

No.141/51-Ests.  
Government of India  
Ministry of Home Affairs.

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From  
Shri S.B. Bapat, I.C.S.,  
Joint Secretary to the Government of India.

To  
The Chief Secretary to the Government of Assam;

New Delhi-2, the 11th August 1952.

Subject:- Question whether any provisions in the Government Servants' Conduct Rules violate fundamental rights guaranteed under the Constitution.

Sir,

I am directed to refer to Shri Pandit's D.O. Letter No. A.A.P. 7/50/59, dated the 23rd June 1951, on the above subject, and to say that the Government of India have been advised in the matter as follows:-

"It is necessary to emphasize that the relationship between the Government and a civil servant rests on contractual basis. In some cases the contract is evidenced by a formal document, but even where there is no formal document executed, there is nonetheless a contract implied by the conduct of the parties (See Gould vs. Stewart 1896 A.C. 576 where such relationship is referred to as a contract of service). The provisions of the Constitution, and the various Rules (and residuary power of the Government to alter those rules) together comprise the terms and conditions of that contract of service, and define the rights, duties and obligations of the Government on the one hand and the civil servant on the other. A person who voluntarily enters Government service, therefore accepts these rules and conditions voluntarily in his own interest. The Government Servants' Conduct Rules, moreover, have reference exclusively to the duration of this contract. Any breach of these rules is punishable at worst by his removal from service. The restrictions imposed by the rules are not in truth and substance imposed upon him externally, but he accepts and abides by them voluntarily in his own interest. The operation of these rules therefore cannot be said to be an invasion of any of the fundamental rights. If the Civil servant does not exercise these fundamental rights to the fullest, he does so merely because he considers it in his interest not to do so. But it is open to him at any time to exercise his fundamental rights by resigning from the civil service. He has no fundamental right to insist that he should be retained in Government service and that he should have the benefit of all the rights and privileges of the contract of service, if on his own part, he does not abide by his own obligations and duties arising from that very contract.

"2. In the contrary view, every contract of service would necessarily involve the invasion of the Fundamental Rights of the civil servants and other employees in many ways. For instance, the contract of service of a civil servant (as indeed of any other employee) requires him to devote his time and energy to the discharge of his official functions, and so preclude him from engaging himself in any other trade or profession; it likewise requires his presence at his place of duty for specified periods and so precludes him from going to other places during those periods; and by analogy of the arguments advanced by the Governments of Assam and Orissa every such contract of service would involve invasion of the fundamental rights of the employee under sub-clause (g) and (d) of clause (1) of article 19. The view suggested by these

Governments would lead to the conclusion that article 19 would have effect to invalidate every contract of employment under a Government, or a public authority, etc. A view leading to such absurd results cannot be sustained."

2. The Government of India are further advised that this position is not affected by the presence, in Part III, of article 33 which expressly authorises Parliament by law to restrict or abrogate any of the fundamental rights in the case of members of the armed forces, etc. The inclusion of that article was necessary because maintenance of discipline among members of these services necessarily and frequently required action in contravention of certain provisions of Part III of the Constitution - for instance, attention otherwise than in accordance with article 21, and the liability to be tried and punished by Court Martial as well as by ordinary courts.

3. The Government of India are accordingly of the opinion that the provisions in the Conduct Rules which place any restrictions on the freedom of speech and expression of Government servants and on their right to form associations, are not inconsistent with the provisions of the Constitution. It may also be stated in this connection that even in the U.S.A. civil servants are prohibited from taking part in politics and it has never been suggested that this prohibition involves any encroachment on any fundamental right.

4. The delay in sending a reply is regretted.

*S. B. Bapat*  
(S.B. Bapat)

Joint Secretary to the Government of India

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New Delhi-2, the 11th August 1952.

Copy forwarded to all States, except Assam and Jammu and Kashmir, for information.

(This disposes of letter No.756A, dated the 23rd January 1952 from the Government of Orissa). ( ) For Orissa only.

(S.P. Mahna)

Assistant Secretary to the Government of India.