NATIONAL CONFERENCE FOR HIGH COURT JUDGES ON SERVICE & EMPLOYMENT LAW

Address by Hon'ble Mr. Justice Dipankar Datta,
Judge,
Supreme Court of India.
23rd August, 2025.

LOOKING BACK …

There are certain important observations made by the SCI in Karam Pal v UOI, (1985) 3 SCR 271: AIR 1985 SC 774:

> "There has been a phenomenal rise in service disputes in the last three decades.... We are struck by the innumerable rules that have been framed within a period of about 30 years to cover the field relating to constitution, recruitment and provision for other conditions of service....."

and Gonal Bihimappa v State of Karnataka, 1987 SCC Supp 207:

> "Experiences show that legal battles are fought in Court between Government servants whether individual pitched against individual or group against group; this embitters relationship *inter se* and often results in a switch over (sic) of attention from public duty to personal cause."

PRESENT TIMES

- **We are in 2025. The situation has not changed for the better. If one looks at the 'Digests' published covering case laws of the Supreme Court and the decisions of the High Courts in service law matters, the same outruns all other subjects except civil and criminal matters. Much of the blame has to be shouldered by the executive for irrational and irresponsible actions, which happen to be one of the main causes for triggering docket explosion in service matters.**

SERVICE JURISPRUDENCE

- **Service Jurisprudence is a complex subject. It is inter-twined with legislation, rules, directions, practices, principles of Administrative Law, Constitutional Law, Fundamental Rights, Natural Justice principles and last, but not the least, judicial decisions.**

SERVICE JURISPRUDENCE (CONTD.)

- **Courts, when approached by public servants seeking remedy in service-related disputes, are tasked to examine the actions/orders under challenge. What are the courts supposed to bear in mind?**
- **The basic *mantra* is to ascertain whether the impugned action/decisions/orders is *ultra vires*:**
  a. **the Fundamental Rights;**
  b. **any statutory provision;**
  c. **any binding rules and/or instructions; and**
  d. **due process, i.e., the rule of fair procedure.**

SERVICE JURISPRUDENCE (CONTD.)

- **Since Public Service Law is a specialized branch of Administrative Law, the three limbs of natural justice principles play a very vital part in decision making.**
- **The State as a model employer has a duty to act fairly keeping in mind the rules framed by it. The State must earn the trust of the employees that they will be treated by dignified fairness, essential for good governance.**
- **Drawing from my combined experience at the Bar and on the Bench for almost three and half decades, I can opine without any fear of contradiction that much happens in closed chambers of the executive which obviously never enters the public domain and thereby, public servants also do not have access to the same. It is the tip of the iceberg that the courts generally see and even the RTI machinery in such cases does not help in view of Section 8 of the RTI Act, 2005.**

RULES ARE SUPREME IN PUBLIC SERVICE LAW

- **The employer-employee relationship in public service and the terms and conditions governing such relationship are generally contained in statutory provisions or rules. In our country, such relationship at times is also governed by administrative instructions. The Supreme Court has consistently held that statutory rules have dominance in service disputes over other executive decisions.**
- **Acts of Parliament/State Legislature, if any, or delegated legislation will reign supreme in matters relating to recruitment, appointment, probation, conditions of service, promotion, misconduct, disciplinary proceedings, removal from service, retirement, pension, retiral benefits – essentially covering the entire gamut of public appointment.**

REALIZATION – PERSONAL VIEW

As per the extant law, we as Judges have to presume official acts to have been regularly performed; hence, the same are valid. While deciding particular sensitive cases, I develop a feeling that may be illustration (e) of Section 114, Evidence Act, 1872/Section 119, Sakshya Adhiniyam, 2023 should be relooked. Without generalizing, I am sorry to say that malice in a number of cases seems to be overpowering whether it is a case of selection or transfer or even disciplinary action. This erodes the faith and trust that public servants' repose in the State, with the obvious result that the Tribunals and the Courts are flooded with litigation which could easily be avoided if only the executive realized that dispensing justice is not the exclusive prerogative of the judiciary. Despite the concept of separation of powers, the executive under the constitutional provisions has a vital role, *albeit* limited, to render justice to its subjects which, more often than not, it falters to render; thereby increasing the load of the justice delivery system.

RULES GOVERNING SERVICE UNDER THE CENTRE

- **The Central Civil Services (Classification, Control, and Appeal) Rules, 1965 –** These rules classify central government employees into different groups (A, B, C), define disciplinary actions, and provide appeal mechanisms against penalties.
- **The Central Civil Services (Conduct) Rules, 1964 –** These rules govern the conduct of government employees, ensuring integrity, impartiality, and discipline in public service, covering aspects like political neutrality and financial propriety. **The Central**
- **The Civil Services (Leave) Rules, 1972 –** These rules regulate the different types of leave available to central government employees, such as earned leave, casual leave, medical leave, and study leave.
- **The Central Civil Services (Pension) Rules, 1972 –** These rules outline the pension benefits, eligibility, and retirement procedures for central government employees, ensuring post-retirement financial security.

RULES GOVERNING SERVICE

- All State Government employees, like the Central Government employees are governed by similar such rules framed by each Government as mentioned in the previous slide.

CONSTITUTIONAL PROVISIONS RELATING TO AND/OR CONNECTED WITH PUBLIC SERVANTS

ARTICLE 309

"309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

CONDITIONS OF SERVICE – ARTICLE 309

Article 309 of the Constitution regulates conditions of service in public employment. Article 309 empowers the employers to frame rules governing the conditions of service. These rules, since are made under constitutional authority, bear statutory force though are amenable to judicial review. The only caveat to rules framed under Article 309 is that they cannot be violative of/repugnant to any substantive law including Article 311.

[Union of India v. Tulsiram Patel, (1985) 3 SCC 398]

RULES MADE UNDER ART. 309 CANNOT OVERRIDE STATUTORY RULES

1. The power to regulate recruitment and service conditions of public employees lies primarily with the legislature, either Parliament or State Assemblies (**Entry 71 of List I and Entry 41 of List II** in the Seventh Schedule).
2. President or Governor can make service rules under the proviso to Article 309, but only as a transitional measure until the legislature enacts a law governing recruitment and service conditions.
3. Rule-making power under Article 309 is legislative in nature, meaning it must comply with other constitutional provisions like Articles 14, 16, 310, and 311.
4. Once a legislature enacts a law, the Executive's rule-making power under Article 309 ceases in that field unless certain aspects remain unaddressed by the statute, in which case the Executive can issue rules or instructions. (Occupied Field Principle).
5. Rules made under a legislative Act constitute delegated legislation, whereas rules under Article 309 are not of the same nature. Consequently, rules under Article 309 cannot override legislative rules due to the "occupied field" doctrine.

[A.B. Krishna v. State of Karnataka, (1998) 3 SCC 495]

RULES MADE UNDER ART. 309 CANNOT OVERRIDE STATUTORY RULES (CONTD.)

