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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1968/1995

New Delhi this the 14th day of October, 1999.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI S.P.BISWAS, MEMBER(A)

Shri R.K.Yadav,
r/o 84, Jawalaheri,
New Delhi-110063.Applicant

(By Advocate Sri B.B.Raval)

vs.

1. Union of India,
Through the Cabinet Secretary,
Government of India,
Rashtrapati Bhavan,
New Delhi.

2. Secretary(RAW),
Government of India,
F Block, CGO Complex,
Lodi Road,
New Delhi.

..Respondents

(By Advocate Mr.Madhav Panicker)

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

In this application filed under Section 19 of the Administrative Tribunals Act,1985, the applicant Sri R.K.Yadav has challenged the order dated 2.10.1989(Annexure -XXI) by which the President dismissed the applicant from service with immediate effect invoking powers under sub-clause (c) of the proviso to clause(2) of Art. 311 of the Constitution of India. The applicant filed writ petition No.12/90 under Art.32 of the Constitution before the Hon'ble Supreme Court challenging the order of dismissal. However the writ petition was dismissed as withdrawn vide order dated 8.5.1995(Annexure XXII) as the learned counsel of the

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applicant submitted before the Court that the applicant would approach the Tribunal and the petition might be dismissed as withdrawn. It was thereafter that the applicant has filed this application.

2. Shorn of details which are not essential for the purpose of adjudication of this application, the essence of the allegation of the applicant in challenging the impugned order can be stated as follows. The applicant joined the Cabinet Secretariat as an Assistant on 12.10.1973. He was the only person in a batch of 30 to be transferred immediately on joining to Jodhpur. In 1975 he was again transferred to Jaipur. In 1976 he was transferred to Delhi. In 1978 the applicant applied for leave for a period of 40 days for appearing M.A. (Final) examination in Jodhpur from first week of May till first week of June 1978. But leave was granted only for 21 days. Similarly he was not given sufficient leave in the year 1978 for preparation to appear in the Rajasthan Administrative Services examination. Right from the day he commenced his service in the Cabinet Secretariat in October 1973 he was being put to some inconvenience or the other. In the year 1980 the employees of the Research and Analysis Wing (RAW for short) being dissatisfied by the behaviour of senior officers formed an association of which the applicant was initially selected as the Joint Secretary. On 27.11.1980 an incident took place which led to a lathicharge and 31 employees including the applicant were placed under arrest. To mark their protest, the employees association started agitations and there was a pen down strike. As a retaliatory measure the respondents suspended some of the employees and dismissed some of them

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invoking the powers conferred by proviso(b) to Article 311(2) of the Constitution. The applicant alongwith some other employees who were placed under suspension filed civil writ petition No.1786 of 1980 seeking to have the orders of dismissal set aside. However the writ petition was finally dismissed on 25.8.81. Adverse entries in the ACR of the applicant were made which were ultimately expunged. The applicant was charge-sheeted vide memorandum of charges dated 28.7.1984 alleging that the applicant had wrote a letter to the Editor of Indian Express which appeared in the Indian Express on 28.4.1984. However the disciplinary authority held that the charge was vitiated. Yet another charge-sheet dated 7.5.1985 on the same allegations was issued to the applicant. The applicant challenged the chargesheet as also the provisions of the Central Civil Services (Conduct) Rules filing C.W.P.No.2370 of 1985 in the Delhi High Court. The High Court admitted the application and directed that final order in the disciplinary proceedings would not be passed until further orders. The respondents restrained the enquiry officer from proceeding further with the enquiry. In the mean while in the year 1985 a Bill was introduced in the Parliament. The employees of the Intelligence Organisation known as Intelligence Bureau and Research and Analysis Wing were prohibited from forming an Association. Coming to know the same the applicant who was General Secretary of the Association sent a letter to Secretary, RAW on 23.8.1985 stating that the Association had ceased to exist. That the applicant was reinstated on 2.3.87 but by order dated 5.3.87 he was transferred to Amritsar, on 25.3.1987 the applicant wrote to the second respondent that he would be

