

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.343/2002

New Delhi, this the 17th day of April, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri M.P. Singh, Member (A)

J.P. Singh
S/o Late Shri Krishanlal
R/o 226/B-35, Indirapuram (Sabundogam)
MeerutApplicant

(Shri H.C. Sharma, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi

2. Director, Health Services
Government of India
Nirman Bhawan, New Delhi

3. Director General, Health Services
Government of India
Nirman Bhawan, New Delhi

4. Additional Director, CGHS
Government of India
102, Soti Gang, Begum Bridge
Meerut Respondents

(Shri M.M. Sudan, Senior Advocate)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J) :

The applicant has impugned the order passed by the respondents dated 31.1.2002 dismissing him from service with effect from the very same date without issuing any show-cause notice. According to him, the order has been passed with mala fide intention to deprive him from receiving provisional pension during the pendency of the appeal in a criminal case before the Hon'ble High Court of Uttranchal at Nainital. Admittedly, the applicant states that he had been served the aforesaid impugned order dated 31.1.2002 in

the evening of the same day when he had already retired from service on superannuation and was under suspension from 1996. The applicant was placed under suspension w.e.f.4.6.1996 because of the disciplinary case filed against him under Section 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. The respondents have stated that the applicant was trapped by the CBI Dehradun for taking bribe in the office and, hence, he was placed under suspension. The criminal proceedings were initiated against him before the Special CBI Court, Dehradun and the Hon'ble Court found him guilty and convicted him under the provision of the Prevention of Corruption Act, 1988 vide order dated 17.10.2001. Against the aforesaid judgement of the Hon'ble Special CBI Court, the applicant has filed the appeal (Criminal Appeal No.1831/2001) in the Hon'ble High Court of Uttarakhand at Nainital. He has been granted bail and notices have been issued to the opposite party by the Hon'ble High Court of Uttarakhand at Nainital vide order dated 13.12.2001.

3. The applicant had filed another application before the Tribunal (OA No.61/2002) which was dismissed vide Tribunal's order dated 8.1.2002 as devoid of merit at the admission stage.

4. We have heard Shri H.C. Sharma, learned counsel for applicant and Shri M.M. Sudan, learned

senior counsel for respondents and perused the relevant documents on record.

5. Shri H.C. Sharma learned counsel has drawn our attention to the office Memo dated 31.12.2001 issued by the Joint Director, C.G.H.S., Meerut, directing the applicant to send his papers for pension purposes. He has, therefore, contended that even though the Hon'ble Special Court had convicted the applicant under the provisions of the Prevention of Corruption Act, however, the respondents have themselves taken steps to process his case as he was to retire from service on superannuation w.e.f.31.1.2002. He has contended that the impugned order, therefore, has been passed on 31.1.2002 (FN) with mala fide intention, and that too mentioning "Rule" instead of "Article" under 311 (2) (a) of the Constitution of India, dismissing him from service. Learned counsel has vehemently submitted that until and unless the applicant's services were to be continued beyond 31.1.2002, there is no question of dismissing him from service on that date. In any case, he was not to return to service on 1.2.2002. He has, therefore, submitted that the impugned order dated 31.1.2002 should be declared as illegal and without jurisdiction as the same has been passed on the last day, evening of the applicant's retirement from service on superannuation, without following the statutory Rules, and OA may be allowed with costs. He has relied on the judgements of the Tribunal (Madras

A7

Bench) in the case of P. Shanmugam, IAS Vs. UOI (SLJ 2001 (1) CAT page 397) and Principal Bench in the case of Shri K.C. Brahmachary Vs. The Chief Secretary & Ors. (1998 (1) (CAT) 383).

6. The above averments have been controverted by Shri M.M. Sudan, learned senior counsel for respondents. He has submitted that the orders make it clear that it has been passed in pursuance of the provisions of Article 311 (2) (a) of the Constitution of India and the same being referred to as "Rule" instead of "Article" cannot assist the applicant.

