

## Natural Justice vis-à-vis Service Jurisprudence: Applied Dimensions of the Constitutional Mandates in India

**Rupam Saikia**

*Department of History, Dibrugarh University Assam. E-mail: rupamsaikia@dibru.ac.in*

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**Abstract:** The Article 309, 310 and 311 of the Constitution of India having implanted the constitutional mandates of service jurisprudence for the civil servants engaged in the services of the union and the states, have also *interalia* infused new vistas for introspective analysis of its applicability in the backdrop of Natural Justice and Rule of Law in regard to exceptions carved out by the Constitution itself.

Natural justice is expected to supplement the statutory rules framed by the State within the purview of the Article 309 and also in consonance with the Article 310 and 311 as well as the Service Rules meant for the civil servants of the Union and the States for keeping the constitutional conscience unvarnished against arbitrariness.

However, the Doctrine of Pleasure and its limited extent under Article 310, if not constructed harmoniously with the principles of Natural Justice so far as the provisos of the Article 311 (2) are concerned, the constitutional morality will shatter in view of inconsistencies in precepts envisaged by the architects of the Constitution and exceptions carved out from those for dealing with extraordinary situations.

The exceptions under the Article 311(2) (a) (b) & (c) of the Constitution of India read with the Article 311(3) having legitimized exercise of discretion on imposition of very harsh punishments on a civil servant albeit with the Rule of Caution in the form of dismissal, removal from service or reduction in rank by a competent disciplinary authority on the grounds mentioned therein, may be an important subject of academic discussions for concatenating *raison d'être* of such exceptions in the backdrop of guiding principles of reasonableness and fairness as well as imprimatur of Case laws.

In service jurisprudence Law mandates that, these exceptions, if not objectively applied, colorable intrusion into the protective shield of natural justice would be legalized and in such a situation arbitrariness will unnerve the Constitutional goals itself.

The propriety of ordering dismissal, removal or reduction in rank on the ground of conviction of a civil servant by a Court on Criminal Charges and deviations from the established procedures envisaged by the

Natural Justice in the disciplinary proceeding against a civil servant as and when conduct of enquiry is not found to be reasonably practicable in an emergent situation or the President of the Union or Governor of a State, is satisfied that holding of enquiry would not be possible in the interests of the security of the State, may be a subject of Judicial Scrutiny on the petition of an aggrieved civil servant before a High Court by exercising the Writ Jurisdiction. But the parameters for construction of such exceptions may also be critical points for examining their merits and constitutionality within the purview of the Doctrine of Reasonableness and in this paper such aspects will be critically evaluated with the doctrinal approach.

As ‘standards of proof’ in the disciplinary proceedings are different from the criminal proceedings in courts of Law, reasonableness & fairness are accepted as valid components for rationalization of disciplinary actions in service jurisprudence. The constitutionality of the Article 311(2) (a),(b) &(C) in their applications may be also a critical point for academic debate in the backdrop of Rule of the Natural Justice. Therefore Provisos of the Article 311(2) may be subject of judicial review and the Rule of caution would therefore predispose only judicious application of the same against a civil servant for protection of their substantive constitutional rights within the scheme of the Constitutional Law.

In this paper a critical approach is applied to unearth the relevant points for removing creases in the interpretation of the Constitutional Jurisprudence vis a vis Service Jurisprudence in the context of exceptions mentioned above, without upending dynamics of Natural Justice.

**Keywords: Disciplinary Proceedings:** Proceedings drawn against delinquent civil servants by the appointing authority/State against misconduct as per service rules.

**In praesenti:** In the present.

**Judicial Review:** Power to review any legislative and executive acts within the purview of Article 13, 32 and 226 of the Constitution of India.

**ipse dixit:** unproven and dogmatic statement, an assertion without proof.

**Constitutional Morality:** Inherent values of the Constitution for cultivation of liberal democratic spirit by maintaining harmonious co-existence of individual and public interests for safeguarding rule of law or reasonableness as an antithesis to arbitrariness.

**Constitutional jurisprudence:** The philosophy of the Constitution and guiding principles.

**Service jurisprudence:** The principles of law set in the part XIV of the Constitution of India, and interpretations of the Constitutional Courts on applied versions of such provisions.

**Natural justice:** It is rule against bias (*nemo iudex in causa sua*) and right to fair hearing (*audi alteram partem*)

‘Civil Servants’ being considered as the steel frame of the Government in India are required to play both advisory and participatory role in framing the policies and implementation of the same. The architects of the Indian Constitution being acquainted with the challenges to be faced by the Government of the independent India for transforming the constitutional mandates into concrete achievements not only infused dynamic spirit in to this piece of living document but also reshaped the “Doctrine of Pleasure” in its contextual propriety for underpinning values of Natural Justice. The dimensions of service Jurisprudence watered by true values of Natural Justice are found to be embedded in the Constitution of India with procedural safeguards so that the Doctrine of Pleasure is not arbitrarily used to assail a civil servant without reasons.

In this context, the values of service jurisprudence in terms of its relevance with the principles of natural justice within the purview of the constitutional mandates would envisage to be tested in context of some deviations often tried to be justified by the State and other instrumentalities

wielding authority in the backdrop of the exceptions in the Article 311 of the Constitution of India for fair understanding of actual facts. Bare procedural technicalities without insightful scrutiny from stand point of constitutional jurisprudence in the context of the Article 309, 310 and 311 coupled with enriching juristic values embedded in the Articles 14, 15 and 16, may whisk away the goals and perceptions encapsulated in Indian chapter of the Doctrine of Pleasure. The Common Law perceptions of the Doctrine was not only revisited by the architects of the Constitution but also the jurisprudential spirit implanted in the Articles, 14,15,16,19 and 311 will continue to shield against the arbitrary application of the doctrine. Whenever the doctrine is to be applied under the garb of so-called unavoidable circumstances and public interests to divest a civil servant of his constitutional rights against dismissal, removal from service and reduction in rank, judicial scrutiny is the only remedy for an aggrieved person against such arbitrary actions within the Constitutional Mandates.

The Bench of Justice Depak Mishra and N.V Ramana of the Supreme Court Of India in *Sadhu Saran Singh VS State of UP*<sup>1</sup> while disposing of a criminal appeal viewed that, reason is the heart beat of every conclusion and without proper reasons the conclusion becomes lifeless.

