

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/207/2018

Date of Reserve:28.11.2019

Date of Order: 16.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Shri Rupraj Nandy, aged about 45 years, S/o. Shri Sukomal Kumar Nandy, formerly serving as Assistant Director, Aviation Research Centre (ARC), At:Charbatia, PS;Choudwar, District-Cuttack, Odisha – presently residing At:MIG-54, Housing Board Colony, Charbatia, PS-Choudwar, District-Cuttack.

...Applicant

By the Advocate(s)-Mr.S.B.Panda

-VERSUS-

Union of India represented through:

1. The Director General of Security, Aviation Research Centre, At: Directorate General of Security, Cabinet Secretariat, Government of India, Block-V (East), R.K.Puram, New Delhi.
2. The Special Secretary, ARC, Directorate General of Security, Cabinet Secretariat, Government of India, Block-V (East), R.K.Puram, New Delhi.
3. The Deputy Director (Pers.), ARC, Directorate General of Security, Cabinet Secretariat, Government of India, Block-V (East), R.K.Puram, New Delhi.
4. Aviation Research Centre (ARC), Government of India, At_Charnbatia – represented by its Joint Director (Administration), P.S-Choudwar, District-Cuttack, Orissa.

...Respondents

By the Advocate(s)-Mr.A.K.Mohapatra

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, while working as Assistant Director, Aviation Research Centre (in short A.R.C.), Charbatia, had been on Casual Leave from 16th to 18th December, 2016 and as such, he was to report for duty on 19.12.2016. On 16.12.2016, an FIR was lodged against him in Baguiati Police Station in the District of 24 Pragana (N) Kolkata City by Sri Aninda Sundar Bhattacharya,

ACP, BDNPC, Air Port Zone-II for applicant's involvement of offences under Sections-370/370B(2)/120-B/34/IPC read with Sections 3/4/5B/5C/7/9 of Immoral Traffic (Prevention) Act, 1956, which formed the subject matter of Baguiati PS Case No.1491/2016. Consequently, the applicant was arrested and remanded to judicial custody till 23.12.2016, when he was enlarged on bail. According to applicant, he thereafter, reported for duty on 02.01.2017 by submitting the required documents. However, vide order dated 03.02.2017, he was placed under deemed suspension from the date of his arrest, i.e., 16.12.2016 on the ground that his detention in judicial custody was beyond 48 hours. This suspension was extended from time to time. On 31.10.2017, the applicant was issued with a Memorandum vide A/6 whereby he was called upon to explain his conduct on the FIR No.1491/16 dated 16.12.2016. In response to this, the applicant submitted his reply on 14.11.2017 (A/7 series) stating that he is not guilty of the charges levelled against him. However, vide Memorandum dated 23.11.2017 (A/8), the applicant was asked to submit the following documents.

- i) English translated version of all documents enclosed which are in Bengali language.
- ii) Complete documents of the case available with him.
- iii) In the reply submitted, a number of documents enclosed are not legible clear copy of all documents be provided.
- iv) All documents being attached as enclosures by signed by Shri Rupraj Nandy.

2. In response to this, the applicant vide his letter dated 24.11.2017 indicated as follows:

- i) English version of the copy of the charge sheet is not available and hence he is unable to submit the same.

- ii) He has already enclosed all the documents in the form as were received by him from the Court.
- iii) To specify the portions of the documents which are not legible. However, also informed that he will be attending the court hearing on 28.11.2017 and shall obtain fresh clear copy of the charge-sheet.

3. In the meantime, vide order dated 11.12.2017, the applicant's headquarters was changed from ARC, Charbatia to ARC HQ, New Delhi in public interest. While the matter stood thus, vide order dated 15.12.2017 (A/11), applicant's suspension period was extended for a further period of 90 days beyond 17.12.2017. Thereafter, vide order dated 15.02.2018 (A/12), the order of the President was communicated to the applicant, the relevant part of which is extracted hereunder:

"WHEREAS the President is satisfied under clause (c) of second proviso to Article 311(2) of the Constitution of India read with Rule-19(iii) of the CCS(CCA) Rules, 1965 that in the interest of security of the state, it is not expedient to hold an inquiry in the case of Shri Rupraj Nandy, Assistant Director, ARC.

