IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. / 397 of 1987

Date of Decision: 3.8.87

Shri Tirloki Nath Kher — Applicant

vs.

Union of India — Respondents

Applicant through Shri Ajay Kumar Tandon

Respondents through Shri P.H.Ramchandani

CORAM: The Hon'ble Mr Justice K.Madhava Reddy ... Chairman
The Hon'ble Mr Kaushal Kumar ... Member(AM)

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

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, calling in question an order of dismissal made by the President in exercise of the powers vested in him under Article 311(2)(c) of the Constitution of India. By that order, the applicant was not only dismissed from service but the pensionary benefits on compassionate grounds were also disallowed under the proviso to Rule 41 of the Central Civil Services(Pension) Rules, 1972.

2. Shri Tandon, learned counsel for the applicant, vehemently contended before us that this order of dismissal does not record reasons for dismissal and is not supported by any material. The so-called satisfaction reached by the President without making any enquiry to hold that dismissal was necessary in the interest of security of state is unsustainable and should be judicially reviewed by this Tribunal. He also further contended that in any case before disallowing pension, the applicant should have been given notice. Thus, the order, according to him, violates all principles of natural justice and deserves to be quashed on that short ground.

3. So far as the first ground of attack is concerned, we must straightaway refer to the decision of the Supreme Court in Union of India and another vs. Tulsi Ram Patel, 1985(2) SLR 145 in which the Constitution Bench of the Supreme Court declared

> "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

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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".

4. Shri Tandon however, contends that Tulsi Ram Patel's case does not prohibit investigation into the question whether there is sufficient material to support the order. According to him, while the court cannot go into the question whether the material placed before the President was sufficient to reach the satisfaction he did, the court can certainly go into the question whether there was any material or not.

5. In Tulsi Ram Patel's case so far as dismissals covered by Article 311(2)(c) are concerned, the Supreme Court categorically declared that the satisfaction reached by the President under Clause (c) is a subjective satisfaction and therefore, would not be a fit matter for judicial review except as regards allegation of malafides. The Supreme 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 unnecessary 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 male fide nor was it based on any extraneous or irrelevant ground."

In a somewhat similar case which came up before us, (Shri Gopalan vs Union of India, OA 680/86) following the above dicta we rejected the applicant's claim (vide judgement dated 8.9.86). This being the limited ground on which judicial

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review of an order of dismissal made under clause (c) of proviso to Article 311(2) could be sought we called upon the learned counsel to point out the allegations of malafides made by him in his application. The allegations in this behalf are in paragraph 6(viii) of the application which reads as under:

> "that unfortunately the applicant was arrested on the night intervening 17/18.1.1985 and was falsely implicated in what had come to be known as 'Cooper Narain Espionage Case' and was under suspension since that date, and that while the court proceedings were in progress, he had been served with the said order dated 28.2.1986 dismissing him from service under Article 311(2)(c) of the Constitution of India along with four other colleagues from the Prime Minister's office on the ground that it was not expedient to hold inquiry in the interest of the security of the state, and that with his dismissal from service the applicant had also been made to lose the pensionary benefits, and that he would now not be entitled to subsistence allowance, and that the applicant had an unblemished record of about 23 years of meritorious service to the entire satisfaction of all his officers. It was further stated in the said representation dated March, 1986, inter alia, to the effect that the applicant had not done the slightest wrong thing to the Government or to the nation for which he was being so much penalised and that again and again he was pleading that he was completely innocent and a false case had been fabricated to implicate him, and that he was suffering in the jail for the last 14 months with no fault of his only due to the misdeeds of others and the highhandedness of the investigating agencies.
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> (xii) (b) The impugned orders also visit the applicant with evil, civil and penal consequences and cast aspersion against his character and integrity and are clearly by way of punishment.....

These averments do not disclose any allegation of malafides; none are attributed either to the Council of Ministers or to the President as such who has made this order. What all is stated is that a criminal case in regard to offences punishable under Sections 3,5 and 9 of the Official Secrets Act read with Section 120 of the Indian Penal Code is pending against him and that he has been repeatedly pleading innocence.

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The applicant has in ground (b) of the application averred that the "reasons, if any, for passing the impugned orders would be non-existent or, in any case, extraneous and mala fide. The applicant reserves his right to challenge the said reasons, if any, as and when the same are communicated to the applicant." In the absence of any specific allegation of mala fides, the respondents cannot be called upon to place any material before the court upon which the order of dismissal is based in the hope that the applicant may be able to fish out some ground.