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filling an application against his transfer order and requested that he might not be relieved till the matter is decided, that Sri R.Balakrishnan, the Additional Secretary called the applicant to his room and threatened with dire consequences if he did not proceed to Amritsar on transfer. On 12.5.87 the applicant wrote to the Cabinet Secretary that he feared his liquidation at Amritsar and that the applicant felt that the respondents 1 and 2 had made up their mind to dismiss the applicant. The applicant challenged the order of his transfer to Amritsar by filing O.A. 1313/1987 before the Central Administrative Tribunal, Principal Bench. However the application was dismissed on 16.12.1987. In his special leave petition the Hon'ble Supreme Court directed the applicant to report at Amritsar on or before 5.5.1988 and ultimately the special leave petition was dismissed. The applicant was served with a charge-sheet dated 26.2.1988 stating that he had remained unauthorisedly absent with effect from 17.12.1987 onwards. The second respondent dropped the charge-sheet but issued a show-cause notice to the applicant for his alleged unauthorised absence from 17.12.87. The second respondent issued the order dated 6.6.1988 being satisfied that he was not unauthorisedly absent, the applicant was sanctioned extra-ordinary leave from 17.12.1987 to 5.5.1988. However superseding the earlier order, the applicant was informed by the respondents that his absence from 7.12.1987 to 5.5.1988 would be regularised after the finalisation of the departmental enquiry pending against him. Thereafter an order was issued by the second respondent on 17.8.1988 appointing an enquiry officer to hold the enquiry against the applicant. The applicant made a representation against this to the appellate authority who rejected his representation vide order dated 23.1.1989. Aggrieved by that the applicant filed O.A. 684/1989 in the

Principal Bench of the Central Administrative Tribunal. The applicant received a letter dated 12.10.1989 directing him to appear in the RAW headquarters on 16.10.1989 in connection with some enquiry pertaining to charge-sheet dated 12.9.1989. When he appeared before the enquiry officer on 16.10.1989 and stated that he had not been served with any charge-sheet, his statement was recorded. The applicant later discovered that a charge-sheet dated 12.9.89 had been issued by the Joint Secretary(Personnel), New Delhi for the alleged unauthorised absence. It was during the pendency of this enquiry that the applicant came to know from his colleagues that the impugned order dated 21.10.89 had been issued dismissing the applicant from service invoking proviso (c) to Article 311(2) of the Constitution. The applicant filed a writ petition No.12/90 challenging the order, but the same was withdrawn with liberty to challenge the impugned order before the Tribunal. Since the Supreme Court has in A.K.Kaul and others vs. Union of India, 1995(2) Scale 755 held that the opinion of the President while exercising powers under Article 311(2) (c) is amenable to judicial review, the applicant has filed this application. It is also alleged in the application that Shri R.Balakrishnan and Sri A.K.Verma were on inimical terms with him. It is on account of the malafides which they nurtured against him that the applicant was dismissed from service. It is also alleged that if writing letters to the editors or giving information to the press was the basis on which the applicant was dismissed from service, the respondents should have held an enquiry giving the applicant reasonable opportunity to defend himself, respecting the mandate of Article 311(2) of the Constitution and that the impugned order which is arbitrary and irrational, made out of malafides, is liable to be set aside.

3. The respondents in their reply statement have raised the plea of limitation as the impugned order was issued on 21.10.1989 the application seeking to challenge the order filed in the year 1995 is totally barred by limitation. On merits the respondents contend that on receipt of a confirmed report that the applicant alongwith others were engaged in activities prejudicial to the national security, the matter was taken up with the Committee of Advisers as prescribed under the Rules and after considering the entire facts and circumstances and the advice of the Committee of Advisers, the President being satisfied that it was not expedient to hold an enquiry in the case of the applicant in the interest of security of the State and that the activities of the applicant are such as to warrant his dismissal from service issued the impugned order bonafide. The respondents contend that the satisfaction of the President in the matter being reached on consideration of the relevant facts, judicial intervention is not justified. They contend that in case of Sri P.T.Thomas, another employee of the Association also dismissed under identical circumstances, the Tribunal in its order in O.A. 2378/89 refused to interfere with the order of dismissal. Though the Tribunal had in that order directed payment of compassionate allowance to the applicant, the Hon'ble Supreme Court in civil appeal No.4445/90 reversed that direction also, contend the respondents. The respondents further contend that the application is devoid of any merit and the same is liable to be dismissed.

4. Shri B.B.Raval, the learned counsel of the applicant argued that the plea of limitation is devoid of merit as the applicant had immediately after notice of the impugned order filed writ petition No.12/90 before the Hon'ble Supreme Court which was dismissed as withdrawn on 8.5.95 with liberty to

approach the Tribunal. A copy of the order of the Hon'ble Supreme Court in writ petition No.12/90 has been produced and marked as Annexure A XXII. It reads as follows:-

"Learned counsel submits that the petitioner shall approach the Tribunal and that this petition may be dismissed as withdrawn. We record his statement and dismiss the petition as withdrawn."

