

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 561/87
T.A. No.

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DATE OF DECISION 2-8-1991

<u>Shri Amrik Lal</u>	Petitioner
<u>Shri Arvind Gupta</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. ~~Jus~~ U.C. SRIVASTAVA, VICE CHAIRMAN

The Hon'ble Mr. I.P. GUPTA, MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgement of the Bench delivered by
Hon'ble ~~J~~ Shri U.C. Srivastava)

1. The applicant who was dismissed from service by the order of 04.11.1986 w.e.f. the date of serving of the order has approached this Tribunal for quashing the same.

2. The applicant was a Senior P.A. to the Joint Secretary, Defence Supplies, Ministry of Defence and had been holding the post since September 1983. On 21.01.1985, he was arrested in connection with what has come to be known as Coomar Narain espionage case. On 25.01.1985, the applicant

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was placed under suspension and was released on bail on 07.11.1986. Four days later, on 11.11.1986, the applicant received a copy of an order dated 04.11.1986 informing him that he was dismissed from service from the date of receipt of the said order.

The order reads as follows:

3. "WHEREAS the President is satisfied under Clause(1) of Article 310 of the Constitution read with Rule 19 (iii) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, that in the interest of the security of the State, it is not expedient to hold an enquiry in the case of Shri Amrik Lal, Stenographer Gde 'B' Ministry of Defence.

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

NOW, therefore, the President hereby orders dismissal of Shri Amrik Lal from service with effect from the date of receipt of this order by him. The President further orders that no terminal benefits shall be given to Shri Amrik Lal.

(By order and in the name of the President)

(R.K. KALIA)
DESK OFFICER (VIG) "

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4. The applicant submitted a memorial to the President dated 11.12.1986 but no reply was received despite reminder. The applicant has approached this Tribunal challenging the said order and prays for quashing of the above order.

5. The respondents have stated that the order has been rightly passed by the President and it would not be expedient to hold an enquiry in the interest of the security of the State.

6. The learned counsel for the applicant Shri S.C. Gupta stated that the dismissal of the applicant from service may have been passed on President's satisfaction. But it is not justifiable that without apprising the person what the charges are against him, ^{he} is dismissed from service. _u

7. Further Rule 19 of the CCS(CCA) Rules, 1965 dispensing with the inquiry implied issuance of charge sheet comprising the charges under which he has been dismissed. Further the President's order under Article 310 of the Constitution of India is to be read with Article 311 of the Constitution of India and without the compliance of Article 311 of Constitution of India which provides for reasonable opportunity, the order could not have been passed and the order is illegal.

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8. However, Rule 19(iii) of the CCS(CCA) Rules, 1965 itself states that "Notwithstanding anything contained in Rule 14 to Rule 18:

"Where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

9. Here in this case, the President is satisfied and the satisfaction of the President as such is not questionable and the same is obviously not in question.

10. Article 310 of the Constitution of India provides that:

"Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with Defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State."

11. It has been contended that the applicant was holding the post on the pleasure of the President but the President did not find him fit for retaining him in service and he was dismissed without the enquiries, which should not have been done as per the provision.

12. Article 311(2) of the Constitution of India provides that: "

"No such person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges."

13. The learned counsel contended that Proviso two of the Article 311(2) has not been taken recourse to in the order.

Proviso two to Article 311(2) says:

Provided further that this clause shall not apply:

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

14. In the case, reference was made to the case of U.O.I. Vs. Tulsi Ram Patel, AIR 1985 (SC) 1415-Vol.72, in which it was observed that:

"The language of the second proviso to Art. 311(2) is plain and unambiguous. The keywords in the second proviso are "this clause shall not apply". By "this clause" is meant clause(2). As clause (2) requires an inquiry to be held

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against a government servant, the only meaning attributable to these words is that this inquiry shall not be held. The keywords of the second proviso govern each and every clause of that proviso and leave no scope for any kind of opportunity to be given to a government servant. The phrase "this clause shall not apply" is mandatory and not directory. It is in the nature of a Constitutional prohibitory injunction restraining the disciplinary authority from holding any inquiry under Art.311(2) or from giving any kind of opportunity to the concerned government servant. There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity by a process of inference or implication. Therefore, the view that even where by the application of the second proviso the full inquiry is dispensed with, there is nothing to prevent the disciplinary authority from holding at least a minimal inquiry or giving to the government servant an opportunity of showing cause against the penalty proposed to be imposed or giving of charge-sheet or at least a notice informing the government servant of the charges against him and calling for his explanation is wholly untenable.

15. Shri Khurana, learned counsel for the respondents contended that three other persons similarly dismissed along with the applicant approached this Tribunal and the Principal Bench of this Tribunal had dismissed the application holding that the dismissal order was quite valid

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and the powers were rightly exercised. *He made reference to the case of Sri Swarni Nath vs Union of India (1987) 1 C.A. 78.*

16. Rule 19 of the CCS(CCA) Rules, 1965 is the reproduction of second proviso to Article 311(2) of the Constitution. The Presidential Order should be deemed to have been passed under second proviso to Article 311(2) of the Constitution. A mere typographical or clerical error should not take away the substance of the order which is clear and explicit.

17. The President has used his powers in the right way and we are of the opinion that the President had full powers and he exercised his powers and there is no flaw in it.

18. Accordingly, this application is dismissed.

19. There shall be no order as to the costs.


(I.P. GUPTA)
MEMBER


(U.C. SRIVASTAV)
VICE CHAIRMAN