

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1530/90

Date of decision: 22.03.1993.

Shri Jit Singh

...Applicant

Versus

Union of India & Others

...Respondents

Coram:-

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman (J)
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the applicant

Shri S.C. Luthra, Counsel.

For the respondents

Shri M.L. Verma, Counsel.

Judgement(Oral)
(Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman)

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as the Rules) were initiated against the applicant who was then functioning as the Incharge, Military Farm Depot, Alwar. An Enquiry Officer was appointed who submitted his report. On 12.5.1989 the Deputy Director General of Military Farm passed an order dismissing the applicant from service. On 4.6.1990 the Quarter Master General dismissed the appeal preferred by the applicant. He, however, converted the order of dismissal into an order of compulsory retirement from service. The orders passed by the Deputy Director General, Military Farm and the Quarter Master General are being impugned.

2. The common case of the parties is that the applicant was all alone a civilian and he drew his salary etc. from the Defence Estimates.

814

3. In Union of India and another v. K.S. Subramanian (AIR 1989 SC 662) it was held that the civilian employee in the Defence Service who is paid salary out of the ~~Estimates of Ministry of~~ Defence does not enjoy the protection of Article 311 (2). It was also held that the Rules among others, provide procedure for imposing the three major penalties that are set out under Article 311 (2). When Article 311 (2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the Rules in favour of a civilian employee in Defence Service. The rules cannot independently play any part since the rule making power under Article 309 is subject to Article 311. This would be the legal and logical conclusion.

4. It follows from the aforementioned decision of the Supreme Court that to the case of the applicant neither Article 311 (2) of the Constitution was applicable nor were the Rules applicable.

5. In Indrajit Dutta v. Union of India and Ors. (1992 (1 ATJ 44) it was held that a civilian employee serving in Defence, cannot claim any protection under Article 311 of the Constitution and the Rules which have been framed under Article 309 of the Constitution and subject to Article 311 thereof have no application to his case. The entire disciplinary proceedings started against such a civilian employee is misconceived and does not have any legal consequence. The order of punishment is equally misconceived without having any legal effect. In that view of the matter, the civilian employee concerned is deemed to be continued in service. In that case the learned Members did not allow back wages to the applicant before them for the intervening period. The learned Members

however, made it clear that their order would not prevent the authorities to take appropriate legal recourse or pass any order sustainable in law in lieu of the decision of the Supreme Court in K.S. Subramanian's case (supra).

6. We see no reason to take the view different from the one taken by the Calcutta Bench of this Tribunal in Indrajit Dutta's case. We accordingly quash the impugned orders and hold that the order of punishment imposed upon the applicant has no legal effect and he will be deemed to be continued in service. We, however, direct that the applicant would not be entitled to any back wages for the intervening period. We also make it clear that this order will not prevent the competent authority to take appropriate legal steps or pass any orders in accordance with law.

7. Section 2 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act) bars the jurisdiction of the Tribunal and provides, inter alia, that the provisions of the Act shall not apply to any member of the Naval, Military or Air Force or of any other Armed Forces of the Union. A provision ousting the jurisdiction of a Court or Tribunal should be strictly constituted. This applies with greater force to this Tribunal, as it is a substitute to the High Court in service matters. We are satisfied that a civilian in the Defence Service is neither a member of the Naval, Military, Air Force or of any other Armed Forces of the Union. Therefore, we do not find any force in the contentions advanced on behalf of the respondents that on account of the

operation of the provisions of Section 2 of the Act, this Tribunal has no jurisdiction to entertain this Original Application.

8. This Application succeeds and is allowed to the extent stated above.

9. There shall be no order as to costs.

Sheth
(I.K. RASGOTRA)

MEMBER(A)

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(S.K. DHAON)
VICE-CHAIRMAN(J)

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