

Frequently Asked Questions

Periodical Review of Employees to maintain Efficacy and Probity And Premature Retirement under Rule 55(ii)b of BSNL CDA Rules

Q.1 What is Premature Retirement ?

A.1 The appropriate authority in BSNL has the absolute right to retire, if it is necessary to do so in the interest of Company, any Government employee as per provisions of Rules under Rule 55 ii (b) of BSNL CDA RULES (refer Q-9)

Box-1

Premature Retirement means the retirement before the prescribed age of superannuation i.e. 60 years under certain conditions

To retire a public servant compulsorily before age of superannuation in terms of the rule which provides for such an action on review of his conduct and performance on reaching the prescribed age, there is a prescribed procedure, with a time schedule (refer Q-11). This process should be carried out effectively to achieve the desired objectives (refer Box no 3,4 & 5) and not in a ritualistic manner.

The corresponding provisions for Central Govt Employees exist in Fundamental Rules and CCS Pension Rules.

In accordance with Rule 59 of BSNL CDA Rules 2006, in case of any doubt in application of the BSNL CDA RULE relevant GOI decision, Fundamental Rules/Supplementary rules as amended/modified from time to time can be referred, so long as they are not in contradiction with BSNL CDA Rules. Therefore for the purpose of forms prescribed for retirement order, reviewing CR dossier and service record by review committee, relevant DoPT OMs issued from time to time shall be referred.

The observations of Supreme court on Premature Retirement in different cases have been quoted in various OMs issued by DoPT. Therefore in this FAQ also the observations of Hon'ble Supreme court are being cited for understanding of the subject. In the case of state of Gujarat Vs.

Umedbhai M.Patel, 2001(3)SCC 314, Hon'ble Supreme Court has observed as follows:

(i) whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even un-communicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.

(Please see Question No - 32 also)

(vii) If the officer was given a promotion despite adverse entries made in the confidential record that is a fact in favour of the officer.

Box-2

It is different from Compulsory retirement which is ordered by way of penalty after holding due inquiry and coming to the conclusion that the public servant is guilty of some grave charges deserving such an action, which attracts Article 311 of the Constitution and is not the subject matter of this FAQ. Article 311 operates as proviso to Art 310

Box-3

Provision relating to premature retirement, works as a constant reminder to government servants:

To conduct properly, diligently and efficiently throughout their service career.

Box-4

Compulsory retirement is a salutary safeguard in the armoury of government for maintenance of the services in trim and fitness

(viii) Compulsory retirement shall not be imposed as a punitive measure.

Q.2 What is the Meaning of Company Interest as per Rule 55(ii)b of BSNL CDA Rule 2006?

A.2 The meaning of Company interest has to be seen in the light of the meaning of Public interest (as per FR 56(j)) defined by Hon`ble Supreme Court in the context of Premature Retirement.

Box-5

The term 'public interest' in the context of premature retirement has a well settled meaning. It refers to cases where the interests of public administration require the retirement of a government servant who with passage of years has prematurely ceased to possess the standard of efficiency, competence and utility called for by the Government service to which he belongs. (Gian Singh Mann v. High Court of P&H, AIR 1980 SC 1894: (1980)4 SCC 266)

The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing with services of those who are inefficient, dead-wood or corrupt and dishonest. (Brij Mohan Singh v. State of Punjab (1987)2 SCR 583: AIR 1987 SC 948)

Q.3 What is Probity ?

A.3 The quality of having strong moral principles; honesty and decency, service of the employee should be free from corruption.

Q.4 What is Efficacy ?

A.4 Power or capacity to produce a desired result/output; effectiveness.

Q.5 Entry in Service Book ?

A.5 After Review, Entry to this effect including the outcome of review should be made in Service Book (Refer SR 199)

Q.6 Where are the broad guidelines in BSNL ?

A.6 These were issued vide letter No 10-1/2016 WS&I Dated: 15th January, 2016.

Q.7 What are the Broad guidelines by DoPT etc ?

