



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.1130/2004

New Delhi, this the 19th day of October, 2005

**HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. M.K. MISRA, MEMBER (A)**

Shri Ganga Prakash,
S/o Shri Ram Swarup,
R/o GH-13/864.
Paschim Vihar,
New Delhi.

.... **Applicant.**

(By Advocate Shri Sarvesh Bisaria)

Versus

1. Union of India through
Finance Secretary,
Department of Economic Affairs,
Ministry of Finance,
North Block, New Delhi.
2. Ministry of Personnel, Public Grievances
and Pension,
through Secretary,
Department of Personnel & Training,
North Block, New Delhi.

.... **Respondents.**

(By Advocate Shri N.S. Mehta)

O R D E R

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A., applicant has challenged the order dated 1.4.2004 whereby applicant has been dismissed from service by the President by attracting Article 311 (2) (c) of the Constitution (page 8).

2. The brief facts, as stated by the applicant, are that he joined the service of the respondents as Assistant Master, Class 1, on 9.4.1974 and always worked to the entire satisfaction of his superiors and earned promotions from time to time. In May, 1992, applicant was selected as Deputy General Manager in Govt. of India Mint Noida, on deputation basis. Subsequently, he was transferred along with the post in the Currency Notes Press, Nashik Road in public interest. He was promoted as Deputy General Manager in his own cadre and was posted in India Security Press in March, 1998 at





Nashik Road. He earned several commendations, certificates and awards from Govt. of India from time to time. He has referred to pages 9 to 18 to show that even as late as in 2002, his work was appreciated by the Chief Electoral Officer. Applicant was promoted as General Manager in India Security Press, Nashik Road, on 15.1.2002 only because of his excellent performance throughout. However, vide order dated 24.4.2003, applicant was transferred from Indian Security Press, Nashik to SSP, Hyderabad. He accordingly joined at Hyderabad on 3.5.2003.

3. That all of a sudden, respondents suspended the applicant vide order dated 16.7.2003 without any justification. Applicant gave representation but no response was given nor any charge sheet was issued to him. Applicant was arrested by the CBI on 19.12.2003 from Hyderabad, for the charges under Section 120B read with Section 255, 258 IPC and read with Section 13 (2) and 13 (1) (d) of the PC Act, on the allegations of criminal conspiracy, counterfeiting Govt. stamps, sale of counterfeited Govt. stamps but by an order of Special Judge, Nasik dated 26.3.2004, he was bailed out yet without holding the inquiry or giving him any opportunity, applicant was dismissed from service vide order dated 1.4.2004, served on applicant on 26.4.2004, thus violating his fundamental right to defend himself.

4. Applicant has challenged the above orders on amongst others the following grounds:

- (i) The order dated 1.4.2004 is absolutely wrong, illegal and unsustainable in law as no reasons have been assigned therein to show how applicant's retention in service would be prejudicial to the security of the State whereas it is necessary to record the reasons under Article 311 (2) (c), therefore, in the absence of same, the order cannot be sustained in law;
- (ii) The order has been passed on the basis of assumptions and presumptions without any material on record and without any substantial evidence available against the applicant;
- (iii) The dismissal order is based on the FIR but in the FIR, the interest of the security of the State is nowhere in picture and the role assigned to





the applicant in the FIR does not warrant dismissal of the applicant from service.

(iv) The order passed by the respondents is absolutely disproportionate to the offence alleged to have been committed by the applicant, therefore, the dismissal order is violative of Articles 14, 16 and 21 of the Constitution of India. As such, it is liable to be quashed and set aside.

