CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 830/90
T.A. No. **199**

DATE OF DECISION 14.12.1995

Shri Balbir Singh **Petitioner**

Shri K.S. Bindra with S/Shri R.M. Tiwari, Vijay Chaudhary and Ravinder Kumar **Advocate for the Petitioner(s)**

Versus Vs.

Union of India & Ors. **Respondent**

Shri Arun Bhardwaj **Advocate for the Respondent(s)**

CORAM

The Hon'ble Mr. N.V. Krishnan, Acting Chairman.

The Hon'ble Mrs. Lakshmi Swaminathan, Member(J).

1. **To be referred to the Reporter or not?** ✓
2. **Whether it needs to be circulated to other Benches of the Tribunal?** No.
3. Should the reporters of the local papers be allowed to see the judgement? Yes

(N.V. Krishnan)
Acting Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No.830 of 1990.

Dated: New Delhi, this the 14th day of Dec, 1995.

HON'BLE MR. N.V. KRISHNAN, ACTING CHAIRMAN

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J).

Shri Balbir Singh
Ex-Sub Inspector
Delhi Police - No.D-672
son of S. Sant Singh
r/o T-924, Bagh Rao Ji,
Arya Nagar,
Delhi - 110066. ..... Applicant.

By Advocates: Shri K.S.Bindra with
S/Shri R.M.Tiwari, Vijay Chaudhary
and Ravinder Kumar.

VERSUS

1. Union of India
through Secretary,
Ministry of Home Affairs,
New Delhi.

2. Hon'ble Lt. Governor,
Raj Niwas, Raj Niwas Marg,
Delhi-110054.

3. Commissioner of Police,
Police Headquarters,
I.P.Estate,
New Delhi-110002. .... Respondents.

By Advocate : Shri Arun Bhardwaj.

ORDER

Mr. N.V. Krishnan, Acting Chairman.

The applicant was a former Sub-Inspector of Police in the Delhi Police. On having been arrested in a criminal case registered under FIR No.241/84 under Sections 307, 302, 120-B IPC read with Sections 25, 27, 54 and 59 of the Arms Act in the Police Station Tughlak Road, New Delhi in connection with murder of Smt. Indira Gandhi, the then Prime Minister of India, the applicant was suspended with immediate effect by the Annexure 'A' Order of the Dy. Commissioner of Police who directed Shri B.K.Mehta, ACP/SSD to conduct the departmental enquiry against the applicant on a day-to-day basis and submit his report.

2. However, no such inquiry was conducted. For, in the meanwhile the applicant was dismissed from serice by the order dated 16.3.1985 (Annexure B)

of the President of India which reads as under:

" ORDER

Whereas the President is satisfied under sub-clause (c) of the proviso to clause (2) of article 311 of the Constitution that in the interest of the security of the State it is not expedient to hold an inquiry in the case of Sub-Inspector Shri Balbir Singh No.D-672 of Delhi Police.

And whereas the President is satisfied that, on the basis of the information available, the activities of Sub-Inspector Shri Balbir Singh are such as to warrant his dismissal from service.

Accordingly, the President hereby dismisses Sub-Inspector Shri Balbir Singh from service with effect from 16th March,1985 (A.N).

(By order and in the name of the President).

Sd/- (Surendra Kumar)
Deputy Secretary to the Govt. of India. "

3. Subsequently the applicant, along with two other accused, faced trial in the above criminal case. We are concerned with only the applicant's trial. He was convicted by the trial judge and sentenced to death. His conviction and sentence was affirmed by the Delhi High Court. However, on appeal against the sentence, the applicant was acquitted by the Supreme Court on 3.8.1988 in **KEHAR SINGH & OTHERS Vs. STATE DELHI ADMINISTRATION)** - (1988) 3 SCC 609.

