CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(17)

O.A. No. 3223 199 2
~~T.A. No.~~

DATE OF DECISION 28.2.1995

Nagarajan Srinivasan — Petitioner

Shri G.K. Aggarwal — Advocate for the Petitioner(s)

Versus

Union of India — Respondent

Shri V.S.R. Krishna — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice S.C. Mathur, Chairman

The Hon'ble Mr. P.T. Thiruvengadam, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

(S.C. Mathur)
Chairman

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 3223 of 1992

New Delhi this the 20th day of February, 1995

HON'BLE MR. JUSTICE S. C. MATHUR, CHAIRMAN
HON'BLE MR. P. T. THIRUVENGADAM, MEMBER (A)

Nagarajan Srinivasan,
C/O G. K. Aggarwal,
G-82, Ashok Vihar-I,
Delhi - 110052. ... Applicant

(By Advocate Shri G. K. Aggarwal)

Versus

1. Union of India through
Defence Secretary,
South Block,
New Delhi - 110011.

2. The Director of Civilian Personnel,
Naval Hqrs., Sena Bhawan
D-Wing, New Delhi - 110011.

3. Commodore-in-Chief (West),
Indian Navy, Naval Dockyard,
Bombay.
Address - Navy Office,
Mint Road, Bombay-400001.

4. The Director of Estates,
Nirman Bhawan,
New Delhi - 110011. ... Respondents

(By Sr. Advocate Shri E. X. Joseph with
Shri V. S. R. Krishna, Advocate)

O R D E R

Shri Justice S. C. Mathur —

The applicant has directed this Original Application against the order dated 18.8.1992 passed by the President in exercise of the power conferred under clause (1) of Article 310 of the Constitution read with Rule 19 (iii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 dismissing the applicant from service without holding enquiry into the allegation of misconduct.

2. The applicant was Personal Assistant and was posted at the Naval Dockyard, Bombay. He was thus a Civilian in Defence Service. It appears that some time in the year 1990, Deputy Commissioner of Police, Special Branch, New Delhi filed a complaint under Sections 3, 5 and 9 of the Official Secrets Act, 1923 read with Section 120-B of the Indian Penal Code against ten persons. During the investigation of this case, the applicant's involvement was also noticed. He was interrogated. The applicant claims that his house was searched but nothing incriminating was recovered. Thereafter, the impugned order of dismissal from service was passed which reads as follows :-

> "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 N. Srinivasan, Stenographer Grade-D.
>
> AND WHEREAS the President is satisfied that, on the basis of the information available, the activities of Shri N. Srinivasan are such as to warrant the dismissal from service.
>
> NOW, THEREFORE, the President hereby orders dismissal of Shri N. Srinivasan from service with immediate effect. The President further orders that no pensionary benefits and other terminal benefits shall be given to Shri N. Srinivasan.
>
> (By order and in the name of the President)
>
> sd/-
> (Dr. A. R. Goyal)
> UNDER SECRETARY TO THE GOVT. OF INDIA"

The above order has been challenged by the applicant on the following grounds :-

(1) it has not been passed by his appointing authority which was Commodore-in-Chief (West), Navy Wing, Mint Road, Bombay;

(2) there was no occasion to exercise power under Article 310 of the Constitution as in respect of the persons mentioned in the complaint, a prosecution is already pending;

(3) the order is passed on no evidence and is arbitrary and discriminatory; and

(4) the penalty imposed is disproportionate to the misconduct alleged against him.

3. In the counter affidavit filed on behalf of the respondents, it is denied that the impugned order is based on no evidence. It is stated in paragraph 4.9 that the applicant made a statement in which he confessed that he had supplied documents of the nature which were detrimental to the security of the State for monetary consideration from January, 1989 onwards. It is stated that even though the President was not the appointing authority of the applicant, he was competent to impose punishment under Article 310 (1) of the Constitution. It is also stated that the pendency of criminal proceedings against certain other persons has no effect on the validity of the present order. It is asserted that since the applicant had indulged in espionage activities, it was not expedient to hold an enquiry.

4. We have heard Shri G. K. Aggarwal, learned counsel for the applicant and Shri E. X. Joseph, senior counsel for the respondents.