- Rules made under the proviso to Article 309 apply only in the absence of a statute or statutory rules governing service conditions. Once a special law or rule is enacted, the general rules under Article 309 cease to apply.
- If a statute or rules already exist, the general rules under Article 309 cannot override them.
- In case of a conflict between a general rule and a special rule, the maxim *generalia specialibus non derogant* applies, meaning special provisions prevail over general ones.

[D.R. Yadav v. R.K. Singh, (2003) 7 SCC 110]

EXECUTIVE CANNOT SUPERSEDE STATUTORY RULES BUT CAN FILL UP THE GAPS

"7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. **It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.**"

[Sant Ram Sharma v. State of Rajasthan, 1967 SCC OnLine SC 16, AIR 1967 SC 1910]

ARTICLE 16 – EQUALITY OF OPPORTUNITY

16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State…

ARTICLE 16 (CONTD.)

85. ...Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, **Article 14 is the genus while Article 16 is a species**. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. ... Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. ... Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

[E.P. Royappa v. State of T.N., (1974) 4 SCC 3]

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ARTICLE 16 (CONTD.)

❖ Is Article 16(4) an 'exception' to Article 16(1)?

"741. …In our respectful opinion, the view taken by the majority in *Thomas* [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] is the correct one. We too believe that Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it. For assuring equality of opportunity, it may well be necessary in certain situations to treat unequally situated persons unequally. Not doing so, would perpetuate and accentuate inequality. Article 16(4) is an instance of such classification, put in to place the matter beyond controversy. The 'backward class of citizens' are classified as a separate category deserving a special treatment in the nature of reservation of appointments/posts in the services of the State. **Accordingly, we hold that clause (4) of Article 16 is not exception to clause (1) of Article 16…"**

***[Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217]**

ARTCLE 16 (CONTD.)

- A perusal of Article 16 leads us to the only irresistible conclusion that Article 14 and 21 also apply to any form of public employment. Therefore, considering that employment is a means of livelihood protected under Article 21, therefore the employer-employee relationship cannot be severed “except according to procedure established by law”.
- Difference Between Government Servants And Other Public Servants arises by reason of constitutional provisions relating to services under the Union and the State in Part XIV of Constitution and **more particularly Articles 309, 310 and 311.** These provisions apply to persons serving the Union and the States and not to members of other public services like employees of statutory corporations or other agencies / instrumentalities of the State.

ARTICLE 16 (CONTD.)

- **Clause (6) was added to Article 16 by the 103rd Amendment Act, 2019, which came into effect on January 14, 2019, and empowers the State to make various provisions for reservation in appointments of members of the Economically Weaker Sections (EWS) of society to government posts.**
- **In the case *of Janhit Abhiyan v. Union of India (EWS Reservation), (2023) 5 SCC 1* the constitutionality of the 103rd Amendment was contested, alleging that it violated the fundamental structure of the Indian Constitution. However, the majority decision, with a 3:2 ratio, upheld the amendment as constitutionally valid.**

SEVERANCE OF RELATIONSHIP – THE PLEASURE DOCTRINE

- The origin of the doctrine can be traced to England where all public officers and servants of the Crown hold their appointments at the pleasure of the Crown and their services can be terminated at will without assigning any cause.
- This right of the crown is known as the “pleasure doctrine”.
- Article 310 (1) of the Indian Constitution provides that those in services of the Union or the States shall hold their office during the ‘pleasure of the President or the Governor of the State’, as the case may be. However, Article 310 (1) does not envisage an unfettered pleasure. **Such discretion or power is limited by the provisions of the Constitution itself.**

THE PLEASURE DOCTRINE (CONTD.)

This doctrine was discussed by a Constitution Bench of the Supreme Court in **Union of India v. Tulsiram Patel, (1985) 3 SCC 398:**

> *"39. In India, the pleasure doctrine has received constitutional sanction by being enacted in Article 310(1). Unlike in the United Kingdom, in India it is not subject to any law made by Parliament but is subject only to what is expressly provided by the Constitution.*
>
> *43. The position that the pleasure doctrine is not based upon any special prerogative of the Crown but upon public policy has been accepted by this Court in State of U.P. v. Babu Ram Upadhya [AIR 1961 SC 751].*
>
> *45. It is thus clear that the pleasure doctrine embodied in Article 310(1), the protection afforded to civil servants by clauses (1) and (2) of Article 311 and the withdrawal of the protection under clause (2) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good."*

DISMISSAL – ARTICLE 311

❖311. **Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—**

(1) 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.

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311 (1)

❖What is a 'civil post'?

"There is no formal definition of 'post' and 'civil post'. The sense in which they are used in the services chapter of Part XIV of the Constitution is indicated by their context and setting... a civil post means a post not connected with defence outside the regular services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State.... There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is a relation between the State and the alleged holder of a post." ***(Para 9)***

[State of Assam v. Kanak Chandra Dutto, AIR 1967 SC 884]

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311 (1)

A civilian employee in military service who is drawing his salary from the Defence Estimates cannot claim the protection of Article 311(2) of the Constitution of India. The CCA Rules of 1965 also have no application to such an employee. The dismissal of such an employee cannot be faulted on the ground of non-complying with the requirements of Article 311(2).

[See Director General of Ordnance Services & Ors. v. P.N. Malhotra, 1995 Supp (3) SCC 226 for better understanding]

While this case is applicable as a precedent for both Article 311(1) and 311(2), the reason for its inclusion in this slide is for a better understanding of what constitutes a civil post. This is a basic requirement that needs to be fulfilled for the further application of the protections and safeguards enshrined under Article 311.

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 33

Article 33 confers power on the Parliament to determine to what extent any of the rights conferred by Part III shall, in their application to the members of the Armed Forces, be restricted or abrogated so as to ensure the proper discharge of duties and maintenance of discipline amongst them. Article 33 does not obligate that Parliament must specifically adumbrate each fundamental right enshrined in Part III and to specify in the law enacted in exercise of the power conferred by Article 33 the degree of restriction or total abrogation of each right. That would be reading into Article 33 a requirement which it does not enjoin. In fact, after the Constitution came into force, the power to legislate in respect of any item must be referable to an entry in the relevant list. Entry 2 in List I : Naval, Military and Air Forces; any other Armed Forces of the Union, would enable Parliament to enact the Army Act and armed with this power the Act was enacted in July 1950. It has to be enacted by the Parliament subject to the requirements of Part III of the Constitution read with Article 33 which itself forms part of Part III. **Therefore, every provision of the Army Act enacted by the Parliament, if in conflict with the fundamental rights conferred by Part III, shall have to be read subject to Article 33 as being enacted with a view to either restricting or abrogating other fundamental rights to the extent of inconsistency or repugnancy between Part III of the Constitution and the Army Act.**

[Lt. Col. Prithi Pal Singh Bedi vs. Union of India & Ors, (1982) 3 SCC 140]

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 33

Therefore, proceedings against the delinquent members of the defence forces are taken under the respective Acts, that is, the Army, Navy and Air Force Act read along with the rules incorporated under them. These instruments envisage Court of Inquiry followed by Court Marshals.