4. After acquittal, the applicant filed this O.A. on 23.4.1990 impugning the order of the President dated 16.3.1985 dismissing him from service. He prayed that this impugned order be quashed and the respondents be directed to reinstate him in service with retrospective effect with all consequential benefits including seniority, promotion etc. This O.A. was dismissed by the order dated 8.8.1994 primarily on the ground of limitation. The applicant challenged this order before the Supreme Court in Civil Appeal No.3953 of 1995. That appeal was allowed, inter alia, with the following directions on 22.8.1995:

"The delay in approaching the Tribunal is condoned herewith by us. The Original Application filed by the appellant shall be treated to be one filed in time. It shall also be treated as an Original Application questioning the legality and validity of the order of dismissal dated 16.3.1985. In addition to the

contentions raised by the appellant, namely, that he is entitled to reinstatement by virtue of his acquittal by this Court, the Tribunal may also examine whether the invocation of the power under clause (c) to dispense with the enquiry under Article 311 (2) was proper and justified in the facts and circumstances of the case. We may also mention that the law in this behalf has been set out recently in a decision of this Court in A.K.Kaul & Anr. Vs. Union of India & Anr. (1995) 4 SCC 73. The Tribunal may examine the validity of the order on this count as well. The Union of India shall be permitted to file a counter-affidavit explaining the circumstances in which Article 311 (2) (c) was invoked. This shall be done within a month from today."

5. Thereupon the respondents have filed an additional counter affidavit sworn by Shri D.L. Kashyap, Addl. Deputy Commissioner of Police, Security, Delhi, to which the applicant has also filed a rejoinder.

6. During the hearing on 31.10.1995, we directed the respondents to keep following records for our perusal:

"(1) The file in which the applicant was directed to be proceeded against in a departmental inquiry by the order dated 8.12.84.

(2) The file in which the applicant was suspended.

(3) The file in which ultimately it was decided that the departmental proceedings should not continue and instead the applicant should be dismissed from service under clause (c) of the second proviso to Article 311 (2) of the Constitution.

(4) Any other records which the respondents would like to produce before the Tribunal in view of the order dated 22.8.1995 of the Hon'ble Supreme Court disposing of Civil Appeal No.3953/95 read with the judgment of that Court in A.K.Kaul & Anr. Vs. Union of India & Anr. 1995 (4) SCC 73."

7. The additional counter affidavit filed by Shri D.L.Kashyap (para 5 refers) was found deficient inasmuch as the respondents had not disclosed the nature of the activities of the applicant on the basis of which he was dismissed. The claim of privilege under Sections 123 and 124 of the Indian Evidence Act made by this deponent was also found to be improper. Hence the respondents were permitted, in the interest of justice, to file additional affidavit though the learned counsel for the applicant was opposed to giving them such an opportunity.

8. Accordingly on 10.11.1995 Shri Nikhil Kumar, Commissioner of Police, Delhi being the Head of Department, has filed an affidavit claiming

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privilege in regard to the production of the documents referred to in para 6. He has also filed on the same date an affidavit listing out "the reported nature of the activities of the applicant" for which he was dismissed.

9. We have heard the learned counsel for the parties at great length.

10. Our task in the disposal of this O.A. has been considerably lightened because all the important issues which are required to be considered in an application, challenging an order of dismissal issued by the President of India under clause (c) of the second proviso to Article 311 (2) of the Constitution have been considered by the Supreme Court in **A.K.KAUL AND ANOTHER** Vs. **U.O.I. & ANOTHER** - (1995) 4 SCC 73. Indeed, we are required to keep this judgment prominently in view, vide the order of the Supreme Court extracted in para 4 supra. In that case also the appellants who were employed as Deputy Central Intelligence Officers in the Intelligence Bureau in the Ministry of Home Affairs of the Government of India, were dismissed by the President of India under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution holding that in the interest of the security of the State it was not expedient to hold an inquiry in the case. After discussing the various contested issues, in great detail, and after referring to various authorities, the Supreme Court held as follows:

> "30. We are, therefore, of the opinion that an order passed under clause (c) of the second proviso to Article 311 (2) is subject to judicial review and its validity can be examined by the Court on the ground that the satisfaction of the President or the Governor is vitiated by mala fides or is based on wholly extraneous or irrelevant grounds within the limits laid down in S.R. Bommai ((1994) 3 SCC 1).
>
> 31. In order that the Court is able to exercise this power of judicial review effectively it must have the necessary material before it to determine whether the satisfaction of the President or the Governor, as the case may be, has been arrived at in accordance with the law and is not vitiated by mala fides or extraneous or irrelevant factors. This brings us to the question whether the Government is obliged to place such material before the court. It is no doubt true that unlike clause (b) of the second proviso to Article 311 (2) which requires the authority to record in writing the reason for its satisfaction that it is not reasonably practicable to hold such inquiry, clause (c) of the second proviso does not prescribe for the recording of reasons for the satisfaction. But the absence of such a requirement to record reason for

