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Central Administrative Tribunal  
Principal Bench, New Delhi.

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O.A. No.2827 of 1992

New Delhi this the 10th day of May, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)

Shri B.S. Hegde, Member (J)

Shri Charanjit,  
R/o Qr. No.1204, Sector III,  
Pushpa Vihar,  
New Delhi-110017.

Applicant

By Advocate Shri B.B. Raval.

Versus

Union of India through

1. Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.

2. Secretary,  
Department of Personnel & Trg.  
North Block,  
New Delhi.

3. The Engineer-in-Chief,  
Army Headquarters,  
Kashmir House,  
New Delhi-110011.

Respondents

By Advocate Shri M.L. Verma.

O R D E R

Shri N.V. Krishnan, Vice-Chairman(A)

The applicant is aggrieved by the order dated 18.8.1992 (Annex. A) of the 1st Respondent by which he has been dismissed from service. That order reads as follows:-

"ORDER

WHEREAS the President is satisfied under Clause (1) of Article 310 of the Constitution

read with Rule 19(iii) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, that in the interest of the security of the State, it is not expedient to hold an inquiry in the case of Shri Charanjit, Senior Draughtsman.

AND WHEREAS the President is satisfied that, on the basis of the information available, the activities of Shri Charanjit are such as to warrant his dismissal from service.

NOW, THEREFORE, the President hereby orders dismissal of Shri Charanjit from service with immediate effect. The President further orders that no pensionary benefits and other terminal benefits shall be given to Shri Charanjit.

(By order and in the name of the President)

Sd/-

(Dr. A.R. Goyal),  
UNDER SECRETARY TO THE GOVERNMENT OF INDIA

2. The applicant was working as a Senior Draughtsman in the Office of the Engineer-in-Chief, Army Hqrs., Govt. of India (Res.No.3). At the relevant time, he was posted as Sr. Draughtsman in the Office of the Chief Engineer, Delhi Zone, Delhi Cantt., where he joined on 8.7.1987. While so, it is stated that, on 1.9.1990, a team of C.B.I. officers visited his house and subjected him to a detailed interrogation. He was particularly interrogated about his acquaintance with one, Vishwanath Dutta, a L.D.C. in his office. The house of the applicant was also searched but nothing incriminating was found. He was then taken to the new Kotwali Police Station, Darya Ganj, where he was again interrogated till night. He was asked to report to the same Police Station on 4.9.1990 and keep these proceedings strictly confidential.

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3. It is further stated that such interrogation by various officials continued for a fortnight. At the request of the Police officials, he reduced in writing, at different times, the version given by him to different officers. After such interrogation, for about a fortnight, the applicant was allowed to go home and he felt relieved.

4. The applicant, however, received on 20.11.1990, an order of suspension dated 26.11.1990 (Annex.A8) passed by the Chief Engineer, Delhi Zone, which stated that he was being suspended under Rule 10(1)(aa) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 - 'CCA Rules' for short - because a disciplinary proceeding against him was contemplated. However, no such proceeding was commenced. Instead, he received the impugned order (Annex.A) of dismissal under the cover of a registered letter dated 16.9.1992 sent to him by the Chief Engineer, Delhi Zone.

5. The applicant has impugned this order on the following principal grounds:-

- (i) Though the C.B.I. officials interrogated him for about a fortnight, nothing incriminating was found, because he was not prosecuted for any offence.
- (ii) Though the order of suspension (Annex.A8) stated that a disciplinary proceeding was contemplated, yet none was initiated and he had been dismissed without any inquiry.

(iii) The statement that in the interest of the security of the State, it is not expedient to hold an enquiry in his case, is governed by para.(c) to the second proviso to Article 311 (2) of the Constitution and has nothing to do with Article 310.

(iv) Further, the withdrawal of the President's pleasure under Article 310 should not necessarily result in dismissal.

(v) The impugned order is further vitiated because it is issued under 19 (iii) of the C.C.A. Rules which is meant to be a guideline or a direction for the disciplinary authority who, in his case, is the Chief Engineer. This Rule is not meant for use by the President of India.