5. Counsel for the applicant further submitted that respondents have stated in the counter affidavit that applicant was instrumental in disposing of the machine but applicant was not the in-charge and auction was carried out by some other officer. Moreover, at the relevant time, applicant was posted in Nasik only in March, 1998 and India Security Press does not do marketing of stamp papers at all. Therefore, he cannot be held responsible for counterfeiting Government stamps, etc. The tender was accepted by a Committee where applicant was not the in-charge. The CBI even conducted a raid but no incriminating documents were recovered from his house. No charge-sheet has been filed against the applicant in criminal case which itself shows that he has no role in the whole racket and the way dismissal order has been passed in haste itself vitiates the order. He further submitted that in the suspension order dated 16.7.2003, it was clearly stated that a disciplinary proceeding is contemplated against the applicant but since respondents did not have any evidence against him, they have resorted to Article 311 (2) (c) to cut short the method for reasons best known to them. He also submitted that it would amount to double jeopardy as he will face the criminal case also where evidence will come, therefore, at this stage applicant's services could not have been terminated. He has relied on the following judgments:

- (i) **Jaswant Singh Vs. State of Punjab and Ors.** (1991 (1) SCC 362);
- (ii) **Om Prakash Pathak Vs. Union of India (Jabalpur)** (ATR 1986 (2) 557);
- (iii) **Chandigarh Administration, Union Territory, Chandigarh & Ors. Vs. Ajay Manchanda etc.** (1996 (2) SLR 673); and
- (iv) **A.K. Kaul and Anr. Vs. Union of India & Anr.** (1995 (3) SLR 1).





6. Respondents have opposed this O.A. They have submitted that as per reports received from Central and State Investigating agencies, a fake stamp racket was detected in 2001-02 in Pune – Mumbai-Thane belt running into crores of rupees. One Abdul Karim Telgi of Karnataka was reported to be the mastermind behind the racket, the tentacles of which were discovered in many other States. The conspiracy included involvement of a number of serving and retired officials of the India Security Press (ISP), Nashik who were printing the Non-Judicial Stamp Paper. Some ex-officials/serving employees of ISP had actively helped the gang of counterfeiters in procuring the technical know-how and various aspects of printing of genuine stamps supplied by the Indian Security Press, Nashik. This included the person holding the top management post i.e. General Manager, ISP Shri Ganga Parkash. Applicant's name figured in the list of persons reported by IB to be actively involved with the counterfeiters in the fake stamp case. Even audit parties had pointed out serious lacunae in his working. In view of the subversive activities indulged in by applicant, it was decided to contemplate disciplinary proceedings against him. The main reasons for starting disciplinary proceedings against him were as under:

- (i) The IB report sent by the Home Secretary referred to Shri Ganga Parkash as the most prominent partners of Abdul Karim Telgi, the leader of the organized crime syndicate for counterfeiting stamp papers;
- (ii) The Special Investigating Team (SIT) set up by the Government of Maharashtra for investigating into the counterfeit stamp case had brought out that the prime accused Abdul Karim Telgi and his associates had managed to obtain printing materials such as negatives and positives of stamps/stamp papers, special kind of paper meant for printing of stamps, gummed papers, perforating machines, inks, etc. with the active connivance of ISP officials;
- (iii) In the raids carried out by the Special Investigation Team, Karnataka Police at the residence of Shri Ganga Parkash, several incriminating documents were found from his possession. Some of his service documents including a representation for promotion and posting were





seized from the bank locker of Telgi by the Pune Police which provides evidence of closer links between the two;

- (iv) Moreover, in the statement made to the SIT, Maharashtra Police by the applicant, he confessed his links with Telgi. He met him along with an ISP official to seek latter's intervention in his promotion/transfer case. He also admitted to have initially accepted two costly watches offered by Telgi in one of such meetings at Mumbai which he claimed were later returned to Telgi;
- (v) It was found that Shri Ganga Parkash was indeed the most important ally of Abdul Karim Telgi in producing nearly perfect counterfeit stamps and stamp papers in huge quantities and their eventual illegal sale in the open market as well as to Govt. Institutions. It was keeping in view the evidence provided by the Security agencies and made available that the Committee of Advisers, headed by the Home Secretary with Secretary (Personnel), Secretary (Legal Affairs), Finance Secretary and Director, Intelligence Bureau as Member, was satisfied that Shri Ganga Parkash had, undoubtedly, conspired with Telgi by not only providing him technical know-how for printing of government stamps and stamp papers but had also handed over to the latter sensitive ISP documents relating to strategy for marketing and distribution of stamp papers. Further, Shri Ganga Parkash was also instrumental in delivering used offset printing machines and performing machines sold in auction by ISP, Nashik to a company purported to have been floated by Telgi without getting these machines dismantled and thereby facilitating the printing of counterfeit stamp papers through such machines;
- (vi) The misdemeanor committed by Shri Ganga Parkash in aiding and abetting Telgi in the stamp paper scam had a direct bearing on the nation's financial security and economy inasmuch as it resulted in causing revenue loss of unprecedented scale both to the Central Government as well as some State Governments;