the satisfaction does not dispense with the obligation on the part of the Government concerned to satisfy the court or the tribunal if an order passed under clause (c) of the second proviso to Article 311 (2) is challenged before such court or tribunal that the satisfaction was arrived at after taking into account relevant facts and circumstances and was not vitiated by mala fides and was not based on extraneous or irrelevant considerations. In the absence of the said circumstances being placed before the court or the tribunal it may not be possible for the employee concerned to establish his case that the satisfaction was vitiated by mala fides or was based on extraneous or irrlevant considerations. While exercising the power under Article 311 (2)(c) the President or the Governor acts in accordance with the advice tendered by the Council of Ministers. (See Samsher Singh Vs. State of Punjab - (1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1SCR 814). Article 74 (2) and Article 163 (3) which preclude the court from inquiring into the question whether any, and if so, what advice was tendered by the Ministers to the President or the Governor to enable the Government concerned to withhold from the court the advice that was tendered by the Ministers to the President or the Governor. But, as laid down in S.R. Bommai the said provisions do not permit the Government to withhold production in the court of the material on which the advice of the Ministers was based. This is, however, subject to the claim of privilege under Sections 123 and 124 of the Evidence Act in respect of a particular document or record. The said claim of privilege will have to be considered by the court or tribunal on its own merit. But the upholding of such claim for privilege would not stand in the way of the Government concerned being required to disclose the nature of the activities of the employee on the basis of which the satisfaction of the President or the Governor was arrived at for the purpose of passing an order under clause (c) of the second proviso to Article 311 (2) so that the court or tribunal may be able to determine whether the said activities could be regarded as having a reasonable nexus with the interest of the security of the State. In the absence of any indication about the nature of the activities it would not be possible for the court or tribunal to determine whether the satisfaction was arrived at on the basis of relevant considerations. The nature of activities in which employee is said to have indulged in must be distinguished from the material which supports his having indulged in such activities. The non-disclosure of such material would be permissible if the claim of privilege is upheld. The said claim of privilege would not extend to the disclosure of the nature of the activities because such disclosure would not involve disclosure of any information connecting the employee

with such activities or the source of such information.

32. In our opinion, therefore, in a case where the validity of an order passed under clause (c) of the second proviso to Article 311 (2) is assailed before a court or a tribunal it is open to the court or the tribunal to examine whether the satisfaction of the President or the Governor is vitiated by mala fides or is based on wholly extraneous or irrlevant grounds and for that purpose the Government is obliged to place before the court or tribunal the relevant material on the basis of which the satisfaction was arrived at subject to a claim of privilege under Sections 123 and 124 of the Evidence Act to withhold production of a particular document or record. Even in cases where such a privilege is claimed the Government concerned must disclose before the court or tribunal the nature of the activities in which the government employee is said to have indulged in." (Emphasis supplied).

11. Therefore, it would appear that whenever such an order is challenged, it is duty of the respondents, subject to claiming privilege, to explain explicitly why such an action was taken so that the dismissed employee could challenge it on the limited grounds on which, in terms of the decision in Kaul's case, such action could be challenged. For this purpose, they would be required, unless privilege is claimed, to produce all relevant documents and records for perusal by the employee.

12. However, in such a case respondents can claim privilege under Sections 123 and 124 of the Indian Evidence Act. Whether this has been validly and rightly claimed or not has to be determined by the Tribunal. For this purpose, the respondents are bound to produce all records and documents for the perusal of the Tribunal. The Tribunal will satisfy itself whether the claim of privilege is to be allowed in full or in part or is to be dismissed. It will also see from the material - except the material it is precluded from seeing under Article 74 (2) of the Constitution, as interpreted in S.R. Bommai's case -((1994) 3 SCC I)- whether decision taken was vitiated by mala fide or was based on wholly extraneous or irrelevant grounds. For this purpose, the Tribunal will, more particularly, consider whether the nature of activities of the employee as disclosed by the respondents could be regarded as having a reasonable nexus with the interest of the security of the State.