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311 (1)

"authority subordinate to that by which he was appointed"

33. … If one looks at Article 311(1), the sole safeguard that it provides to any member, *inter alia*, of a civil service of a State or the holder of a civil post under the State is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed. **Clause (1) does not on its own terms require that the disciplinary proceedings should also be initiated by the appointing authority.** This is what *Shardul Singh* [(1970) 1 SCC 108] and *P.V. Srinivasa Sastry* [(1993) 1 SCC 419] have articulated, with which we wholeheartedly agree.

[State of Jharkhand v. Rukma Kesh Mishra, 2025 SCC OnLine SC 676]

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311 (2)

(2) 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

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further 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 for 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.

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311(1) AND (2)

Clause (1) of Article 311 is quite explicit and hardly requires discussion. The scope and the ambit of that protection are that government servants of the kinds referred to therein are entitled to the judgment of the authority by which they were appointed or some authority superior to that authority and that they should not be dismissed or removed by a lesser authority in whose judgment they may not have the same faith. The underlying idea obviously is that a provision like this will ensure to them a certain amount of security of tenure. Clause (2) protects government servants against being dismissed or removed or reduced in rank without being given a reasonable opportunity of showing cause against the action proposed to be taken in regard to them. It will be noted that in clause (1) the words "dismissed" and "removed" have been used while in clause (2) the words "dismissed" "removed" and "reduced in rank" have been used. The two protections are (*1*) against being dismissed or removed by an authority subordinate to that by which the appointment had been made, and (*2*) against being dismissed, removed or reduced in rank without being heard. ...

[Parshotam Lal Dhingra v. Union of India, 1958 SCR 828 : AIR 1958 SC 36]

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311 (2)

8. … if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311(2). In such a case, it would obviously be necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. There may also be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and against him on other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in their entirety, it is another matter, but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or all of those recorded in his favour and proceeds to specify the nature of the action proposed to be taken on its own conclusions, it would be necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be based not only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer are, according to the dismissing authority, proved. **In order to give the delinquent officer a reasonable opportunity to show cause under Article 311(2), it is essential that the conclusions provisionally reached by the dismissing authority must, in such cases, be specified in the notice.** …

***[State of Assam v. Bimal Kumar Pandit* (1964) 2 SCR 1]**

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311 (2)

It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. **When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.**

[Punjab National Bank v. Kunj Bihari Mishra, AIR 1998 S.C. 2713]

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311 (2)

Guided by the law declared in the aforesaid decisions, we can safely conclude that the **enquiry conducted by the Enquiry Officer in a manner not authorised by law could not have formed the basis of the order of punishment** dated 24th March, 2015 imposed on the respondent.

[State Of Uttar Pradesh Through Principal Secretary, Department Of Panchayati Raj, Lucknow v. Ram Prakash Singh, 2025 SCC OnLine SC 891]

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311

"On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions — **(i)** where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; **(ii)** where a worker is sought to be reinstated on being dismissed under the Industrial Law; and **(iii)** where a statutory body acts in breach or violation of the mandatory provisions of the statute." **(Para. 18)**

[Executive Committee of Vaish Degree College v. Lakshmi Narain, (1976) 2 SCC 58]

DEPARTMENTAL INQUIRY - CHARGE

- A departmental inquiry is not conducted with the rigidity of a judicial trial. Hence, the charge which is to be framed need not be framed with the precision of a charge in a criminal proceeding. But it must not be vague or so general as to make it impossible of being traversed.
- In order to frame a charge, it is permissible to have a preliminary inquiry. This preliminary inquiry may be *ex parte* and it would be permissible to interrogate the delinquent.
- Such a preliminary inquiry is not only permissible but is a very desirable step, because civil servants should not be charged with offences recklessly and without reason.

[A.R.S. Choudhury v. Union of India, 1956 SCC OnLine Cal 224]

DEPARTMENTAL INQUIRY – CHARGE (CONTD.)

A charge must not be vague or indefinite

5. ….If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him…

[Surath Chandra Chakrabarty v. State of W.B., (1970) 3 SCC 548]

RULES OF PNJ TO BE READ INTO THE STATUTORY RULES

The Supreme Court in ***AK Kraipak v. Union of India, AIR 1970 SC 150*** referring to the decision in ***State of Orissa v. Dr., (Miss) Binapani Dei, [1967] 2 S.C.R. 625*** elucidated the principle that the rules of natural justice operate in areas not covered by any law validly made, that is, they do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceeding also, especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones, and an unjust decision in an administrative enquiry may have a more far-reaching effect than a decision in a quasi-judicial enquiry.

RULES OF PNJ TO BE READ INTO THE STATUTORY RULES

It must be borne in mind that when a statute specifies the procedure for administrative decision making, the principles of natural justice supplement but do not substitute the statutory procedure. However, even if the statute does not provide for the administrative procedure, the authorities are bound to make decisions in adherence to the principles of natural justice.

[Krishnadatt Awasthy v. State of M.P., 2025 INSC 126]

DEPARTMENTAL INQUIRY – CHARGE (CONTD.)

Stale Charge

12. We do not find any reason to interfere with the judgment and order passed by the High Court. However, it is necessary for us to highlight a few facts which were brought to our notice during the course of submissions made by the learned counsel. The first issue of concern is the enormous delay of about 7 years in issuing a charge-sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge-sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance.

[UCO Bank v. Rajendra Shankar Shukla, (2018) 14 SCC 92]

INVESTIGATION OF THE CHARGE(S)

- A departmental inquiry is not a judicial proceeding and the law and procedure applicable to judicial proceedings are not applicable. The strict rules of the law of evidence are not to be applied.
- But this does not mean that the proceedings can be held in an arbitrary manner. The rules of natural justice must still be applied.
- The provisions of the Indian Evidence Act are not strictly applicable, so it is not relevant to consider if facts have been 'proved' according to law. It is permissible to look into documents or records which strictly speaking would not be evidence in a court of law, but with one safeguard. Any document or record which is looked into or relied upon must be disclosed to the delinquent and he must be afforded an opportunity of dealing with it.

[A.R.S. Choudhury v. Union of India, 1956 SCC OnLine Cal 224]

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311 (3)

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

CONSTITUTIONAL PROVISIONS (CONTD.) – ART 311 (3)

"**58.** The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final."

[Satyavir Singh & Ors. v Union of India & Ors. (1985) 4 SCC 252]

ADMINISTRATIVE TRIBUNALS

Originally, the Administrative Tribunals were not part of the Constitution; however, they were incorporated in the Indian Constitution by the 42nd Amendment Act of 1976.

Post the 42nd amendment, Article 323-A pertains to Administrative Tribunals, while Article 323-B addresses tribunals concerning other matters.

ADMINISTRATIVE TRIBUNALS (CONTD.)

