

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2193 of 1992 decided on 24.7.1998.

Name of Applicant : Lakshman Dass Meena

By Advocate : Shri D.C.Vohra

Versus

Name of respondent : U.O.I. through the Secretary,
Ministry of Defence

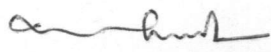
By Advocate : Shri P.H.Ramchandani

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

Hon'ble Dr. A.Vedavalli, Member(J)

1. To be referred to the reporter - ~~Yes~~/No
2. Whether to be circulated to the other Benches of the Tribunal. - ~~Yes~~/No


(N. Sahu)
Member (Admnv)

24.7.98

16

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2193 of 1992

New Delhi, this the 24th day of July, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

Lakshman Dass Meena, son of late Shri
Prabhū Dayal, aged 45 years, resident of
DII/Block III, B-2/P&N Quarters, Kali
Bari, New Delhi - 110 001

-APPLICANT

(By Advocate Shri T.D.Yadav, proxy for
Shri D.C.Vohra)

Versus

The Union of India through the
Secretary, Ministry of Defence, Govt.
of India, South Block, New Delhi-110 011

-RESPONDENT

(By Advocate Shri P.H.Ramchandani)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The applicant impugns the orders issued by
the Union of India on 22.1.1990 and 13.6.1990
dismissing him from service without enquiry, and
rejecting his review-petition. The second prayer is
to issue a direction to the respondent to pay him
subsistence allowance during the period of trial in
the competent court.

2. The background facts of this case are that
the applicant was employed as a Gestetnor Duplicator
Operator in the Ministry of Defence. The charge
against him was that he entered into a criminal
conspiracy with others and passed on secret official
codes and secret and classified documents, pertaining
to the Ministry of Defence, to the Pakistan Embassy.
The other documents belonging to the other Ministries



of Govt. of India are also allegedly transferred. This activity of the applicant was considered to be prejudicial to the interest of the State. He was charged with violation of Section 3(1) (Part-I) of the Official Secret Act and he was charged with liability to punishment under Section 120B of the Indian Penal Code read with Section 3(1) (Part-I) of the Official Secret Act. He was arrested by the Police on 11.9.1987 and as he remained in judicial custody for more than 48 hours he was deemed to have been suspended. All the relevant papers and the documents supporting the charges were placed before the Committee of Advisers for consideration. The Committee considered and submitted a report to the President of India. The President was satisfied that it was not expedient to hold an enquiry in the manner provided under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as "the 1965 Rules"). In view of the subversive activity of the applicant as reported to him, the President was satisfied that his further retention in service would be prejudicial to the interest of security of State. Accordingly the President ordered dismissal of the applicant by invoking the powers conferred on him under Article 310(1) of the Constitution of India read with Rule 19(iii) of the 1965 Rules. By the orders of the President the applicant stood dismissed from 22.1.1990. He filed a review petition against his dismissal which was rejected by an order dated 13.6.1990.



3. The applicant filed this O.A. on 25.8.1992. There is a delay of merely one year and three months in filing the application, the applicant prays for condonation of delay on the ground that he was wrongly advised to send a representation to the Chairman of the Tribunal during July, 1990 when he was in Tihar Jail. He was released on bail only on 7.1.1992. He prays for consideration that the delay in filing the application is neither deliberate nor intentional.

19

4. On merits the applicant claims that the order of dismissal on the ground that no enquiry can be held for the reasons of security of State is not in accordance with law. His second contention is that the order of dismissal was on the same facts and circumstances which are being examined concurrently by another Court in a criminal case. He stated that the respondents should have waited for the outcome of the pending trial in the criminal court. The delay in the conclusion of criminal proceedings could not be attributed to him. He questions the pleasure doctrine of the President. He states that for such an extreme punishment the President should be convinced on the basis of the adequate material on record. He finally claims that the order of dismissal from service without affording him an opportunity of being heard is a violation of rule of law.



