

**MEANING OF DEPTT.
PROCEEDINGS &
CONSTITUTIONAL PROVISIONS
RELATED TO IT**

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what is Departmental Proceedings???

- **Departmental Proceedings has not been defined in any law regulating such proceedings.**
- **in case of Govt. employees of Asaam it is ACS (Discipline & Appeal Rules) 1964**
- **All state Governments have their own rules**
- **The Central Govt. has recently brought in a new DP Rule named “Civil Services (classification Control & Appeal) Rules 2019”**

WHICH LAW DEFINES

The *Departmental Proceedings (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1973* enacted by West Bengal Legislative Assembly has defined it in Sec. 3.

(a) “departmental proceedings” mean proceedings held under and in accordance with—

(i) any law made by Parliament or by the State Legislature or any rule made under any such law,

or

(ii) any rule made under the proviso to article **309**, or continued under article **313**, into any allegation of lack of integrity (including bribery or corruption) in-subordination or dereliction of duty in any manner whatsoever, against any person to whom this Act applies;

Sec. 5-- Empowers State Govt to Invest power of civil court upon the IO in matters of attendance of witnesses and production of documents

Relationship between the govt. & employees ????

MASTER & SLAVE

CONSTITUTIONAL PROVISIONS: (Art 309-314)

- ❖ **Art.309: *Recruitment and conditions of service of persons serving the Union or a State.***
- ❖ **“Acts of appropriate legislators may regulate the (1) recruitment, and (2) conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:”**
- ❖ **A proviso was made - that until such Acts are made, the president/Governor may direct such person to make rules regulating the services & such rules shall remain valid until replaced by ACTs of legislature.**
- ❖ **ALL RULES ARE MADE BY GOVT. UNDER THE SAID PROVISIO including DP RULES , SERVICE RULES ETC.**

ART. 311

Dismissal, removal or reduction in rank of persons employed in civil capacities

- No employee shall be dismissed or removed by an authority subordinate to that by which he was appointed.
- shall be dismissed or removed or reduced in rank only after an inquiry in which he has been (1) informed of the charges against him
- reasonable opportunity of being heard in respect of those charges is sine-quo-non

- After an inquiry, penalty may be imposed on the basis of the evidence adduced
- it shall not be necessary to give such person any opportunity of making representation on the penalty proposed

This clause not applicable:-

(a) Govt, Servant convicted on criminal charges

(b) If it is Not reasonably practicable to hold such inquiry; but, reason, to be recorded by that authority in writing

(c) If President / Governor, is satisfied that in the interest of the security of state not expedient to hold inquiry

D. P PROCEEDINGS VIS-À-VIS CIVIL COURT PROCEEDINGS

- provisions of CPC 1908 not **expressedly** made applicable through any Act of legislature or rules framed.
- GOI in Deptt. inquiry (enforcement of attendance of witnesses & production of documents) Act, 1972 -- Sec.5 of CPC applicable in only in matters of **attendance of witness & production of documents.**
- Bengal, Tripura etc also have such Act.
- **No such law in Assam**
- some provisions of evidence act- like exam. of witness, cross exam., leading question, fact in issue , relevancy of fact etc. are relevant.

D. P PROCEEDINGS VIS-À-VIS CRIMINAL PROCEEDINGS

- ***Not like criminal enquiry*** {SC Chakravorty V. WB.SC 1971} where charges to be proved without an iota of doubt.
- ***But, not to exonerate mechanically***
- In {R.K.Solanki Vs. Central Bank of India} -- “two proceedings Criminal and departmental. They are entirely different”.
- Operate in different field and objectives.
- **The exoneration from criminal case can not conclude the departmental enquiry**

Essential elements of Art.311

Justice delivery process :

(A) quasi-judicial .

(B) Natural Justice:

1. *Nemo debet Essc Judex in Propria Causa.* (*No one should Judge his Own case*)

2. *Audi Alterem Partem.* (Hear the Other-Side**)**

(C) Speaking Order. (Reasoned Decision**)**

judicial, Quasi-judicial & administrative

- **A dispute between two or more parties**
- **Each party present the case**
- **Question of fact**
- **Proving the fact through evidence**
- **Question of relevant Law**
- **Application of Law of Land**

Natural justice

- ❖ implies equality fairness & reasonableness,
- ❖ Justice: in other words Fairness - - *Plato, Aristotle.*
- ❖ Rule of Law- Aristotle
- ❖ can be traced from the following *maxims* of different countries where Rule of law is the rule.
 - a) *No man should be condemned unheard.* (**Common Law Principle**)
 - b) *Justice should not only be done, but manifestly be seen to be done.* (Lord Hewart)
 - c) *Judges, like Caesar's wife should be above suspicion.* (Bowen, J.)
 - d) **RAJDHARMA**

Principles of Natural Justice:

- *Nemo debet Essc Judex in Propria Causa.* (*No one should Judge his Own case*)
- *Audi Alterem Partem.* (**Hear the Other-Side**)
- **Speaking Order.** (**Reasoned Decision**)

principle of natural justice

“Nemo in Propria Causa Judex, Esse Debet” -no one should judge his own case.

- This principle is also known as **Rule Against Bias.**
- Bias is mainly of three types:
 - a) Pecuniary Bias (*Manak Lal v. Dr. Prem Chand*)
 - b) Personal Bias (*A. K. Kripak v. Union of India*)
 - c) Official/ Subject-matter Bias (*G. Nageshwara Rao v. A.P.S.R.T.C.*)

Audi Alteram Partem:

- ❖ This principle is known as Rule of Fair Hearing.
- ❖ Also means-- '**hear the other side**' "**hear all**"
- ❖ this principle includes two elements:
 - a) **Notice**: show cause notice must be given to affected party against the proposed action and seeking explanation.
 - b) **Give reasonable time to reply**
 - c) **Hearing**: After notice of the charges, the person concerned must be given an opportunity of being heard before any adverse action taken against him/her.)

The underlying object of this principle is to compel the authorities to 'act judicially'.

Principles of Natural Justice

- a) No man should be condemned unheard. (**Common Law Principle**)
- b) Justice should not only be done, but manifestly and undoubtedly be seen to be done.)
- c) Judges, like Caesar's wife should be above suspicion.
- d) Application in Indian Constitution

speaking order – meaning

- The expression `speaking order' was first coined by Lord Chancellor Earl Cairns in a strange context.
- explaining the ambit of **Writ of Certiorari**, referred to **orders with errors on the face of the record** and pointed out that **an order with no error on its face, is a speaking order**.
- such erroneous orders are like the “inscrutable face of a Sphinx”.
- **Present context- an order with reasons.**

Necessity of assigning reasons in speaking order

Exercising judicial power -- reasons in support of the order must be disclosed on two grounds.

- 1) Firstly, person aggrieved gets an opportunity to divulge erroneous reasons
- 2) secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power

- The second principle is based on the *jurisprudential doctrine* “*justice should not only be done, it should also appear to be done as well.*”
- *Smt. Maneka Gandhi vs. Union of India* the *Hon’ble Chief Justice* held when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that *justice is not only done but manifestly appear to be done as well.*
- This principle would obviously demand disclosure of reasons for the decision.

The apex court held:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that *justice must not only be done, it must also appear to be done as well.*

- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable component of a decision making process as **observing principles of natural justice** by judicial, quasi-judicial and even by administrative bodies.

