

# **Constitutional Provisions & Principle Of Natural Justice**



# Constitutional Provisions



# CONSTITUTIONAL PROVISIONS

Public servants have got a special relationship with the employer i.e. Government

This special relationship between Government and the employee is governed under the provision of Article 309, 310 & 311 of the Constitution of India



# ARTICLE 309

## Article 309 of the Constitution

provides power to the President or to Parliament to make rules in relation with the recruitment and conditions of service of a person appointed to public services and posts with the affairs of Union

Parliament has not so far passed any law on the subject under this Article 309

# ARTICLE 309

Thus recruitment and conditions of service are governed by the rules made by the President under Article 309

The relevant rules made under this Article are:

CCS (Conduct) Rules, 1964

CCS (CCA) Rules, 1965

# ARTICLE 309

In case of employees of PSUs registered under Companies Act as companies, they are governed by the rules and regulations made by the respective undertakings



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# ARTICLE 310

Article 310 of the Constitution deals with the principle of “**Doctrine of Pleasure**”

A public servant holds office till the pleasure of the President

All the Government servants are covered under this Article including the employees of the PSUs and other Organizations.

However exercise of pleasure is subject to Article 311

# ARTICLE 311

Article 311 of the Constitution provides that-

No public servant shall be dismissed or removed by an authority subordinate to that by which he was appointed i.e. Appointing Authority



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# ARTICLE 311

No public servant shall be dismissed, removed or reduced in rank except after an inquiry where :

Charges should have been communicated to him

Reasonable opportunity of being heard in respect of charges is given

Penalty be imposed only on the basis of evidence adduced during such inquiry

# ARTICLE 311

Condition of holding inquiry shall not apply

When action is on conviction of employee on

Disciplinary Authority has to records reasons for invoking this clause in writing before imposing penalty. Reason should be exhaustive

hold such inquiry

When President is satisfied that it is not reasonably practicable to hold such inquiry

# ARTICLE 311 (EXCEPTIONS)

Cases where protection of Article 311 is not available:

On contractual appointment under provision of contract

Termination of service by compulsory retirement under specific rule of conditions of service i.e. under provision of FR 56J

Termination of services of a probationer

# Principle OF Natural Justice



# NATURAL JUSTICE

What is Natural Justice

Natural Justice is a term which denotes

“Duty to Act Fairly”



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# NATURAL JUSTICE

Two rules that natural justice is concerned with are:

Rule Against Bias

Right to have a fair hearing

# NATURAL JUSTICE

A COURT OR TRIBUNAL WOULD LIKELY CONSIDER ANY PROCEDURES, WHICH ARE LESS BENEFICIAL TO AN EMPLOYEE, UNFAIR

Emphasis will be on the Employer to prove that they have acted fairly



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# NATURAL JUSTICE

Hence these principles are fundamental in the governance of administration, and

Their objective is to prevent injustice



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# NATURAL JUSTICE

The two rules of Natural Justice can be elaborated as:

## 1. Rule Against Bias

No one shall be a judge in his own case

The person deciding the matter must not have anything like personal interest in the case

# NATURAL JUSTICE

## 2. Right to have a fair hearing

Hear the other side

The accused person must have an adequate opportunity to present his defense and prove his innocence

# FAIRNESS MEANS THE EMPLOYEE HAD.....

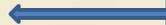
1. THE OPPORTUNITY  
TO IMPROVE  
CONDUCT &  
PERFORMANCE



2. NOTICE OF AND  
UNDERSTOOD THE CASE  
AGAINST HIM



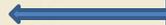
3. THE RIGHT TO  
REPLY TO  
ACCUSATIONS



4. THE OPPORTUNITY TO  
HAVE SOMEONE  
ACCOMPANY HIM



5. THE RIGHT TO HAVE  
THE CASE HEARD  
WITHOUT PREJUDICE



6. THE RIGHT TO APPEAL  
THE DECISION MADE



# Role of UPSC in Disciplinary Proceedings



# ARTICLE 320

Article 320 (3) (c) of the Constitution provides that

The UPSC shall be consulted on all disciplinary matters affecting a person serving under Government of India in civil capacity