323A. Administrative tribunals

1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.
2) A law made under clause (1) may
    a. **provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;**
    b. **specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;**
    c. *********

ADMINISTRATIVE TRIBUNALS (CONTD.)

Drawing its competence from Article 323-A of the Constitution, Parliament enacted the Administrative Tribunals Act, 1985. The primary objective was to provide a forum alternative to the High Courts for routine service appeals, which otherwise was overburdening the working of the constitutional courts. It recognised that the higher courts were envisaged to primarily deal with important constitutional issues and substantial question of law of general public importance.

[Rojer Mathew v. South Indian Bank Ltd., (2020) 6 SCC 1]

CONSTITUTIONAL PROVISIONS: REMOVAL OF SUPREME COURT AND HIGH COURT JUDGES

❖ **Removal**

📌 Key Constitutional Articles

Article	Applies To	Subject
Article 124(4)	SC Judges	Removal process
Article 124(5)	SC Judges	Parliament may regulate the procedure by law
Article 217(1)(b)	HC Judges	Removal on same grounds as SC
Article 218	HC Judges	Removal process same as SC

CONSTITUTIONAL PROVISIONS: REMOVAL OF SUPREME COURT AND HIGH COURT JUDGES

Removal of **Supreme Court Judges**

📜 **Relevant Articles: Article 124(4) & (5)**

(4) A Judge of the Supreme Court 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 a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4) – **JUDGES (INQUIRY) ACT, 1968** enacted for this purpose.

CONSTITUTIONAL PROVISIONS: REMOVAL OF SUPREME COURT AND HIGH COURT JUDGES

An allegation of misbehaviour or incapacity of a Judge has to be made, investigated and found proved in accordance with the law enacted by the Parliament under Article 124(5) without the Parliament being involved up to that stage; on the misbehaviour or incapacity of a Judge being found proved in the manner provided by that law, a motion for presenting an address to the President for removal of the Judge on that ground would be moved in each House under Article 124(4); on the motion being so moved after the proof, the bar on discussion contained in Article 121 is lifted and discussion can take place in the Parliament with respect to the conduct of the Judge; and the further consequence would ensue depending on the outcome of the motion in a House of Parliament. If, however, the finding reached by the machinery provided in the enacted law is that the allegation is not proved, the matter ends and there is no occasion to move the motion in accordance with Article 124(4). **(Para 74)**

Thus prior proof of misconduct in accordance with the law made under Article 124(5) is a condition precedent for the lifting of the bar under Article 121 against discussing the conduct of a Judge in the Parliament. Article 124(4) really becomes meaningful only with a law made under Article 124(5). Without such a law the constitutional scheme and process for removal of a Judge remains inchoate. **(Para 100)**

[Subcommittee on Judicial Accountability v. UOI & Ors., (1991) 4 SCC 699]

CONSTITUTIONAL PROVISIONS: REMOVAL OF SUPREME COURT AND HIGH COURT JUDGES

Removal of High Court Judges

📜 **Relevant Article: Article 218**

218. Application of certain provisions relating to Supreme Court to High Courts.—The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

RECRUITMENT, SELECTION AND APPOINTMENT

PUBLIC EMPLOYMENT IS CONTRACTUAL ONLY TILL ACCEPTANCE BY EMPLOYEE

The origin of government services is contractual. There is an offer and acceptance in every case. But once appointed to his post or office, the government servant acquires a status and his rights and obligations are no longer determined by the consent of both the parties, but by the statute or statutory rules as framed and unilaterally altered by the Government. In other words, the legal position of a government servant is more one of status than that of contract.

***[Brij Mohan Lal v. Union of India*, (2012) 6 SCC 502]**

ESSENITAL QUALIFICATIONS FOR APPOINTMENT – BEST LEFT TO THE EMPLOYER

9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.

[Maharashtra Public Service Commission v. Sandeep Shriram Warade, (2019) 6 SCC 362]

RECRUITMENT, SELECTION AND APPOINTMENT – RELATED, SOMETIMES SYNONYMOUS BUT DISTINCT CONCEPTS

RECRUITMENT, SELECTION AND APPOINTMENT (CONTD.)

What is recruitment?

"6. ..... 'Recruitment' according to the dictionary means 'enlist'. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown."

[K. Narayanan v. State of Karnataka, 1994 Supp (1) SCC 44]

RECRUITMENT, SELECTION AND APPOINTMENT (CONTD.)

- **Recruitment is a broader process that culminates in appointment while selection is a subset of the recruitment process.**

"…the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment…"

[A.P. Public Service Commission v. B. Sarat Chandra, (1990) 2 SCC 669]

RECRUITMENT, SELECTION AND APPOINTMENT (CONTD.)

"42. …although, ordinarily, the words recruitment process and selection process are used inter-changeably, the same are not synonymous; by and large, a selection process is an integral part of a recruitment process that an employer initiates to fill up vacancies by open selection. While recruitment process starts with a decision to fill up an identified number of vacancy/vacancies in the manner prescribed and ends with appointment(s) in favour of the selected candidate(s), a selection process could commence with a requisition of names of eligible candidates from the relevant employment exchanges and/or issuance of a public advertisement or even thereafter, depending upon the language of the governing rules, and normally, a selection process would terminate with preparation of the final panel/merit list."

[Kadamtala High Madrasah v. State of W.B., 2019 SCC OnLine Cal 381 (FB)]

SELECTION COMMITTEE BECOMES FUNCTUS OFFICIO WHEN PROCEEDINGS OF MEETINGS ARE SIGNED

"8. …..The function of the Selection Committee comes to an end when the process of selection is completed and the proceedings are drawn. Every member of the Selection Committee has a right to give his independent, unbiased and considered opinion in respect of each candidate appearing before the Committee. Normally, it would not be considered a bona fide act on the part of a member of the Selection Committee to say, after the selection is over and he has signed the proceedings, that he "overlooked" certain qualifications in respect of a candidate. The sanctity of the process of selection has to be maintained. It would be travesty of the selection process if the candidates are encouraged to meet members of the Selection Committee after the selection is over and to obtain letters from them attempting to renege the selection made….."

[Chancellor v. Bijayananda Kar (Dr), (1994) 1 SCC 169]

PANEL AND SELECT LIST

- A select list or merit list (often referred as panel list) is a necessary and usually the final step in the recruitment process. It ensures transparency in the process and public accountability.
- A select list does not provide a candidate an automatic right to be appointed but does give the right to be considered for such appointment. It also prevents the state/appointing authority from acting arbitrarily. The appointing authority cannot ignore or deviate from the merit list at the time of making appointment, unless provided by the rules. An appointment beyond the select/merit list would be void.

PANEL AND SELECT LIST (CONTD.)

- Preparation of a zone-wise or a district wise merit list would also be arbitrary and void of Articles 15(1) and 16(2).
- Once prepared, the select list cannot be cancelled without a proper justification.
- Only after a candidate is provisionally selected does some reasonable expectation in his favour arises.
- A person who was not eligible to be appointed cannot challenge the legality of the select list.

