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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 680
T.A. No.

1986.

DATE OF DECISION 8.9.1986.

Shri P.Gopalan, Petitioner
S/Shri D.R.Gupta & Feroz Khan, Advocate for the Petitioner(s)
Versus
Union of India & Others, Respondent


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 ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches ? NO


(Kaushal Kumar)
Member
8.9.1986.


(K.Madhava Reddy)
Chairman.
8.9.1986.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

Regn. No. OA 680/1986.

September 8, 1986.

Shri P. Gopalan

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Applicant.

Versus

Union of India & Others

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Respondents.

CORAM:

Shri Justice K. Madhava Reddy, Chairman.

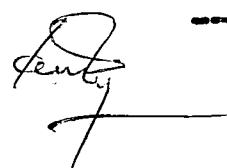
Shri Kaushal Kumar, Member.

For the applicant

Shri D.R. Gupta and Shri
Feroz Khan, Advocates.

(Judgment of the Bench delivered by
Shri Justice K. Madhava Reddy, Chairman).

This is a petition for quashing the order of dismissal made by the President in exercise of the power vested in him under sub-clause (c) to Clause (2) of the second proviso to Art. 311 of the Constitution. The contention of the petitioner is that he was suspended pending investigation into a criminal offence on 23.1.1985. Even while that prosecution under the Official Secrets Act is pending the Applicant has been dismissed from service under the impugned order dated 28.2.1986. It is the case of the applicant that when he is being prosecuted in a criminal Court, it cannot be said that "it is not expedient to hold such an inquiry" into his misconduct before imposing the penalty of dismissal from service. This contention in our view pre-supposes that the allegation of misconduct against him is confined to the allegations made in the criminal case now pending before the Court. Firstly, there is no warrant for such an assumption; secondly, the conclusion that it is not expedient to hold an inquiry is reached by the President in this case under sub-clause (c) to clause (2) of the second proviso to Art. 311. Upon being satisfied that in the interest of the security of the State, such an inquiry should not be held, he has

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ordered dismissal of the applicant from service.

The Supreme Court in Union of India and another versus Tulsiram Patel (1) held:

"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".

When the satisfaction reached by the President that it is not expedient to hold an inquiry, cannot be gone into by any Court or Tribunal, no relief can be granted to the applicant in this application.

Shri D.R. Gupta, learned counsel for the applicant, however, contends that such an inquiry is barred under Art.311(3) only in regard to an order made under sub-clause (b) of the second proviso to clause (2) of Art.311. There is no such a bar in clause (3) of Art.311 to a Court making an inquiry and calling upon the respondents to show why and what material, if any, justified dispensing with the inquiry

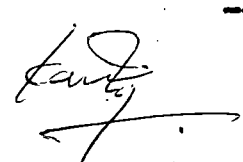
before an order is made under sub-clause (c) of the second proviso to clause (2) of Art.311 of the Constitution.

This contention was specifically considered by the Supreme Court in Union of India and ~~XXX~~ another versus Tulsiram Patel (1) and held:

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 judgment 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".

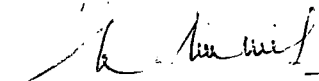
When as declared by the Supreme Court, the satisfaction reached by the President is subjective satisfaction and cannot be judicially reviewed, issuing notices to the respondents calling upon them to state what material other than the one which formed the subject matter of criminal proceedings have weighed with the President to dismiss the applicant would be wholly futile. The Court cannot judicially review the matter and hold that the satisfaction arrived at by the President is not correct. The satisfaction reached by the President is binding and not subject to judicial review. The order of dismissal cannot, therefore, be assailed.


Shri D.R.Gupta, learned counsel for the applicant



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next contended that pending the prosecution the applicant should be allowed to retain the government accommodation while he was in service. Admittedly, the quarters were allotted to him only because he was a public servant. Once he has been dismissed from the service and has ceased to be in service, he is not entitled to retain the quarters. The order of dismissal is not the subject matter of any departmental appeal or any proceeding before this Tribunal or any other court of law. The prosecution is one punishable under the Official Secrets Act. Pendency of such a prosecution does not result in continuance of the relationship of master and servant. Even if he is acquitted in that case, he is not restored to service when ^{he} is dismissed under sub-clause (c) to Clause (2) of the second proviso to Art.311. The order of dismissal was made on 28.2.1986. Now more than six months have elapsed. In the circumstances, no order permitting him to continue in the quarters allotted to him can be made in this petition even on grounds of equity. This petition, therefore, fails and is accordingly dismissed.


(Kaushal Kumar)
Member.
8.9.1986.


(K. Madhava Reddy)
Chairman.
8.9.1986.