AND WHEREAS the President is satisfied that on the basis of the information available, the activities of Shri Rupraj Nandy, Assistant Director, ARC, are such as to warrant his dismissal from service.

Accordingly, the President hereby dismisses Shri Rupraj Nandy, Assistant Director, ARC, from service with immediate effect.

The President further orders that the said Shri Rupraj Nandy, Assistant Director, ARC, will not be paid any pensionary benefits or compassionate allowance consequent upon to his dismissal from service".

4. Aggrieved with this, the applicant has approached this Tribunal in the present O.A. seeking for the following reliefs:

- i) Rule Nisi may be issued calling upon the Respondents to show cause as to why the reliefs sought for herein shall not be granted in favour of the Applicant and upon showing their no cause and/or insufficient cause, the said rule may be made absolute.
- ii) The impugned order vide Annexure-A/12 may be quashed.
- iii) The applicant may be reinstated in his service with effect from the date of his dismissal i.e., from dated 15.02.2018 and may be paid with all his service benefits including full back wages;
- iv) Any other consequential relief(s) as would be deemed just and proper maybe granted in the fitness of the facts and circumstances of the case.

5. The grounds on which the applicant has based his claim are that the impugned order vide A/12 is beyond the scope of Wednesbury Principles of Reasonableness, apart from the same being de hors the provisions of CCS(CCA) Rules, 1965. The exercise of extraordinary powers in the instant case is a camouflaged one in order to do away with the service of the applicant without any law or logic. According to applicant, there is no incriminating document available on records to invoke extraordinary powers by the President nor is there any such contingency to take resort to the provisions of Rule-19(iii) of CCS(CCA) Rules, 1965. In other words, the plea advanced by the applicant is that in order to arrive at a just decision, it was incumbent upon the Respondents to conduct a regular process of inquiry thereby giving an opportunity to the applicant to effectively defend himself to prove his innocence. According to applicant, as per the cardinal principles of Criminal Jurisprudence and Universal Declaration of Human Rights, an accused is presumed to be innocent till his guilt is established under a Public Trial by providing adequate means and opportunities of defending himself. In the instant case, since before the applicant could be held guilty in the criminal

trial has been imposed punishment of dismissal from service vide order at A/12, it amounts to overreaching the decision to be taken in the criminal trial, which is not permissible under the law. In sum and substance, it is the case of the applicant that he should not have been imposed punishment of dismissal from service based on the order of deemed suspension following to his detention in judicial custody for more than 48 hours pursuant to an FIR lodged against him, before holding him guilty through a regular process of inquiry as envisaged under the CCS(CCA) Rules, 1965.

6. Opposing the reliefs sought by the applicant, the respondents have filed a detailed counter. According to respondents, the applicant was the senior-most officer handling personnel issues relating to ARC personnel base in Charbatia. His direct involvement in a criminal activity concerning illegal trafficking of women and their sexual exploitation as part of an organized criminal racket is clearly unbecoming on the part of a Government servant and potential of affecting national security. Respondents have pointed out that the Preamble of Intelligence Organization (Restriction of Rights) Act, 1985, states that the Act is to "provide for the restriction of certain rights conferred by Part-III of the Constitution in their application to the members of certain rights conferred by Part-III of the Constitution in their application to the members of certain organizations established by the Central Government for purposes of intelligence or counter-intelligence so as to ensure the proper discharge of their duties and the maintenance of discipline among them". In Paragraph-20 of the counter-reply, the respondents have averred as follows:

"Article-33 of the Constitution of India was amended in 1984 read as follows:

“Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-

- (a) the members of Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter-intelligence; or
- (d) persons employed in, or in connection with, the telecommunication system set up for the purposes of any force, bureau or organisation referred to in clauses (a) to (c);

be restricted or abrogated so as to ensure the proper discharge of their duties and maintenance of discipline among them”.