5. We have heard the learned counsel appearing for both sides. In response to our query, the Ministry of Defence stated that the criminal case FIR No.242/87, P.S.Chankyapuri where the applicant is one of the accused is being tried by the Assistant Sessions Judge, Patiala House, New Delhi. The latest date given in that case is 1.8.1998 and the conclusion of the proceedings are stated to take some more time. The learned counsel for the respondents has relied on an order of this Court in OA No.3278/92 in the case of Dharam Deo Ojha Vs. Union of India decided on 24.11.1994 on identical facts. He states that all the grounds raised here are exhaustively dealt with in that order. He also relied on the decision of the Apex Court in the case of Director General of Ordnance Services & ors. Vs. P.N.Malhotra, 1995 Supp (3) SCC 226. 20

6. The learned counsel for the applicant relied on the grounds raised in the O.A. and also in the pleadings.

7. We have carefully considered the petition for condonation of delay. The applicant was enlarged on bail on 7.1.1992. We do not have any explanation for a period of 7 months thereafter, even if we treat his incarceration as a valid ground for not filing the O.A. We are therefore not satisfied with the grounds stated in the application for condonation of delay. The same is rejected.

[Signature]

8. Even on merits in the case of Union of India Vs. K.S.Subramaniyan, 1989 Supp(1) SCC 331 the Apex court held that a civilian employee in Military service drawing his salary from defence estimates could not claim the protection of Article 311(2) of the Constitution. This makes the exercise of the pleasure doctrine by the President without any fetters. It was also held that when the protection of Article 311 (2) is excluded, the 1965 Rules cannot come to his rescue because the rule making power under Article 309 is subject to Article 311. Thus, the Hon'ble Supreme Court held that dismissal of an employee cannot be faulted on the ground that there was no compliance with the requirement of Article 311(2). In P.N.Malhotra's case (supra) it was held that the respondent Shri Malhotra could not be said to have suffered any prejudice in following the procedure prescribed by the 1965 Rules. (2)

9. It is very clear that the applicant is not entitled to be informed of the reasons which led the President to issue the dismissal order. Consultation with the Union Public Service Commission (in short 'UPSC') is dispensed with in terms of Regulation 5(2) of the UPSC (Exemption from Consultation) Regulations, 1958 under which civilians in defence organization are outside the purview of the UPSC. Ministry of Home Affairs issued guidelines vide OM No.34012/1(5)/79-Estt(B) dated 26.7.1980 to deal with the Government servants engaged in and associated with subversive activities, and procedure to be followed for taking action under the second proviso

[Signature]

to Article 311(2) of the Constitution is also outlined. Under that OM a High Level Committee has to examine such cases and submit its recommendations to the Secretary of Department concerned. As the applicant is a defence employee, the Committee of Advisers consists of Home Secretary, Defence Secretary and Secretary Personnel with a Director of Intelligence Bureau. It is on the basis of the recommendations of this Committee that the applicant was held to have engaged himself in highly objectionable and prejudicial activity adverse to the security of the State and, therefore, his retention in service was held to be not desirable. 22

10. During the course of the first hearing, none for the applicant was present and during the course of the second hearing Shri T.D.Yadav did not canvass the case of the applicant beyond the pleadings.


11. Rule 19 ibid derives sustenance from the second proviso to Article 311(2) which sets out the circumstances under which the protection in Article 311 will not apply. A reference to Rule 19(iii) has been made only to indicate that the pleasure of the President is necessary to be exercised under Article 310 in the interest of the security of State. It was not considered expedient to hold any kind of enquiry. As the applicant did not have any right to an enquiry and as the President has exercised his powers under Article 310, the first ground has no merit.


Am

12. With regard to the objection about identical points raised in the pending criminal case, we have to state that the matter stands now fully covered. A Full Bench of the Karnataka High Court in a decision in T.V.Gauda Vs. State of Mysore, 1975(2) LLJ 553 has held that there is no bar for holding disciplinary proceedings even after acquittal (emphasis supplied) in a criminal case. The law laid down by the Karnataka High Court has been confirmed by the Hon'ble Supreme Court in Corporation of City of Nagpur Vs. R.G.Modak, AIR 1984 SC 626. In the present case, the criminal trial is going on and there is no bar for the respondents to proceed departmentally against the applicant although on similar charges criminal trial is pending.

13. In view of the above discussion, there is no merit in this OA. Even on the question of limitation we hold that the delay in filing the OA is not properly explained and the filing itself is barred by limitation.

14. In the result, the O.A. is dismissed. No costs.


(Dr. A. Vedavalli)
Member(J)


(N. Sahu) 24.7.98
Member(Admnv)

rkv.