The observation of the learned Bench will also supplement the proposition that, the doctrine of pleasure, inspite of its subjective orientation, when placed under judicial scrutiny for testing constitutionality of any arbitrary application of it within the ambit of the Articles 14, 16, 19 and 311 and should emphasize on reasonableness as the parameter even for dealing with exceptions. The application of the doctrine if not supported by reasonableness, the fundamental protective shield of the part III of the constitution shall stand shattered. The principle of Natural Justice with all its contextual and jurisprudential values should remain as the guiding spirit in the disciplinary proceedings drawn against the civil servants by the State. Now, this proposition will afford an opportunity to introspect the mandates of Article 309 and 311 in the context of the Doctrine of Pleasure based on some important judgments of the Supreme Court Of India. The Supreme Court and also a few High Courts having dealt with many critical issues aligned with the same tried to iron out the creases in the application of the doctrine by pronouncing a few important judgments. The application of natural justice with exceptions in certain situations is a debatable point even within the mandate of the Article 311 of the Constitution. Further the technicalities of recording evidences in the disciplinary proceedings are often challenged in the High Courts by the aggrieved parties, relying on the standard of proof, benefit of doubt and attempting to tilt the balance of natural justice in favour of an aggrieved civil servant and in such situations the conduct of disciplinary proceedings & decisions are challenged as arbitrary, whimsical and unreasonable

The following points may be relevant for addressing the core issues which are summarized as below,

1. Natural Justice as to what extent may be relevant in disciplinary proceedings drawn by a Disciplinary Authority against a delinquent civil servant?
2. How far the Article 309 is relevant in framing statutory rules by the competent Authorities including the legislatures for dealing with the disciplinary proceedings?
3. How far the executive order(S) passed from time to time by the Government in the absence of specific Rules or Statutory provisions to deal with the disciplinary proceedings would

be relevant in judicial scrutiny?.

4. The scope of Corporate Bodies and other Statutory Organizations in framing rules and procedures within the spirit of the Article 12 and 309 of the Constitution for dealing with disciplinary proceedings.
5. The autonomy of the Disciplinary Authorities to act the “best judge of the facts” for considering the charges brought against its employees and the scope of *judicial scrutiny within the scope of the Article 226 and 32 or 136*.
6. *Interpretations and judicial review of the exceptions provided under Article 311(2) (a,b, c) and standard of proof to be applied in disciplinary proceedings.*

*It is an important point to be reckoned with that, failure to justify functional nexus between the “facts in issue” and the procedural exceptions not in consonance with natural justice may eclipse the raison-d-etre of such exceptions incorporated in the Constitution itself. Needless to mention such issues surface during critical judicial scrutiny and hence the provisos under Article 311(2)(a, b and c) are subject to judicial review for testing reasonableness of applications on different situations.*

The Supreme Court having dealt with such critical aspects as regards to application of the exceptions under Article 311 (2) (a, b, c) on imposing the penalty of dismissal, compulsory retirement, reduction in rank by the disciplinary authority on conviction of a civil servant in a criminal proceeding, has already issued certain Guidelines through its rulings in a few cases. Critical study as to the gravity of the offence, the impact of the offence in the administration, whether the offence was of a technical or trivial nature, the extenuating circumstances if any and why the Disciplinary Authority had to conclude the proceedings *ex parte* and without giving an opportunity of hearing to the civil servant will of questions of substantive merit for rationalization of any deviations from the established procedure of natural justice.<sup>2</sup>

Further, M.P Jain, a Constitutional Expert referring to the judgment delivered by the Apex Court in *Shankar Das vs Union of India*<sup>3</sup> viewed that, the conduct of the civil servant which led to the conviction though if found to be material for imposition of three major punishments mentioned in the Article 311(2), same should be decided fairly, justly and reasonably. Tough no hearing need to be given while imposing the penalty after conviction on a criminal charge, but the right to impose penalty carries **with the duty to act justly**.

The Article 311(1) states that, no person who is a member of a civil service in India or an All India service or 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.

The Article 311(2) clearly states that, a civil servant is not to be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges, which is the fulcrum of the natural justice. The concept of “reasonable opportunity” is generic and difficult to be statutorily defined. It is subject to judicial review and when major penalties are imposed on the civil servants, i.e. dismissal, removal or reduction in rank, reasonableness becomes a vital instrument to review its legality. The dynamics of “reasonable opportunity” on unequivocal terms *inter alia* will include scope to be given to a charged official for reasonable defence. The rules are often framed by the

Executive Authority exercising the rule making authority in consonance with the constitutional mandates.<sup>4</sup>

The existence of the state for Administration of Justice was advocated by Jeremy Taylor who stated that “a herd of wolves is quieter and moves as one than so many men, unless they all had in one reason in them or have one power over them”. The procedural rules of fairness as corollary of natural justice may reasonably ensure justice to a charged official in disciplinary proceedings. The twin principles

- (a) No one can be judge in his own cause, expressed in latin maxims – *nemo debet esse iudex in propria causa* and
- (b) Hear the other party also (*Audi alteram partem*) as key elements of procedural justice are found to be embedded in the Articles 14, 15, 16 and 311 of the Constitution of India, which was also widened by the Supreme Court in *A.K Kraipak Vs Union of India*<sup>5</sup>

The Doctrine of Pleasure being qualified by the Article 311(2) of the Constitution of India and also by the proviso to the same in the clauses (a, b, c) is to be applied with the spirit of accountability, reasonableness and fairness. The disciplinary authority being the best judge of the facts for awarding any major punishment in the form of dismissal, removal or reduction in rank on a civil servant in the event of his conviction by the criminal court on similar facts and almost similar circumstances and deviation from the doctrine of reasonable opportunity while awarding any such harsh punishment(S) on plain reading of the judgment of a criminal court instantaneously, is an exception in service jurisprudence. The Article 311(2)(a), (b) and (c) of the Constitution having stated, “where a person is dismissed or removed or reduced in rank on the ground of conduct which 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 reasons, 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, the mandatory procedure to be followed as stipulated in Article 311(2) is not required. The provisos have incorporated certain exceptions for non adherence to the established procedures of giving reasonable opportunity to a civil servant for defence before infliction on him severe punishment on the above mentioned situations. The point was further discussed in the context of the legal status of a convicted civil servant when appeal against the judgment/ order of the trial court leading to his conviction on criminal charge is filed by him before the Appellate Court. The Bench of Justice, K.Venkataswami and V.N Khare of the Supreme Court on 02.09.1997, in *Union of India vs Ramesh Kumar*(<http://India Kanon.org>)<sup>6</sup> dealt with the same in detail. In the instant case the respondent was dismissed from the service, being convicted by the special sub-Judge, Delhi on 03.07.1983 under section 5(2) of the Prevention of Corruption Act 1947 and was sentenced to undergo imprisonment for three years and pay a fine of Rs.500/ and in default of payment, to further undergo six month imprisonment. Consequent upon his conviction by the Court, the Disciplinary Authority dismissed the respondent from the service, under Rule (19) of the C.C.S (CCA) Rules, 1965, read with the provision of the Vigilance Manual. On appeal the Delhi High Court ruled that the execution of the sentence would remain suspended and the appellant was directed to be released on bail on furnishing a personal bond of Rs 5000/ with one surety.