7. Respondents have pointed out that from the details of the FIR lodged against the applicant and the secret information received/obtained in the Department, it is clear that he was part of criminal conspiracy and involved in a criminal racket relating to immoral trafficking of women and prostitution. Further, it has been submitted that at the time of incident, the applicant was holding the rank of Assistant Director (Pers.), a Class-I post in the Government of India. Being in the Personnel Department of ARC, he is fully aware that Aviation Research Centre (ARC) is an Intelligence Organisation of Government of India as well as the Intelligence Organization (Restriction of Rights) Act, 1985. Respondents have submitted that the case was thoroughly examined in the Department and as per procedure contained in OM No.34012/1/(S)/79-Estt.(B) dated 26.07.1980, a proposal was forwarded to DOP&T for placing the matter before the Advisory Committee for taking action against the applicant under Clause (c) of Provision 311(2) of the Constitution. The recommendation of the Advisory Committee was placed before the Competent Authority and with the approval of the competent authority, the applicant vide order dated 15.02.2018 was dismissed from service without any

pensionary benefits or Compassionate Allowance consequent to such dismissal from service. Therefore, the respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

8. Applicant has filed a rejoinder to the counter, which is more or less the same contentions as raised in the O.A. However, in Para-6 of the rejoinder, he has stated as follows:

"6. That in reply to the contentions raised under Paras-17 and 18 of the counter, it is humbly submitted that the initial suspension order dated 03.02.2017 till 15.02.2017 vide Annexure-A/11 had got a clear indication and intent to institute a regular departmental proceeding basing upon the materials available under the Police papers, as the alleged criminal offences absolutely do not have any traits and/or ingredients so as to attribute the offence of endangering National Security. However, despite having no material and/or valid grounds to dispense with such disciplinary proceedings, the impugned order vide Annexure-A/12 in removing the applicant from his service by dispensing with holding of departmental proceeding, is grossly misconceived, arbitrary, illegal and wholly without jurisdiction of the Respondents. It is trite law that the satisfaction so as to dispense with the Departmental Proceeding in order to impose harsh and drastic punishment like Removal from Service has to precede by Subjective Satisfaction and not merely an Objective Satisfaction of the President of India and therefore, in the instant case, the removal order vide Annexure-A/12 is unsustainable in the eye of law having failed to satisfy the mandatory requirements of law as laid down by the Hon'ble Supreme Court of India time and again".

9. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission along with the relied upon citations submitted by the respective parties. From the pleadings of the parties, the short point to be decided herein is whether the Respondents were justified in dispensing with the inquiry by invoking clause (c) of second proviso to Article 311(2) of the Constitution of India read with

Rule-19(iii) of the CCS(CCA) Rules, 1965 and consequently, imposing punishment of dismissal from service on the applicant.

10. At the outset, we would like to deal with the provisions of Office Memorandum dated 26.07.1980, which is the main stay of authority of the respondents while forwarding the case of the applicant to DOP&T to be placed before the Competent Authority for appropriate action against the applicant under Clause (c) of Provision 311(2) of the Constitution. The relevant part of the Office Memorandum reads as follows:

"...As a result of this review, it has been decided that the instructions contained in the Office Memorandum dated the 30th June, 1972 in so far as they related to the procedure for taking action against Government servants engaged in, or associated with, subversive activities should be revised as indicated in the subsequent paragraphs.

2. Cases of Government servants engaged in subversive activities can be classified as follows:
 - (A) Cases where there is strong reason leading to the conclusion that a Government servant is engaged in activities like espionage, sabotage such as removal of fish plates from a railway track, destroying lines of communication in a strategic area or participation in or associated with extremist activities of a subversive nature, endangering the security of the State.
 - (B) Cases where Government servants have been engaged in other objectionable activities of any of the following types and which may affect/endanger the security of the State such as -
 - (a) Membership of, or association with, anybody or organisation declared unlawful after it was so declared;
 - (b) participation in or association with any activity or programme –
 - (i) aimed at the subversion of the Constitution or