5. At the very outset it may be pointed out that reference to Rule 19 (iii) of the C.C.S. (C.C.A.) Rules, 1965 in the impugned order is misconcieved. Admittedly, the applicant was a Civilian holding post in Defence Establishment. Such persons hold office during the pleasure of the President. He is, therefore, not covered by the provisions of Article 311 (2) of the Constitution. Clause (c) of the 2nd Proviso to Article 311 (2) expressly excludes the applicability of that clause by providing, "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." In the case on hand, such a satisfaction has been expressed in the impugned order. The expressions "interest of the security of the State" and "not expedient to hold an inquiry in the case of" have been specifically used.

6. The law on the exercise of power under Articles 310 and 311 (2) (c) has been succinctly laid down by their lordships of the Supreme Court in Union of India & Ors. vs. Tulsiram Patel & Ors., (AIR 1985 SC 1416). In paragraph 141 of the Report it has been observed :-

> "141. The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2). The satisfaction of the President or Governor must, therefore, be with respect to the expediency or inexpediency of holding an inquiry in the interest of

> the security of the State.....
> The satisfaction so reached by the President or the Governor must necessarily be subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public." (Emphasised).

Again, in paragraph 142, it is observed :-

> "142.....There can be no departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor; and so far as the Court's power of judicial review is concerned, the Court cannot sit in judgment over State policy or the wisdom or otherwise of such policy. The Court cannot equally be the judge of expediency or inexpediency. Given a known situation, it is not for the Court to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the inquiry. The satisfaction reached by the President or the Governor under clause (c) is subjective satisfaction and, therefore, would not be a fit matter for judicial review....." (Emphasis supplied).

The above observations place it beyond controversy that the satisfaction of the President is subjective and it is not open to judicial review.

7. The above decision has been considered by a Division Bench of this Tribunal in a recent judgment delivered in a case filed by a person who, it appears, was also involved in the same espionage activity in which the applicant was allegedly involved (Dharam Deo Ojha vs. Union of India & Ors. —O.A. No. 3278/92 decided on 24.11.1994). In this case also the order of dismissal from service was passed on 18.8.1992 and is in identical terms. The application was dismissed. Holding that the support of Rule 19 (iii) was not required to validate an order under Article 310, it has been observed by the Division Bench in paragraph 21 of the judgment as follows :-

> "21.....Therefore, neither any Act made thereunder nor any Rule made under the proviso thereto relating to tenure would govern action under Article 310. Though Article 310 is subject to express provision contained in Article 311 in this reagrd, those provisions do not apply to defence civilians, as Article 311 does not apply to them. Therefore, it is abundantly clear that in respect of such persons, their continuance in office which is subject to the pleasure of the President under Article 310 can be terminated by withdrawing such pleasure and they can be dismissed by an order under Article 310. Such order is not required to be supported by any other provision of law."

8. In the aforesaid case, as in the present case, it was submitted on behalf of the applicant that if criminal prosecution could be launched in respect of the alleged offence or misconduct, there was no occasion to dispense with the enquiry and resort to the exercise of power under Article 310. The plea was negatived with the observation, "the short answer to

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this objection is that Rule 19 (iii) itself is not applicable. Therefore, there is no need to enquire whether or not in the circumstances of the case, the enquiry was rightly dispensed with on the ground that it was not found expedient to hold it in the interest of the security of the State." The view taken, may be
therefore, was that enquiry / required to be held where Article 311 of the Constitution is attracted or Rule 19 (iii) is attracted. Since the applicability of these two provisions in respect of Civilians in Defence forces was held to be excluded, it was held that mere withdrawal of pleasure under Article 310 was sufficient to support the order of dismissal.

9. Views similar to the above were expressed in two other Division Bench decisions of this Tribunal — (1) Daljeet Singh vs. Union of India & Ors. (T.A. No. 624/1986 decided on 18.1.1993); and (2) Shri Charanjit vs. Union of India & Ors. (O.A. No. 2827/1992 decided on 10.5.1994). In the former case, it has been observed in paragraph 7 of the judgment, "But as the orders passed under clause (c) do not require reasons to be recorded by the President, it is the satisfaction of the President only, which has to be accepted. Where the satisfaction of the President is challenged in court, there is no obligation upon the Government to produce the materials upon which the satisfaction was reached."

10. When this case came up for hearing before us, the learned counsel for the applicant invited our attention to prayer R-1 and pressed that the respondents should make the relevant record available. The learned counsel for the respondents made the record available to us but

filed an affidavit claiming privilege under Sections 123 and 124 of the Indian Evidence Act, 1872. That affidavit has been sworn by Shri K. A. Nambiar, Secretary to the Government, Ministry of Defence, New Delhi. The Secretary has stated that he has considered the documents and has come to the conclusion that the said documents are unpublished official records relating to the affairs of the State and contain recordings of highly sensitive nature. It has also been stated that the production and disclosure of the records is protected under Sections 123 and 124 of the Evidence Act, as the records contain communications made in official confidence which are privileged. After making these assertions, the Secretary has stated in paragraph 4 that the disclosure of the material contained in the records would cause injury to public interest and that public interest would suffer. In paragraph 5, it has been stated that there was no objection to the perusal of the record by the Tribunal.