The Apex Court while examining the propriety of the order of the Central Administrative tribunal on the petition of the petitioner (convicted person) in the light of the order of the High Court held that the order of dismissal should not be given effect and directed that the petitioner be considered as suspended, till the final judgment is delivered by the High Court in appeal. But the Apex Court relying on the spirit of the Rule 19(1) of ECS (CCA) Rules 1965, read with the proviso of the Article 311(2) of the Constitution ironed out the creases on the point by stating that, the decision of the Disciplinary Authority on the conviction of the respondent based on the gravity of offence to dismiss him was permissible even without issuing show cause to him, since his retention in the service would be *prima facie* undesirable. The imposition of the penalty of dismissal or removal from service or reduction in rank within the ambit of the Rule 19(i) of the CCS (CCA) was found reasonable as the Rules also did not provide scope for judicial interference on the decision of the Disciplinary Authority to dismiss the Government servant on the ground of grave misconduct being synonymous with the offence committed by him, leading to his conviction in a criminal court. Further it was also stated in the Judgment that, suspension of the execution of the order of dismissal based on his conviction on criminal charges, would not automatically revert him to the stage of suspension till the disposal of the appeal by the Appellate Court, while the action was taken by the Disciplinary Authority on the ground of misconduct having led to his conviction by the Criminal court of Law. **The Apex Court by giving reference to the section 389 of the CrPC also, viewed that suspension of a sentence by an Appellate Court only avoids undergoing of a sentence, pending the criminal appeal and the conviction continues without obliteration of it.** *It may be reasonably inferred from the point of law interpreted by the Apex Court that, in the event of positive outcome in a criminal appeal filed by an aggrieved civil servant against the conviction on the charges of criminal offences, the order of dismissal or removal from service or reduction in rank would be required to be reviewed by the Disciplinary Authority without diluting the spirit of justice as per mandates of service jurisprudence.*

The “failure of natural Justice” without affording an opportunity to a civil servant for defence while awarding any harsh penalties in the form as discussed in the preceding para might be a substantive issue to be framed for testing constitutionality of its application as an exception of the doctrine of fairness and reasonableness envisaged by the Constitution to be followed in the disciplinary proceedings. The power to appoint and punish a public servant being co-relative, deviations from the cardinal principle of natural justice, if put in practice even in the exceptional situations within the constitutional mandates, i.e. under provisos to the Articles 311(2) would invite judicial scrutiny for testing its propriety. This being so, the exceptions should be not equated with unbridled discretionary power or *carte blanche* of an executive authority on awarding very harsh punishment on a civil servant following conviction by a criminal court. Further, the decision of a criminal court when appealed, the operation of the penalty awarded by the Disciplinary Authority based on order of the trial Criminal court will also be a nullity. The legal proposition is that, only execution of such order will be in abeyance and should not dilute the order of the Appellate Court, whether interim or final in terms of execution. **No one should be held guilty of an offence till the process of adjudication is over through judicial process and appellate stage is the part of the said process within the administration of justice and settled law is that the execution of the order of the trial court should remain in abeyance till disposal of the appeal against the same.**

### **Deviation from Natural Justice: Legality and Relevant Aspects**

The interpretation of Justice in the legal sense is relative and dynamic as core elements of it are required to be assessed and decided on situational dynamics by a court of law. However as regards to service jurisprudence, since the doctrine of Natural Justice has been accorded wider acceptance, the subjective approach contrary to the proposition will hinder the distillation of its true values with a functional objective depending on facts and circumstances at any point of time.

In this context, deviation from reasonableness and fairness in the exceptional situations, if challenged by exercising the writ jurisdiction in the High Court by an aggrieved civil servant, the doctrine of *intelligible differntia* may also be a striking point of defence for the respondent Disciplinary Authority. The doctrine of preponderance of probabilities which is relied upon in balancing the evidence adduced in the disciplinary proceedings, it is a settled Law that, even during judicial scrutiny also same will be the standard for judging the application of procedural fairness unless evidence relied upon by the Disciplinary Authority is perverse or adverse decision affecting the civil servant was taken without any evidence in the proceeding. Biasness as antithesis to fairness in the decision making process of the Disciplinary Authority is also considered to be material for vitiating a disciplinary proceeding, as upheld by the Constitutional Courts on many cases.

The Apex Court, in Darbara Singh Vs State of Punjab<sup>7</sup> viewed that, “Failure of justice” is a pliable expression which can be made to fit to any case. There would be failure of justice, not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidences and the court should endeavor to unearth the truth. Of course the rights of the accused should be kept in mind and safeguarded, **but should not be over emphasized to extent of forgetting that, victims also have rights”**.

### **Doctrine of Reasonableness Vs Beyond Reasonable Doubt: Extent of Application in Disciplinary Proceeding**

The Doctrine of reasonableness and fairness being the substantive elements of natural justice are basic mandates to be followed in the departmental proceedings for recording fair findings and from that perspective, how far it would be relevant to order dismissal or removal of a civil servant from the service or reduction in rank by the Disciplinary Authority based on convictions in criminal charges? Naturally such actions may trigger some substantive points to be discussed where decisions are taken by the Disciplinary Authority to said effect. **As the charges are to be proved beyond reasonable doubt in the criminal proceedings, but not mandatorily in the Disciplinary Proceedings, as the standard of proof applicable to Criminal Proceedings being not identical to disciplinary proceedings, can we justify imposition of penalty on a civil servant without conducting fair procedure of disciplinary proceedings on his conviction on criminal charges by a trial court? It may also be a point of merit for discussions in the sense that, acquittal by the criminal court on criminal charges is not of much material relevant in Disciplinary Proceedings almost on same facts and circumstances, as standard of proof in such proceedings is different from the Criminal Court and only misconduct is required to be ascertained based on evidence with adherence to the procedural fairness as per Service**

**Rules.** The Supreme Court having discussed in details the scope of simultaneous proceedings both criminal and departmental in *Kushewa Dubey Vs M/s Bharat cooking Ltd & others*<sup>8</sup> and *Capt. M Paul Authority Vs Bharat Gold Mines Ltd & another*,<sup>9</sup> laid qualified views by stating that departmental proceedings should remain under suspension during pendency of parallel criminal proceedings, but the learned court in *Capt M Paul Anthony Case (Supra)* set certain guidelines of higher jurisprudential value for taking a decision on such matters.