(vi) Further, the disciplinary authority had already indicated in the Annex.A8 order of suspension that a ~~other~~ Departmental Enquiry was contemplated. It cannot thereafter be stated that the President has felt that it is inexpedient to hold an enquiry and dismiss him under 19(iii) of the C.C.A. Rules.

(vii) In the way his dismissal has been ordered, it ought to have been ordered under para. (c) of the second proviso to Article 311(2) of the Constitution. By not doing

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so, the order is vitiated.

(viii) Lastly, an order of dismissal by way of punishment, without following the procedure of giving an opportunity to the applicant to defend himself, is bad in law.

6. The respondents have filed a detailed reply.

In para. 4(11) of the reply, it is stated as follows:-

".....The officer has accepted the fact that he submitted his entire version in writing. He had confessed in his statement dated 9th September, 1990 that he supplied documents of State to Shri Dutta and Shri Sharma and a reward he got monetary benefits from period 1984 onwards. He also confessed that he travelled to places like Jaipur, Srinagar, etc. on the espionage activities and collected locations of strategic importance having sophisticated defence equipment, Air Fields etc. These were given to Shri Sharma by him."

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".....Police Authorities had interrogated the individual under Sections 3,5,9 of Official Secrets Act, 120-B I.P.C. and found that the applicant Shri Charanjit Singh had passed on sensitive defence information to Pakistan High Commission Official. He was, therefore, suspended as per sub-Rule 1(aa) of Rule 10 of CCS(CC&A) Rules 1965 w.e.f., 26th November, 1990 to enable the Government to take follow up action."

7. His case was, therefore, referred to a Committee of Advisers consisting of the Secretaries in the Ministry of Home Affairs, Department of Personnel, Department of Legal Affairs, Ministry of Defence and Director, Intelligence Bureau. It is stated that this Committee recommended the dismissal of

the applicant and after the approval of the Raksha Mantri and the Prime Minister, the applicant was dismissed from service by the impugned order.

8. The respondents also contend that "since the applicant is a defence civilian paid from Defence Service Estimates, Article 311(2) (c) is not applicable to him." He was, therefore, dismissed by the Presidential order invoking Article 310 (1) read with Rule 19(iii) of the CCS(CCA) Rules. As the applicant's indulgence in espionage activities was prejudicial to the security of the State and as it was not expedient to hold any enquiry in the manner provided in the CCS(CCA) Rules, no chargesheet was issued. The respondents deny that there is any infirmity in these proceedings.

9. We have heard the learned counsel for the applicant. It is his contention that the impugned order discloses the confused thinking of the respondents. Rule 19(iii) of the C.C.A. Rules empowers the disciplinary authority to impose the punishment of reduction in rank, removal from service or dismissal from service without complying with the procedure laid down in Rules 14 to 18 for imposing such penalties. Therefore, Rule 19(iii) is inappropriate to be invoked by the President, who is not the applicant's appointing authority.

10. He also pointed out that as the applicant had been suspended pending an enquiry, the respondents could not have resorted to a short cut without holding the promised enquiry. The applicant was grilled by the C.B.I. officials for about a fortnight but nothing came out of it as would be evident from the fact that at the end of it, they did not either institute any criminal proceedings against him or initiate any disciplinary proceedings against him. Therefore, it has to be concluded that there was hardly any evidence against the applicant to warrant his dismissal.

11. He also contended that the Special Committee xxxxxxxx of Advisers could not have discovered anything incriminating against the applicant, when the C.B.I. team itself could not find anything and let him off without any prosecution. The learned counsel also contended that no confessional statement had been given by him to the C.B.I. officials and even if, for argument's sake, this is accepted, it cannot be acted upon to take any punitive action against him, as such a confession is not admissible in evidence.

12. The learned counsel for the respondents contended that during the interrogation, the applicant gave an incriminating confessional statement relating to espionage activities. Hence, his dismissal under

Article 310 was proper. He has also relied upon the following judgements\* in support of his contention that the dismissal cannot be assailed by the applicant.

