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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 698/88 198

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DATE OF DECISION 23.5.88

Shri J.M. Tewari Petitioner

None Advocate for the Petitioner(s)

Versus

Union of India Respondent

None Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No

(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

(P.K. KARTHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

OA NO.698/88

Date of decision 23.5.88.

Shri J.M. Tewari ..... Petitioner

Vs.

Union of India ..... Respondent(s)

None ..... Advocate for the petitioner

None ..... Advocate for the respondents.

CORAM:

THE HON'BLE Mr. P.K. KARTHA, VICE CHAIRMAN

THE HON'BLE Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

(The judgment of the Bench delivered by Shri S.P. Mukerji, Administrative Member)

The applicant, Shri J.M. Tiwari, who is a dismissed Stenographer of the Ministry of Finance, has come up against the impugned order dated 21.4.1987 dismissing him from service without any inquiry. The impugned order reads as follows:-

" Whereas the President is satisfied under sub-clasue (c) of the proviso to clause (2) of Article 311 of the Constitution that in the interest of the security

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of the State it is not expedient to hold an inquiry in the case of Shri J.M. Tewari, Stenographer Grade 'B' (under suspension), Department of Economic Affairs, Ministry of Finance.

And whereas the President is satisfied that, on the basis of the information available, the activities of Shri J.M. Tewari are such as to warrant his dismissal from service.

Now, therefore, the President hereby dismisses Shri J.M. Tewari from service with effect from the 21st April, 1987 (Afternoon).

By order and in the name of the President".

The material facts of the case are that the applicant was arrested on 17.1.1985 in connection with a criminal case of a conspiracy under Section 120-B of the I.P.C. read with Section 3(1) of the Official Secrets Act pending against Mr. Kumar Narain and 15 others including the applicant. He was released on bail on 16.11.1986 under the order of the High Court of Delhi. He had been placed under suspension with effect from 17.1.1985 and dismissed by the aforesaid impugned order dated 21.4.1987. The main grounds taken by him are that no inquiry was held before his dismissal and that the disciplinary authority has not recorded the reasons in writing regarding his satisfaction that it was not reasonably practicable to hold the inquiry contemplated under Article 311(2) of the Constitution. He has also argued that the Supreme Court in Tulsi Ram Patel's case had observed that the Disciplinary Authority should communicate its reasons for dispensing with the inquiry in order to obviate the possibility of such reasons being fabricated at a later stage. He has also challenged the impugned order by stating that, that it was not expedient to hold an enquiry in the interest of security of the State is not borne out of the facts.

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2. Neither the applicant nor his counsel appeared for admission of the application. However, we have gone through the documents carefully and find that in accordance with the ruling of the Supreme Court in the celebrated case of Union of India Vs. Tulsi Ram Patel : 1985(2) SLR 576 the conclusions in which have been enunciated further by that Court in Satyavir Singh and others Vs. Union of India and other : 1986(2) SLR 255 the application does not merit admission. The following observations in Satyavir's case regarding the decision in Tulsi Ram Patel's case will be very pertinent:-

> " (9) Under Clause (2) Article 311 no civil servant can be dismissed or removed from service 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 such charges. By reason of the amendment made by the Constitution (Forty-second Amendment) Act, 1976 in clause (2) of Article 311 it is now not necessary to give a civil servant an opportunity of making a representation with respect to the penalty proposed to be imposed upon him.
>
> " (12) The safeguard provided to civil servants by clause (2) of Article 311 is taken away when any of the three clauses of the second proviso (originally the only proviso) to Article 311(2) becomes applicable".

Further in regard to clause (c) of the second proviso to clause (2) of Article 311 of the Constitution, the following further observations in the same case will be decisive:-

> " (87) Under clause (c) of the second proviso the satisfaction reached by the President or the Governor, as the case may be, must necessarily be a subjective satisfaction because expediency involves matters of policy.
>
> " (88) Satisfaction of the President or the Governor under clause (c) of the second proviso 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 matter. There are other factors which are also 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 and once known the particular source from which the

information was received would no more be available to the Government. The reason for the satisfaction reached by the President or the Governor under clause (c) of the second proviso cannot, therefore, be required in the order of dismissal, removal or reduction in rank nor can it be made public".

As regards the recording of reasons for dispensing with the inquiry amd communication of the same to the employee the following observations in Satyavir's case seem to have been relied upon by the applicant as ground (f) in the application:-

"(63) The recording of the reason for dispensing with the inquiry is a condition precedent to the application of clause (b) of the second proviso. This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. It is, however, not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated".

A bare reading of the above observations shows that they are applicable to clause (b) of the second proviso to Article 311 of the Constitution and not to Clause (c) under which the impugned order has been passed.

3. In the facts and circumstances, we see no merit in the application and dismiss the same under Section 19(3) of the Administrative Tribunals Act, 1985.

23.5.88

(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

23/5/88

(P.K. KARTHA)
VICE CHAIRMAN