(vii) Since the findings against the applicant have shown to have grave ramifications upon the economy of the country by denting into the revenue generation mechanism of the Central and State Governments as the illegal activities of the accused were directed towards creation of a parallel network of printing and distribution of fake security documents, naturally this process impinges directly upon the national security and suggests subversion of a high security unit by the accused. It also shows that the official position bestowed on him has been misused illegitimately for anti-national activities.

They have thus submitted that all these facts were brought to the notice of highest hierarchy who felt his further continuation in service was considered dangerous and detrimental to the interest of the security of the State. The Government was satisfied that it was not expedient to hold an inquiry into the matter looking at the appalling state of affairs in the India Security Press, Nashik leading to a large scale organized racket in fake/counterfeit stamp papers. The Government was deeply concerned as the value of fake stamp papers/stamps seized by different State Police authorities across the country was in the range of Rs.3500 crores, which shows the enormity of the organized racket.

7. It was in these circumstances that the proposal for dismissal of the applicant from service was recommended by the Finance Minister. His case was submitted for consideration of the Committee of Advisers. The Committee after going through the evidence in possession of the Government regarding involvement of Shri Ganga Parkash in the scam felt that he was indeed the most important ally of Abdul Karim Telgi in producing nearly perfect counterfeit stamps and stamp paper in huge quantities and their eventual illegal sale in the open market as well as to Government institutions. Thus, the Committee was satisfied that Shri Ganga Parkash had, undoubtedly, conspired with Telgi by not only providing him technical know-how for printing of government stamps and stamp papers but had also handed over to the latter sensitive ISP documents relating to strategy for marketing and distribution of stamp papers. In this view of the matter, it was decided that Shri Ganga Parkash was not a fit person to



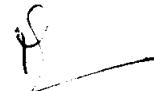


be retained in Government service. The recommendation of the Committee of Advisers was approved by Finance Minister as Minister in-charge of the administrative Ministry, which was ultimately approved by the Prime Minister. Therefore, proper procedure was followed for dismissing the applicant.

8. Counsel for the respondents further submitted that once dismissal order had been passed, it was not open to judicial scrutiny by the Courts. He relied on the judgment given by the Principal Bench of the Tribunal in the case of **Krishan Kishore Malhotra Vs. Union of India** (1988 (8) ATC 595) whereas counsel for the applicant relied on Hon'ble Supreme Court's judgment in the case of **A.K. Kaul and Anr. Vs. Union of India and Anr.** (1995 (3) SLR 1) to state that where the validity of an order passed under clause (c) of the second proviso to Article 311 (2) of the Constitution is assailed before a Court or Tribunal, the Government is obliged to place before the Court or the Tribunal the relevant material on the basis of which the satisfaction was arrived at subject to claim of privilege under Sections 123 and 124 of the Evidence Act to withhold production of a particular document or record.

9. In rejoinder, counsel for the applicant submitted that no raid had been conducted by the Karnataka Police at residence of applicant, therefore, respondents have filed a wrong affidavit whereupon respondents filed an additional affidavit wherein they clarified the position that it was inadvertently written as Karnataka Police whereas the raids were carried out by the Special Investigation Team of Maharashtra Police. The inconvenience caused to the Court was regretted by the respondents.