11. The records were placed before us and we have examined the same with the assistance of the departmental representative. The examination of the record has revealed that the decision to dismiss the applicant from service has not been taken in haste or hurry. It is based on material which was considered at various levels including a high level committee of Advisers. The decision to dismiss the applicant from service has the approval of the Prime Minister and the Defence Minister. The applicant's statement referred to in the counter reply is also on record. On a perusal of the

record, we are satisfied that there was material available to the President for acquiring satisfaction and also for passing the order of dismissal from service. The applicant's plea, therefore, that the order is arbitrary or is based on no evidence, cannot be sustained.

12. The learned counsel for the applicant, however, submitted that the Tribunal could have examined the record only for the purpose of examining the claim of privilege, but the Tribunal had no jurisdiction to go into the record in order to find justification for the impugned order of dismissal. It was submitted by the learned counsel that once the Tribunal decides to make use of the material for finding justification for the order, that material cannot be withheld from the applicant and the material must be disclosed to the applicant or his counsel. With this argument, the learned counsel sought inspection of the record produced by the learned counsel for the respondents. We did not allow inspection of the record to the learned counsel as we are satisfied that the information contained in the record is of sensitive nature. The learned counsel for the respondents rightly submitted that disclosure of the information contained in the record may affect India's relations with certain countries. This argument was sought to be repelled by the learned counsel for the applicant by submitting that if India's relations with other countries could not be put in jeopardy by launching prosecution against certain employees similarly placed, it was inconceivable that

India's relations would have been put in jeopardy if domestic enquiry had been held. The record has revealed that the prosecution has been launched in respect of those involved in passing documents to a foreign country. We may take judicial notice of the fact that India's relations with that country are already not happy. All the same, it is not a matter of enquiry by the court. The Central Government may not be interested in preserving relations with one country but may be interested in maintaining relations with another. This is a matter of State policy and cannot be debated in court.

13. The applicant's right of inspection could not be sustained also because of the limited enquiry available in proceedings under Article 226 of the Constitution. Enquiry of the nature sought by the learned counsel is impermissible in view of the law discussed hereinabove. In view of the legal position exposed above, it is not necessary to examine all the arguments which the learned counsel for the applicant advanced and in support whereof he cited authorities. None of the authorities squarely deals with the subject before us. We may accordingly only notice the authorities cited by the learned counsel, and they are —

(1) Commissioner of Police, Bombay vs. Gordhandas Bhanji (AIR (39) 1952 SC 16);

(2) P. Balakotaiah & Ors. vs. Union of India & Ors. (AIR 1958 SC 232);

(3) Jai Nath Wanchoo vs. Union of India & Ors. (AIR 1970 Bombay 180);

(4) R. L. Butail vs. Union of India & Ors. (1970 (2) SCC 876);

(5) Union of India vs. Sardar Bahadur (1972 (7) SLR 355);

(6) Parmanand Dass vs. State of Andhra Pradesh (AIR 1978 SC 1745);

(7) S. P. Gupta & Ors. vs. President of India & Ors. (AIR 1982 SC 149) — This authority was cited mainly to negative the claim of privilege and the right of disclosure of material. In this case the privilege was not claimed in respect of a matter involving security of the State);

(8) Union of India & Anr. vs. K. S. Subramanian (1989 Supp. (1) SCC 331); and

(9) D. K. Yadav vs. M/s J.M.A. Industries Ltd. (JT 1993 (3) SC 617).

14. That leaves us with the last argument of the learned counsel relating to the quantum of punishment. Even if we were to go into this question, we cannot hold that the punishment is disproportionate to the allegation made against the applicant. Espionage affects the security of the country. Retention of a person indulging or suspected to be indulging in espionage activities in Defence Establishment is frought with great dangers. Dismissal from service in such a situation cannot be faulted even if it falls within the province of the Court to examine. In view of this position, we do not proceed to examine the question of our entitlement to go into the same.

