

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No.

T.A. No.

1339 of 1993

(13)

DATE OF DECISION 23-3-94

D. R. Anand

Petitioner

Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Defence

Respondent

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.T. THIRUVENGADAM, MEMBER (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGEMENT

P. T. Thiruvengadam  
23/3/94

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

(X)

O.A.No.1339/93

New Delhi, this the 23rd day of March, 1994.

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER (A)

Shri J.R.Anand s/o  
Shri Latha Ram,  
A-21, Malka Ganj,  
Single Storey, Delhi.

..Applicant

(By <sup>K.B.S. Rajan</sup> Shri Umesh Mishra, Advocate)

Vs.

Union of India, through:

1. Secretary,  
Ministry of Defence,  
Govt. of India,  
New Delhi.

2. Under Secretary,  
Vigilance II, Ministry of Defence,  
Govt. of India, New Delhi.

3. Chief Administrative Officer,  
Ministry of Defence, Govt. of India,  
New Delhi.

Respondents.

(By Shri MS Ramalingam, <sup>Presenting Officer</sup> Advocate)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM

The applicant was working as Assistant in the Ministry of Defence and was due to retire on superannuation on 30-9-1990. He was arrested by the police on 8-9-90 and on remaining in custody for more than 48 hours was deemed to have been suspended with effect from 8-9-1990. FIR No.234 dated 27-8-90 under sections 3,5,9 Officials Secrets Act read with Section 120-B I.P.C., was lodged against the applicant in P.S.Dabri, Delhi. Subsequently challan was filed and criminal trial is continuing in the court of Additional Sessions Judge, New Delhi. The applicant is on interim bail. The applicant on reaching the age of superannuation was sanctioned a provisional pension but commutation of pension and disbursement of DCRG were not allowed.



The applicant has been served with an order dated 28-5-93 which reads as under:-

"Whereas it has been made to appear that Shri J.R.Anand while serving in various capacities in the Armed Forces HQrs/CAO's office committed grave misconduct warranting institution of departmental proceedings against him.

AND WHEREAS in exercise of powers conferred on him by Sub-clause (i) of Clause (b) of Sub-rule (2) of Rule 9 of the Central Civil Services (Pension) Rules, 1972, the President hereby accords sanction to the departmental proceedings against the said Shri J.R.Anand and is satisfied 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 that in the interest of the security of the State, it is not expedient to hold an inquiry in the case of Shri J.R.Anand.

AND WHEREAS on the basis of the information available the President is satisfied that the activities of Shri J.R.Anand were such as to warrant permanent withdrawal of full pension already sanctioned to the said Shri Anand.

NOW, THEREFORE, the President in exercise of the powers conferred on him by sub-rule (1) of Rule 9 of the Central Civil Services (Pension) Rules, 1972, hereby orders permanent withdrawal of full pension payable to Shri J.R.Anand. The President further orders that other terminal benefits shall not be given to Shri J.R.Anand.

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

Sd/-

(Sanjay Kumar)

Under Secretary to the Govt. of India

2. This O.A. has been filed praying for setting

aside the above order dated 28-5-93 and for a direction to the respondents to pay pension and all other retirement dues to the applicant. 16

3. In the counter reply filed on behalf of the respondents, it has been mentioned that the applicant is one of the 15 defence civilians who were found involved in activities prejudicial to security of the State. His undesirable activities came to notice of the Ministry of Defence when the police authorities forwarded a report containing his confession statement. In his statement dated 8-9-90 the applicant has confessed that he has been unauthorisedly passing on classified information to Pakistan High Commission officials. Out of the 15 persons involved in the espionage case, 12 serving employees were dismissed from service. The case of the applicant who had retired by that time was examined under Rule 9 of the CCS (Pension) Rules, 1972 for withdrawal of his pension. Procedure, which could have been applicable to the applicant for institution of departmental proceedings while he was in service, being equally applicable even in respect of departmental proceedings to be initiated after his retirement, was followed in this case. Rule 19(iii) of the CCS (CC&A) Rules, 1965 which would have been applicable in the case of the applicant had he been in service at the time of initiating departmental proceedings, provides for imposing any of the prescribed penalties (including dismissal from service) without holding a formal inquiry in the prescribed manner in the interest of the security of the State. In the present case of the applicant, on the basis of his confessional statement and other evidence available on record, the President came to the conclusion that in the interest of security of the State, it was not