10. We have heard both the counsel and perused the pleadings as well. Counsel for the respondents had relied on Tribunal's judgment to state that it was not open to the court to judicially review the satisfaction of the President. However, the judgment given by the Tribunal in 1987 does not hold the field nor can it be said to be the correct law as this question had come up before the Hon'ble Supreme Court in the case of **A.K. Kaul** (supra) and after considering the contentions of both the sides, it was held by the Hon'ble Supreme Court that since the task of interpreting the provisions of the Constitution is entrusted to the judiciary, it is vested with the power to test the validity of an action of every authority functioning under the Constitution on the touch stone of the





Constitution. Therefore, exercise of power under clause (c) of second proviso to Article 311 (2) of the Constitution is subject to judicial review. An order passed under the said provisions is open to challenge before the Courts on the ground that satisfaction of the President or the Governor is vitiated by mala fides or is based on considerations, which have no relevance to the interest of the security of the State. Judicial review of a particular action is different. Unless expressly excluded by a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution. Justiciability relates to a particular field falling within the purview of power of judicial review. On account of want of judicially manageable standards, there may be matters which are not susceptible to the judicial process. Such matters are regarded as non justiciable. That is during the course of exercise of the power of judicial review it may be found that there are certain aspects of the exercise of that power which are not susceptible to judicial process on account of want of judicially manageable standards and are, therefore, not justiciable. It was further held where the validity of an order under Article 311 (2) (c) of the Constitution is assailed before a Court or the Tribunal, the Govt. is obliged to place before the Court or the Tribunal the relevant material on the basis of which the satisfaction was arrived at, subject to claim of privilege under Sections 123 and 124 of the Evidence Act to withhold production of a particular document or record. It is thus clear that once an order is assailed in a court of law even though it is passed under Article 311 (2) (c) of the Constitution, the Government is bound to place the relevant record before the Court for its perusal to see whether there was some material before the authorities for coming to the conclusion or the order is based on some extraneous considerations or is passed due to some mala fides. In this view of the matter, the objection taken by the respondents' counsel is not sustainable in law. The same is accordingly rejected. Respondents were directed to produce the records to show the material relied upon by them before issuing the order of dismissal for the Court's perusal. Respondents have since produced the relevant record for Court's perusal.





11. We have gone through the records produced by the respondents and we find that there were number of reports given by different agencies which were taken note of by the Committee of Advisers, which was headed by noneless than by Home Secretary, Secretary Personnel, Secretary, Legal Affairs, Finance Secretary and Director Intelligence Bureau. All the material was placed before them who scrutinized the various reports and after they were satisfied about the role of Shri Ganga Parkash in helping Abdul Karim Telgi by giving him off-set printing machines and perforating machines without dismantling them, thus facilitating the printing of counterfeit stamp papers through such machines and helping him in procuring the technical know-how of printing of government stamps and stamp papers and various aspects of India Security Press, Nashik and conniving with him in other matters relating to the printing of stamps and stamp papers, they opined that Shri Ganga Parkash was not a fit person to be retained in Government service. The enormity of the organized racket was shown in the various reports submitted by the Intelligence Bureau or other agencies who investigated into the matter and who gave the report that locus of the racket was mainly the India Security Press, Nashik where applicant was working as General Manager. It was also held that the misdemeanor committed by Shri Ganga Parkash in aiding and abetting Telgi in the stamp paper scam had a direct bearing on the nation's financial security and economy inasmuch as it resulted in causing revenue loss of unprecedented scale both to the Central Government as well as some State Governments, which had grave ramifications upon the economy of the country by denting into revenue generation mechanism of the Central and State Governments as the illegal activities of the accused were directed towards creation of a parallel network of printing and distribution of fake security documents. Naturally, it affects national security and suggests subversion of a high security unit, which was headed by the applicant. In these circumstances, if they recommended to dismiss the applicant by attracting Article 311 (2) (c) of the Constitution, we are satisfied that the impugned order cannot be said to be vitiated either by mala fides nor by extraneous considerations as suggested by the counsel for the applicant. On the contrary, there was sufficient material before the Committee of Advisers to come to the conclusion that it was not safe to continue the applicant in the



Government service looking at the illegal activities resorted to by the applicant in connivance with Abdul Karim Telgi.