13. In our view, the law as settled in A.K.Kaul's case throws the onus of proof on the respondents. Therefore, the respondents on their own

are bound to produce the relevant records - whether a claim of privilege is raised or not - suo motu. In the circumstances, the respondents ought to identify the records which they should produce before the Tribunal to satisfy it that the impugned order was validly made in terms of the law laid down in A.K.Kaul's case. It is not necessary in such a case, either for the employee to seek a direction to produce certain records nor is it necessary for the Tribunal to order their production. If the respondents do not produce the records, on their own, subject to any claim of privilege, it could well be within this Tribunal's right to hold that the onus imposed upon them by the Supreme Court's judgment in A.K.Kaul's case has not been discharged and that, therefore, the impugned order has no leg to stand on and quash it. It is a different matter that, in the interests of justice, we directed on 30.10.1995 that the respondents should produce certain records.

14. Before we examine what records have been produced, we have to examine the claim of privilege in the affidavit dated 10.11.1995 of Shri Nikhil Kumar, the Commissioner of Police, in the following terms:

> "2. That for the purpose of claiming privilege in regard to production of certain documents as directed by the Hon'ble Tribunal vide order dated 30.10.95, the deponent respectfully submits as follows:-
>
> (a) that the deponent has looked at the documents himself.
>
> (b) that the deponent has considered the documents himself.
>
> (c) that the deponent is of the opinion that the documents relate to the affairs of the State.
>
> (d) that the deponent holds that the documents in question, if disclosed to the applicant or his counsel would be injurious to public safety and would be against the public interest.
>
> (e) that the documents contain reports of Special Investigation Team and also the report of the Intelligence Bureau and some others notings and documents.
>
> (f) that the class and character of the documents is such that they have to be withheld from exposure as otherwise injury would be caused to the public interest.
>
> (g) that the documents in question fall in a class which ought to be kept secret for proper functioning of public services.
>
> (h) that some of documents in question also correlate with the assassination of the Late Prime Minister of our country and are highly sensitive in nature.
>
> (i) that the deponent is of the firm view that the above said documents cannot be disclosed without detriment

to public interest and, therefore, the deponent is of the firm view that the above said documents should not be disclosed and made public. The disclosure would injure public and national interest.

(j) that the deponent, therefore, withholds the said documents from disclosure in public interest and national interest."

15. We would have expected the Commissioner of Police to have subjected the claim of privilege to the right of this Tribunal to peruse the records for its satisfaction about the reasonability of the claim of privilege. Indeed the claim of privilege can be allowed or disallowed only after the perusal of the record by this Tribunal.

16. The learned counsel for the applicant has opposed this claim on various grounds. He stated that the incident is quite an old one and that no harm would be done if the contents of the documents are disclosed.

17. We have carefully considered this matter in respect of each of the four records produced. Those records are as follow:-

(i) File of the Dy. Commissioner of Police (Security), relates to the D.E. against the applicant.

(ii) Secret File of the Public Headquarters Confidential Branch. This relates to action against Sub-Inspector Balbir Singh and Constable Satwant Singh who have been arrested in case of FIR 241/84 under Sections 302/307/120-B IPC, Police Station Tughlak Road (P.M's assassination case).

(iii) Top Secret File of the Ministry of Home Affairs dealing with dismissal from service of Sub-Inspector Balbir Singh of Delhi Police and accomplice in the murder case of Smt. Indira Gandhi.

(iv) File of Home Ministry.

The file at Sl.No.(i) contains the order of suspension dated 8.12.1984 which is produced at Annexure A. The other important document is the impugned order of dismissal (Annexure B). There is no other material in this file. Accordingly, the claim of privilege in respect of this file is baseless and is dismissed. The file at Sl.No.(iv) contains the orders of Government which were sought in connection with the production of records as directed by us. This file also does not deserve any privilege. File at Sl.No.(ii) was initiated by the Commissioner of Police on the receipt of a reference from the Director, Special Investigating Team and also contains certain reports of the Intelligence Bureau. It is thereupon that the Commissioner of Police sent certain proposals