13. The learned counsel for the applicant contend that these very decisions support his case and that he is entitled to the reliefs prayed for.

14. We have carefully considered the rival contentions and perused the records.

15. In the first place, it is necessary to find out the status of the applicant and the extent of the protection to which he is entitled under the Constitution of India. Admittedly, he is a Defence civilian paid from the Defence Service Estimates. Therefore, he is not entitled to the protection of Article 311 of the Constitution as held by the Supreme Court in successive decisions, viz., J.M. Ajwani Vs. U.O.I., 1967 SLR 471, S.C.; Lekh Raj Khurana Vs. U.O.I., A.I.R. 1971 S.C. AIR 1989 SC 662. 662; Union of India Vs. K.S. Subramanian/ That issue is now well settled.

16. The implication of these decisions seems to be that in respect of such persons, the President's pleasure in regard to their tenure is absolute. They hold office

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- \* i) M. Ramanath Pillai Vs. State of Kerala, 1973 (2) SCC 690
- ii) AIR 1985 SC 1416 (UOI Vs. Tulsiram Patel)
- iii) 1989(10) ATC(SC) 513, UOI Vs. K.S. Subramanian.
- iv) 1984 (4) SLJ 966 C.A.T.
- v) 1987 (3) ATC 668 CAT P. Gopal Vs. U.O.I.
- vi) 1989(20) ATR 1 (CAT) Krishan Lal Chadha Vs. U.O.I.
- vii) 1990 (2) SLJ 305 (CAT) P.T. Thomas Vs. U.O.I.
- viii) 1993 (1) SLJ 578 CAT.

during the absolute pleasure of the President. That pleasure can be withdrawn without being subject to the provisions of clause (1) and clause (20 of Article 311. In other words, in respect of such persons, the exercise of the President's pleasure to terminate their tenure - whether by way of removal or dismissal - is not subject to the provisions of Article 311, in as much as in clause (1) of that Article, which enumerates the class of persons to whom the protection of clause (1) and clause (2) of Article 311 is conferred in respect of their dismissal, removal from service (i.e., tenure) and reduction in rank, the names of such persons are not mentioned. That being the case, we are of the view that the pleasure of the President to terminate the tenure of such persons (like the applicant) in any manner, e.g., dismissal, can be exercised by merely invoking the powers under Article 310(1) of the Constitution without calling in aid Rule 19 (iii) of the C.C.A. Rules.

17. The question is whether reference to Rule 19(iii) would be appropriate in any other sense. We have considered this issue. Rule 19 gets life from the second proviso to Article 311(2) of the Constitution. This proviso sets out in paras. (a), (b) and (c) thereof the three circumstances in which the provisions of and protections given by Article 311 will not apply. In other words, the second proviso to Art. 311(2) lifts the embargo placed by Article 311 on the President's pleasure under Art. 310(1) to determine the tenure of the class of persons mentioned in clause (1) of Art.

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311, in the circumstances mentioned in paras. (a), (b) and (c) of that proviso. In such circumstances, there would be practically no difference, in so far as the exercise of the pleasure of the President in respect of tenure is concerned, between persons like the applicant to whom the protection of Art. 311 is not available and the persons to whom Art. 311 applies, but in respect of whom that protection is withdrawn under one of the paras. of the second proviso to clause (2) of Art. 311. What is only sought to be conveyed by the reference to Rule 19(iii) in Annex.A is that the President has withdrawn the pleasure under Article 310 because it was necessary in the interest of the security of the State and that it was not considered expedient to hold any kind of enquiry, before doing so. Therefore, the invocation of Rule 19(iii) of the C.C.A.Rules in the impugned Annex.A order is, perhaps, not inappropriate, though in our view, it is not necessary.

18. Nevertheless, a procedure has been laid down, which has to be followed before orders of the President are obtained to determine the service of an employee under Article 310(1), so as to avoid arbitrariness and unreasonable exercise of this power. This procedure has been referred to in para.5-F of the reply and described in the para. 'Brief Facts of the case'. We have given the details in para. 7 (supra.).