A.7 DoPT vide OM No. 25013/01 12013-Estt.A-IV dated 11-09-2015

DoPT vide OM No. 25013/01 12013-Estt.A-IV dated 21-03-2014 and DPE letter DPE-GM-01/001/2015 GM-FTS-4857 dated 14.12.2015 may also be read.(available on intranet)

Q.8 Whether the guidelines by DoPT are available online?

A.8 DOP&T has issued general guidelines in the past and same are available at

http://persmin.gov.in/DOPT_CP_Circular_Form2.asp?choice=1
(Index of the Circulars)

Then click on Premature Retirement

Q.9 What is the Relevant Rule of BSNL CDA Rules 2006

A.9 Rules 55(ii)b - The company may, if it is in the interest of the Company so to do have the absolute right to retire an employee at any time after he completes the age of 55 years by giving him three months' notice in writing or on payment of three months salary to him in lieu of such notice.

Q.10 What is the Action to be taken in BSNL ?

A.10 Periodical review, has to be taken by all CGM of the field units and cadre controlling authorities (GM(Pers)/ GM(Estt.)/ GM(FP)/ PGM(BW/Elect/Arch.)/ GM (TF), BSNL Corporate Office) in accordance with Rules 55(ii)b of BSNL CDA Rules 2006.

Q.11 What are the Time lines -for Periodical Review

A.11 Review Calendar **(Each of the three steps comprises of tasks to be completed maximum in 3 months period, fourth one is not a task but is a time slot. All the four steps combined together constitute one year.)**

Step 1	Internal Committee to Identify employees and submit in respect thereof the Special Report (as per Pers Cell letter no 400-263/2016-Pers.I dtd 2.2.2016) along with the relevant material	Task to be completed 9 months before the employee attains the prescribed age.
Step 2	Review by Review Committee and Submission of Report regarding retention or compulsory retirement by the Review Committee to Appropriate Authority	Task to be completed 6 months before an employee attains prescribed age
Step 3	<p>a) Where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule, the appropriate authority should record in the file its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule in the public interest.</p> <p>b) Issue Order of Compulsory retirement by appropriate authority, giving three months notice to the person who is to be retired.</p> <p>c) Making entries in the service book with respect to retention / compulsory retirement under Rule 55(ii)b of BSNL CDA Rules</p>	Tasks to be completed 3 months before an employee attains prescribed age
Step 4	Notice period	3 months

Q.12 What are the Reports to be submitted to Corporate Office?

A.12 1. Annexure-VI-R (circulated vide letter No 10-1/2016 WS&I dated 20.1.2016). Report to be sent to WS&I cell by 25th of every month, which shall compile the report for onward transmission to DoT through CVO. Format of the Annexure is given as under:

Annexure-VI-R
(Revised vide letter dtd 20.1.2016)

Proforma for periodical review for ensuring probity and efficacy among employees

Calendar Year:

Sr.No.	Name of CPSE	Name of Cadre	Details of performance review for 1st quarter i.e. Jan-Mar (No. of Employees)	Details of performance review for II nd quarter i.e. Apr-Jun (No. of Employees)	Details of performance review for IIIrd quarter i.e. Jul-Sep (No. of Employees)	Details of performance review for VIth quarters i.e. Oct-Dec (No. of Employees)	Total No. of employees for the year 2016	No. of employees retained on the basis of review	No. of employees retired prematurely on the basis of review	Remarks
1	2	2a	3a	3b	4a	4b	5 (3a+3b+4a+4b)	6	7	8

2. Annexure-VII-R **Report related to review meetings** (circulated vide letter No 10-1/2016 WS&I dated 21.6.2016). Report to be sent to WS&I cell by 25th of every month, which shall compile the report for onward transmission to DoT through CVO.

Q.13 What are Quarter wise Completion Certificate?

A.13 Certificate of completion of Review under Rule 55(ii)b of BSNL CDA Rules is to be given to GM(Restg/WS&I)/DGM(WS&I) (circulated vide letter No 10-1/2016 WS&I dated Sep 2016) by all . These certificates are being taken to ensure that no body remains un-reviewed once he attains the prescribed age.

