GOVERNMENT OF MADHYA PRADESH

GENERAL ADMINISTRATION DEPARTMENT

MEMORANDUM

No. 69-3727-I (iii)-65 Bhopal, dated the 7th January 1966—17 Pausa, 1887

To,

All Departments of Government,
The President, Board of Revenue,
All Commissioners of Divisions
All Heads of Departments,
All Collectors,

Sub.—Departmental enquiries—Article 311 of the Constitution—Legal and Procedural Requirements.

With a view to having a clear idea about the exact legal requirements to be complied with in the conduct and disposal of departmental enquiries and also to avoiding confusion with regard to the exact scope and implications of Article 311 (2) of the Constitution, the following instructions are issued for the guidance of all concerned in supersession of all previous instruction on the subject.

2. **Scope and implications of Article 311 (2).**—Article 311 (2) is attracted only in cases in which it is proposed to dismiss, remove or reduce in rank the Government servant concerned. If, however, it is proposed to inflict any other minor punishment, this Article is not attracted and it is not necessary to comply with the requirements thereof.

The words "dismissed", "removed" and "reduce in rank" are all used in a special, technical sense. They must be understood in the sence in which they are used in the Madhya Pradesh Civeil Services (Classification, Control and Appeal) Ruless, 1965 (herein after referred to as the said Rules), where the denote the three major categories of punishments which can be imposed on civil servants. Therefore Articles 311 (2) is attracted only when termination of service or reduction in rank is ordered not in accordance with the conditions of service but as a measure of disciplinary action and punishment in consequence of some fault or misconduc of the Government servant concerned.

Although both "dismissal" and "removal" connote a penalty, from service is a milder term of punishment as it does not disqualify a person from future employment under the Government while dismissal does so.

3. **Termination of the service of contract employees.**—There are several Government servants who are employed on contract basis. In the Agreements relating to such Government servants, provision is usually made for terminating the services by a notice of a specified period by either party. Hence, if the services of a contract employee are terminated at the expiry of the term for which he was engaged or at the expiry of the period of notice in accordance with the conditions of the contract of his service, such termination of service does not amount to punishment and the provisions of Article 311 (2) or Rule 12 of the said Rules are not attracted. This is because the termination in such a case is not by way of punitive action in consequence of some fault or misconduct on the part of the employee concerned but it is simply the exercise of the option vested in one of the parties for determining the contract of service by giving a notice of the specified period. If, however, it is proposed to dismiss, remove or reduce in rank a contract employee by way of punishment on the ground of some specific fault or misconduct on his part or any breach or non-performance of any of the terms or conditions of the contract of service or the rules pertaining to the service then the requirements of Article 311 (2) and also of the said Rule 12 have got to be complied with.

4. **Termination of service of temporary employees.**—In the case of temporary employees, it is open to Government to prescribe any conditions of service in regard to their tenure in the service rules. It is also competent for the appointing authority to specify the nature of the tenure of such employees in the appointment orders. And if the services of a temporary employees are terminated in accordance with the conditions of service relating to this tenure whether in the rules or in the appointment order, Article 311 (2) will not be attracted, because such termination is not as a punushment for misconduct or otherwise but is if accordance with the conditions of service and it would not be a case of dismissal or removal within the meanins of that Article. Thus, if a Government servant is appointed temporaily until further orders it would be open to the appointing authoriy to terminate his services at any time by making a further order. Where, however, the termination of service is actually based on the misconduct, negligence, inefficiency or other disqualification of Government servant concerned, the action will be deemed to be punitive and Article 311 (2) will be attracted and in this respect there is no difference between temporary and permanent member of the service between persons holding permanent or temporary posts.

5. **Discharge of probationers.**—The discharge of a probationer during or at the end of the period of probation on the ground of unsuitability or on grounds arising out of the specific conditions laid down by the appointing aothority, e.g. failure to acqure the prescribed special qualifications or to pass the prescribed test, does not a amount to removal or dismissal and it is not necessary in such cases to comply with the requirements of Rule 12 or the said Rules or Article 311 (2). The reason is that the discharge is not by way of punitive action but is in accordance with the conditions of service. But even in such cases, if the termination of service is based on the ground of miscounduct, negligence, inefficiency or other disqualification, and is resorted to by the Government as a measure of punishment, it will amount to "dismissal" or :removal" and provisions of Article 311 (2) will be attracted. In order to comply with the requirements of this Article, it is not sufficient to frame in such a case a general charge in efficiency or unsatisfactory work against the probationer. The specific fault alleged against him must be set out clearly with full particulars and the probationer must be given an adequate apportunity to answer the same. In all cases in which the charge involves allegatons as to any matter of fact which are disputed by the probationer, an enquiry into the truth of such allegations should be held in accordance with the procedure laid down in Rules 12 of the said Rules and the requirements of Article 311 (2) should be complied with.

6. **Reduction in rank.**—As in the case of dismissal or removal, so also in the case of reduction in rank, the provisions of Article 311 (2) (as also of Rule 12 of the said Rules-would be attracted only in cases in which it is proposed to reduce a Government servant in rank as a measure of punitive action on the ground of some specific fault or misconduct or unsatisfactory work. In short, Penal charcter of the action is an essential ingradient of "reduction in rank" as in the case of dismissal or removal. But, if a Government servant is to be reduced to a lower position in any other circumstances, the action will not amount to reduction in rank within the meaning of Rule 12 or Article 311 (2). Thus, for instance, if a Government servant is appointed to officiate in a higher post and has to be reverted in the normal course, e.g. when the permanent incumbent has returned, his reversion will not amount to reduction in rank, for the purposes of Article 311.