6. The allegation that there is no material whatsoever to support the order of dismissal under Article 311(2)(c) cannot be countenanced in the face of the prosecution that is now pending before the court which, as already stated above is for offences punishable under Sections 3,5 and 9 of the Official Secrets Act. If there is material for prosecution, for offences under Sections 3,5 and 9 of the Official Secrets Act irrespective of whether that prosecution will ultimately end in conviction or not, it cannot be said that there is no material for taking action under Article 311(2)(c). When, as laid down by the Supreme Court, it is not open to any court or tribunal, to go into the sufficiency of the material for reaching the satisfaction which the President did, it would be futile to call upon the respondents to produce that material before this court. As on today, even according to the applicant, he is facing a charge under Sections 3,5 and 9 of the Official Secrets Act. Unless it is open to this Tribunal to go into the sufficiency of the material and according to Tulsi Ram Patel's case, it is not open to the tribunal to go into it, we see no justifiable ground to admit this petition, and call upon the respondents to produce the material in support of the charge

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before the criminal court which obviously forms the basis of that order.

7. Reliance in this behalf was also placed upon the judgement of the Andhra Pradesh High Court in Bhaskara Reddy vs. State of Andhra Pradesh (1981 1 SLR 249) to which one of us (Madhava Reddy) was a party. That judgement was rendered prior to Tulsi Ram Patel's case . If what is held in that case is at variance with the dicta laid down in Tulsi Ram Patel's case, it can no longer be relied upon. In any event, the facts and circumstances of that case do not bear any analogy to the allegations against the applicant in this case and the circumstances in which the President made the impugned order under Article 311(2)(c). Any reliance upon that judgement is therefore of no avail.

8. Lastly, it was contended that Article 311(2)(c) itself is against the basic structure of the Constitution. We are unable to accept this contention. No public servant has a fundamental right to be continued in service irrespective of any consideration. The right of a person to enter into Government service is governed by the Service Rules and the Constitution of India. A citizen has no right to enter into service otherwise than or independent of the provisions of the Constitution and the Service Rules. However, after entry into service, his dismissal, removal or reduction in rank is governed by Article 311 of the Constitution. The constitutional protection to continue in service arises under Article 311(1) and Articles 14 and 16. The curtailment of the right to continue in service by clause (2) of Article 311 does not in any way touch upon the basic structure of the Constitution. The right to continue in service itself being governed by Service Rules and is guaranteed only to the extent covered by Article 14,16 and 311(2) of the Constitution.

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no question of the second proviso to Article 311(2) affec. the basic structure of the Constitution arises. Dismissal from service purported to be under clause (c) of the second proviso to Article 311(2), may be violative of 311(2), but not of the basic structure of the Constitution.

9. The applicant also contended that before an order denying him the pensionary benefits was made, notice should have been given, and he should have been afforded an opportunity to show cause why pension should not be withheld. Whenever a public servant is dismissed from service, as laid down under Pension Rule 41 he also loses his pensionary benefits. No separate order is in fact necessary for forfeiture of pension. That is a consequence of dismissal from service. As that is the logical consequence of dismissal automatically flowing under Rule 41 of the Pension Rules, if the competent authority thinks that in the special circumstances of the case, the public servant dismissed or removed from service deserves special consideration it is open to the competent authority to sanction pension or gratuity on compassionate grounds. Rule 41 of the Pension Rules reads as under:-

> "What is sanctioned in exercise of this power is not pension as such but a "compassionate allowance" which shall not exceed two-thirds of the pension or gratuity or both, which would have been admissible to him if he had been retired on compensation pension."

10. The contention that pension or gratuity is no longer a gratuitous bounty but is one earned by a public servant by dint of his service, cannot in any way help the applicant's contention that a further notice should have been given to him before withholding pension. Validity of Rule 41 as such has not been questioned in this application. Irrespective of whether the dismissal is before or after enquiring into the charges of misconduct

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levelled against a public servant, an order of dismissal itself results in total forfeiture of pension and gratuity unless the authority ordering such dismissal or the competent authority, as the case may be, specifically orders a payment of compassionate allowance. Hence if in the circumstances of the case, the authority has held that the applicant does not deserve any compassionate allowance as such, no exception can be taken.

11) In the result, this petition fails and is accordingly dismissed.

(Rasaiah Kumar)
Member (A)

(R.Madhava Reddy)
Chairman