Q.14 What are the Broad Guidelines for Review ?

A.14 As mentioned in para 2 of DoPT OM dt 11-09-2015 on premature retirement as observed by the Supreme Court in State of Gujarat Vs. Umedbhai M. Patel. 2001 (3) SCC 314 are as follows:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even un-communicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.

(vii) if the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

Q.15 What is the role of Review / Internal Committees and what is the extent of role of CVO in the Review process?

A.15 (i) The cases of employees covered by BSNL CDA Rule 55ii(b) shall be reviewed **six months** before they attain the prescribed age mentioned therein i.e. **55 years**. As per para 7 of DoPT vide OM dt 11-09-2015 Cadre Controlling Authorities will constitute Review Committees consisting of two Members at appropriate level. Review committees at different levels for reviewing the cases of BSNL employees, who are covered by the aforesaid provisions of BSNL CDA Rules shall be as per Annexure V of letter no. 10-1/2016-WS&I dtd. 15.01.2016

(ii) CVO in the case of executives, or his representative in the case of non-executives, will be associated in case of record reflecting adversely on the integrity of any employee. In case any officer as shown in the committee is not available, an officer in the same rank shall be substituted.

(iii) Internal committees: Role of internal Committee precedes that of Review Committee. Internal committee may be constituted to assist the Review Committees in reviewing the cases. These Committees will ensure that the service record of the employees being reviewed, along with a summary bringing out all relevant information, is submitted to the Cadre Authorities at least **three months** before the due date of review.

(iv) Monitoring: Monitoring of the reports relating to review of BSNL employees under Rule 55(ii)b is being monitored as per Annexure VI-R (Lr. No. 10-1/2016-WS&I dtd. 20.01.2016), Annexure VII-R (Lr. No. 10-1/2016-WS&I dtd. 21.06.2016) and completion certificate issued vide Lr. No. 10-1/2016-WS&I dtd.--Sept-2016). The reports are required to be submitted by the 25th of every month to GM (Restg./WS&I) of BSNL CO.

Q.16 Whether Show-cause notice should be issued before the final order of compulsory retirement ?

A.16 No show-cause notice need be issued to any Government servant before a notice of retirement is issued to him under the aforesaid provisions.

Premature Retirement is:

- Not A Penal Action – Does not attract Audi Alteram Partem
- Offshoot Of Doctrine Of Pleasure Embodied In Art-310 Of Constitution. (Doctrine Of Pleasure – Question no- 34)
- A Balance Between: The rights of the individual government servant and the interests of the public.
- Involves No Civil Consequences – (If Stigma entails – Civil Consequence)

Box-6

Stigma of the type such as outliving the utility as mentioned above is already implied in the case of compulsory retirement under Rule 55(ii)b and should not be expressed in the order of compulsory retirement under the said rule. Stigma of the above type can be expressed only in the order of dismissal and removal, as per the penal provisions attracting Art.311. Whereas, Rule 55(ii)b does not

Order of Compulsory Retirement containing stigma may amount to order of penalty attracting provision of Art. 311 (2) e.g.

“that the respondent had outlived his utility”.

“He has ceased to be an efficient and useful member of the police
f

Box-7

Stigma, according to the dictionary meaning, is something that detracts from the character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard. It is a blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame and mark or label indicating deviation from a norm. In the context of an order of termination or compulsory retirement of a Government servant stigma would mean a statement in the order indicating his misconduct or lack of integrity.

Various case laws on STIGMA makes it clear that if the order of compulsory retirement casts a stigma on the Government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution.

Q.17 Speaking Order not required for issuing order of compulsory retirement ?

A.17 Appropriate Authority as given in Note 1 below FR 56 should bonafide form an opinion that is in the public interest to retire the Government servant in exercise of the powers conferred by that provision and this decision should not be an arbitrary decision or should not be based on collateral grounds.