In the instant case, the court also viewed that, departmental proceedings and criminal proceedings may proceed simultaneously and if the departmental proceedings and criminal cases are based on identical and similar sets of facts, and the charges against the delinquent employee(S) involves complicated questions of law and facts owing to gravity of charges in the criminal cases, then the departmental proceedings should be stayed till the disposal of the criminal case. Further the court also stated that, if the criminal proceedings are delayed the departmental proceedings should be resumed and proceeded with.

In criminal proceedings the technicalities of adversarial criminal justice system is followed with emphasis on Evidence Act, but in disciplinary proceedings reliance on such technicalities are not to be complied with, as the doctrine of reasonableness and fairness are basic norms to be applied for recording the findings of a disciplinary proceeding against the charges and statement of allegations framed against a delinquent civil servant. Perhaps the Supreme Court addressed such points of relevance in an efficacious manner in *Capt M. Paul Anthony case (Supra)* after studying the decision of the Apex Court in *Union of India Vs Ramesh Kumar (Supra)*. The approach of the court was more technical in the latter, and award of harsh punishment on a civil servant without affording him a reasonable opportunity of show-cause by a Disciplinary Authority was considered to be contrary to the principles of natural Justice.

The Supreme Court in *Ramesh Kumar Vs Ram Kr & others*<sup>10</sup> and in *S Nagraj Vs State of Karnataka*<sup>11</sup> viewed that, the law genuflects before justice and order of the court should not be prejudicial to anyone. It was viewed that interest of justice demands that, “**guilty should be punished**” and **technicalities and irregularities**, which do not occasion the failure of justice should not be allowed to defeat the ends of justice.

The Apex Court reiterated the relevance of the proposition in the *Union of India & other Vs Ajit Singh* on 2<sup>nd</sup> April, 2013<sup>12</sup>, while disposing of the civil appeal no 4465 of 2005. Whether suspension of an order of conviction of a public servant on charges of corruption, may be kept in abeyance, is the discretionary power of an Appellate Court. The Apex Court opined that, **the rule of caution is required to be followed at the point of ordering the suspension of a sentence of conviction and viewed that only the order of imprisonment** should be suspended till disposal of appeal under Section 389(1) & (2) of the CrPC and the court should look at all the aspects including ramifications of keeping the conviction in abeyance, suspension of conviction and the sentence. If discretionary power of decision making is exercised without taking into account the intensity of lapses of the convict, same would not be means of fairness.

**In Shankar Das Vs Union of India**<sup>13</sup> the Supreme Court (1985,AIR 772, 1985, SCR (3) 163, 1985,SCC 2(358)delivering its judgement on 12<sup>th</sup> March 1985 observed that, the proviso to the Article 311(2) of the Constitution of India should be exercised justly, fairly and reasonably, because the constitution did not contemplate surely that, a Government servant

being convicted for an offence like, parking his scooter in a non parking area, should be dismissed from service. He may not be heard on question of penalty to be imposed within the ambit of proviso to the Article 311(2) clause (a), but the right to impose penalty carries with it duty to act justly. In the case, the person was found convicted of misappropriating some amount of the Government fund and the charge of breach of trust by the public servant under the section 409 of Indian Penal Code was proved against him and he was dismissed from the service by the Disciplinary Authority. But, the learned Magistrate in the judgment categorically recorded that, the accused, Mr. Shankar Das was a middle aged man and under some compelling circumstances he could not deposit the money within due time. Having noted that he was not a previous convict and also other facts and circumstances of the case, the Magistrate also viewed that, he should be dealt with under the Probation of Offenders Act 1958. The Apex Court in the judgment recorded that, despite the observations of the learned magistrate, the Government had chosen to dismiss him in a huff without applying mind to the penalty. Further the Apex Court directed the appellant to be reinstated in service forthwith with full back wages from the date of dismissal until reinstatement and directed that, the Government of India would pay the cost of the appeal.

Based on above insightful and perspicacious analysis of the facts by the Apex Court in the instant case, the doctrine of Natural justice and its application even within the purview of the proviso of the Article 311(2) clause (a) of the constitution of India should have been accorded a conspicuous place. **Should we draw the inference, that even on conviction on criminal charges, dismissal of a public servant should not be the only alternative?** The point of law interpreted by the highest court of the land in Ramesh Kumar (Supra) may reasonably justify that the said Constitutional proviso, should not be applied for underpinning arbitrary acts of disciplinary authorities and while ordering dismissal or removal of a public servant from the service or reduction in rank and the authority remains under compulsion to act justly. A rule of caution should always inspire the Disciplinary Authority to examine merits of any deviation from the doctrine of "reasonableness and fairness". During such scrutiny of such deviations on the petition of any aggrieved civil servant, the Supreme Court or the High Court will not probably endorse application of hair splitting technical approach and the doctrine of reasonableness and fairness as corollary of natural justice shaped by catena of case laws will continue to encourage the judiciary to be more creative while examining of constitutionality of stringent actions against a public servant under reference to the proviso of the Article 311(2), Clause (a) and also as to the compatibility of service rules to the Doctrine of Reasonableness, if necessary.

The Article 311 (2) (b) states that, where an authority empowered to dismiss or remove a civil servant or reduce him in rank is satisfied that, it is not reasonably practicable to hold such enquiry by recording reasons in writing, such kind of punishment may be imposed on a civil servant. But imposition of such harsh punishment without being buttressed by reasonableness may be struck down after judicial scrutiny by the Constitutional Courts.

What should be standards of reasonableness during judicial review is another important point to be reckoned with, as regards to the said proviso. We may rationally view that the Constitutional mandate, if not interpreted in true contextual propriety, same will lead to dilution of the spirit and even with ordinary prudence it may be inferred that reasons should continue to be the lifeline

of any administrative action if taken in reference to the Proviso of the Article 311 (2)(b) of the Constitution..

The Supreme Court of India <sup>14</sup>while disposing of an appeal on 3<sup>rd</sup> September 2017, (8434 of 2014) in Raghur Singh Vs General Manager, Haryana Roadways, Hissar filed against the order dated 09.01.2012, passed by the Punjab & Haryana High Court, gave decisive interpretation on the point. The appellant was arrested by the police for misappropriation of amount collected from tickets and not depositing the cash in time. He was dismissed on 21.10.1994 from the service by the General Manager of Haryana Roadways when he was released on bail on 15.11.1994 and he was given an assurance by the respondent that, he would be reinstated to the post after acquittal by the court. Upon acquittal by the first class criminal court on the charge under section 409 of IPC (Crl. Case no 33-1 of 1994) when the appellant reported to join his duty, he was informed that his service had been terminated w.e.f.21.10.1994. After series of proceedings, pertinent to the nature of the case as was admissible, his termination was held illegal by the Labor Court on 22.05.2009 and the Court passed an order for reinstatement of the appellant with 60% back wages from the date of issuance of demand notice till the issuance of the order and full back wages thereafter till reinstatement. On appeal filed by the respondent in Punjab & Haryana High Court against the order and thereafter being aggrieved by the decision of the High Court on the appeal, the appellant filed an appeal against the order so passed. The Hon'ble High Court held that, the appellant was dismissed by the respondent on 21.10.1994 in exercise of the power conferred upon it, under the proviso of the Article 311(2)(b) and the Court found the same to be justified in public interests.