- (ii) aimed at the organised breach or defiance of the law involving violence; or
 - (iii) prejudicial to the interest of the sovereignty and integrity of India; or
 - (iv) which promotes on grounds of religion, race, language, caste or community, feelings of enmity or hatred between different sections of the people;
- (C) association with organisations engaged in subversive activities in secret organizations which while professing to work in a democratic way, in fact engage in activities to overthrow the present political system, or organisations which have foreign inspiration and liaison for similar objectives.
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5. All cases referable to the Committee of Advisers under the procedure laid down in Annexure-I to this Office Memorandum should be so referred to the appropriate authorities in a self-contained Note, together with copies of all relevant documents.

This referral note should, inter alia, contain date/information on the following issues, in unambiguous terms:

- (a) What are the specific facts or incidents or events that the Department concerned feels would justify action under proviso to Article 311(2) of the Constitution and not under the normal disciplinary rules ?
- (b) What exactly is the basis and reliability of the evidence that would establish those facts.
- (c) In what manner would these facts, incidents or events show that the indicated official could be brought within the meaning of the activities specified or defined in para 2 above.

In essence, the brief should contain material as would convince a reasonable person of the guilt in terms of para 2 above which could, but for the confidentiality of the matter, be established in normal proceedings.

..... "

11. In the written notes of submission, the applicant has pointed out that there were no materials before the authorities to proceed against him under

Rule-19(iii) read with Clause(c) of the second proviso to Article-311(2) of the Constitution of India. The extension of the duration of suspension was made only with a view to conduct a regular disciplinary proceedings. According to applicant had it been a case under Rule-10(1)(aa) of CCS(CCA) Rules, 1965, the applicant ought to have been dismissed from service by the President without calling for any explanation. The applicant has contended that the impugned order at A/12 does not make it clear whether he has been removed from service under Rule-11(viii) or Rule-11(ix) of the CCS CCA) Rules and therefore, it is not free from ambiguity. According to applicant, a Government servant cannot be dismissed from service under Rule-19(iii) which is merely an enabling provision enabling the President to dispense with departmental enquiry and procedures contained under Rule-14 in certain cases. Therefore, the impugned order being conspicuously silent about Rule-11 of the CCA Rules, the impugned order becomes vulnerable and hence, cannot sustain in the eye of law. The applicant has taken a plea that he having been asked to explain his conduct vide A/6 and A/8 and that he having explained so vide A/7 series and A/9 series, in all fairness and rationality, it was obligatory on the part of the Respondents to answer the explanations offered by the applicant and this could have been possible had there been a regular departmental inquiry.

12. To fortify his stand, the applicant has relied on the decision of Hon'ble Supreme Court reported in AIR 1997 SC 79 (Para-8), which states as follows:

"...Where a Government servant is dismissed, removed or reduced in rank by applying clause (h) or an analogous provision of the service rules and he approaches either the High Court under Article-226 or this Court under Article 32, the Court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in

the service rules was properly applied or not...In examining the relevancy of the reasons, the Court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry...In considering the relevancy of the reasons given by the disciplinary authority, the Court will not, however, sit in judgment over them like a Court of first appeal.

13. Further, the applicant has cited the decision of Hon'ble Supreme Court reported in (1998) 5 SC 216, Para-4,8, and 9.

"8.If an order passed under Article 311(2) proviso (c) is assailed before a court of law on the ground that the satisfaction of the President or the Governor is not based on circumstances which have a bearing on the security of the State, the court can examine the circumstances on which the satisfaction of the President or the Governor is based; and if it finds that the said circumstances have no bearing whatsoever on the security of the State, the court can hold that the satisfaction of the President or the Governor which is required for passing such an order has been vitiated by wholly extraneous or irrelevant considerations".

14. It is the contention of the applicant in the both the cited cases states, there were materials available before the President of India collected by expert investigating agencies like the Police and the Intelligence Bureau whereas in the present case, there are no such materials collected by any such expert agencies. Therefore, the order of the President vide A/12j is vitiated in law as the same has been passed based on extraneous and irrelevant considerations.