Box-8

The opinion of appropriate authority

Should be: 1. Bonafide 2. in public interest, it is necessary to do so

*Should not be: 1. Arbitrary
2. should not be based on collateral grounds.*

Q.18 Whether any form prescribed to serve the order of compulsory retirement?

A.18 In every case where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule, the appropriate authority should record in the file its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule in the public

interest. The order to be served of the Government servant would of course be on the form prescribed for the purpose by DoPT. The important point to see is that it contains 1. No Stigma 2. Only Reason – Company Interest. Formats should be suitably modified.

Q.19 Who is Appropriate Authorities to retire ?

A.19 The appropriate authority to retire an employee shall be as per Note 1 under FR-56 (j) i.e. the authority which has the power to make substantive appointments to the post or service from which the employee is required to retire.

Box-9

Appropriate Authority means the authority which has the power to make substantive appointments to the post or service from which the employee is required to retire.

Q.20 What is the Notice Period of premature retirement?

A.20 The notice period of three months shall be computed as per Note 3 under FR-56. The date of service of the notice and date of its expiry shall be excluded.

Box-10

In computing the notice period of three months referred above, date of service of the notice and the date of its expiry shall be excluded.

Q.21 What are the precautions to be taken about three months notice, when decision of Retirement is taken before an employee attains the specified age?

A.21 Once a decision is taken to prematurely retire an employee, the retirement should take place only after the employee attains the specified age and a notice even longer than three months may become necessary if notice is issued more than 3 months in advance. He shall retire from service on the forenoon of(the date following the date on which he attains the specified age) or the forenoon of the day following the date of expiry of three months computed from the date following the date of service of this notice on him, whichever is later.

Q.22 What about three months notice, if an employee has already attained the specified age?

A.22 The employee shall retire from service on the forenoon of the day following the date of expiry of three months computed from the date following the date of service of this notice on him.

Q.23 Whether Government of India decisions are applicable to BSNL employees?

A.23 Attention is invited to Rule 59 of BSNL CDA Rules 2006. Accordingly in case of any doubt in application of BSNL CDA Rule 55(ii)b relevant GOI decision, Fundamental Rules/Supplementary rules as amended/modified from time to time shall be referred, so long as they are not in contradiction with BSNL CDA Rules 2006. Therefore for the purpose of forms prescribed for retirement order, reviewing CR dossier and service record by review committee, relevant DoPT OMs issued from time to time shall be referred.

Q.24 What are the detailed guidelines for review of records ?

A.24 (i) Doubtful Integrity: The officer would live by reputation built around him. If in any appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his/her conduct and reputation is such that his/her continuance in service would be a menace to public service and injurious to public interest. Integrity of an employee, actions or decisions taken by the employee which do not appear to be above board, complaints received against him/her, or suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings, but such property transactions which give rise to suspicion about the bonafides of a government servant, may be taken into account. Acquiring large assets and getting money from subordinates can also be taken into consideration.

(ii) Government employees who are found to be ineffective will also be retired. The basic consideration in identifying such employee should be

the fitness/competence of the employee to continue in the post which he/she is holding.

(iii) whenever the services of public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(iv) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(v) Any adverse entries made in the confidential record or even uncommunicated remarks in the ACRs/APARs shall be taken note of and be given due weightage.

(vi) Even un-communicated entries in the confidential record can also be taken into consideration.

(vii) The order of compulsory retirement shall NOT be passed as a short cut to avoid Departmental enquiry when such course is more desirable.

(viii) If the officer was given a promotion despite adverse entries made in the confidential record that is a fact in favour of the officer.

(ix) In every review, the entire service records should be considered. the expression service record will take in all relevant records and hence the review should not be confined only to the consideration of the ACR/APAR dossier. the personal file of the officer may contain valuable material. similarly, the work and performance of the officer could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. Even uncommunicated remarks in the ACRs/APARs may be taken into consideration . **BSNL Corporate Office Pers branch letter no 400-263/2016-Pers.I dtd 2.2.2016 may be referred to for the purpose of making special report on performance in the prescribed proforma enclosed with the letter.**

(X) Reports of conduct unbecoming of a Government servant that obstructs the efficiency in public services may also form basis for

compulsory retirement. (for example: unauthorized proceeding on leave/failures in timely submission of IPR, criminal case/charges etc.)