The Supreme Court by expressing critical comments on the order of the High Court and also on the Labour Court for committing errors in reading the spirit of law while rejecting the case on the ground of delay and laches committed by the workman (petitioner) in raising the industrial dispute, also viewed that, the courts had failed to answer the questions required to be answered during the course of adjudication. The Court also viewed that, both the learned single Judge and the division bench of High Court in the civil writ petition and Letter Patent Appeal, failed to consider the critical aspects of the matter and set aside the award of the Labour Court and also the Judgment & order of the High Court. The Apex Court then ordered reinstatement of the workman with back wages from the date of raising the industrial dispute till reinstatement with all consequential benefits. The Apex Court also categorically stated that, the dismissal order of the appellant had also snatched away the means of the livelihood of the family members of him, as he was the only source of income for the family.

Further, the judgement of the Apex Court embedded the principle that, the deprivation if makes life impossible to be lived, which is an integral component of the Right to Life under Article 21 of the Constitution of India would violate the Fundamental Right. The court also painfully put on record that, the service of the appellant was terminated on the ground of unauthorized absence without considering the leave at credit and without examining the scope of granting extra-ordinary leave or leave without wages, and ultimately justice was not delivered to the appellant workman. The Court therefore ruled that the appellant workman should also get protection under Articles 14, 16 and 21 of the Constitution of India.

The Judgment of the Apex Court having incorporated the rule of caution required to be strictly followed by the Disciplinary Authority for exercising the discretionary power within the proviso of the Articles 311(2)(b), eliminated the scope of negativity in the application of the doctrine of reasonableness and fairness. It would be reasonable therefore to put on record that that, the spirit of natural justice is the rule to be followed before imposing harsh punishment on a civil servant within the framework of the Article 311(2)(b) and the constitutional proviso should not be the 'strait-jacket' defence for a Disciplinary Authority in regard to any whimsical or arbitrary decision adversely affecting the livelihood of a civil servant.

M.P Jain (Supra) referring to judgments of the Supreme Court in Life Insurance Corporation India Ltd Vs Mahu Bhai D. Shah and Good Year India Ltd Vs State of Haryana was of the view that, the judicial creativity is required for constructing true spirit of the Constitutional proviso in its evolving and changing perspectives. The Constitution being the source of living laws, should not be subjected to narrow pedantic and syllogistic interpretations and the Apex Court leaned in favour of interpreting the same in its contextual propriety. The Constitution is not a mere statute, but an embodiment of values by which the laws are made. Further, the learned scholar on the Constitutional laws also concurred with the view that, the Constitution is a living and organic document and therefore it should be interpreted liberally.<sup>15</sup>

The Apex Court, in Union of India & another Vs Tulsiram Patel & Others expressed its crystal views referring to the judgment of the Apex Court in Shankar Das Vs Union of India (Supra) that, the court should not always order reinstatement and instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case. The second proviso clause 'b' of the Article 311 (2) should be construed in the sense that, whatever might be the situation, nominal enquiry or at least an opportunity to show cause against the proposed penalty should be always be encouraged with due deference to the Article 14 of the Constitution of India and concomitant mandates of the doctrine of Natural Justice.

Further, when the suspension of the public servant from the service is pleaded on many occasions as to be an effective alternative if conduct of enquiry is not possible within the proviso (b) of the Article 311(2), the Apex Court recorded its view that, in most of the cases, which renders the conduct of an inquiry impossible was the creation of the concerned Government servant himself or herself acting in concert with others or their associates and in all such situations neither the public interest nor public good requires that salary or subsistence allowance, should be continued to be paid out of public exchequer to the concerned Government servant. Any anticipation as to the duration of suspension, when the situation was found to be not congenial for conduct of inquiry as well as exigencies of a situation requiring prompt actions may also assail the merits of any decision for placing a civil servant under suspension in the given situations. Reasonably we may emphasize on the point, that lackadaisical actions may be construed also as weakness of the authorities by the trouble makers and agitators a, which is detrimental to the society. Therefore the rational understanding will be that the clause (b) of the Article 311(2) was not meant to be applied in ordinary or normal situation. It is only applicable in such situations, where conduct of an inquiry would be not reasonably. Further the point of conduct of a preliminary inquiry to decide as to whether the conduct of disciplinary enquiry should be dispensed with or not, should also be scrutinized preceding the imposition of the penalty of dismissal or renewal from service

or reduction on a public servant under clause (b) proviso (2) of Article 311 of the constitution of India. However as an alternative remedy against such penalty, **through the departmental appeal or revision may give a civil servant the opportunity of challenging the penalty if the situation is found to be not similar with that of earlier for non conduct of disciplinary inquiry prior to imposition of the harsh penalty on a Public Servant. Also under the Article 226 read with clause (3) of the Article 311, the High Court for the exercise of the power of judicial review may examine the propriety of discretionary orders affecting the civil servants,** if the writ petition is filed by the aggrieved public servant against an order of dismissal removal from service or reduction in rank. The decision to shape finality on any decision taken by a Disciplinary Authority under the clause 3 of the Article 311 of the proviso of clause (b) of the Article 311(2) may be the domain of the Court of Law as and when the aggrieved person prays for justice. Naturally ground of impracticability for not conducting inquiry against the public servant before the award of stringent penalty would be the substantive issue during judicial review and must withstand the test of arbitrariness.