15. On the other hand, the respondents in their written notes of submission have pointed out that being a senior officer of ARC, Charbatia, his direct involvement in a criminal activity involving illegal trafficking of women and their sexual exploitation as part of an organised criminal racket is not only unbecoming of a Government servant but also of moral turpitude higher detrimental to the functioning of the Organization. The criminal activity of the

applicant has consequently exposed an intelligence organisation to a criminal gang and has potential of affecting National Security by his exploitation by an inimical intelligence agency. Subsequently, adverse impact will be faced by the organization when the criminal trial commences in the court in Kolkata. According to respondents, after taking into account the entire facts and circumstances and the secret and sensitive materials made available after investigating the whole issue, a proposal was forwarded to DoP&T, as per procedure contained in OM No.34012/1(5)/79-Estt.(B) dated 26.07.1980 for placing the same before the Advisory Committee for taking action against the applicant under second proviso clause (c) of Proviso 311(2) of the Constitution. The recommendation of the Advisory Committee was placed before the competent authority in terms of OM No.34102/1(S)/75-Estt.(B) dated 27.08.1975 and based on the approval of the competent authority, the applicant was dismissed from service vide order dated 15.02.2018, without pensionary benefits or compassionate allowance subsequent to his dismissal from service. In this connection, the respondents have relied on the decision of the Hon'ble Apex Court in Union of India & ors. vs. Tulasiram Patel & Ors. (AIR 1985 SC 1416), A.K.Kaul & Anr. Vs. UOI & ors. (AIR 1995 SC 1403) and Union of India & ors. vs. M.M.Sharma (Civil Appeal No.2797 of 2011 disposed of on 30.03.2011). Further, the respondents, have quoted the relevant part of observation of the Hon'ble Supreme Court in Tulasiram Patel (supra) as follows:

“...The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is “in the interest of the security of the State”. The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause(s) is not the satisfaction of the President or the Governor, as the case may, that the interest of the security

of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated in Article-311(2)".

16. We have considered the rival submissions in threadbare. Admittedly, the applicant was a senior officer handling personnel issues relating to ARC personnel base in Charbatia. His direct involvement in a criminal activity like, illegal trafficking of women and their sexual exploitation as part of an organized criminal racket is undoubtedly an unbecoming on the part of a Government servant. The applicant is also well aware of the Preamble of Intelligence Organization (Restriction of Rights) Act, 1985, providing restriction of certain rights conferred by Part-III of the Constitution the members of certain organizations established by the Central Government for purposes of intelligence or counter-intelligence so as to ensure the proper discharge of their duties and the maintenance of discipline. It is an admitted fact that on 16.12.2016, an FIR was lodged against the applicant by the A.C.P., BDNPC, Air Port Zone-II for applicant's involvement of offences under Sections-370/370B(2)/120-B/34/IPC read with Sections 3/4/5B/5C/7/9 of Immoral Traffic (Prevention) Act, 1956 and this being the subject matter of Baguiati PS Case No.1491/2016, the applicant was arrested and remanded to judicial custody and subsequently released on bail on 23.12.2016. From the above, it is clear enough that the applicant being a responsible officer of an organization which has a formidable role concerning security perception of the country. The potentiality of the above act on the part of the applicant being prejudicial to the interest of the sovereignty and integrity of the country cannot be dispelled because the applicant is a responsible officer of an intelligence organization and there is every likely hood of the security being vulnerable in case the applicant is allowed to continue in the Organization. In

such an eventuality, there was every reason for the respondents to do away with the departmental enquiry under the relevant rules of CCS(CCA) Rules, 1965 and to this extent, they have not acted de hors the rules and thus, the point in issue is answered. Last but not the least, we have gone through the report of the Committee shown by the respondents during hearing of this O.A. and upon perusal of the same, we found the reasons recorded for dispensing with the regular inquiry under CCS(CCA) Rules are wholesome.

17. In the conspectus of facts enumerated above, we do not find any flaw with the action of the Respondents which necessitates intervention of this Tribunal. In the result, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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