7. With regard to the other contentions of the learned counsel for applicant, Shri M.M. Sudan, learned senior counsel has submitted that the applicant himself has stated clearly in paragraph 5(c) of the OA that he has been served the dismissal order in the evening of 31.1.2002 at his residence without issuing a show-cause notice. He has, therefore, contended that there is no infirmity in the order as it has been served upon him while he continued in service for some more time. Further, he has submitted that, that time howsoever long or short, is also covered as he was in Govt. service. He has relied on the judgement of the Hon'ble Supreme Court in the case of Union of India Vs. Tulsiram Patel (AIR 1985 SC 1416). He has also submitted that the reliance placed by the applicant on P. Shanmugam's case (supra) is misplaced as the facts are not applicable to the present case.

✓

He has also denied the fact that the respondents have issued the impugned order either arbitrarily or with mala fide intention. He has contended that there is no merit in the OA and the same may be dismissed with costs.

8. We have carefully considered the pleadings and submissions made by learned counsel for the parties.

9. It is evident from the facts, as mentioned by the applicant himself, that he has received the dismissal order issued by the respondents on 31.1.2002 at his residence on the same day evening when he had to retire from service. In the facts and circumstances of the case, we are unable to agree with the contentions of Shri H.C. Sharma, learned counsel that there is any infirmity or illegality in the order passed by the respondents and served on him.

10. It is settled law that a mere wrong mention of the provisions of law where the power validly exists with the competent authority cannot vitiate the exercise of that power by the authority. In the present case, it is clearly mentioned in the impugned order dated 31.1.2002 that the provision "311 (2) (a)" is that of the Constitution of India which would, therefore, mean that it is 'Article' and not 'Rule' 311 (2) (a) of the Constitution of India. In this view of the matter, the objection taken by the learned counsel for the applicant with regard to wrong

VS

mentioning of the provisions of Constitution as a Rule is without any basis and is accordingly rejected.

11. The judgements relied upon by the applicant in P. Shanmugam's case (supra) and K.C. Brahmachary's case (supra) will not assist him in the facts of the present case, having regard to the judgement of the Hon'ble Supreme Court in Tulsiram Patel's case (supra) relied upon by the respondents. In this case, the Hon'ble Supreme Court has held as follows:-

"The conclusion which flows from the express language of the second proviso to Art.311(2) is inevitable and there is no escape from it. It may appear harsh but the second proviso has been inserted in the Constitution as a matter of public policy and in public interest and for public good. It is in public interest and for public good that a government servant who has been convicted of a grave and serious offence or one rendering him unfit to continue in office should be summarily dismissed or to continue in it at public expense and to public detriment. Sympathy and commiseration cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a Constitutional prohibition."

(emphasis added)

12. In the present case, the applicant does not deny the fact that he has been convicted by the Hon'ble Special CBI Court by order dated 17.10.2001 on charges under the provisions of the Prevention of Corruption Act, 1988. In the circumstances of the case, we agree with the contentions of Shri M.M. Sudan, learned senior counsel for respondents that the

12

applicant who was a Govt. servant has been convicted for a grave and serious offence which are sufficient to render him unfit to continue in Govt. service. In the circumstances, the exercise of power by the respondents under the provisions of Article 311 (2) (a) of the Constitution of India cannot be faulted. The contention of Shri H.C. Sharma, learned counsel that the applicant was not in service on 31.1.2002 as he had already retired from service on superannuation on that date is baseless. On 31.1.2002, he continued to be in Govt. service when the aforesaid order of dismissal was served at his residence as admitted by the applicant himself and he retired w.e.f. 1.2.2002.

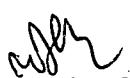
13. In the facts and circumstances of the case, looking at it from any angle, we are unable to come to conclusion that the respondents have acted in an arbitrary or illegal manner justifying any interference in the matter. We respectfully follow the judgement of the Hon'ble Supreme Court in its observations in Tulsiram Patel's case (supra) that "sympathy and commiseration cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a Constitutional prohibition".

14. The reliance placed by the learned counsel for the applicant on the Office Memo dated 31.12.2001 issued prior to the order of the dismissal issued against him cannot also assist the applicant. At that time, the order of

13

dismissal has not been issued and in the normal course of office procedure, the concerned officers have to process the matter as ^{if P} the applicant would be retiring from service on 31.1.2002.

15. In the result, for the reasons given above, we find no merit in the present case or any justification to interfere in the matter. OA is accordingly dismissed. No order as to costs.


(M.P. Singh)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

/ravi/