12. Counsel for the applicant had strenuously argued that there was no material before the authorities to come to the conclusion that nation's security was endangered so as to attract Article 311 (2) (c) of the Constitution but when some one tries to run parallel network of printing and distribution of fake security documents, nothing can be said to be more dangerous than that to the security of the nation. It goes without saying that not only it had made dent in the economy of the country by causing revenue loss to the tune of crores and crores but had also affected the revenue generation mechanism itself of the Central and State Government. In this view of the matter, the contention of the applicant's counsel that there was no material for dismissing the applicant under Article 311 (2) (c) of the Constitution is rejected.

13. At this juncture, it would be relevant to deal with his submission that applicant's services could not have been dispensed with without holding an inquiry or without giving him an opportunity to defend himself. He has relied on number of judgments to substantiate his contention that there could be no short cut in dismissing the services of an employee and an inquiry is a must. However, if inquiry was to be held in each and every case, that would make Article 311 (2) (b) or (c) redundant. The very purpose of inserting Article 311 (2) (c) is that in a situation 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, Article 311 (2) would not apply, meaning thereby that in such situations an employee could be dismissed without even holding an inquiry or affording an opportunity to the said person. Therefore, the only question which can be urged by the employee would be, whether there was sufficient material for forming the satisfaction or not? We have already observed above that there was indeed sufficient material before the authorities concerned to come to the conclusion that looking at the enormity of the situation, it was not possible to hold regular inquiry, the order passed by the respondents has to be upheld. It would also be relevant to quote Article 311(3) which, for ready reference, reads as under:





"(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final".

It was keeping in view the above provisions that Hon'ble Supreme Court upheld the order of dismissal passed against ex-Sub Inspector Gurdit Singh in the case of **Chandigarh Administration and Ors. Vs. Ex. S.I. Gurdit Singh**, reported in JT 1998 (4) SC 253.

In the said case, there was a report which depicted the delinquent as terror in area and influential person. It was also stated that no person would come forward to depose against him. In view of the said report, his services were dismissed by attracting Article 311 (2)(b). When the matter came up before Hon'ble Supreme Court, it was held that under Article 311 (3), the decision of authority empowered to dismiss, is final. When such authority has decided that it was not reasonably practicable to hold enquiry, the Tribunal was in error in holding that enquiry could have been held. None had supported the prosecution in trial. Hence, disciplinary authority was justified in not holding the inquiry. The Hon'ble Supreme Court observed that since none of the witnesses had supported the prosecution case and have turned hostile that itself shows, the disciplinary authority was justified in holding that it is not reasonably practicable to hold an enquiry inasmuch as the witnesses cannot come forward freely to depose against the respondents. Similar view was taken by the Hon'ble Supreme Court in the case of **Union Territory, Chandigarh and Ors. Vs. Mohinder Singh** (1997 (3) SCC 68). In the said case also, a report was submitted by the senior officer confirming the allegation and further stating that the respondent was a terror in the area, that in the very presence of the Superintendent of Police the respondent had intimidated the complainant victim and that two other persons arrested with the complainant-victim and present there immediately left the office of the Superintendent of Police terrified by the threats of the respondent. In such circumstances, Hon'ble Supreme Court held that disciplinary authority rightly came to the conclusion that it was not reasonably practicable to hold the inquiry. Thus, the order of dismissal under Article 311 (2) (b) was upheld. The judgment whereby the order of dismissal was quashed by the Tribunal was set aside. In the case of **Union of India Vs. Balbir Singh** reported in