15. After the oral arguments had been concluded, learned counsel for the applicant submitted a written note which has been placed on record. In this note, the learned counsel has tried to show that certain material aspects were not considered by the Tribunal in Daljit Singh's case referred to hereinabove, especially the scope and nature of judicial remedy in the context of security of the State with reference to the facts and circumstances of a particular case. It is pressed that security of life and personal liberty and right to livelihood of a citizen constitute integral part of security of the State and greatest danger to the security of the State stems from citizen's feeling of insecurity against arbitrary exercise of State power against him. After making these observations, the learned counsel proceeds to visualise three distinct situations and suggests the role of judiciary in each situation. The first situation is where the available material suggests suspicion as to direct involvement of the concerned person. The second is where such material suggests suspicion that the concerned person was associated with an activity prejudicial to the security of the State, though not directly involved therein. And the third situation is where there is no material to indicate his involvement or association. According to the learned counsel in the first two situations, in the interest of security of the State, the courts may not interfere with the exercise of discretion by the State, but in the third situation the courts have an obligation to interefere. According

to the learned counsel, the present case falls in the third category as there is no material on record except the alleged confessional statement whose genuineness is contested by the applicant. The applicant's case will not go out of the first and second categories merely because the material showing involvement is contested. Further, if the submission of the learned counsel is accepted, an enquiry will become obligatory with only the change of forum from executive to judicial. This will render Article 310(1) and clause (c) to the second proviso to Article 311(2) nugatory. No argument which has this effect can be accepted.

16. It has also been submitted in the written note that the security of the State could be ensured by allowing the applicant to seek voluntary retirement or by retiring him compulsorily. In such a situation, the applicant would not be deprived of retiral benefits. Once the President decides to withdraw the pleasure referred to in Article 310 (1), it is for him to determine the manner of its withdrawal. It is not for the courts to decide it. In the impugned order the President has specifically adverted to pensionary and other terminal benefits and observed that the same shall not be payable to the applicant. It is not a case where the aspect urged by the learned counsel has gone unnoticed.

17. Compassionate allowance under Rule 41 of the Central Civil Services (Pension) Rules, 1972 has also been claimed. The allowance is included in the

expression "terminal benefits" specifically denied in the impugned order. The observations made hereinabove apply to this claim also.

18. Rule 41 of the C.C.S. (Pension) Rules, 1972 reads as follows :-

> "41. Compassionate allowance
>
> (1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity :
>
> Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.
>
> (2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rupees three hundred and seventy-five per mensem."

19. The ordinary rule under the above provision is that a Government servant who is dismissed or removed from service shall not get pension and gratuity. Under the proviso he may get pension and gratuity if a specific order is passed in that behalf. The specific order in the present case is in negative and not in affirmative. The Presedential order is within the framework of Rule 41.

20. The learned counsel has cited Charles K. Skaria & Ors. v. Dr. C. Mathew & Ors. (AIR 1980 SC 1230) and Union of India & Anr. v. K. S. Subramanian (1989 Supp. (1) SCC 331) for submitting that this court is entitled to direct the respondents to make compassionate payment to the applicant. The first case is not a case of exercise of power under Article 310 and is irrelevant

for the purposes of the present case. In the second case, the respondent before their lordships was dismissed from service in exercise of power under Article 310 of the Constitution. He challenged the order by filing a suit in forma pauperis. The primary relief claimed was for declaring the order of dismissal from service as illegal. In the alternative a sum of Rs.75,000/- was claimed as damages or compensation for illegal termination of services. The trial court instead of declaring the order of dismissal from service as illegal, directed payment of Rs.25,000/- as damages. The decree of the trial court was confirmed by the High Court. The Union of India preferred appeal to the Supreme Court. The Supreme Court upholding the legality of the order of dismissal did not disturbed the award of damages. This was done on the peculiar facts of that case which have been referred to in paragraph 13 of the Report. One of the factors which weighed with their lordships was that there was concession on behalf of the counsel for the Government regarding applicability of rules framed in exercise of powers conferred under proviso to Article 309 of the Constitution. The other factor was that the respondent's financial condition was extremely bad as was reflected also in the fact that he was allowed to sue as an indigent person. The third factor was that at the time the litigation was commenced, the position of law was nebulous. The judgment in Tulsiram Patel's case (supra) had not been rendered

till then. None of these circumstances exists in the present case. Accordingly, we are unable to accept the plea of sympathy raised by the learned counsel for the applicant.

21. In view of the above, the application is dismissed but without any order as to costs.

28/2/95

(P. T. Thiruvengadam)
Member (A)

28.2.95

(S. C. Mathur)
Chairman

/as/