to the Delhi Administration. The matter was then referred to the Ministry of Home Affairs and dealt with in the File at Sl.No.(iii). A perusal of that file shows that in regard to cases where action is to be taken under clause (c) of the second proviso to Article 311 (2) of the Constitution, a procedure has been evolved to consider such cases by a Committee of Advisers which is required to submit its recommendations to the competent authority. For that purpose, the Secretary of the Ministry who suggests action under this clause (c) has to prepare a self-contained note containing all details on the basis of which he feels that such action is warranted. That Note is then considered by this Committee in detail. Its minutes are then recorded and these are then processed through the concerned Ministries and the orders of the President are obtained. This has been referred to in A.K.Kaul's case in item (g) of para 33 of the judgment which lists out the records the appellants wanted to be produced. In regard to the files at Sl. Nos.(ii) and (iii) , we are satisfied that the claim of privilege is justified. These files contain notes, correspondence and letters exchanged between high level functionaries which are of secret nature and which have not yet been made public. We are of the view that disclosure of the particulars contained in these files would not be in public interest. They are a class of record in respect of which privilege on the ground mentioned at (f) and (g) of the affidavit in para 14 is justifiably claimed. We have taken into consideration whether this would not affect the interest of administration of justice in so far as this case is concerned. After balancing both the considerations we are satisfied that the claim of privilege overweighs the other considerations. Hence the claim of privilege in respect of these two files is upheld.

18. During the course of hearing, we wanted to be enlightened about the course of action we should take if the claim of privilege is disallowed or is upheld. If the claim for privilege is disallowed, the documents can be freely referred to by the Tribunal without any restraint, irrespective of whether the Tribunal permits inspection of the documents by the applicant. The question was as to what would be the position if the Tribunal upheld the claim of privilege. It was agreed on all sides that in view of the fact that the claim for privilege has been upheld, the Tribunal can only mention as briefly as possible, without any disclosure violating the privilege allowed, as to whether it is in a position to accept the contention of the respondents that the order does not suffer from any infirmity or it upholds that the order is vitiated by mala fide or has been issued on extraneous or irrelevant grounds. No reason need be assigned for drawing such a conclusion. The

only remedy against the finding of the Tribunal - whether in favour of the applicant or the respondents is - in seeking a final decision from the Apex Court.

19. Before perusing the record, we should refer one other aspect ofthe matter which was argued at length. We wanted a clarification from the learned counsel for the respondents whether the President's order that it was not expedient to hold an inquiry in the case of the applicant in the interest of the security of the State had a reference to the departmental enquiry which the Dy. Commissioner had ordered on 8.12.1984 in connection with the FIR No.241/84 (Annexure A). We also put it to him that if such was the case, a decision should have been taken in accordance with law not to prosecute the applicant for the same reasons, namely, that it would be inexpedient in the interest of the security of the State to prosecute him. The inexpediency perhaps lies in the fact that the enquiry or prosecution would result in the disclosure of sensitive facts and details, which would have an immediate or indirect impact on the security of the State and would be prejudicial to the security of the State. As a matter of fact, the applicant was prosecuted in a lengthy trial where much more evidence than what would have been required to be produced in a simple departmental enquiry had to be produced. For in a criminal case, conviction can be secured only if the prosecution establishes the offence charged beyond any reasonable doubt while in a departmental enquiry, a penalty could be secured on the basis of preponderance of probabilities and that too, not restrained by the strict provisions of the Indian Evidence Act. We, therefore, felt that if the enquiry was only in respect of the criminal case, the impugned Presidential order obviously suffered from this infirmity and it deserved to be set aside on this ground alone. In other words, we felt that if a criminal prosecution could be launched there could have been no inexpediency whatsoever, in holding a D.E. on the same charges. That was the view taken by the Andhra Pradesh High Court in **Bhaskar Reddy** Vs. **Govt. of Andhra Pradesh** (1981 (1) SLR 249). The High Court held as follows:

> "xxx xxx xxx xxx
>
> In the instant case, the action is taken under proviso (c). Under this proviso the condition precedent for the exercise of the power by the Governor to dispense with the enquiry contemplated by Clause (2) of Article 311 is his satisfaction as to the holding of an enquiry not being expedient in the interest of the security of the State."
>
> "12. If that be the position, when the enquiry into the charges levelled against the public servant could form the subject-matter of a public trial in Sessions Case No.10 of 1975, the enquiry into those allegations in a departmental proceeding could never be against the interest of the internal security. The departmental proceedings are not open to public. Only the petitioner and the Enquiring Officer would be present. Whatever material is placed in support of the charges would be known to the departmental authorities and the delinquent officer. But when that very material and perhaps, some more is placed before the Court at a public trial, it is beyond one's comprehension as to how it can ever be said that it is not expedient to hold a departmental enquiry and holding of such an inquiry is against the interest of the security of the State."