7. **Compulsory retirement.**—The compulsory retirement of a Government servant on proportionate pension before the age of superannuation but on completion of service for the prescribed number of years according to the rules of service applicable to the Goernment servant concerned, does not amount to removal from service and the Government servant is not in such a case entitled to the protection of Article 311 (2). But if such retirement is ordered before the Government concerned has rendered service for the prescribed period or if it is not otherwise in accordance with the rules of service, it would amount to a punishment within the meaning or rule 9 (v) of the said Ruls.

8. **The essential requirements of Article 311 (2).**—In all cases in which it is proposed to impose any of the penalties of dismissal, removal or reduction in rank, the holding of departmental enquiry strictly in conformity with the provisions, contained in Rule 12 of the said Rules is essential. Unless an enquiry is held in accordance with the provisions of Rule 12 the Government servant concerned cannot be said to have been afforded a reasonable opportunity of defending himself within the meaning of Article 311 (2). Compliance with the requirements of Rule12 is, therefore, a matter of great importance and it is essential that there should be no departure or deviation from the procedure laid down therein.

After a departmental enquiry has been held in accordance with Rule 12, the following procedure should be strictly followed in order to comply with the requirements of Article 311 (2) :—

(i) After receipt of the Enquiring Officer's report, the Disiplinary authority should make a preliminary examination of the case in order to find out if the findings of the Enquiring Officer are correct and come to a provisional finding on the charges. If upon such examination, the Disciplinary authority considers that all or any of the charges are proved *prima facie*. it should take a provisional decision as to the punishment which it proposes to impose.

(ii) The Government servant concerned should then be supplied with a complete and unabridged copy of the Enquiring Officer's report and he should be called upon to show-cause, within a reasonable period which should not ordinarily be less than a week to be specified in the notice, why the proposed punishment should not be imposed. The precise penalty proposed to be inflicted must be indicated in the show-cause notice. It is irregular to call upon the Government servant concerned to show-cause in a general way, e. g., "why he should not be dismissed or removed from service or punished with any of the lesser penalties".

(iii) The show-cause notice must indicate clearly the grounds on which the punishment specified therein is being proposed, and state specifically which charges the competent authority considers as *prima facie* proved and to what extent. It should at the same time be made clear to the Government servant concerned that the finding on the charges and that the final decision would be taken after taking into consideration the representation that he may make.

(iv) In a case in which multiple charges are found proved *prima facie*, the provisional punishment should be indicated separately in respect of each charge. If a particular punishment is proposed in respect of a number of charges cumulatively this should be clearly so specified.

(v) Whenever it is proposed to take previous bad record of the Government servant concerned into consideration in the assessment of punishment, and such record did not form the subject of any specific charge at the enquiry, it is necessary to set out that record specifically in the show-cause notice as a ground of the propose action. Copies of the previous bad record should also be furnished. Rule 12 too requires such circumstances to be disclosed to the Government servant concerned.

(vi) If in a case consultation with the Public Service Commission is necessary under Article 320 (3) of the Constitution and the regulations made by the State Government in that behalf, then, after the receipt of the representation of the Government servant concerned, the whole case together with the representation should be forwarded to that body for opinion. On receipt of the opinion the case should be examined again by the competent authority and final decision taken and orders passed.

9. **Requirements of natural justice in departmental enquiries.**—While it is to be emphasised that a departmental enquiry must be held in accordance with the procedure laid down in rule 12 of the said rules, it is to be noted that in general due regard must be had to the principles of natural Justice. These principles require that the Government servant concerned must be informed clearly of the grounds on which it is proposed to proceed against him. the charges

must be definite and specific and not vague and all necessarily particulars thereof should be given in the statement of allegations so that he has not to guess what the exact accusation against him is. The charges and statement of allegations should be intimated to the Government servant concerned. Then he should be given an opportunity to defend himself not only by leading evidence in his defence but also by cross examining the witnesses on whose testimony the charges are supposed to be based. He should be given access to or supplied with copies of all relevant documents and records which bear substantially on the charges made aginst him and on which the enquiry officer proposes to rely. It is also one of the principles of natural justice that a person cannot be both an accuser and a judge. It is well to remember that the above jurisprudence which amounts to saying that no one is allowed to be a judge in his own cause, applies not only in the case of courts of justice in the proper sense, but also in the cause of administrative tribunals who are required to act judiciously. Therefore, where the facts and circumstances of any case are within the personal knowledge of the Enquiring Officer or the enquiry has been instituted at his instance, the enquiry should not be entrusted to him, because in such circumstances, the enquiry held by him would be repugnant to the principles of natural justice.

It should be borne in mind that where the Enquiring Officer had expressed an opinion before the witness had been cross examined, it could not be said to have been a valid enquiry, nor could it be held that the Government servant had a reasonable opportunity to defend himself.

10. The procedure indicated above should be followed in all departmental enquiries against officers and servants of Police and Home Guards also, notwithstanding anythings contained in Rules regulations or Instructions governing them.

M. L. CHOPRA,
Dy Secy. to Govt. Madhya Pradesh,
General Administration Department.