

43 Union Public Service Commission

The Union Public Service Commission (UPSC) is the central recruiting agency in India. It is an independent constitutional body in the sense that it has been directly created by the Constitution. Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC.

COMPOSITION

The UPSC consists of a chairman and other members appointed by the president of India. The Constitution, without specifying the strength of the Commission has left the matter to the discretion of the president, who determines its composition. Usually, the Commission consists of nine to eleven members including the chairman. Further, no qualifications are prescribed for the Commission's membership except that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the Government of India or under the government of a state. The Constitution also authorises the president to determine the conditions of service of the chairman and other members of the Commission.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. However, they can relinquish their offices at any time by addressing their resignation to the president. They can also be removed before the expiry of their term by the president in the manner as provided in the Constitution.

The President can appoint one of the members of the UPSC as an acting chairman in the following two circumstances¹ :

- (a) When the office of the chairman falls vacant; or
- (b) When the chairman is unable to perform his functions due to absence or some other reason.

The acting chairman functions till a person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

REMOVAL

The President can remove the chairman or any other member of UPSC from the office under the following circumstances:

- (a) If he is adjudged an insolvent (that is, has gone bankrupt);
- (b) If he engages, during his term of office, in any paid employment outside the duties of his office; or
- (c) If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.

In addition to these, the president can also remove the chairman or any other member of UPSC for misbehaviour. However, in this case, the president has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member. Under the provisions of the Constitution, the advice tendered by the Supreme Court in this regard is binding on the president. During the course of enquiry by the Supreme Court, the president can suspend the chairman or the member of UPSC.

Defining the term 'misbehaviour' in this context, the Constitution states that the chairman or any other member of the UPSC is deemed to be guilty of misbehaviour if he (a) is concerned or interested in any contract or agreement made by the Government of India or the government of a state, or (b) participates in any way in the profit of such contract or agreement or in any benefit therefrom otherwise than as a member and in common with other members of an incorporated company.

INDEPENDENCE

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the UPSC:

- (a) The chairman or a member of the UPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy security of tenure.
- (b) The conditions of service of the chairman or a member, though determined by the president, cannot be varied to his disadvantage after his appointment.
- (c) The entire expenses including the salaries, allowances and pensions of the chairman and members of the UPSC are charged on the Consolidated Fund of India. Thus, they are not subject to vote of Parliament.
- (d) The chairman of UPSC (on ceasing to hold office) is not eligible for further employment in the Government of India or a state².
- (e) A member of UPSC (on ceasing to hold office) is eligible for appointment as the chairman of UPSC or a State Public Service Commission (SPSC), but not for any other employment in the Government of India or a state³.
- (f) The chairman or a member of UPSC is (after having completed his first term) not eligible for reappointment to that office (i.e., not eligible for second term).

FUNCTIONS

The UPSC performs the following functions:

- (a) It conducts examinations for appointments to the all-India services, Central services and public services of the centrally administered territories.
- (b) It assists the states (if requested by two or more states to do so) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- (c) It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.
- (d) It is consulted on the following matters related to personnel management:
 - (i) All matters relating to methods of recruitment to civil service and for civil posts.
 - (ii) The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
 - (iii) The suitability of candidates for appointments to civil service and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotions and request the UPSC to ratify them.
 - (iv) All disciplinary matters affecting a person serving under the Government of India in a civil capacity including memorials and petitions relating to such matters. These include:
 - Censure (Severe disapproval)
 - Withholding of increments
 - Withholding of promotions
 - Recovery of pecuniary loss
 - Reduction to lower service or rank (Demotion)
 - Compulsory retirement
 - Removal from service
 - Dismissal from service⁴
 - (v) Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.

- (vi) Any claim for the award of a pension in respect of injury sustained by a person while serving under the Government of India and any question as to the amount of any such award.
- (vii) Matters of temporary appointments for period exceeding one year and on regularisation of appointments.
- (viii) Matters related to grant of extension of service and re-employment of certain retired civil servants.
- (ix) Any other matter related to personnel management.

The Supreme Court has held that if the government fails to consult UPSC in the matters (mentioned above), the aggrieved public servant has no remedy in a court. In other words, the court held that any irregularity in consultation with the UPSC or acting without consultation does not invalidate the decision of the government. Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the UPSC does not confer any right to the post upon the candidate. However, the government is to act fairly and without arbitrariness or mala fides.

The additional functions relating to the services of the Union can be conferred on UPSC by the Parliament. It can also place the personnel system of any authority, corporate body or public institution within the jurisdiction of the UPSC. Hence the jurisdiction of UPSC can be extended by an act made by the Parliament.

The UPSC presents, annually, to the president a report on its performance. The President places this report before both the Houses of Parliament, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance. All such cases of non-acceptance must be approved by the Appointments Committee of the Union cabinet. An individual ministry or department has no power to reject the advice of the UPSC.

LIMITATIONS

The following matters are kept outside the functional jurisdiction of the UPSC. In other words, the UPSC is not consulted on the following matters:

- (a) While making reservations of appointments or posts in favour of any backward class of citizens.
- (b) While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.
- (c) With regard to the selections for chairmanship or membership of commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
- (d) With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.

The president can exclude posts, services and matters from the purview of the UPSC. The Constitution states that the president, in respect to the all-India services and Central services and posts may make regulations specifying the matters in which, it shall not be necessary for UPSC to be consulted. But all such regulations made by the president shall be laid before each House of Parliament for at least 14 days. The Parliament can amend or repeal them.

ROLE

The Constitution visualises the UPSC to be the 'watch-dog of merit system' in India. It is concerned with the recruitment to the all-India services and Central services—group A and group B and advises the government, when consulted, on promotion and disciplinary matters. It is not concerned with the classification of services, pay and service conditions, cadre management, training, and so on. These matters are handled by the Department of Personnel and Training—one of the three departments of the Ministry of Personnel, Public Grievances and Pensions⁵. Therefore, UPSC is only a central recruiting agency while the Department of Personnel and Training is the central personnel agency in India.

The role of UPSC is not only limited, but also recommendations made by it are only of advisory nature and hence, not binding on the government. It is upto the Union government to accept or reject that advise. The only safeguard is the answerability of the government to the Parliament for departing from the recommendation of the Commission. Further, the government can also make rules which regulate the scope of the advisory functions of UPSC⁶.

The emergence of Central Vigilance Commission (CVC) in 1964 affected the role of UPSC in disciplinary matters. This is because both are consulted by the government while taking disciplinary action against a civil servant. The problem arises when the two bodies tender conflicting advise. However, the UPSC, being an independent constitutional body, has an edge over the CVC, which is created by an executive resolution of the Government of India and conferred a statutory status in October 2003.