20. The learned counsel for the respondents submitted that this was not the case. The President had before him other information on the basis of which he could conclude that the activities of the applicant were such as to warrant his dismissal from service. Those activities were not the same as the charges preferred against him in the criminal case. The record of those activities has been submitted in the affidavit dated 10.11.1995 which read as follows:

> "2. That the deponent has gone through the entire records and has considered the same and thereafter is indicating the reported nature of activities of the applicant as under, for which he was dismissed:-
>
> (a). That the applicant was actively associated with the conspiracy aimed at assassinating the Late Prime Minister and her family and thus the applicant was affecting and endangering the security of the State.
>
> (b) That the activities of the applicant promoted feelings of enmity/hatred between the different sections of people in the country on grounds of religion and community.
>
> (c) That the applicant was involved in anti-national activities which threatened the unity and integrity of the country. The activities of the applicant threatened to overthrow the elected Government of India."
>
> (Emphasis given)

21. The learned counsel for the applicant submitted that the respondents have taken full advantage of the opportunity given to them to file a fresh affidavit regarding the activities and have now listed out activities not mentioned in the earlier additional counter affidavit filed by Shri D.L.Kashyap. In para 15 of the affidavit it was stated as under:

> "15. That the respondents respectfully submit that the facts of the assassination case were such that they warranted immediate prompt and urgent action and that the holding of enquiry into the conduct of the applicant at that stage would not have been expedient in the interest of the security of the State."

Therefore, the only ground for dismissal without enquiry was the alleged role of the applicant in the assassination of the Late Prime Minister. These additional activities, according to him, are only paddings to strengthen their case.

22. In order to verify these submissions in the affidavit, we found it necessary to see the files referred to at (ii) and (iii) in para 17. We

are satisfied that we are required to consider only the documents contained in the Home Ministry's file mentioned above for it is in that file - that the decision was ultimately taken that the applicant should be dismissed from service under clause (c) of the second proviso to Article 311 (2) of the Constitution. As already mentioned, that file contains the note prepared by the Secretary concerned for the consideration of the Committee of Advisers. That note is required to be self contained in all respects. Therefore, we concentrated only on the material in the file at Sl. No.(iii).

23. We have carefully considered the activities mentioned in the above affidavit. The first activity is the alleged active association of the applicant with the conspiracy aimed at assassinating the late Prime Minister and her family. It must be remembered that this activity was being considered by the President at a time when the applicant had been arrested and was facing trial. He had not yet been acquitted by the Supreme Court. The learned counsel for the applicant submitted that, no doubt, the assassination of the late Prime Minister was a heinous and dastardly crime and was an act of betrayal by her own security guards. But that did not necessarily mean that it affected and endangered the security of the State which is the reason given for concluding that it was inexpedient to hold an enquiry. He pointed out that while considering this matter the President and his advisers should have clearly kept in view the vital distinction between threat to law and order, threat to public order and threat to security of State which has been highlighted by the Supreme Court in its decision in the case of **Union of India** Vs. **Tulsiram Patel** - (1985) 3 SCC 398. The learned counsel for the respondents merely contended that the assassination of the Prime Minister really posed a problem for the security of the State.

24. The assassination of the Prime Minister of the country is not an ordinary murder, particularly when the personality of the late Prime Minister and her policies, domestic and international, are considered. It could be that, in the perception of the executive and political wings of Government, the assassination did have implications for the security of the State. However, that is not a justification for dismissing the applicant under clause (c) of the second proviso to Article 311 (2), unless some further linkage is established between the activities of the applicant connected with the assassination and the apprehension that the assassination posed

a threat to the security of the State. On a perusal of the file referred to above, we find that there is no material on record to draw such a conclusion.