PANEL AND SELECT LIST (CONTD.)

- On validity of a select list, the Apex Court has held:

16. In this context, it is necessary to consider as to how long the list of candidates for a particular examination can be utilised for appointment. … In the absence of any provision in the Rules a reasonable period must be followed during which the appointment on the basis of the result of a particular examination should be made. … The list prepared by the Commission on the basis of the competitive examination of a particular year could be utilised by the Government for making appointment to the service before the declaration of the result of the subsequent examination. If selected candidates are available for appointment on the basis of the competitive examinations of subsequent years, it would be unreasonable and unjust to revise the list of earlier examination by changing norms to fill up the vacancies as that would adversely affect the right of those selected at the subsequent examination in matters relating to their seniority under Rule 22. … The result of a particular examination must come to an end at some point of time, like a “dead ball” in cricket. It could not be kept alive for years to come for making appointments. … This practice is fraught with dangers of favouritism and nepotism and it would open back door entry to the service. …

[State of U.P. v. Rafiquddin, 1987 Supp SCC 401 : 1987 SCC OnLine SC 728]

PANEL AND SELECT LIST (CONTD.)

- A select list must be published by the appointing authority, not only because the rules or norms provide so, but also in the interest of transparency and probity.
- Upon the select list having been exhausted, no further appointments from the list can be made.
- A selection process comes to end when all selections are made against the post(s); consequentially, validity of the select list ends with the process.
- An appointing authority is not bound to prepare a wait list, however, when a list is so prepared, appointment against the post – in the event of rejection of select list candidate(s) – must be made from the wait list.

APPOINTMENTS IN PUBLIC SERVICE AND THE SCOPE OF INTERFERENCE - THE TEN COMMANDMENTS TO REMEMBER

1. **The rule of appointments to public service is that it should be through open invitation and on merits. After the selection process is complete, a merit list or a select list (by whatever name called) has to be prepared. While filling up the vacancies, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.**

2. **Inclusion of the name of a candidate in the merit/select list is at best a condition of eligibility for the purpose of appointment. A candidate in the merit/select list, though having no vested right to be appointed, he has a right to be considered for appointment and the State does not have the license of acting in an arbitrary manner. The appointing authority can neither ignore the list nor decline to make appointment on his whims.**

THE TEN COMMANDMENTS (CONTD.)

3. **Despite vacancies still being available for appointment out of the number of vacancies advertised, the successful candidates do not acquire an indefeasible right to be appointed. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. Nonetheless, the decision not to fill up the vacancies has to be taken bona fide for appropriate reasons.**

THE TEN COMMANDMENTS (CONTD.)

4. **Selection made by an authority for appointment is not ordinarily open to judicial scrutiny because whether a candidate is fit for a particular post or not, has to be decided by the duly constituted Selection Committee which has the expertise on the subject. Since it lacks the expertise, it is not the function of the Court to hear appeals over the decisions of Selection Committees and to scrutinize the relative merits of candidates.**

THE TEN COMMANDMENTS (CONTD.)

5. **Subject to a candidate's prior unawareness of any defect or infirmity in the selection process, such process can be interfered with only on limited grounds, such as a glaring illegality in the procedure vitiating the selection, or patent material irregularity in the constitution of the Selection Committee, or proved *mala fide* affecting the selection, or when an appointment made, based on a selection process, is susceptible to challenge on grounds similar to those for which a writ of *quo warranto* may legitimately issue.**

THE TEN COMMANDMENTS (CONTD.)

6. **Normally, rules following which the selection has commenced cannot be changed/altered but nothing prevents the appointing authority to take measures for screening of candidates, if candidates in numbers apply for employment and the need to restrict the zone of consideration is felt. Similarly, bench marks or cut-off marks for appointment could be set without prejudicing the right of any candidate, not based on considerations that are extraneous but based on reasonable and *bona fide* intention.**

THE TEN COMMANDMENTS (CONTD.)

7. **If a candidate despite being aware of any defect or infirmity in a process of selection appears at the examination for recruitment/interview by taking a calculated chance, and finds the result of such examination/interview not palatable to him, he cannot turn around and subsequently contend that the process of examination/interview was either defective or unfair.**

THE TEN COMMANDMENTS (CONTD.)

8. **Filling up of vacancies by making appointments over and above the number of vacancies advertised, would be violative of Articles 14 and 16 of the Constitution.**
9. **Wait-listed candidates have no right of appointment, unless the relevant rules authorize appointment from such list in the given circumstances.**
10. **Appointment of candidates cannot be quashed without the appointees being brought on record as respondents.**

THE TEN COMMANDMENTS (CONTD.)

Commandment	Case Law	Citation	Ruling
Commandments 1, 2 and 3	***Shankarsan Dash v. Union of India***	**(1991) 3 SCC 47**	Candidates selected in a recruitment process do not have an indefeasible right to appointment unless recruitment rules mandate it, but the State must act bona fide, without arbitrariness or discrimination, in deciding whether to fill vacancies
Commandment 3	***State of Haryana v. Subash Chander Marwaha***	**(1974) 3 SCC 220**	The existence of vacancies does not guarantee a candidate's appointment + the government has discretion in making appointments

THE TEN COMMANDMENTS (CONTD.)

Commandment	Case Law	Citation	Ruling
Commandment 4	***University of Mysore v. C.D. Govinda Rao***	**AIR 1965 SC 491**	There is limited scope of judicial interference in cases where selection bodies have made determinations. The High Court must consider whether the concerned appointment was to be vitiated due to mala fides or non-adherence to statutory or binding rule or ordinance.
Commandment 4	***Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan***	**(1990) 1 SCC 305**	Judicial interference in selections is warranted only when illegality, arbitrariness, bias, or mala fides are demonstrated. Absent these, the courts must respect the autonomy of expert bodies in assessing merit and suitability.
Commandment 4 and 5	***Tajvir Singh Sodhi v. State of Jammu and Kashmir***	**2023 SCC OnLine SC 344**	When exercising the power of judicial review, Courts are limited from entering the merits of the selection unless there is such inherent arbitrariness that there are proven allegations of malfeasance or violations of statutory rules.

THE TEN COMMANDMENTS (CONTD.)

Commandment	Case Law	Citation	Ruling
Commandment 5	***Amaragouda L Patil v. Union of India***	**2025 SCC OnLine SC 297**	The Supreme Court set aside the appointment of the Chairperson of the National Commission for Homeopathy on the grounds that mandatory requirements incorporated in the statutory rules were not met by the selectee and the decision of the selectors suffered from the vice of legal malice or malice in law.
Commandment 6	***V. Lavanya and Ors. v. State of Tamil Nadu***	**(2017) 1 SCC 322**	The change in the selection process, limited to calling candidates for certificate verification, does not alter the weightage of marks or academic qualifications. Since it does not affect essential qualifications or eligibility, it is a valid modification within the selection process.

THE TEN COMMANDMENTS (CONTD.)