**The last clause of the second proviso of the Article 311(2) i.e Clause ‘c’ states that, if the President or Governor as the case may be, is satisfied that in the interest of the State, it is not expedient to hold such inquiry, the constitutional mandates for awarding stringent punishments of the nature already discussed on a civil servant without conducting inquiry, would be not violated. The satisfaction of the said Constitutional Authority being the pre-requisite condition for waiving the conduct of inquiry may not be in accordance with the doctrine of natural justice and the award of the penalty of dismissal or removal from service or reduction in rank by an executive order is likely to be infected by arbitrariness. The Clause (b) of the Article 311(2) deals with question as to whether the conduct of inquiry is reasonably impracticable and the Clause (c) deals with expediency in the interests of security of the State for not conducting inquiry. Although the clause (b) of the Article 311(2) envisages that, the order of penalty should be accompanied by reasons in writing by the disciplinary authority, if the reasons were not recorded in the order, whether written explanations would be required, is neither expressly nor impliedly provided under clause (b) of the Article 311(2) and hence reliance is placed on impracticability of holding an inquiry. Situation affecting the public order is given priority to the situation affecting the “Law and order” under proviso of Article 311(2)(c) including threats to the security of the state for non conduct of disciplinary inquiry. Further as per the mandate of the same, security of the state should be given more importance while deciding not to conduct inquiry by the President of the Union or Governor of a state, than that of deteriorating public order. It is now pertinent to discuss about probable circumstances, where the security of the state may be reasonably at stake for justifying the application of the said constitutional proviso as an exception to Natural Justice. The Security of the state may be affected openly or clandestinely, including disaffections among the Para Military or Armed forces. In this respect the police force stands very much on the same footing as that of the Military or Para Military force for being entrusted with the maintenance of law and order as well as public order. Breach of discipline and acts of disobedience coupled with insubordination on the part of the members of the police force cannot be viewed with less gravity, than that of similar acts on the part of the Para Military or Military Forces. The 50<sup>th</sup> Amendment**

of the Constitution of India Act 1984 by amending the Article 33, extended the jurisdiction of the Parliament to modify the rights conferred by the part III of the Constitution (Fundamental Rights) as regards to Armed Forces or the Forces charged with the maintenance of the Public order. By the said amendment of the Constitution the Parliament was empowered to modify the extent of application of the Fundamental Rights as the protective shield to the persons employed in any bureau or other organizations established by the State for purpose of intelligence or counter intelligence or persons employed in or in connection with the telecommunication systems set up for the purpose of any force, bureau or organizations referred to the clauses (a) to (c) of the Article 33. The Parliament may as such restrict or abrogate their rights so as to ensure the proper discharge of their duties and maintenance of discipline among them <sup>16</sup>

**Deviation from the established principles of natural Justice in disciplinary proceedings against civil servants within the purview of the provisos of the Article 311(2) may be considered as an exception, which has also extended the derivative ambit of the doctrine of pleasure as embodied under the (Article 310) and service rules framed so.**

In the above contexts, official arbitrariness is considered to be more serious than the statutory discriminations, because latter is found to be less subversive of the doctrine of equality than the former. In respect of statutory discriminations one may know where he stands but the wand of official arbitrariness can be moved in all directions indiscriminately.<sup>17</sup>

In *Union of India Vs Col. J.N Sinha and another* <sup>18</sup> the Apex Court in conformity with its observations in the leading case of *Kraipak and others Vs Union of India*, held that, the aim of natural Justice was to secure Justice or to put it negatively, to prevent miscarriage of Justice. The rules can operate only in the areas not covered by any law validly made, and in other words, they do not supplant laws, but supplement it. If a statutory provision can be read consistently with the principles of natural justice, the court should do so, because it must be presumed that, the legislature and the statutory authorities intended to act in accordance with the principles of natural justice. But when the statutory provision either specifically or by necessary implication excluded the application of any or all the principles of natural justice, then the court cannot ignore the mandate of the legislature or the statutory authority and should read in to the concerned provision, not the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not, depends upon express words of the provision conferring the power, the nature of the power conferred and the purpose for which it is conferred and the effects of the exercise of power.

In *Swadeshi Cotton Mills Vs Union of India*<sup>19</sup> Justice Chinappa Reddy in his dissenting judgment categorically stated that, the natural justice had taken deep root in the judicial conscience of our people, nurtured by the judicial pronouncements in *Kraipak*, *Mohindar Singh Gill*, *Maneka Gandhi* etc, and they are now considered to be so fundamental as to be “implicit in the concept of ordered liberty” and therefore implicit in decision making process in judicial, quasi judicial or administrative proceedings where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner. The natural justice will have to be observed in that manner and no other. Statutory silence on the application of the natural justice will mean the application of the natural justice, which is however presumptive and may be excluded by the express words of statute or necessary intendment. Where there is conflict in

between the public interest and the private interest, the perception must necessarily be weak and may be displaced.

The Apex Court also in *J. Mohapatra & Co. and another State of Orissa*<sup>20</sup> & another also ruled that, the express proviso under article 311(2), if properly applied, the jurisdiction of the Article 14 will be not relevant. If the Article 14 is allowed to step into the place of the clause (2), the same may nullify effects of the opening words of the second proviso with possibility of frustrating the intention of the architects of the Constitution to the said extent. The second proviso is based on public policy in public interest and for public good, and the constitution makers who inserted it in to the article 311(2), were only the best persons to decide whether such explanatory provisions should be there and the situations in which the provisions should be applied.

But it was also stated that when the second proviso is applied on extraneous grounds or a ground having no relation to the situation envisaged in that clause is relied upon by the Authority to shield colorable application of the exception, same would be *malafide* and antithesis to the constitutional morality and jurisprudence.

In *Tulshiram Patel case* (supra)<sup>21</sup>, Justice D.P. Madan, who was the author of the judgment having referred to the rule 14(1)(a) as a logical corollary to the rule 14(1)(b) of the Railway Servants (Discipline and Appeal) Rules 1968 viewed that the rule embodied in *Challappan* (Supra) to the effect that, an employee must at least be heard on the question of quantum of punishment, before he is dismissed or removed from service without holding any enquiry, would be relevant as guiding principle and was leaned in favour of its reiteration. The ratio was endorsed by the learned judge as just & fair and hence expressed his inability to be persuaded by the majority view for speaking against the ratio of “*Challappan*” case.

