

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 445 198 8
T.A. No.

DATE OF DECISION 11.4.88

Shri V.K.Palaniswamy Applicant
Petitionerx

Shri G.D.Bhandari, Advocate for the Petitioner(s)

Versus

Union of India & others Respondents

None Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
 2. To be referred to the Reporter or not ? No
 3. Whether their Lordships wish to see the fair copy of the Judgement ? No
 4. Whether to be circulated to all the Benches? No
- (Kaushal Kumar)
Member
- (K. Madhava Reddy)
Chairman

11.4.88

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI.

REGN. NO. OA 445/88

Date of decision: 11.4.1988.

Shri V.K.Palaniswamy

..... Applicant

Vs.

Union of India & others

..... Respondents.

Coram: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

Applicant through Shri G.D.Bhandari, Counsel.

(Judgement of the Bench delivered by Hon'ble Mr. Justice
K. Madhava Reddy, Chairman)

The applicant herein who was working as a Senior Personal Assistant(Grade 'B' Stenographer) in the Ministry of Shipping and Transport calls in question the order of dismissal dated 13.3.1987 made by the President in exercise of the powers vested in him under sub-clause(c) of the proviso to clause(2) of Article 311 of the Constitution. The applicant was also detained in judicial custody on 15.2.1985 for a period exceeding 48 hours and was, therefore, deemed to be under suspension in terms of sub-rule(2) of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. He is being prosecuted separately under the Official Secrets Act before the competent criminal court. It is submitted on behalf of the applicant that the satisfaction reached by the President to dismiss the applicant from service in exercise of the powers under clause(c) of the proviso to Article 311(2) is based on extraneous considerations. It is argued assuming that the applicant is ~~is~~ guilty of passing on some secret information relating to the commercial transactions of the Government undertakings under the Ministry of Shipping and Transport as reported in the Press and as now alleged against him in the criminal case, it does not affect the security of the State and, therefore, the satisfaction reached by the

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President cannot be deemed to be bona fide. The satisfaction so reached, cannot be a valid basis for passing an order under sub-clause(c) of the proviso to clause(2) of Article 311. We are afraid, having regard to the pronouncement of the Supreme Court in Union of India & another Vs. Tulsiram Patel(1) such a contention cannot be entertained. A dismissal ordered under clause(c) of the second proviso to Article 311(2) is not subject to judicial review. The Supreme Court declared:-

" 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 (c) is not the satisfaction of the President or the Governor, as the case may be, 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 by Article 311(2). The satisfaction of the President or Governor must, therefore, be with respect to the expediency or in expediency of holding an inquiry in the interest of the security of the State..... It must be borne in mind that the satisfaction required by clause(c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head. Whenever, therefore, the President or the Governor in the constitutional sense is satisfied that it will not be advantageous or fit

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or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause(c). 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 danger to the security of the State and like matters..... 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.....

In the case of clause(b) of the second proviso, clause(3) of Article 311 makes the decision of the disciplinary authority that it was not reasonably practicable to hold the inquiry final. There is no such clause in Article 311 with respect to the satisfaction reached by the President or the Governor under clause(c) of the second proviso. There are two reasons for this. There can be no departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor; and so far as the Court's power of judicial review is concerned, the Court cannot sit in judgement over State policy or the wisdom or otherwise of such policy. The Court equally cannot be the judge of expediency or in expediency. Given a known situation, it is not for the Court to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the inquiry. The satisfaction reached by the President or Governor under clause(c) is subjective satisfaction and, therefore, would not be a fit matter for judicial review."

2. Shri Swami Nath Ram, one of the co-accused of the applicant and Shri Coomar Narain in what has come to be known as Coomar Narain Espionage case, had moved this


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Tribunal by way^{of} an application (OA No.469/86) under Section 19 of the Administrative Tribunals Act, 1985. In that case, we took the view that such an order of dismissal is not subject to judicial review and the Tribunal cannot grant any relief. We do not see any reason to differ from that view which follows the dicta laid down by the Supreme Court. This application, therefore, fails and is accordingly dismissed.

A copy of this judgement may be furnished to the applicant(dasti).


(KAUSHAL KUMAR)
MEMBER


(K. MADHAVA REDDY)
CHAIRMAN

11.4.1988