Commandment	Case Law	Citation	Ruling
Commandment 6	***Tej Prakash Pathak v. Rajasthan High Court***	**(2025) 2 SCC 1**	The Court held that fairness in public employment is grounded in the principle that "the rules of the game cannot be changed after the game has begun." Once a recruitment process has commenced, any change in eligibility conditions, evaluation methods, or selection benchmarks would be arbitrary, as it places candidates at an unfair disadvantage and undermines the integrity of the process.
Commandment 7	***Meeta Sahai v. State of Bihar***	**(2019) 20 SCC 17**	The Court rejected the principle of estoppel against the appellant, noting that a candidate may challenge the misconstruction of statutory rules even after participating in the selection process.

THE TEN COMMANDMENTS (CONTD.)

Commandment	Case Law	Citation	Ruling
Commandment 7	***Madan Lal v. State of J&K***	**(1995) 3 SCC 486**	If a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted
Commandment 8	***Arup Das v. State of Assam***	**(2012) 5 SCC 559**	An authority cannot make any selection/appointment beyond the number of posts advertised since other candidates who had chosen not to apply for the vacant posts which were being sought to be filled, could have also applied if they had known that the other vacancies would also be under consideration for being filled up

THE TEN COMMANDMENTS (CONTD.)

Commandment	Case Law	Citation	Ruling
Commandment 9	***Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat***	**1994 Supp (2) SCC 591**	A waiting list is not an independent source of recruitment but serves only to fill vacancies if selected candidates do not join or in cases of extreme exigency
Commandment 10	***Ranjan Kumar v. State of Bihar***	**(2014) 16 SCC 187**	Quashing the appointment of the appointees without impleading them is unsustainable and no adverse order can be passed against such persons.

APPOINTMENT

- Appointment to a service can be:
  - by direct recruitment;
  - by promotion;
  - by transfer;
  - by deputation;
  - also, by absorption.

CAN THE APPOINTING AUTHORITY IMPOSE BARS ON EMPLOYMENT?

Bar on employment can be imposed having regard to antecedents, social status, etc. Ultimately, the litmus test is the test of reasonableness. If the bar is found to be arbitrary and unreasonable, it can and will be struck down.

CAN THE APPOINTING AUTHORITY IMPOSE BARS ON EMPLOYMENT?

Employees must furnish true information regarding conviction, acquittal, arrest, or pending criminal cases. Employers possess discretionary power to terminate services or cancel candidature based on the nature of the offence, its materiality, and the role's sensitivity. Factors such as the gravity of the offence, whether the acquittal was honourable or technical, the age of the offender, and the potential for reform must be considered. For confirmed employees, a departmental enquiry is necessary before termination. The verification form must be precise, and suppression of only material information, not trivial details will warrant action.

[refer to Avtar Singh vs. Union of India, (2016) 8 SCC 471 for better understanding]

CAN THE APPOINTING AUTHORITY IMPOSE BARS ON EMPLOYMENT? (CONTD.)

Bars on employment which were found to be arbitrary:

- A rule disqualifying a married woman for appointment to the post of district judge. (AIR 1969 Ori 237)
- A government order directing that a woman should not be appointed as stenographer. (1978 I LLJ 323)

CAN THE APPOINTING AUTHORITY IMPOSE BARS ON EMPLOYMENT? (CONTD.)

Bar on employment which was upheld by court:

- Ban on reappointment of compulsorily retired persons in Government and semi-government institutions. (AIR 1977 SC 854)

PROBATION

PROBATION

- An appointment on probation means that the appointee has been recruited on a trial basis for a particular period.
- In ***Ajit Singh v. State of Punjab, (1983) 2 SCC 217***, the Supreme Court went into great detail about the rationale behind the statutory probationary period and how it has been interpreted in service jurisprudence. According to the court, the idea of probation gained significance in the evolving master-servant relationship in public service, where it became challenging for the employer to fire an employee without adhering to specific procedural protections such as natural justice, etc. It was observed that in order that an incompetent or inefficient servant is not foisted upon an employer because the charge of incompetence or inefficiency is easy to make but difficult to prove, the concept of probation was devised.
- Although confirmation is the *sine qua non* of attaining a substantive status, it has been judicially noted to be one of the inglorious uncertainties of Government service. It has been observed that confirmation depends neither on efficiency nor on the availability of substantive vacancies. It has been further observed that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the Government.

TERMINATION OF PROBATION

- The services of a probationer can be lawfully brought to an end before the expiry of the period of probation by way of simpliciter termination. But the termination will be illegal if it was really brought about to punish the employee for misconduct or the termination casts a stigma on him.
- The transitory character of probationary appointment carries with it by necessary implication the consequence that it is terminable at any time. The Supreme Court in ***Parshotam Lal Dhingra v. UOI, 1958 SCR 828,*** *held* that a probationer whose services have been terminated for unsuitability for the job, cannot complain about such termination and such a termination has been judicially labelled as a simpliciter termination. The was further observed that the protection of Article 311 also covered a probationer and that, although a probationer cannot complain in case of a termination simpliciter he can legitimately do so if the termination is by way of punishment.
- Ever since the ruling in *Dhingra*, in challenging an order of discharge, a probationer has almost invariably contended that the termination was by way of punishment since the real grounds were such that they cast a stigma.

TERMINATION OF PROBATION (CONTD.)

"The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment. "

"But, if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career in such a case, he is entitled to the protection of Article 311 (2) of the Constitution."

"But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for for the post he was temporarily holding, on account his misconduct, or inefficiency, or some such cause. "

[State of Bihar v Gopi Kishore Prasad, AIR 1960 SC 689, Constitution Bench]

TERMINATION OF PROBATION (CONTD.)

- A simple termination order **(termination simpliciter)** → **valid** (even if there is no inquiry or adverse findings against the employee)

- **Distinction Between "Motive" and "Foundation"**
  - **Motive –** If the employer terminates the probationer's service due to general dissatisfaction with his work or conduct, without the same forming the basis of any specific misconduct, the termination remains innocuous and does not attract Article 311 or the principles of natural justice. The termination is treated as termination simpliciter and does not require an inquiry.
  - **Foundation –** If the termination is based on specific allegations of misconduct or incompetence, forming the foundation of the action, then it amounts to punitive termination. In such cases, principles of natural justice must be followed, including a proper inquiry. If an inquiry was initiated before termination or the order contains adverse findings, it is deemed to be stigmatic, requiring procedural safeguards.

[Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, (1999) 3 SCC 60]

CERTAIN SPECIAL TYPES OF APPOINTMENTS

COMPENSATORY APPOINTMENT

When land is acquired by the Government for a public project, the Government sometimes frames a scheme for providing compensatory appointment to a member of a family affected by the project. These kinds of appointments are purely matters of State benevolence arising out of policy considerations.

[V. Sivamurthy v. State of A.P., (2008) 13 SCC 730]

COMPASSIONATE APPOINTMENT

COMPASSIONATE APPOINTMENT (CONTD.)