(xi) while the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his/her service during the preceding 5 years or where he/she has been promoted to a higher post during that 5 year period, his/her service in the highest post, has been found satisfactory. It would be useful if all the data available about the officers are put together and a comprehensive brief is prepared by the Internal committee for consideration by the Review committee.

(xii) In the case of those officers who have been promoted during the last five years. the previous entries in the ACRs may be taken into account if the officer was promoted on the basis of seniority cum fitness, and not on the basis of merit.

(xiii) Ordinarily, no employee should be retired on grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case. it is, however, clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement.

(xiv) compulsory retirement shall not be imposed as a punitive measure. Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the constitution.

(xv) The supreme court had not only upheld the validity of FR 56(j) but also held that no show-cause notice need be issued to any government servant before a notice of retirement is issued.

(xvi) However, a Notice of three Months or three months pay & allowances in lieu thereof, for compulsory retirement, may be given.

(xvii) The appropriate authority defined in Note 1 below FR 56 should bonafide form an opinion that is in the public interest to retire the government servant in exercise of the powers conferred by that provision

and this decision should not be an arbitrary decision or should not be based on collateral grounds.

Q.25 How the Compliance is to be reported to WS&I Cell of Corporate Office ?

- A.25 (a) It is requested to ensure strict compliance of the aforesaid instructions in a time bound manner as per the calendar for periodical review. Progress report shall be sent by the Circles in the Proforma, as prescribed by DPE OM No.DPE-GM-01/0001/2015-GM-FTS-4857 dated 22-12-2015 to the Cadre Controlling Authorities, who in turn shall update the status to WS&I Cell of Corporate Office for onward submission to DoT through CVO.
- (b) The verification of review of employees will be done by all the Circles in respect of all the employees of the Circles irrespective of the fact that for review of STS and above level officers, the matter is required to be referred by field units to various Cadre Controlling Authorities in Corporate Office viz PERS, ESTT, BW, Elect. etc so that **no employee due for review remains unreviewed.**

WS&I Cell of Corporate Office requires final outcome of review by the field units after coordination with the Cadre Controlling Authorities.

Q.26 Queries have been raised w.r.t. Telecom Finance, wherein it is mentioned that Members may be GM(HR) / DGM(HR) / AGM(HR) / SDE(HR) of the Circle in Annexure-V ?

- A.26 In view of above it is clarified that in case of Telecom Finance (for circles), Members in Review Committee may be GM(Fin) / DGM(Fin) / AGM(Fin) / SDE(Fin), instead of GM(HR) / DGM(HR) / AGM(HR) / SDE(HR).

Q.27 Cases where employee is retiring on superannuation within a period of one year from the date of consideration of his case ?

A.27 No employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case.

Ordinarily no employee should be retired on grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case. It is clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement..

The above instruction is relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity. The damage to public interest could be marginal if an old employee, in the last year of service, is found ineffective; but **the damage may be incalculable if he is found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty bound to perform.**

Box-11

Doubtful Integrity: *The officer would live by reputation built around him. If in any appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service.*

But his/her conduct and reputation is such that his/her continuance in service would be a menace to public service and injurious to public interest.

Integrity of an employee, actions or decisions taken by the employee which do not appear to be above board, complaints received against him/her, or suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings, but such property transactions which give rise to suspicion about the bonafides of a government servant, may be taken into account.

Acquiring large assets and getting money from subordinates can also be taken into consideration

Q.28 Whether an employee once reviewed, shall be reviewed again ?

A.28 Once a decision has been taken by the appropriate authority to retain an employee beyond the specified age, under the BSNL CDA Rule 55(ii)(b) he would ordinarily continue in service till he attains the age of retirement. If, however, the appropriate authority later considers after the review that the retention of the employee will not be in the Company's interest, that it may take necessary action to retire the employee by following the due procedure.

