CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No. 4315/2018 With
M.A No. 4894/2018

This the 19th day of December, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Vinod Ashwini Saxena,
Aged about 50 years,
S/o. Mr. V. P. Saxena,
R/o. H. No. 2-B, Block-225,
Panchkuian Road, Railway Officers Colony,
Basant Lane, Connaught Place,
New Delhi – 110 001. ...Applicant

(By Advocate : Ms. Anamika Sharma for Mr. Biswajit Das)

Versus

1. Union of India
   Through Cabinet Secretary,
   Appointment Committee of the Cabinet (ACC),
   Cabinet Secretariat,
   Rashtrapati Bhawan, New Delhi – 110 004.

2. Research and Analysis Wing (R&Aw)
   Through Secretary,
   Cabinet Secretariat, Room No. 1001, B-1 Wing,
   10th Floor, Pt. Deen Dayal Antodaya Bhawan,
   CGO Complex, Lodhi Road, New Delhi-110 003.

3. Department of Personnel & Training (DoPT),
   Through its Secretary,
   North Block, Central Secretariat,
   New Delhi – 110 001. ...Respondents

(By Advocate : Mr. S. N. Verma)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman :

The applicant was initially in the Engineering Service (CPWD) in the year 1993 and joined the Indian Civil

Accounts Service in 1994. He was absorbed in the Cabinet Secretariat in the year 1998, as a Deputy Secretary. He was also promoted to the level of Director. Through an order dated 26.10.2018, the President dismissed him from service by way of clause (c) under second proviso, read with Rule 19 (iii) of the CCS (CCA) Rules, 1965. It was observed that it is not expedient to hold an inquiry in the case, and that the President is satisfied that on the basis of the information available, the activities of the applicant are such that they warrant his dismissal from the service. The same is challenged in this O.A.

2. The applicant contends that, ever since he joined the service, he received several appreciations for his exemplary and dedicated service and mentioned them in the O.A. and filed copies of the relevant certificates. He submits that, the then Prime Minister of India has also appreciated his services in the year 2013, by issuing a letter to that effect. The applicant contends that once his services were recognised to be so meritorious, there is absolutely no basis for dismissing him in such a manner. The applicant further contends that the very invocation of the power under the provisions, referred to above, was gross misuse of powers, amounting to arbitrary exercise thereof and that impugned order cannot be sustained in law. Various other grounds are also urged.

3. The respondents filed counter affidavit opposing the O.A. It is stated that the competent authority has observed the various acts and omissions on the part of the applicant, for the past several years and on noticing that the applicant has resorted to several acts which are detrimental to the interest and security of the State, the President has invoked the power under Article 311 (2) (c) read with Rule 19 (iii). It is stated that the conducting of inquiry was not at all in the interest of the nation in the instant case and that before a decision to dismiss the applicant was arrived at, a thorough scrutiny was undertaken at every level in the department.

4. We heard Ms. Anamika Sharma for Mr. Biswajit Das, learned counsel for applicant and Mr. S. N. Verma, learned counsel for respondents.

5. Before discussing the matter on merits, it is essential to mention some developments, that have taken place in this case. The applicant initially approached the Hon'ble Delhi High Court by filing a Writ Petition, challenging the very order of dismissal. Even while that Writ was pending, the present O.A was filled. The O.A had to be adjourned on some occasions requiring the applicant to choose the forum. It is only when the Writ Petition was

returned by the Hon'ble High Court of Delhi that the O.A was entertained.