- Being an exception to the general rule that appointment to a public service should be on merits, appointment on compassionate grounds is given to a member of the family of a deceased / incapacitated employee.
- The policy is not of too distant an origin. Based on legal reports, it appears to have emerged in the 1970s and gained traction over the subsequent decades, with the Courts periodically establishing guidelines for the provision of compassionate appointments.

COMPASSIONATE APPOINTMENT (CONTD.)

- The rationale for such appointment has been explained in ***Haryana State Electricity Board v. Hakim Singh,*** (1997) 8 SCC 85 in the following words:

> "8. **The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner.** This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

COMPASSIONATE APPOINTMENT (CONTD.)

Recently, the Supreme Court has summarized the well-settled principles relating to Compassionate Appointment in the case of ***Canara Bank v Ajithkumar G.K. [2025 SCC OnLine SC 290].***

The question as to whether - while considering a claim for compassionate appointment - the policy on the date of death of the bread-earner would apply or the policy prevailing on the date of consideration of the application would apply, is still a grey area, there being conflicting decisions of two three-Judge Benches as well as a host of two-Judge Benches decisions, which have been noted in the aforesaid decision.

COMPASSIONATE APPOINTMENT (CONTD.)

- Appointment on compassionate ground, which is offered on humanitarian grounds, is an exception to the rule of equality in the matter of public employment [see ***General Manager, State Bank of India v Anju Jain, (2008) 8 SCC 475***].

- Compassionate appointment cannot be made in the absence of rules or instructions [see ***Haryana State Electricity Board v. Krishna Devi, (2002) 10 SCC 246***]

COMPASSIONATE APPOINTMENT (CONTD.)

- Compassionate appointment is ordinarily offered in two contingencies carved out as exceptions to the general rule, viz. to meet the sudden crisis occurring in a family either on account of death or of medical invalidation of the breadwinner while in service [see ***V. Sivamurthy v. Union of India***, (2008) 13 SCC 730]

- The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased/incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should be made immediately to redeem the family in distress [see ***Sushma Gosain v. Union of India***, (1989) 4 SCC 468]

COMPASSIONATE APPOINTMENT (CONTD.)

- Since rules relating to compassionate appointment permit a side-door entry, the same have to be given strict interpretation [see ***Uttaranchal Jal Sansthan v. Laxmi Devi***, (2009) 11 SCC 453]

- Compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants [see ***SAIL v. Madhusudan Das***, (2008) 15 SCC 560]

- None can claim compassionate appointment by way of inheritance [see ***State of Chattisgarh v. Dhirjo Kumar Sengar***, (2009) 13 SCC 600]

COMPASSIONATE APPOINTMENT (CONTD.)

- None can claim compassionate appointment, on the occurrence of death/medical incapacitation of the concerned employee (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible [see ***Union of India v. Amrita Sinha***, (2021) 20 SCC 695].

- An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over [see ***Eastern Coalfields Ltd. v. Anil Badyakar***, (2009) 13 SCC 112]

COMPASSIONATE APPOINTMENT (CONTD.)

- The object of compassionate employment is not to give a member of a family of the deceased employee a post much less a post for post held by the deceased. Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Class III and IV is legally impermissible [see ***Umesh Kumar Nagpal v. State of Haryana***, (1994) 4 SCC 138]

- The idea of compassionate appointment is not to provide for endless compassion [see ***I.G. (Karmik) v. Prahalad Mani Tripathi***, (2007) 6 SCC 162]

- Dependents if gainfully employed cannot be considered [see ***Haryana Public Service Commission v. Harinder Singh***, (1998) 5 SCC 452]

COMPASSIONATE APPOINTMENT (CONTD.)

- An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy [see ***Kendriya Vidyalaya Sangathan v. Dharmendra Sharma,*** (2007) 8 SCC 148]

- The benefits received by widow of deceased employee under Family Benefit Scheme assuring monthly payment cannot stand in her way for compassionate appointment. Family Benefit Scheme cannot be equated with benefits of compassionate appointment. [see ***Balbir Kaur v. SAIL,*** (2000) 6 SCC 493]

REGULARISATION IN PUBLIC SERVICE

REGULARISATION IN PUBLIC SERVICE (CONTD.)

- Ad-hoc Appointments:
  - The term ad-hoc is derived from Latin, which means '*pertaining to or for a particular case*'.
  - An ad-hoc appointment is usually in place of or as a stop gap measure to cover a special purpose.
  - An ad-hoc appointment is made to a post but not to a cadre/service.
  - The concept of *ad-hoc* appointment is, if the regular process of examination, interview, and selection is not possible, made in exigencies of administration.

AD-HOC APPOINTMENTS AND REGULARISATION (CONTD.)

- Regularisation refers to the official formalisation of an appointment made on a temporary/ad-hoc/casual basis.
- Various features need to be fulfilled in order to be found eligible for regularisation into public service.
- Regularisation may not always be synonymous to permanence.
- Regularisation of service may be carried out by the authority to cure only such defects as are contributable to the methodology followed in the appointment process.

REGULARISATION IN PUBLIC SERVICE (CONTD.)

- Ad-hoc appointment, by itself, will not grant the employee a right to seek regularisation/permanent status.
- The Apex Court, in **J&K Public Service Commission v. Narinder Mohan, (1994) 2 SCC 630** cautioned and held that leeway in making ad-hoc appointments due to exigencies does not clothe the executive the power to relax the appointment rules.
- Merely because an ad-hoc appointment is being made, it will not permit the executive to make appointments in violation of rules and in an arbitrary manner.

REGULARISATION IN PUBLIC SERVICE

- There are various essential features that need to be fulfilled to be eligible for regularisation into public service. Regularisation refers to the official formalisation of an appointment which was made on a temporary/ad-hoc/casual basis in deviation from the normal rules of appointment.
- There has been a substantial change in the way that Courts have dealt with the question of regularisation. Initially, the Supreme Court had a more liberal stance and regularisation was brought about wherever temporary appointments were made against sanctioned posts and the policy of "ad-hocism" was followed for a long period without filling up these posts on a regular basis. ***[Rattanlal v. State of Haryana, AIR 1987 SC 478]***

AD-HOC APPOINTMENTS AND REGULARISATION (Contd.)

- Thereafter, in **Secretary, State of Karnataka v. Uma Devi (3) (2006) 4 SCC 1**, the Supreme Court did away with the liberal approach in case of regularisation of appointments. The Court laid down:
  - Appointment must be against a **sanctioned post, which is vacant**.
  - Appointee must have the **basic eligibility qualifications**.
  - **Selection** must have been made in a **fair and transparent process** and **entry in service** through the **backdoor** has to be shunned.

AD-HOC APPOINTMENTS AND REGULARISATION (CONTD.)