25. It is doubtful if the activity listed at (b) of para 20 can be considered to be connected with the security of the State. This activity is, no doubt, mentioned in the file. Hence the suspicion of the learned counsel for the applicant which has been referred to in para 21 has no basis. But there is no discussion whether the activity is concerned with law and order, or public order or security of State. What is more, there is no evidence on the basis of which this activity is alleged.

26. In regard to the activity at (c) of the affidavit in para 20, there is no doubt that this has an intimate connection with the security of the State, even though that expression has not been used. For, if somebody is engaging in an activity, which poses a threat to the integrity of the State, undoubtedly, it is an activity on the basis of which an order under clause (c) of the second proviso to Art. 311 (2) could justifiably be passed by the President. However, we find that except for an allegation to this effect there is nothing else on that file to connect the applicant with any such activity. On the contrary, we find that most of the consideration is based on the alleged conspiracy of the applicant to assassinate the Prime Minister in regard to which he has been acquitted by the Supreme Court.

27. Therefore, though the respondents have disclosed the alleged activities as mandated by the Supreme Court which formed the basis for the issue of the impugned order, we find that these activites including the one relating to the alleged role of the applicant in the assassination of the Prime Minister, having a nexus with the security of the State have no basis in the records considered by the Committee of Advisers. In order to find out whether such activities were noticed even before the applicant was arrested in connection with the assassination of the Prime Minister, we directed the learned counsel for the respondents to produce the character rolls of the applicant. That record has been produced and we have perused the same. We do not find any incriminating entry suggesting that the applicant was indulging in the kind of activities which have been mentioned in (b) and (c) of the affidavit of the Commissioner of Police. On the contrary, for the period after 1980 when Smt. Indira Gandhi came back to power

again, the entries relating to communal impartiality, loyality to the government in power without regard to politcal and party feelings and reliability have been favourably commented upon. Further the service book shows that while he had his share of punishments, not connected with the activities under consideration, he had also received commendation certificates, including for duties connected with the security of the Prime Minister. The last such certificate was given in February, 1984 (before the Blue Star Operation of June, 1984, which is stated to be the reason for the assassination of the Prime Minister) for security duty inside the Prime Minister's house. Nor are there any remarks in the A.C.Rs to link him up with the subsequent assassination of the Prime Minister. We, therefore, hold that the impugned order is based on extraneous and irrelevant considerations and on grounds which have no basis whatsoever and accordingly it is liable to be quashed.

28. The learned counsel for the respondents contends that, in judicial review, it is not open to this Tribunal to determine the validity of the impugned order based on the sufficiency of the evidence or the ground. That is quite true but that dictum would apply only if some evidence or ground backed by evidence exists. In that case, if the evidence or ground has a nexus with the decision, we cannot go into the adequacy thereof. But we have found that no evidence is available in the file to back up the allegation regarding the activities of the applicant. Hence we are entitled to quash the impugned order.

29. In this view of the matter, we do not find it necessary to consider the very lengthy arguments of the parties, particularly of the learned counsel for the applicant relating to various aspects of the case and the following judgments referred to by them:

1. The State of Punjab Vs. Sodhi Sukhdev Singh (AIR 1961 SC 493).
2. Union of India Vs. Indra Deo Kumar & Ors. (AIR 1964 SC 1118).
3. S.P. Gupta & Ors Vs. President of India and Ors. (AIR 1982 SC 149).
4. K.I. Shephard & Ors. V.S. U.O.I. & Ors ((1987) 4 SCC 431).
5. Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others (1991 Supp (1) SCC 600).
6. R.K.Jain Vs. U.O.I. & Ors (AIR 1993 SC 1769).
7. S.P. Chengalvaraya Naidu Vs. Jagannath & Ors. ((1994) 1 SCC 1).
8. Tata Cellular Vs. U.O.I. ((1994) 6 SCC 651).
9. S.R. Bommai & Others Vs. U.O.I. & Ors. ((1994) 3 SCC 1).

30. The next question is what reliefs the applicant is entitled to. We wanted to know whether the proper course would not be to quash the impugned order and direct the reinstatement of the applicant, leaving it to the respondents to grant him consequential reliefs in accordance with law. Fundamental Rule 54 A contains provisions to govern such situations.