*The spirit of the Doctrine of pleasure embedded in Article 310(2) and mandates of the Article 311(1), with provisos of the Article 311(2) & the Article 311(3) as interpreted by the judiciary on many occasions are not for safeguarding arbitrary decisions taken by the Disciplinary Authorities. The jurisprudential value of the doctrine of reasonableness as the corollary of natural is embedded in its distilled form in the constitutional scheme and exception though are part of the Law, it may be reasonably inferred that exceptions are not to be applied for legitimization of the actions, which would be otherwise arbitrary in the test of reasonableness. Narrow and pedantic approach of interpretation of the doctrine of pleasure will plague the very intention of the architects of the constitution at the point of contextualizing the application of the provisos of the Article 311(2) under classified situations. Judicial review of exercise of exceptions on different occasions having juxtaposed the same with the doctrine of reasonableness, has already added new vistas in to the constitutional jurisprudence by laying a functional nexus between fairness as a means to implement reasonableness and statutory compulsions in public interests in regard to justification of exceptions.* It is pertinent to opine that the public policy would also not definitely encourage the grant of constitutional immunity to corrupt and dishonest public servants by a hair splitting technical applications of the doctrine of reasonableness by marring the intent of placing the exceptions under the Article 311(2) and such critical aspects are also required to be factored in to the process of judicial review as and when harsh punishments imposed on the delinquent civil servants are challenged in the courts of Law. The spirit of public interests, being incorporated in the **provisos of the Article 311(2) as the fulcrum of such exceptions should**

**be the point of leading arguments, whenever imposition of penalty without inquiry is to be defended. The concomitant extension of the authority of the Disciplinary Authority (one who can dismiss, remove or order reduction in rank) within the purview of Article 311(3) for finalization of a decision as to whether the conduct of inquiry as referred to clause (2) of the Article 311 will be reasonably practicable or not, is another important aspect to be reckoned with, in the Constitutional Scheme, as the Disciplinary Authority is the best judge of the facts. The propriety of passing order of dismissal or removal from service or reduction in rank, when tested within the doctrine of fairness and reasonableness though need not be skirted during judicial review, the Rule of Caution is also to be followed by the Court of Law for objective interpretations of preceding situational dynamics of the case in hand. However the Court will be at liberty to focus on pretexts of public interests to be primarily invoked by the Disciplinary Authority while awarding harsh punishments on a civil servant by referring to exceptions. But the immunity of a civil servant against punishment without enquiry under Service Rule is not constitutionally absolute and subject to judicial review in the spirit of extant laws already referred to.**

The Constitution 50<sup>th</sup> Amendment Act 1963, substituted the Clause (2) and (3) of the Article 311, by the following Clauses-

- (1) no such person (who is a member of a civil service of the union or on All India Service holds a civil post under the union or a State shall be dismissed or removed or reduction in rank except after an enquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard, in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on basis of the evidence adduced during such inquiry provided that, the clause shall not apply
  - (a) Where a person is dismissed or removed or reduced in rank on 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 reasons 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
- (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 of the authority empowered to dismiss or remove such person, or to reduce him in rank shall be final.

The Constitution (Forty Second Amendment ) Act 1976, introduced certain amendments in the substituted clause (2) of the Article 311 with effect from January, 3<sup>rd</sup>, 1977, which changed the Clause(2) of the Article 311 as under-

*“No 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 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 be not necessary to give such person any opportunity of making representation on the penalty proposed.

The Provisos of the Clause (2) of the Article 311 under (a, b, c) and clause (3) of the Article 311 were not amended by the said Amendment.

In continuation of our discussions, it will be reasonable to infer that the Doctrine of Pleasure should be attendant to the proposition that, the individual rights and public interests as and when are required to be balanced, the pleasure doctrine is to be read harmoniously in conformity with the Article 311(1) and provisos of the Clause (2) of the Article 311 of the Constitution. The doctrine in its plain construction, should not be invoked to divest a public servant of his rights to continue in that capacity and in contravention of the spirit of the article 311(1) and 311(2) of the constitution. The applied version of the “Rule of Law” will also remain shielded, when the doctrine of pleasure is applied in consonance with the jurisprudential mandates of the provisos in the Clause (2) of the Article 311 and of course with objective applications of its exceptions in an extraordinary situation. The Clause (3) of the Article 311 of the Constitution supplements the responsibility of the Disciplinary Authority to act justly and fairly for taking any decision(s) to impose harsh penalties on a public servant, without *jeopardizing the qualified autonomy of exercising discretion as embodied in the provisos (a,b and c) of the Clause (2) of the Article 311.*

The right to concomitant claims like promotion after appointment in case of a civil servant are though not directly related to the scope of present discussions, yet critical discussions on the right to ‘promotion’ may be relevant for an objective analysis in context of service jurisprudence. When ‘misconduct’ was proved against a public servant, prior to his promotion or appointment to a post of higher responsibility and benefits, it may be reasonably viewed that, his right to promotion should be scrutinized in the public interests. The service rules in most of the cases give importance to merit, efficiency and seniority as eligibility norms for assessing the performances of a public servant for his selection or for consideration of promotion to a higher post. Hence deprivation of promotion or appointment to a higher position for not fulfilling the eligibility criteria should not be ordinarily interfered with, if decided reasonably by a Competent Authority, as misconduct proved against a civil servant would not equate him in the scale of efficiency with his counterparts maintaining unblemished service record. The Law is clear on the point-one who seeks justice must come with clean hands.

**The Supreme Court in Union of India Vs V.K Jankiraman<sup>22</sup> etc (1991) viewed that, promotional benefits should not be denied to employee who was exonerated from the disciplinary or criminal proceedings and found not guilty. The Court viewed that an employee has the right to be considered for promotion. The promotion to a post and more so to a selection post depends on several circumstances.** To qualify for promotion the employee should have an unblemished record, which is required to ensure clean and efficient administration and also to protect the public interests. An employee found guilty of misconduct cannot be placed at par with the other employees and in that case should be treated separately and there will be no discrimination when he is treated differently in matters of promotion. An employee who should

not be rewarded with promotion retrospectively from a date, when for the conduct before that date, he is penalized *in praesenti*.

Further, the Apex Court in another judgment delivered in Kerala State Electricity Board Vs T.S Saharanaman also viewed that, infliction of punishment of withholding of an increment was a relevant factor to be taken into account in assessing the merit and ability of the person concerned.<sup>23</sup>

The right to promotion is to be viewed in public interest in the backdrop of rules of Law embodied by the Apex Court in the aforesaid cases.

The dismissal, removal from service or reduction in rank being extreme forms of penalty may be imposed on a civil servant only when charges of grave misconduct as defined in the service rules are proved in the Disciplinary Proceedings against him and also under conditions stated in the proviso (a,b,c) of the clause (2) of the Article 311. So far as the standard of proof is concerned in the disciplinary proceedings, the disciplinary authority is the best judge of the facts as regards to award of appropriate punishments and the same is not ordinarily interfered with, unless gross deviations from the rules of natural justice or procedural lapses are found during judicial scrutiny in such proceedings during judicial scrutiny.