- Employees must have completed the **minimum period of continuous service** as required by the relevant rules.
- Compliance with constitutional (Articles 14 and 16) and statutory provisions a must.
- **No fundamental right** to regularization.
- Regularisation must be based on a policy decision by the Government.
- Regularisation **cannot bypass the reservation policy**.
- Financial implications and service benefits must be analysed before regularisation. appointment must be against a vacant and sanctioned post

AD-HOC APPOINTMENTS AND REGULARISATION (CONTD.)

- The posts in which ad-hoc/ temporary appointment is made is of significance. When the posts are perennial in nature and are also indistinguishable from those of regular employees, it is imperative that the benefit of regularisation be granted to such employees, to make them at par with the regular employees.
- The judgment in **Uma Devi**, did not intend to penalise the employees who had been in service for a long period of time.
- Emphasis was laid on temporary employees, particularly in government institutions, often face multifaceted forms of exploitation.

AD-HOC APPOINTMENTS AND REGULARISATION (CONTD.)

- The principles in **Uma Devi** were followed for a long time, till the recent judgment in ***Jaggo v. Union of India and Ors.*** (2024 SCC OnLine SC 3826), wherein the Supreme Court deprecated the policy of the executive retaining employees for years without regularizing their services by renewing their services from time to time.
- The executive cannot remove the temporary/ad-hoc employees and simultaneously publish advertisement for contractual recruitment for the same posts.

REGULARISATION IN PUBLIC SERVICE (CONTD.)

- While affirming the principle that regularisation cannot be claimed as a matter of right, the Supreme Court echoed that the government department must lead by example in providing fair and stable employment.
- By ensuring fair employment practices, government institutions could reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody.
- Thus, the shift from ***Uma Devi*** to ***Jaggo*** was essential to protect and affirm the rights of employees to a secured and dignified employment.

REGULARISATION IN PUBLIC SERVICE (CONTD.)

"23. To acquire a right to post, it is imperative that the appointee is recruited according to law meaning thereby, that (i) he is eligible, as per recruitment rules, to offer his candidature for selection and consequent appointment on a post that is appropriately advertised, (ii) he is made to face a selection process conducted by the authority constituted therefor; and (iii) upon his selection, he is appointed on a duly sanctioned post, and thereafter, confirmed in service after the period of probation, if any. It is bearing in mind these imperatives of a valid appointment that one needs to proceed to decide a claim for regularization in service which, as the Supreme Court has time and again observed, is not and cannot be a source of recruitment."

[Union of India v. Lalita V. Mertia, 2021 SCC OnLine Bom 3363]

DISPUTES REGARDING DATE OF BIRTH

DISPUTES REGARDING DATE OF BIRTH (CONTD.)

- In matters relating to the correction of date of birth, the diligence of the employee is of paramount importance. The Supreme Court has consistently declined to grant relief to employees who seek such changes at the fag end of their careers.

- Change in date of birth can only be as per the applicable provisions and regulations.

DISPUTES REGARDING DATE OF BIRTH (CONTD.)

"**11.** Considering the aforesaid decisions of this Court the law on change of date of birth can be summarised as under:

(*i*) application for change of date of birth can only be **as per the relevant provisions/regulations applicable;**

(*ii*) even if there is cogent evidence, the same **cannot be claimed as a matter of right;**

(*iii*) application **can be rejected on the ground of delay and laches** also more particularly when it is made at the fag-end of service and/or when the employee is about to retire on attaining the age of superannuation."

[Karnataka Rural Infrastructure Development Ltd. v. T.P. Nataraja, (2021) 12 SCC 27]

DISPUTES REGARDING DATE OF BIRTH (CONTD.)

In ***Karnataka Rural*** (supra), the following precedents were considered:

1. *Home Department* v. *R Kirubakaran*, 1994 Supp (1) SCC 155;
2. *State of Madhya Pradesh* v. *Premlal Shrivas*, (2011) 9 SCC 664;
3. *Life Insurance Corporation of India* v. *R Basavaraju*, (2016) 15 SCC 781;
4. *Bharat Coking Coal Limited* v. *Shyam Kishore Singh*, (2020) 3 SCC 411 were considered.

DISPUTES REGARDING DATE OF BIRTH (CONTD.)

The Supreme Court dealing with an enquiry made as regards the correct age of a government servant, observed thus:

"We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State...." ***(Para 12)***

[State of Orissa v. Binapani Dei & Ors., (1967) 2 SCR 625]

DISPUTES REGARDING DATE OF BIRTH: HIGH COURT JUDGES

❖ **Disputes regarding age of a High Court Judge:**

217 (3): If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

If the Constitution does not specify a minimum age, why is 217(3) present?

Because Article 217(3) is not about minimum age — It deals with age disputes, especially regarding the retirement age.

Sometimes, disputes arise about a judge's actual date of birth - Article 217(3) provides a mechanism to resolve such disputes.

DISPUTES REGARDING DATE OF BIRTH: HIGH COURT JUDGES (CONTD.)

Article 217(3) is a provision to resolve disputes regarding a judge's age, especially for determining retirement; it does not relate to the minimum age of appointment. The President's decision on such disputes is final and binding, but it must be made after due consultation with the Chief Justice of India, whose opinion must be given due importance in order to ensure fairness and constitutional propriety.

[Union of India v. Jyoti Prakash Mitter, (1971) 1 SCC 396.]

CONDITIONS OF SERVICE

CONDITIONS OF SERVICE

The phrase “conditions of service” is of wide import and incapable of being defined with mathematical precision. However, the Supreme Court in decisions abound has defined “conditions of service” to be inclusive of the following:

- Terms of Appointment / Probation / Confirmation
- Salary and Pay scale
- Suspension / Disciplinary Action for Misconduct
- Lien
- Leave
- Confidential Reports
- Promotion
- Transfer
- Seniority
- Break in service
- Deputation
- Reversion
- Pension / Terminal Benefits

CONDITIONS OF SERVICE (CONTD.)

Conditions of service will include all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matter relating to post retirement benefits.

A State has multifarious activities and, in the very nature of things, has to employ a huge number of employees for carrying on such activities in different departments who are equipped to appropriately discharge their duties. The conditions of service will generally be different for different classes of service. But as between the same class of service holders', questions may arise whether the conditions of service are same or not. If they are not then it may be open to challenge on the ground of unjustified discrimination infringing Article 14 of the Constitution.

CONDITIONS OF SERVICE (CONTD.)

In **State of Punjab v Kailash Nath, (1989) 1 SCC 321,** the Supreme Court has observed:

> "In the normal course what falls within the purview of the term 'conditions of service' may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scale, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings."

CONCLUSION

I am sure that you will be faced with myriad service law related disputes and issues on a first-hand basis. Remember, certain cases will require your kindness, generosity and compassion. You may come across cases where the scales are evenly balanced. What do you do? Read the Preamble. Achieving justice - social and economic - is one of the cherished goals. Decide, bearing this goal in mind.

I hope this presentation provides a foundational introduction to the field of service law and the sessions to follow would offer a comprehensive overview of service jurisprudence which is beneficial for your career.

Thank you for your patience and attention.

Jai Hind! Namaskar.