6. The applicant filed M.A No. 5234/2018 with a prayer to direct the respondents to file a counter affidavit. Ultimately, the counter affidavit was filed by the respondents. When the matter was listed for hearing on 12.03.2019, the learned counsel went on arguing the matter for a considerable length, though he was informed that the matters of this nature are decided by perusing records, which the respondents shall be under obligation to produce. Having regard to the pressure of the work, we adjourned the O.A to a subsequent date. At that stage, the applicant filed W.P. (C) No. 4728/2019 with a following prayer :-

> "a. pass an order for early listing and final disposal of O.A No.100/4315/2018 and O.A No. 100/113/2019 preferably on earliest possible date as per convenience of the Ld. Tribunal on the basis of the existing pleadings and the records of the same.
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> b. Pass an Order that proceeding be conducted in-camera or under audio-video recorded environment in interest of justice by taking cognizance of M.A No. 1311/2019 in O.A No. 4315/2018,
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> c. Declare that the process of Envelop proceedings is alien to the concept and doctrine of the principles of natural justice by taking cognizance of M.A No. 5234/2018 in O.A No. 4315/2018,"

7. The Hon'ble High Court disposed of the Writ Petition with the following observations :-

> "In these circumstances, we are not inclined to pass any of the orders sought by the petitioner. As it is still not known

> to how the Tribunal would proceed in the matter after perusing the record produced by the respondents. It would be premature for this Court to make any observations in that regard.
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> In view of the above, the petition is dismissed."

8. Thereafter, the O.A was listed on 21.05.2019 and the respondents produced the records in a sealed cover and we perused the same. On that date also the arguments of learned counsel for applicant was almost unending. Therefore, it was directed to be listed on 20.08.2019 as part-heard. The applicant filed Writ Petition No. 12321/2019, feeling aggrieved by the order of adjournment passed by us adjourning the O.A. The Writ Petition was disposed of on 22.11.2019 observing that Special Bench shall be constituted by the Tribunal for hearing the matter on 13.12.2019. The Special Bench accordingly was constituted yesterday. We heard learned counsel for applicant at length and have also passed orders on 3 M.As. Today, he submitted a note through his junior colleague, virtually casting aspersion on the Tribunal and imposing his own conditions for hearing of the O.A. Learned counsel wanted the Tribunal to take the following steps :-

> "12. I request you that sealed cover, if brought to Ld. CAT on 19.12.2019 pursuant to yesterday's oral instruction, should be put to a safe custody of Ld. CAT through proper endorsement of all the parties for their future judicial scrutiny.
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> 13. In view of above, O.As ought not be decided at this stage and thus no purpose will be served to decide the same until

core issue as stated hereinabove is decided by appropriate forum."

9. The O.A was listed on 14 occasions earlier and has become the subject matter of the Writ Petition before the Hon'ble High Court. It is imperative for us to decide the O.A in view of the directions issued by the Hon'ble High Court. Learned counsel has not only argued the matter on merits but also has drawn our attention to various decided cases.

10. Whenever an order of dismissal is challenged before this Tribunal, the usual course is to go through the pleadings, the entire record, hearing the arguments of the parties and to decide the matter on merits. The record would generally comprise of the charge memo, the report of the inquiry officer, the appendix of evidence and thereafter the order of punishment. The scope of judicial review in such cases is limited, in the sense, that the scrutiny would be of the decision making process, than the decision itself. However, instances are not lacking, where the Tribunal or Courts analyse the evidence, and if there is any possibility to take a view, different from the one arrived at by the inquiry officer, or, where the punishment is found to be highly disproportionate, suitable relief is granted to the employee. In certain cases, if it is felt that further scrutiny is needed, the matters are remanded to the Disciplinary

Authority or the Inquiry Officer. There exist a class of cases, in which the scope of judicial review is further restricted.