Q.29 Whether an employee is be reviewed at 50 yrs of age or after 30 yrs of service ?

A.29 To be reviewed only when an employee is going to attain the age specified in Rule 55(ii)(b) of BSNL CDA Rules 2006 only.

Q.30 If a Review Committee Member has earlier expressed his opinion about an employee`s performance, can he be a member of Committee to review the employee ?

A.30 If during the process of review by a Review Committee, any member finds an employee, about whom he had expressed his opinion earlier (i.e. APAR and Special Performance Report) and same is placed before Committee for consideration, under such circumstances which are likely to give rise to justifiable doubts as to member`s independence or impartiality, he or she may be substituted by an independent member, in equivalent grade, for review of only that employee.

Q.31 In case of non availability of designated member in the SSA, how to constitute the Committee ?

A.31 Members may be substituted, such that the member is equivalent or one step lower than the Chairman. Member can be judiciously taken from other stream or other SSA.

Q.32 Third member in Review Committee for non-executives at Circle level ?

A.32 It is clarified that as per DoPT letter dtd 11.9.2015 Review Committee should have two Members. If it is felt necessary, third member of the rank of AGM or equivalent may be included. Chairman shall remain the same.

Further in part(e) of the table pertaining to Arch stream SE(Arch) and EE(Arch) may be read as Sr Arch and Arch respectively. In the absence of Sr Arch/Arch any executive in the grade of DGM or AGM may be substituted.

Q.33 Compulsory retirement vis a vis Departmental enquiry ?

A.33

1. The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.
(State of Gujarat Vs. Umedbhai M. Patel, 2001(3) SCC 314 - Supreme Court)
2. Compulsory Retirement during pendency of disciplinary proceedings - does not necessarily make the order penal in nature.
When the charges communicated in the disciplinary inquiry is only one of the several circumstances, merely because the order of compulsory retirement is made after the charges are communicated or during the pendency of disciplinary inquiry, it can not be said to be penal in nature. Compulsory Retirement simpliciter is not hit by Art. 311 of the Constitution.

Supreme Court of India : State Of U.P vs Abhai Kishore Masta on 1 December, 1994, Equivalent citations: 1995 SCC (1) 336, JT 1994 (7) 748

Q.34 What is Doctrine Of Pleasure Under The Indian Constitution ?

A.34 This Doctrine of Pleasure is embodied in India in Article 310(1). It reads as follows:

Tenure of office of persons serving the Union or a State :

(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

This is the general rule which operates "except as expressly provided by the Constitution." This means that the Doctrine is subject to constitutional limitations. Therefore, when there is a specific provision in the Constitution giving to servant tenure different from that provided in Article 310, then that servant would be excluded from the operation of the pleasure doctrine.

The following are expressly excluded by the Constitution from the rule of Pleasure. They are:

1. Supreme Court Judges Article 124,
2. Auditor General (Article 148)
3. High Court Judges (Article 217, 218)
4. A member of Public Service Commission (Article 317)
5. The Chief Election Commissioner.

The fundamental rights guaranteed under the constitution are restrictions on the pleasure doctrine and therefore this doctrine cannot be resorted too freely and unfairly, Articles 14, 15 and 16 of the Constitution imposed limitations on free exercise of Pleasure Doctrine. Article 14 embodies the principle of reasonableness the principle of reasonableness is anti-thesis of arbitrariness. In this way, Article 14 prohibits arbitrary exercise of power under pleasure doctrine. In addition to article 14 of the constitution Article 15 also restricts arbitrary exercise of power in matters of services. Article 15 prohibits termination of service on grounds of religion, race, caste, sex or place of birth or any of them. Another limitation is under Article 16(1) which obligates equal treatment and bars arbitrary discrimination.

Article 311 operates as proviso to Art 310

Note: The application of the observations made by Hon'ble Supreme Court cited above will be made judiciously in the context of the facts and circumstances of each case and the FAQ is for the understanding of the subject and can not be quoted in support of and to justify any action.