31. The learned counsel for the applicant submitted that the applicant has been in jail for over 4 years and ever since his acquittal, he has been fighting for his dues. He pointed out that in a more or less similar situation, the Tribunal had passed appropriate orders, leaving nothing to the discretion of respondents (Bishamber Singh Vs. Lt. Governor of Delhi - ATR 1992(1) CAT 425). That was a case of dismissal of a Police Officer without enquiry under clause (b) of the second proviso to Art. 311 (2), i.e., it was not reasonably practicable to hold an enquiry, because it concerned a criminal charge of rape by a Police Officer. This ground was found insufficient for invoking the above provision. The officer was also acquitted by the trial court. Hence the Tribunal ordered his reinstatement with payment of full back wages and other consequential benefits.

32. The learned counsel for the respondents was also fair enough to submit that, in case the impugned order was quashed, the applicant is entitled to such relief.

33. We have considered the matter. In the normal course we would have preferred to merely reinstate him and leave it to the respondents to pass suitable orders under FR 54 A. But there are some special features. The applicant has been finally acquitted by the Supreme Court ((1988) 3 SCC 609 - **Kehar Singh & Others** Vs. **State (Delhi Admn.).** The acquittal is not by granting benefit of doubt, but as stated in the order dated 22.8.1995 of the Supreme Court referred to in para 4 supra:

> "It was found that the prosecution has not made out its case against the appellant and, therefore, he is entitled to acquittal."

We notice that in the Delhi Police (Punishment & Appeal) Rules, there is a provision which regulates holding of a D.E. even after acquittal in a criminal case. That provision reads as follows:

> "12. Action **following judicial acquittal.** - When a police officer has been tried and acquitted by a criminal course, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-
>
> (a) the criminal charge has failed on technical grounds, or,

(b) in the opinion of the court, or on the Deputy Commissioner of Police, the prosecution witnesses have been won over; or

(c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or

(e) additional evidence for departmental proceedings is available."

In the special circumstances of the case, where the applicant has been acquitted on merits by the Supreme Court, we are of the view that notwithstanding the above provision of the Delhi Police (Punishment and Appeal) Rules, 1980 the respondents should be restrained from initiating any D.E. against the applicant on the same grounds on the basis of which the criminal case was instituted against him. We do so.

34. The second question is whether the respondents should be left free to institute a D.E. in respect of the other activities which are stated to be the basis for the impugned order. In this regard the respondents are in an unenviable quandary. Their stand is that it was inexpedient in the interest of the security of the State to hold a D.E. on those grounds and hence the impugned order was passed. Therefore, even if liberty is granted, perhaps, they may not be in a position to initiate such a D.E. It is not their case - at least no such submission was made - that conditions have now changed and that an inquiry could be held now as interest of the security of the State is not likely to be affected. However, we are of the view that the respondents should be restrained from holding a D.E. on the basis of the alleged activities on a totally different ground, because we have held that the respondents had no material with them on the basis of which they could come to a prima facie conclusion that the applicant was indulging in such activities.

35. For the aforesaid reasons, we allow this O.A. with the following directions/orders:

(i) The impugned Annexure B order dated 16.3.1985 is quashed.

(ii) The respondents are directed to reinstate the applicant within one month from the date of receipt of this order.

(iii) They are restrained from holding any further departmental enquiry against the applicant either on the basis of Annexure A order dated 8.12.1984 or on the basis of the activities of the applicant referred to in the impugned Annexure B order dated 16.3.1985.

(iv) The applicant shall be treated to be on duty from the date of suspension till he is reinstated and accordingly he shall be entitled to the payment of his full salary and allowances for the above period, including consequential benefits in regard to refixation of his pay under the Revised Pay Rules, 1986. Such payment shall be subject to the adjustment of the amount earned by the applicant through employment, during the period after his acquittal, provided the onus of establishing such earning shall be on the respondents and no adjustment shall be made without notice to the applicant to show cause in this regard.

(v) The respondents are directed to ensure payment of the arrears of pay in accordance with the above order within four months from the date of the receipt of this order. In respect of any delay beyond this date, the respondents shall be liable to pay interest worked out @ 14 per cent per annum for the period of delay.

(vi) The applicant shall also be entitled to be considered for further promotion in accordance with law if during the above period when he was out of service his juniors have been promoted. Action in this regard shall be completed within six months from the date of receipt of this order.

There will be no order as to costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

14.12.91

(N.V. Krishnan)
Acting Chairman

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