11. The framers of the Constitution incorporated the part XIV under the heading 'Service under the Union and the States' in which, Article 309 to 311 figure. Even while protecting the interests of the public servants by insisting that no person who is a Member of the Civil Services whether of State or the Union, shall be dismissed or removed by an authority subordinate to the one by which he was appointed and without conducting inquiry, a proviso, which empowers the President or the Government or the State to impose a punishment, without conducting the inquiry is made part of Article 311. It reads as under :-

> "311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
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> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges ;
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> Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:
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> Provided further that this clause shall not apply—](a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some

reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

12. The corresponding provision is incorporated in the CCS (CCA) Rules, in the form of Rule 19 (iii) which reads as under :-

"**19. Special procedure in certain cases**

Notwithstanding anything contained in rule 14 to rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

13. Once the power under the second proviso to Article 311 (2) referred to above, is invoked, the scrutiny by the Court or Tribunal would be limited, to see whether there is justification, for the exercise thereof. It is fairly well settled that, mere existence of power is not justification in itself, for exercise thereof. More stringent, the consequences that

flow from the exercise of power, higher, would be the level of scrutiny. Since the factor like the security of the Sate are involved, the scope of judicial review would not be the same as the one, undertaken in ordinary cases. In matters, of this nature, the Tribunal has to go through the confidential material, that has lead to the imposition of punishment, and decide the case. It is not supposed to break the confidentiality, in the name of scrutiny.

14. It is no doubt true, that the recording of reasons is one of the hallmarks of the rule of law. If reasons are furnished, anyone who happens to peruse the order, would be in a position to understand the circumstances that lead to the particular conclusion. The cases falling under second proviso to Article 311 (2) are of a different category. By their very nature, they do not permit of analysis or a scrutiny, similar to the one in ordinary case of dismissal. If the same level of scrutiny is to be undertaken, the very purpose of incorporating such provision would be deviated or would render it redundant.

15. Cases of this nature did fall for consideration by the Hon'ble Supreme Court and High Courts. In **A. K. Kaul and Another Vs. Union of India and Another** (1995) 4 SCC 73, relied upon by the learned counsel for applicant, the Hon'ble Supreme Court discussed in detail the scope of

judicial review, in such cases and took into account, several leading precedents on the subject. That case has also arisen out of dismissal of an employee by invoking the second proviso to Article 311 (2). On perusal of the record, the Tribunal was satisfied that the dismissal was justified. Challenge to the order passed by the Tribunal in the High Court was not successful. The matter was taken to Supreme Court, and their Lordships held as under :-

> "36. The Tribunal, after examining the records produced before it, has observed that the records contain cabinet minutes, papers brought into existence for the purpose of preparing submission to the cabinet, notes made by the respective officers, information expressed and the gist of official decisions. Having regard to the fact that the appellants were working in a highly sensitive Organisation entrusted with the delicate job of gathering, collecting and analysing intelligence necessary to maintain the unity, integrity and sovereignty of the country and that secrecy is the essence of the organisation and exposure may tend to demolish the organisation and aggravate the hazards in gathering information and dry up the sources that provide essential and sensitive information needed to protect public interest, the Tribunal has held that it will not be in public interest to permit disclosure of such documents. The Tribunal has, therefore, upheld the claim of privilege. We do not find any ground to take a different view in the matter.
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> 37. After looking into the records the Tribunal has recorded the finding that the materials considered by the President relate to the activities of the appellants which would prejudicially affect the security of 22 the State and that the materials relied upon for the satisfaction of the President have nothing to do with the activities of the appellants in relation to IBEA and that the impugned orders have not been passed in violation of the interim order passed by this Court in W.P. (C) Nos.1117 to 1119 of 1980 and that there is no substance in the appellants' case that the orders of dismissal are not bona fide and had been passed to victimise the appellants for promoting and participating in the activities of IBEA. The learned Additional Solicitor General has submitted that the Tribunal has not committed any error in adopting this course and has placed reliance on the decision of this Court in Jamaat-e-Islamdi Hind v. Union of India, 1995 (1) SCC 428.