We do not find that the Hon'ble Supreme Court had granted any liberty to the applicant to file an original application challenging the impugned order without reference to the question of limitation. The O.A. was admitted leaving the question of limitation open to contest. The impugned order is dated 21.10.89. The applicant had filed a miscellaneous application seeking condonation of delay. When the O.A. came up for hearing on 18.10.95, M.A. for condonation of delay was not pressed. The same was closed. Since while dismissing the writ petition No.12/90 as withdrawn no liberty was specially granted to the applicant to file the O.A. challenging the impugned order the application filed after a lapse of one year from the date of the impugned order is barred by limitation in terms of the provisions contained in Section 21 of the Administrative Tribunals Act.

5. However we have considered the application on merits also as the matter has been pending before the Tribunal since 1995. Shri Raval argued that if the basis of the impugned order was any activity on the part of the applicant which is against national interest even then the respondents should have given the applicant an opportunity to prove his

innocence. The action taken without disclosing the reason thereof is opposed to the rule of law and is arbitrary, argued the learned counsel. The Hon'ble Supreme Court has in its celebrated ruling in Union of India and Another vs. Tulsiram Patel, 1985(2) SLR 145 after an elaborate consideration of the case law on the point held that the satisfaction reached by the President under clause (c) of Article 311(2) is a subjective satisfaction and could not be called in question in judicial review except on the basis of allegations of malafides. The Apex Court observed:

"the power of judicial review is not excluded where the satisfaction of the President or the Governor has been reached malafide or is based on wholly extraneous or irrelevant grounds because in such a case, in law there would be no satisfaction of the President or the Governor at all. It is necessary to decide this question because in the matters under clause (c) before us, all the materials, including the advice tendered by the Council of Ministers, have been produced and they clearly show that in those cases the satisfaction of the Governor was neither reached mala fide nor was it based on any extraneous or irrelevant ground." It is evident from the reply statement filed by the respondents that it was on receipt of confirmed information that the applicant was engaged in certain activities prejudicial to the national security that on the advice of the Committee of Advisers and on consideration of all relevant material that the President being satisfied that the applicant was required to be dismissed from service and that it was not expedient in the interest of security of the nation to hold an enquiry that the impugned order invoking the powers under proviso (c) to Article 311(2) of the Constitution was issued. As has been held by the Apex Court in Tulsiram Patel's case the decision of the President can be called in question only on the ground of allegations of malafides. Though the applicant has alleged in the application

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that Shri R.Balakrishnan had threatened him and advised him to resign and that Sri A.K.Verma who was the Cabinet Secretary nurtured ill-will towards the applicant, nothing has been brought on record to establish the averment nor has these individuals been impleaded in their personal capacity affording them an opportunity to controvert the allegations of malafides. Learned counsel of the applicant argued that the applicant had filed a private complaint before the Additional District Judge, Delhi against Sri A.K.Verma and that in that case Sri Verma had made a statement to the effect that the dismissal of the applicant was for union activities. Nothing has been brought on record to show either that the applicant had filed a case against Sri A.K.Verma before the Additional District Judge or that Sri Verma had made any statement in that case. The allegations of malafides made in this case are vague and non-specific and in the absence of any evidence of malafides especially when the persons against whom malafides are alleged are not made parties, we are of the considered view that the applicant has failed to establish the allegations of malafides. The applicant has also not been able to establish that any extraneous consideration had weighed with the competent authority in arriving at the dissatisfaction that it was necessary in the national interest to dismiss the applicant without holding any enquiry. There is no change in the position of law by pronouncement of the Supreme Court in A.K.Kaul vs. Union of India. The principle laid down in Tulsi Ram Patel's case have only been reiterated. Even according to the dictum in A.K.Kaul's case the decision of the President under Article 311(2)(c) can be challenged only on allegation of malafides or it was taken for extraneous reasons on consideration of extraneous matter. No such situation is

available . It is pertinent to mention that though Sri P.T.Thomas who was dismissed from service invoking the provisions of Article 311(2)(c) of the Constitution under identical circumstances and on the same day on which the applicant was dismissed from service challenged his dismissal, the Tribunal vide its order in O.A.No.2378/89 refused to interfere with the decision. Though the Tribunal had directed the respondents to give the applicant therein compassionate allowance, the Apex Court in its order in civil appeal No.4445/90 reversed the direction as one made with jurisdiction.

6. In the light of what is stated above, we do not find any merit in this application. The application is therefore dismissed, leaving the parties to bear their own costs.



S.P. BISWAS
MEMBER(A)



A.V. HARIDASAN
VICE CHAIRMAN

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