment** – State of Gujarat v. Umedbhai M. Patel AIR 2001 SC 1109 & Baikuntanath v. Chief Medical Officer , (1992) 2 SCC 299
- **Safeguards not applicable to temporary servants / probationers** State of Punjab v. Sukh Raj Bahadur AIR 1968 SC 1089

Leading Cases and Settled Law



- Reasonable Opportunity need not be given – in cases of conviction u/s 332,IPC,Creating a riotous situation by CISF personnel becoming a security risk, etc – Union of India v.Tulshiram Patel (1985) 3 SCC 398
- Termination on ground of procuring job by producing false caste certificate – justified Addl.G.M.(HR),BHEL Ltd,hyd. V. S.R.Burde, AIR 2007 SC 2048



Criminal Prosecution and Acquittal of Employee-Effect on Service

Once an employee accused of an offence is finally acquitted (**honourably and completely exonerated of the charges**) by a court of competent jurisdiction-

- i) keeping the employee in suspension or not revoking the order of suspension contemplating or pending departmental enquiry on the same set of facts is wholly unjustified
- ii) The employee would be entitled to be considered for promotion from the date on which his junior has been promoted

Gurpal Singh v. High Court of Rajasthan [WP(Civil) no.200/2006 u/A 32] See also **Corporation of City of Nagpur v. Ramcandra** (1981)2 SCC 714

Leading Cases and Settled Law

- All Entries in C.R.s (Whether poor, fair, good or very good) must be communicated to public servants (whether in civil, judicial, police or any other State service except Military) must be communicated to him within a reasonable period so that he can make a representation for its upgradation

Dev Dutt v. UoI, (2008) 8 SCC 725



Minimum tenure for civil servants & action on oral instructions

- We are of the view that the civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests. Further, civil servants shall also not have any vested interests. **Resultantly**, there must be some records to demonstrate how the civil servant has acted, if the decision is not his, but if he is acting on the oral directions, instructions, he should record such directions in the file. If the civil servant is acting on oral directions or dictation of anybody, he will be taking a risk, because he cannot later take up the stand, the decision was in fact not his own. Recording of instructions, directions is, therefore, necessary for fixing responsibility and ensure accountability in the functioning of civil servants and to uphold institutional integrity. (Para 33)

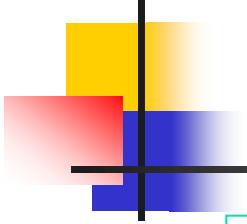
Oral Instructions to Civil servants- Impact

Oral and verbal instructions, if not recorded, could not be provided. By acting on oral directions, not recording the same, the rights guaranteed to the citizens under the Right to Information Act, could be defeated. The practice of giving oral directions/instructions by the administrative superiors, political executive etc. would defeat the object and purpose of RTI Act and would give room for favoritism and corruption.

.....**T.S.R. Subramanian v. Union of India (Oct 31, 2013)**

Minimum Tenure for Civil servants

- **30. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling /transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.**
- **31. We, therefore, direct the Union State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within a period of three months**



Thank You