

CIRCULAR

Bhubaneswar, the 14th July, 1960.

Subject:- Procedure to be adopted for terminating the services of temporary Government servants.

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It has come to the notice of Government that in some cases where proceedings are drawn up against Government servants, the full-fledged procedure laid down in Home Department memo. no. 1150(68)-A., dated 23.9.54, as subsequently amended in Political and Services Department memo. no. 2170(72)-Gen., dated 20.2.57, is not being observed in all respect. The instructions contained in Book Circulars Nos. 21 & 22 in so far as they are applicable to the changed circumstances also, are not being followed in some cases. A lacuna, which occurs quite commonly, concerns the issue of a second show-cause notice to the delinquent officer in the fourth stage of the proceedings, mentioned in the former memo of the Home Department as amended in the Political and Services Department memo dated 20.2.57, and required compulsorily under article 311 of the Constitution. The non-observance of this procedural step vitiates the proceedings and the order of punishment passed on its basis becomes insupportable on appeal. The intention of the present circular is to bring to the notice of all concerned some of the material changes in the position which has been brought about by the decision of the Supreme Court in P.L.Dhingra Versus Union (reported in A.I.R.No.1958 S.C. 36).

2. In the aforementioned case, it has been held by the Supreme Court that a temporary or officiating Government employee has no right to a post and if the Government has, by contract, express or implied, or under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or under the rules, is prima-facie and per se, not a punishment and does not attract the provisions of Art. 311. Where such a notice of mere termination of employment is given to the employee, it is not necessary that the elaborate procedure under Article 311 of the Constitution be followed.

3. The above remarks do not, however, apply to a case in which dismissal, removal or reduction in rank is contemplated. Such a case will attract the provisions of article 311 of the Constitution of India. In order to arrive at a conclusion whether the provisions of article 311 of the Constitution are attracted or not, the test evolved by Supreme Court is:

"Has the officer concerned been visited with any penal consequences, such, as forfeiture of pay and allowances or loss of seniority in his substantive rank or stoppage or postponement of his future chances of promotion?" If any of these conditions is satisfied, it is to be held that the Government servant has been punished and the termination of his service must be taken as dismissal or removal from service or reversion to his substantive rank. In such cases requirements of the rules and article 311 of the Constitution, which give protection to the Government servants, have to be compulsorily complied with. Otherwise, termination of service or reduction in rank in such circumstances will be wrongful and will be interpreted as violation of the constitutional rights of the Government servant.

4. In fine, it may be stated that where termination of service of a temporary Government servant is not attended with any of the penal consequences referred to in para 3 above, temporary employment is terminable with or without notice as the terms of employment or the rules specify. On the other hand, if the termination of his service is done as a measure of punishment culminating in any of the civil consequences, proceedings will have to be drawn up against the officer concerned and the four stages of a departmental enquiry enjoined in Home Department memo. no. 1150(68)-A., dated 23.1.54, as subsequently amended in Political and Services Department memo. no. 2170(72)-Gen., dated 20.2.57, have to be adhered to scrupulously. It may however be borne in mind that the option to terminate the service as or under the terms of employment or the rules, or alternatively to take disciplinary action and terminate it by way of punishment always rests with the appointing authority.