

Central Administrative Tribunal  
Principal Bench, New Delhi

Regn. No. OA-2082/88

Date: 9-12-88

Shri Madan Lal

.... Applicant

Versus

Union of India

.... Respondents

For the Applicant

.... Shri Asrar Ahmed, Counsel

For the Respondents

.... Shri P.P. Khurana, Counsel.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)  
Hon'ble Shri D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

(Judgement of the Bench delivered by Hon'ble  
Shri P.K. Kartha, Vice-Chairman)

The applicant, who was working as a Daftry in the Finance Division in the Ministry of Defence, filed this application under section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) To set aside the impugned order of dismissal of the applicant from service, dated 14th July 1988 passed by the authorities by wrongly applying the provision of Article 311(2)(c).
- (ii) To direct the respondents to treat the applicant in service in continuity of his past service without break with full pensionary and other benefits of retirement, as the applicant has been honourably released from his detention and there is no proof or evidence against him for any activity prejudicial to the security of the country, and there was no occasion to pass the impugned order.

2. The impugned order dated 14th July, 1988 which is at Annexure 'A' to the application, reads as follows:-

"ORDER"

WHEREAS the President is satisfied that, in the interest of the security of State, it is not expedient to hold an inquiry in respect of certain activities of Shri Madan Lal, a Daftry of the Finance Division in the Ministry of Defence.

2. AND WHEREAS, the President is further satisfied that on the basis of the information available, the activities of Shri Madan Lal are such as to warrant his dismissal from service.

3. NOW therefore, the President, in exercise of the powers vested in him, under Article 311(2)(c) of the constitution of India, read with Rule 19 (iii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is hereby pleased to dismiss Shri Madan Lal from service with immediate effect. The President further orders that no pensionary benefits and other terminal benefits shall be paid to Shri Madan Lal.

(By order and in the name of the President).

Sd/- V.L. Joshi  
Under Secretary to the Govt. of India"

3. It has been stated in the application that the applicant is due to retire on reaching his superannuation age shortly. By the impugned order he was dismissed without giving him pensionary and other terminal benefits. After about 2 months of his dismissal, he was served with a detention order dated 2.9.1988 issued under Section 3(1) (a) read with Section 2(e) of the National Security Act, 1980 passed by the Administrator of the Union Territory of Delhi and he was detained and kept in custody in the Central Jail, Tihar, New Delhi. A copy of the order of detention has been given in Annexure 'B'. He was, however, released from detention as the Advisory Board

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was of the opinion that there was no sufficient cause for his detention. A copy of the releasing order is at Annexure 'C'.

4. It has been stated in the application that about ten months prior to the dismissal of the applicant, one Shri Sita Ram Rathi, Assistant, Ministry of Finance and S/Shri Laxman Dass Meena and Mohd. Yusuf of the Ministry of Defence were charged for an offence of spying and were prosecuted under Section 43/5/9 of the Official Secrets Act read with Section 120-B I.P.C. They were arrested on 10.9.1987. It has been alleged that they falsely mentioned the name of the applicant in their statements. Thereafter, the Police searched the house of the applicant on 12.9.87 but left him free on 13.9.1987. He continued to be in service till 14.7.1988, when he was dismissed from service.

5. The applicant has challenged the impugned order of dismissal passed at the fag end of his due date of retirement on various grounds. According to him, there is no proof or evidence about his guilt and that the impugned order was passed merely on the basis of suspicion, apprehensions and conjectures. It has been contended that the respondents could, at the most, only order his premature retirement with full pensionary benefits if they felt suspicious about his conduct. It has further been alleged that S/Shri Sita Ram Rathi, Laxman Dass Meena and Mohd. Yusuf were only suspended but not dismissed. The treatment meted out to the applicant was discriminatory.

6. It will be seen from the impugned order of dismissal that it was issued by the President in exercise of the powers vested in him under Article 311(2)(c) of the

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Constitution read with Rule 19(iii) of the C.C.S. (CCA) Rules, 1965. The applicant has faintly suggested that the impugned order was passed out of mala fides but no evidence has been given to prove mala fides on the part of the respondents.

7. <sup>Q</sup> <sup>have</sup> <sup>a</sup> The respondents ~~filed~~ <sup>a</sup> counter-affidavit wherein it has been stated that during the course of the I.B. investigation into the espionage case of Shri Sita Ram Rathi, Assistant in the Finance Ministry, the conduct of the applicant also came to adverse notice, that the applicant had been spying for Pakistan for a considerable period of time for monetary consideration and that it was felt that his services were detrimental to the interest of the security of State within the meaning of Rule 19<sup>(iii)</sup> ~~(ii)~~ of C.C.S. (CCA) Rules, 1965 read with Article 311(2)(c) of the Constitution. In view of this, the impugned order of dismissal was passed. The respondents have further contended that the issues raised in the present application have already been considered by the Supreme Court in the well-known case of Union of India Vs. Tulsi Ram Patel, 1985(3) S.C.C. 398 which was decided by a constitutional Bench of the Supreme Court. As to the charge of discrimination, it has been submitted that adjudication on this ground would involve inquiry into the allegations against the applicant and the other three persons involved in the espionage case and unless that is done, it would not be possible for the Tribunal to hold whether or not they are similarly placed. Any such attempt would render nugatory the provisions of Article 311(2)(c) of the Constitution.

8. We have carefully gone through the records of the case and have heard the learned counsel for both the

parties at length. In our opinion, there is considerable merit in the contention raised by the respondents that the present application is not maintainable in law in view of the decision of the Supreme Court in Tulsi Ram Patel's case.

9. In Shri Tulsi Ram Patel's case, the Supreme Court has observed in para.142 of its judgement that whenever the President is satisfied that it will not be advantageous or fit, or proper, or suitable, or politic in the interest of the security of the State to hold an enquiry, he would be entitled to dispense with it under clause (c) of the second proviso to Article 311 of the Constitution. The following observations contained in the judgement are pertinent:-

".....The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing of danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public."

(Vide p.510 of the judgement)

10. In the light of the foregoing authoritative pronouncement of the Supreme Court, which squarely applies to the facts and circumstances of the present case, we are of the

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opinion that the present application is not maintainable and the same is rejected at the admission stage. The parties will bear their own costs.

*D. K. Chakravorty*  
(D. K. Chakravorty)  
Administrative Member

*P. K. Kartha*  
(P. K. Kartha)  
Vice-Chairman (Judl.)