38. In Jamaat-e-Islamdi Hind (supra) a notification had been issued by the Government of India under Section 3 of the Unlawful Activities (Prevention) Act, 1967 declaring that the Jamaat-e-Islami Hind was an unlawful Association. The said notification was referred for adjudication to the Tribunal constituted under the said Act. Before the Tribunal the only material produced by the Central Government was a resume prepared on the basis of some intelligence reports and the affidavits of two officers who spoke only on the basis of the records and not from personal knowledge. The Tribunal held that there was sufficient cause for declaring the Association to be unlawful and confirmed the notification. On behalf of the appellant it was urged that the only material produced at the inquiry does not constitute legal evidence for the purpose in as much as it was, at best, hear say and that too without disclosing the source from which it emanates to give an opportunity to the appellant to effectively rebut the same. On the other hand, on behalf of the respondent it was submitted that the requirement of natural justice in such a situation was satisfied by mere disclosure of information without disclosing the source of the information. This Court, while holding that the minimum requirement of natural justice must be satisfied to make the adjudication meaningful, observed that the said requirement of natural justice in a case of this kind had to be tailored to safeguard public interest which must always out-weigh every lesser interest. It was said:

> "It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. ..... However, the nondisclosure of sensitive information and evidence to the association and its office bearers, whenever justified in pubic interest, does not necessarily imply its non-disclosure to the Tribunal as well."

39. These observations in Jamaat-e-Islami Hind (supra) lend support to the view that in a case where the material is of such a nature that it requires continued confidentiality in public interest it would be permissible for the court or tribunal to look into the same while permitting the nondisclosure to the other party to the adjudication. It cannot, therefore, be said that the Tribunal, in the present case, was in error in looking into the record for the purpose of determining whether the satisfaction has been vitiated for any of the reasons mentioned by the appellants."

16. Recently, this Tribunal decided O.A No. 4365/2018 on 03.01.2019, **Dushyant Kumar Bahri, Ex-Senior**

Interpreter, Cabinet Secretariat, Govt. of India, Vs. **Union of India & Ors.** The discussion on the merits of the matter is contained in paras 6 and 7 which read as under :-

> 6. Initially the appointment of the applicant was as Interpreter in the Cabinet Secretariat. He was trained to discharge certain sensitive duties, and thereafter he was transferred to the Ministry of External Affairs. He was posted in the High Commission of India in Pakistan, by assigning him certain duties. What led to the issuance of the impugned order is indeed startling, and we find it not proper to mention the same in detail. However, an indication as to what may have prompted the respondents to pass the impugned order, is given by the applicant himself in para 4.6 of the OA. That, however, is only a part of the episode, that too, from his point of view. The facts contained in the file are really disturbing, and the record reveals that the security of the State was at stake on account of the acts and omissions of the applicant.
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> 7. We are of the view that this is one of the fittest cases for invoking the exceptional provision, namely, clause (c) of the second proviso to Article 311 (2) of the Constitution, read with rule 19 (iii) of the CCS (CCA) Rules, 1965. For reasons of national security, we do not intend to make any further observations. In our eagerness to see whether any injustice has been caused to the applicant, we perused the record meticulously from various angles, but did not find anything that warrants interference by the Tribunal.

17. The O.A was dismissed. W.P. (C) No. 2896/2019 filed before the Hon'ble High Court was dismissed on 26.03.2019 and SLP No. 13521/2019 was rejected on 22.08.2019 by the Hon'ble Supreme Court.

18. Coming to the facts of this case, we have carefully gone through the records pertaining to the applicant, which are placed before us in a sealed cover. We were indeed shocked and surprised to note as to what amount of damage the applicant was causing to the security of the State. It was not a solitary instance. Several instances,

each of which is capable of causing extreme damage to the security of the State, were cited. Added to that, the conclusions were not on the basis of imagination or guess work. They were arrived at in a highly professional objective and meticulous manner. If at all anything, the record would disclose as to how the acts and omissions of the applicant, who was holding a highly sensitive position, have made the security of the State, vulnerable. We refrain ourselves from making any observation beyond that, lest any further damage is caused.

19. We are satisfied that, there was every justification for the President, to invoke the second proviso to Article 311 (2) in the case of the applicant. The order of dismissal passed against the applicant does not suffer from any legal infirmity. The O.A is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/Mbt/