

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH NEW DELHI

Original Application No. 1228 of 1987

Versus

Union of India & Others . . . . . Respondents

Hon'ble Mr. Justice U.C. Srivastava, VC

Hon'ble Ms. Usha Savara, Member (A)

( By Hon'ble Mr. Justice U.C.Srivastava, VC)

is aggrieved

The applicant against his dismissal from

service, ~~now~~ At the relevant point of time was L.D.C. in the Ministry of External Affairs having started his service as a casual labour, <sup>Against the</sup> ~~dismissal~~ without any enquiry by the president invoking the provisions of Article 312(2) of the Constitution of India, the applicant has approached this tribunal praying that the respondent no. 1 be directed to treat the applicant as innocent following the verdict of the Court of Law in the criminal suit and that the order of dismissal be quashed, being violative of Article 14 and 16 of the Constitution of India and they be directed to reinstate the applicant in service w.e.f. 17.3.83 when he was deemed to have been suspended, as he was subsequently acquitted ~~and~~ <sup>He has further prayed that</sup> the respondents be directed to pay all his dues during the period of suspension/dismissal etc.

2. As indicated, above, the applicant joined the office of the Foreign Secretary of Government of India Ministry of External Affairs to the casual labour in the year 1967 and was appointed as L.D.C. on adhoc basis and later on in grade-VI of the General Cadre, which was

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also approved by the Departmental Promotion committee.

After 16 years of service, the applicant was also implicated in a criminal investigation conducted against the respondent no. 2 and 3 also who were the junior intelligence Officers in the intelligence bureau in the Ministry of Home affairs and the searches were taken also ~~and~~. Apparently, the same was in respect of some charge ~~against~~ <sup>ag. relatable to the interest of</sup> them which ~~was~~ <sup>involved in</sup> ~~the~~ security of the country and ~~with~~ <sup>had</sup> relations with the foreign countries. Thereafter various searches were made from the house of the applicant. The applicant was also arrested under the Official Secrets Act on the allegations that some budget documents have been found out ~~at~~ his residence. The applicant was behind the bar for more than 48 hours, that's why he was placed under ~~deemed~~ suspension. In the criminal case not only the applicant, but other two persons were involved. The final report was given as there was no evidence. In the absence of evidence, the case was consigned vide order dated 6.11.1984.

3. The grievance of the applicant is that the other person Dharam Singh was re-instated back in service while the applicant was not re-instated and the Raghbir Singh too was not re-instated. Even after his acquittal in this manner, the applicant who was expecting to be re-instated back in service for which he met the officers and the respondents yet and made representation which was rejected. The applicant's services were dispensed with in exercise the powers under Article 311(2) of the constitution of India by the president without giving any opportunity of hearing to the applicant and without

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holding any enquiry. The applicant challenged the said order on the ground that it was violative of Article 14 and 16 of the Constitution of India in as much as discrimination has been done and further he having been acquitted from the criminal court, the respondents <sup>bound</sup> are duty <sub>to</sub> <sup>bound</sup> to reinstate back in service ~~to~~ the applicant, and the services could not have been dispensed with in this manner and further that the dismissal of the service is violative of the principles of natural justice.

4. The respondents have opposed the application and have filed their written statement and have pointed out that the <sup>criminal</sup> case was not pursued and it was not possible to cite the reasons for withdrawal of the case in the interests of Public Security and India's friendly relations with other countries and as a result, the Additional Chief Metropolitan Magistrate discharged the accused and ordered the file to be consigned to record Room. It has been further stated that the applicant was one among three accused in the Raghbir case. The other accused ~~Chiram~~ Singh against whom the dismissal order filed a writ petition before the Delhi High Court which was dismissed and so far the third accused is concerned his case was based on assessment of the facts against him and that's why his suspension order was revoked by W.S.F. 21.1.1985. In this connection it has been point out that his dismissal order was passed by the competent authority after following prescribed procedures on the basis of the recommendations of a Committee of Advisers which carefully considered and evaluated all facts and

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circumstances of the case. The committee of Advisers comprised of the Home Secretary, secretary(Personnel), secretary(Department of Legal affairs), Director (Intelligence Bureau) and joint secretary(Personnel) in the Ministry of External Affairs(on behalf of the Foreign Secretary) and after due deliberation, the Committee of Advisers recommended the applicant's dismissal from service by taking recourse to Article 311(2)(c) of the Constitution of India. The recommendation was duly approved by the Minister of Home Affairs. So far as the case of Dharam Singh is concerned, it has been pointed out who was earlier came from Delhi Police and he was junior Intelligence Officer and the assessment was made by the committee after considering his role, his suspension order was revoked and according to the respondents, the applicant can not claim in parallel with the case of Dharam Singh as the whole the cases were in different part.

5. The learned counsel for the applicant contended that the provisions of C.C.S Rules are not followed in this case as no enquiry commenced after service of the charge-sheet. As the matter of fact the applicant's case was not taken under the C.C.S. Rules and the C.C.S. Rules can not go over and above the constitution of provisions. In this case, the president exercised the power under Article 311(2) (c) as referred to above and passed the order. The Article 310 of constitution of India Provides that except as especially provided by this constitution of India every persons who is a member of defence service or of civil service of the union or of an All India services or holds any post concerned with the defence or any civil post under the Union, holds office during the pleasure of the President and every person who

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is a member of Civil Service of ~~the~~ state or holds selection post under the state holds office during the pleasure of the government of state, which indicates that the person holding the office under the Union of India; but Article 311 stands is not to be read in isolation as to the regard 311~~(\*)~~ of the Constitution of India, which provides that no persons shall be dismissed or removed by an authority who is subordinate to him, he shall not be removed except after an enquiry which he has been informed of the charges against him and giving reasonable opportunity of being heard in respect of both the charges, but proviso to 311 Article 311 also provides certain exception. In the instant case, ~~xxxxxx~~ it was the security of the state ~~that~~ the enquiry was not held against the applicant. The satisfaction of the president was based on report of board ~~of~~ consisting of 5 seniors officials and it is difficult to accept as has been contended by the learned counsel, though without any raising specific ground in this behalf, that the relevant material was not placed before the President. In the instant case, the president after the report was satisfied that it was the case in which the security of interest is involved and its disclosure is made, consequently, the order was passed. In these circumstances, the enquiry could have been dispensed with and the enquiry has thus rightly been dispensed with. It is not necessary for us to look into the reasons, assigned in the file as the matter has been investigated by a committee and there appears to be

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no reasons without the statement which have been made in the counter-affidavit based on the perusal of the record. Although, without taking in particular ground, the learned counsel raised the question regarding the satisfaction of the president himself. It will not be necessary to deal with this point in the absence of the President, but it will be relevant to refer to the case of Baxi Sardari Lal Vs. Union of India A.I.R. 1987(4) Supreme Court page 2106 wherein, in case, the President ordered for dismissal from service on being satisfied in clause(c) after considering the prime Minister's advise, held, the president order was not on the basis of his personal satisfaction as required in Sardari Lal's decision, but on advise of the counsel of the Minister required by the Shamsher Singh decision's, which overruled Sardari Lal's decision. Accordingly, we do not find any ground to interfere the case, as such the application is dismissed. No order as to costs.

*N. Sivaram.*

Member(A)

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Vice-Chairman

Dated: 24.12.1992

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