The President is empowered to make regulation specifying matters where consultation with UPSC is not necessary

Thus the President has made the Union Public Service Commission (Exemption from Consultation) Regulations, 1958

# CONSULTATION WITH UPSC

It is necessary to Consult UPSC in cases when an order is proposed by the President for imposing any of the prescribed penalties

While deciding a memorandum i.e. charge sheet

On an appeal against an order made by a subordinate authority



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# CONSULTATION WITH UPSC

Over-ruling or modifying, after consideration of any petition or memorial or otherwise, an order where a penalty was imposed, made by the President or by a subordinate authority

in exercise of powers of review and in modification of an order under which none of the penalties has been imposed



# CONSULTATION WITH UPSC (EXCEPTIONS)

It is not necessary to Consult UPSC in cases:

Of Disciplinary matters affecting person paid out of the Defense Services Estimates including civilians in defence services

Where the President propose to make an order of dismissal, removal or reduction in rank in the interest of the security of the State

Where on conclusion of the disciplinary proceedings, it is proposed not to impose any punishment on the officer

# PROCESS OF CONSULTATION WITH UPSC

When proceedings have been initiated for Minor Penalty under Rule-16(1)(a), where oral inquiry is not required

Reference will be made to UPSC after receipt of representation of the officer. Documents forwarded to UPSC are:

Memorandum containing allegations with the representation of the charged officer.

# PROCESS OF CONSULTATION WITH UPSC

A self contained note with necessary clarifications/ comments on the reply of officer

Clarifications/ comments should be factual and procedural only, without any opinion on merits of the case

This note will form part of the record of the case

# PROCESS OF CONSULTATION WITH UPSC

When proceedings have been initiated for Minor Penalty under Rule-16(1)(b), where oral inquiry is required

Procedure will be same as in case of Major Penalty cases under Rule 14



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# PROCESS OF CONSULTATION WITH UPSC

When proceedings have been initiated for Major Penalty under Rule-14,

Reference will be made to UPSC after receipt of Inquiry Report. Documents forwarded to UPSC are:

Inquiry report along with all related documents

# PROCESS OF CONSULTATION WITH UPSC

A self contained note with necessary clarifications/ comments on remarks contained in inquiry report

Clarifications/ comments should be factual and procedural only, without any opinion on merits of the case

This note will form part of the record of the case

# PROCESS OF CONSULTATION WITH UPSC

In case of Appeal made against the decision of imposition of penalty, where consultation with UPSC is required, documents forwarded along with the Appeal are:

All related documents of case and original decision made by the disciplinary authority.

A self contained note, without any opinion on merits of the case

# PROCESS OF CONSULTATION WITH UPSC

When the President, after consideration of any petition or memorial or otherwise, proposes to pass an order over-ruling or modifying,

An order imposing any of the penalties made by the President or by any subordinate authority

An order imposing any of the penalties in modification of an order under which none of the penalties has been imposed, while exercising powers of revision or review

# PROCESS OF CONSULTATION WITH UPSC

In such cases separate note may contain view of ministry for such modifications (with reasons if any)

However, no order imposing or enhancing penalty shall be made unless the officer has been given a reasonable opportunity of making representation against the penalty proposed

# PROCESS OF CONSULTATION WITH UPSC

If memorandum is under Rule-16(1) (a) and penalty proposed falls in clause (v) to (ix) of Rule-11 or enhancing the penalty during review under this clause, no such penalties shall be imposed except after an oral inquiry is held in the manner laid down in Rule-14

For consultation in such cases, procedure as in case of major penalty shall be followed

# ADVICE OF UPSC

When it is proposed not to accept the advice of UPSC, the case should be referred to Department of Personnel & Training before orders are passed



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# ADVICE OF UPSC

## Effect of non-consultation with UPSC in Law

While Article 311 of the Constitution confers a right upon the officer, Article 320(3)(c) does not confer any right

The provision of consultation is only to afford proper assistance to the Government in assessing the guilt or otherwise of the delinquent officer as well as suitability of the penalty to be imposed

**THANK YOU**