1998 (5) SCC 216, the respondent therein was dismissed from service by attracting Article 311 (2) (c) of the Constitution as in the present case. It was held by Hon'ble Supreme Court that the Court can examine the circumstances on which the satisfaction of the President or the Governor is based and if it finds that the said circumstances have no bearing whatsoever on the security of the State, this Court can hold that the satisfaction of the President or the Governor which is required for passing such an order has been vitiated by wholly extraneous or irrelevant considerations. In the said case also, the dismissal of the respondent therein was based on the recommendations of a High Powered Committee of Advisors constituted in accordance with Govt. of India, Ministry of Home Affairs OM dated 26.7.1980. The Committee considered information and documents collected by the Intelligence Bureau, which had bearing on security of State. It was in these circumstances that Hon'ble Supreme Court upheld the order of dismissal by observing that this is not a case where there is absolutely no material relating to the activities of the respondent prejudicial to the security of the State. It would be relevant to mention here that in the said case, the respondent was acquitted in criminal case. It was still held that the material placed before the Committee was not confined to the assassination of Prime Minister only, it related to various other activities of the respondent as well. Therefore, his acquittal in the criminal case did not make any difference to the order which was passed by the President on totality of material which was before the authorities long prior to the conclusion of the criminal trial. In that case also, Tribunal had quashed the dismissal order but Hon'ble Supreme Court set aside the judgment passed by the Tribunal and upheld the dismissal order because there was sufficient material gathered by the Intelligence Bureau which was placed before a high-level Committee of Advisors as per the procedure prescribed by the government memorandum.

14. We find that the case in hand before us is clearly covered by the judgment of Hon'ble Supreme Court in the case of **Balbir Singh** (supra) because in the instant case also, there were various reports collected by different agencies, including the Intelligence Bureau placed before the Committee of Advisors, which was a very high-level Committee as it included the officers of highest rank, as mentioned above, in



accordance with the procedure laid down by the Government memorandum and it was only after they were satisfied after looking at the various reports, that they came to the conclusion that applicant's retention in service was not proper, therefore, they recommended his dismissal by attracting Article 311(2) (c) of the Constitution. The said recommendation was approved by the Finance Minister, who was Minister In-Charge and also by the Prime Minister. Therefore, proper procedure was followed before passing the order of dismissal under Article 311 (2) (c) of the Constitution. From the above judgment, it is clear that filing of criminal case would have no bearing so long there is sufficient material on record to show that satisfaction was based on objective facts, therefore, the contention of applicant's counsel that he would be faced with double jeopardy is rejected. In this view of the matter, we find no illegality in the order passed by the respondents.

15. Counsel for the applicant had relied on 1991 (1) SCC 362, judgment in the case of **Jaswant Singh Vs. State of Punjab and Ors.** to show that order of dismissal passed under Article 311 (2) (b) was quashed by the Hon'ble Supreme Court. However, perusal of the judgment shows that the said case was decided on the facts and material on record wherein Hon'ble Supreme Court came to the conclusion that the subjective satisfaction of the impugned order was not fortified by any independent material to justify dispensing with the inquiry, as envisaged by Article 311 (2). Moreover, earlier DE were conducted against the appellant and there was no allegation that department had found any difficulty in examining witnesses. Apart from it, appellant was in hospital, therefore, he could not have given the threats, which is not the situation here, therefore, that case cannot be applied in the present facts.

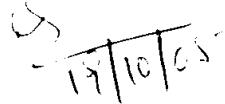
16. Counsel for the applicant had next contended that no reasons were given in the impugned order. However, since this matter related to the nation's financial security and economy, it was not necessary for the Government to give all the reasons in the impugned order and so long the reasons are given in the files wherein the said decision was taken, the order cannot be said to be illegal nor can it be quashed on the said ground. We have perused the files and find that sufficient reasons have been assigned



in the files to the effect that applicant is not a fit person to be retained in Government service. Therefore, even this ground is rejected.

17. In view of the above, we find no ground to interfere in the order passed by the respondents. O.A. is accordingly dismissed. No order as to costs.


(M.K. MISRA)
MEMBER (A)


(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'