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19. The arguments of the learned counsel that the dismissal, being in violation of the principles of natural justice, is bad in law, has also no substance. This issue has also been settled by one of the earliest decisions rendered by a Constitution Bench of the Supreme Court relating to the discharge of the service of a person holding a civilian post connected with defence and whose salary was paid from the defence estimates (Lekh Raj Vs. U.O.I. AIR 1971 SC 2111). Repelling the contention of the applicant that the principles of natural justice were violated, as he had not been afforded any opportunity of showing cause against his discharge or termination of service, the Apex Court observed it has not been shown how under the general law of master and servant, such a rule can be invoked, in the absence of any protection conferred by Art. 311 of the Constitution.

20. The other contentions of the applicant, therefore, do not have any legs to stand upon, once we come to the conclusion that no protection, whatsoever, is available to him as, in his case, the pleasure of the President to terminate his tenure is absolute. Nevertheless, we take up some of these issues for consideration on merit.

21. The applicant was suspended by the Annexure A-8 order indicating that a disciplinary proceeding was contemplated. It is, therefore, contended that one should have been held before he was dismissed. The provisions of Article 310 (i) are restricted to the tenure of service of members of the Armed Forces and persons holding posts connected with Defence, like

the applicant. As already seen, such persons do not get the protection of Article 311 of the Constitution. Rules framed under the proviso to Article 309 of the Constitution i.e. C.C.A. Rules, regulating the procedure for terminating the service of government servants and the protection they get in this regard, also do not apply to such persons. For, Article 310 is subject to only provisions specifically made under other Articles of the Constitution and not to rules made under any other article. If any other punishment, not affecting the tenure is to be imposed, e.g., a censure or reduction of pay etc, the provisions and protection of the C.C.A. Rules would apply. This view has been taken in a recently delivered decision of a Full Bench of the Tribunal (Principal Bench) in O.A. 2044/90, K.L. Gulati Vs Union of India. Therefore, it could as well have been that, it was initially thought that, perhaps, it would be sufficient if a penalty not connected with his tenure, was imposed on him under the C.C.A. Rules after holding a disciplinary enquiry. It is only subsequently, after consideration of the case by the Competent Authority, that a decision was taken, considering the gravity of the applicant's delinquency, that it was necessary to dismiss him under Article 310. It was made explicit in the impugned order of dismissal (Annex.A), by invoking Rule 19 (iii) of the C.C.A. Rules, that the action was being taken in the interest of the security of the State and that it was not expedient to hold any enquiry.

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22. The applicant's surmise that because he was not prosecuted, there was no evidence against him for his dismissal, is baseless. Such a conclusion does not necessarily follow. The applicant himself has admitted that he gave a number of statements to the Police. The respondents have alleged that these statements contain his confession. Maybe, it is precisely for that very reason that the applicant could not be prosecuted because a prosecution cannot be rested on a confession before a Police official. There is no bar in relying on such a confession to dismiss the applicant from service in a departmental proceeding which is what the Annex.A order is.

23. For the foregoing reasons, we do not find any merit in the O.A. Accordingly, it is dismissed.

24. An interim order was issued on 3.11.1992 restraining the eviction of the applicant from the quarter No.1204, Sector III, Pushpa Vihar, M.B. Road, New Delhi. This has been continued from time to time but there are certain intermediate periods when the interim order was not continued. In particular, it has not been continued after 24.9.1993. We make it clear that, with the dismissal of O.A., the authorities concerned are at liberty to evict the applicant from his quarter in accordance with law. In the interest of justice, we further direct that the rent recoverable upto the date on which this order is passed shall be at the rate at which he was paying rent immediately before he was suspended.

25. The O.A. is disposed of accordingly. No costs.

  
(B.S. Hegde)  
Member (J)  
CAMP: NEW DELHI

SLP

  
(N.V. Krishnan) 10/3/94  
Vice-Chairman (A)