The Disciplinary Authority should however act reasonably and wisely while assessing the nature of misconduct, levelled against a public servant based on the findings of the inquiry report, as the order of dismissal or removal from service, reduction in rank or even compulsory retirement, if awarded whimsically will invite judicial intervention. Not only the procedural fairness of Enquiry findings may be subject of judicial scrutiny, but also the proportionality of punishments in regard to the degree of misconduct coupled with the resultant effects on livelihood of the concerned public servant and his families within the spirit of the Article 21 of the constitution of India may also be relevant during judicial scrutiny. The constitutional courts while deciding on the writ petitions under Article 226 filed by an aggrieved public servant against the stringent penalties awarded on him based on the inquiry conducted by the Disciplinary Authority will not only scrutinize the procedural technicalities of the disciplinary proceedings and also possible adverse effects on the public servant and his families by reading the facts and circumstances. As per mandates of Law, the Court will require to strike the balance in between individual and public interests reasonably in the facts of a particular case. However Public interests usually tilt the balance of justice in favour of the Disciplinary Authority if punishment is awarded by following procedural fairness relying on the natural justice.

Further the rights to promotion of a public servant should not be substantively aligned with the arguments advanced for the retention in service from a humanitarian view. In the context of promotion, merit and efficiency being considered as the fundamental requirements with unblemished service record including moral turpitude, the scale of public interests will incline in favour of objective discrimination for promoting the meritorious and efficient civil servants to important positions. However reasonableness as antithesis to arbitrariness also becomes a relevant point for a constitutional court during judicial review when promotional benefits are not allowed to a public servant, if found otherwise eligible.

The procedural fairness being the lifeline of natural justice, if not followed in disciplinary proceedings, same will mean travesty of its sanctity. The Penalty of dismissal or removal from service or reduction in rank, being very harsh form of penalty should be rarely imposed, based on

facts and circumstances of each case. The Apex Court in *SBI vs D.C Aggarwal* (1992) vehemently criticized the Disciplinary Authority when punishment was inflicted on an employee of the bank without supplying relevant materials to him for preparation of his defence and also having not disclosed to him such documents. The court held that, procedural fairness is the essence of rights and liberty and also the substantive law itself.<sup>24</sup>

Recently Sachin Waze, a police official of Mumbai Police was dismissed from the service by the Police Commissioner of Mumbai without departmental inquiry, by invoking the Article 311(2) (b) of the Constitution of India, after he was arrested by the National Investigation Agency in connection with Mukesh Ambani terror Scare case. His dismissal on 21.05.2021 by the Commissioner of Police was followed, by the official record in writing that, holding of departmental inquiry will be not reasonably practicable. The Jammu & Kashmir, Administration also recently set up a special Task Force to scrutinize cases of employees suspected to be involved in the activities requiring actions under the proviso (c) of the Article 311(2) and such cases are therefore instances of applied dimensions of the Constitutional Provisos. **25**

During judicial scrutiny of such acts under Writ jurisdiction, the Constitutional Courts are expected to rely on the propositional values of service jurisprudence based on case laws with jurisprudential values over the decades. Such propositional values having cemented the functional nexus between the preponderance of public interests *vis a vis* the individual rights shielded by the doctrine of reasonableness and fairness coupled with chiseled objectivity of our creative Constitutional Courts, will continue to infuse vibrancy in to the constitutional jurisprudence underpinning the Article 310 and 311, so that the very purpose of their incorporations in the Constitution, is not diluted by any colorable intrusions in regard to applications.

The settled law of caution is that punitive actions affecting adversely the career of a civil servant if taken without application of the Doctrine of Reasonableness would be set aside in all probabilities by any constitutional court after judicial scrutiny as and when required. The exceptions to the conduct of a fair disciplinary enquiry prior to imposition of penalties on a civil servant should be preceded by recording the reasons as to why the conduct of inquiry was impracticable in consonance with the Constitutional Mandates by reading dynamics of public interests, security of the State and other factors delineated in the Article 311(2) with provisos.

The Hon'ble Supreme Court of India in a recent judgement delivered on 20/05/2025 in *S, Janaki Iyer vs. Union Of India*, Neutral Citation: 2025 INSC74, reported in VERDICTUM, Website of Legal News, upheld that the principle of reasoned decision also known as speaking orders requires that every decision to be supported by valid and clearly stated reasons for promotion of transparency and accountability in the decision making process is an integral component of the Natural Justice. Therefore the constitutional mandate will not facilitate any colorable intrusion in to the basic structure of the Natural Justice even under exceptional situations carved out in the provisos of the Article 311(2) of the Constitution, without a speaking order before imposition of major punishments on a civil servant without a reasonable order which may be examined during judicial review in the facts of a particular case.

There should not be any doubt as to the summation of the upshot of our discussions that exceptions are only permissible as and when public interests reign supreme in departing from the orbit of Natural Justice embedding fairness and reasonableness as two vital ingredients of it. It

may also be interpreted in the context of the settled proposition of equity that, cutting of wood for the tree may be reasonable, but not the tree for the wood.

### Notes

1. Sadhu Saran Singh Vs State of up & ors on 26<sup>th</sup> February 2019, <https://indiankanoon.org/doc/137367729>
2. M.P Jain, Indian Constitutional Law, Eight Edition, PP 1558-159
3. (1985) 2SCC 358
4. Jain, Supra, PP 1554-1955
5. N.V Paranjape “ Studies in Jurisprudence& Legal Theory “ Central Law Agency,Allahabad, 2019 PP-260-261
6. [Http://IndianKannon.org/doc/662\\_590](Http://IndianKannon.org/doc/662_590) also, Union of India vs Ramesh Kumar, AIR1997 Sc 3531
7. AIR 2013,SC 840
8. 1988, 4SCC, 319
9. 1999.3SCC, 679
10. AIR 1984,SC 1929
11. 1993, Supp(4) SCC 595
12. <Https://IndiaKanon.Org>
13. [Http://indiankannon.org/doc/184\\_8163](Http://indiankannon.org/doc/184_8163)
14. [Http://indiankannon.org/doc/967\\_28565](Http://indiankannon.org/doc/967_28565)
15. M.P Jain (Supra), Pt 1679
16. Union of India Vs Tulsi Ram Patel & others, Supreme Court,11/7/1985, Indian Kanoon <Http://indiankannon.org/doc/1134697>
17. State of Andhra Pradesh and another Vs Nalla Raja Reddy & other (1967) 3 SCR,28
18. 1971 SCR,791
19. 1985,1SCR.322,334-345
20. 1985, AIR 1416, 1985 SCR(Suppl)(2)(131)
21. 1985, AIR, 1416.1985, SCR (suppl.)(2)(131)
22. M.S Ansari “Assam civil services Disiplinary and Appeal Rules 1964” (revised by S.K Awasthi) Allahabad, Orient publishing Company,2006 PP.72,1991,3,SCJ,427
23. M.S Ansari (Supra),1978,I,SLR,322
24. M,S Andari(Supra),SBI VS DC Aggarwal (1992) 3 SCJ,656 (page 122)
25. <http://indianexpress.com-7312322>, visited on 12/09/2021.