14

expedient to hold an inquiry in the manner provided in the Rules. After the President having regard to the information/evidence available on record was satisfied that the activities of Shri JR Anand were such as to warrant permanent withdrawal of full pension already provisionally sanctioned to him, Order No.C-13021/1/Vig II/91 dated 28-5-93 was issued for withdrawing full pension payable to the applicant with further stipulation that other terminal benefits also shall not be given to him".

4. The ld. counsel for the applicant advanced a number of grounds as under:-

- (i) No opportunity by way of show cause was given to the applicant before withdrawing the pension.
- (ii) Article 310 of the Constitution <sup>and</sup> Rule 19(iii) of the Central Civil Service (CC&A) Rules, 1965 have been invoked in the order dated 28-5-93 and such invocation is not relevant in the case of the employees who have already retired.
- (iii) The order has been issued prematurely when the criminal proceedings are still going on and the respondents should have waited for culmination of the proceedings.
- (iv) The impugned order begins with the wording that it has been made to appear that the applicant while serving in various capacities in the Armed Forces HQrs./ CAO's office committed grave misconduct warranting institution of departmental proceedings. The wording used do not establish any guilt against the employee.
- (v) The following citations have been relied upon:
  - (a) 1981 Lab IC 18 (A.P.High Court)  
Bhaskar Reddy Vs. Govt. of Andhra Pradesh.  
<sup>Services</sup>
  - (b) AIR <sup>Services</sup> Law Journal 1973 173 (High Court of Delhi)  
Major Dewan Singh Vs. UOI & Ors.
  - (c) AIR 1973 SC 834  
State of Punjab Vs. KR Erry & Another.

18

5. Shri Ramalingam, Presenting Officer for the respondents mentioned that <sup>12</sup> out of 15 persons involved in the SR Anand's case were serving employees and ~~were~~ dismissed from service by invoking the same provisions, as were invoked for the applicant in this case, namely article 310 of the Constitution and Rule 19(iii) of the C.C.S (CC&A) Rules, 1965. These persons not only lost their service but have also lost their pension. The applicant who was given provisional pension from 1-10-90 till 27-5-93 lost his pension only from the date of issue of the impugned order i.e. 28-5-93. None of these persons was issued the show cause notice as the 'pleasure doctrine' enshrined in article 310 was invoked. The subjective satisfaction of the President is not subject to judicial review. The action in the case of the applicant, as alleged, has been taken on the basis of material on record and in accordance with the rules and therefore the outcome of criminal proceedings in progress against the applicant is not relevant. The material evidence provided by the police authorities including the confessional statement of the applicant was considered by the President to decide that the activities of the applicant merited permanent withdrawal of total pension and withholding of other terminal benefits. It was therefore denied that Presidential orders have been passed without applying the mind arbitrarily or whimsically or mechanically.

6. I have heard both the counsels and the note that the applicant was placed under suspension with effect from 8-9-90 prior to his normal date of superannuation i.e. 30-9-90. Rule 9 of Pension Rules which is applicable to the applicant reads as under:-



19

"9. Right of President to withhold or withdraw pension.

9(1).- The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of (rupees three hundred and seventy-five) per mensem.

9(2)(a).- The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

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9(6)(a).- departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and."

20

7. According to Rule 9(6)(a) of Pension Rules quoted supra the applicant having been placed under suspension prior to his normal date of retirement is covered by Rule 9(2)(a). The next issue to be considered is the aspect of continuance of the departmental proceedings. These proceedings are to be continued and concluded in the same manner as if a government servant had continued in service. In AIR 1989 SC 662 Union of India & Ors. Vs. KS Subramanian, the Supreme Court has held the following: -

"10. By virtue of Art 311(2), no civil servant can be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges. Art.311(2) thus imposes a fetter on the power of the President or the Governor to determine the tenure of a civil servant by the exercise of pleasure. Tulsi Ram case (AIR 1985 SC 1416) concerned with the exclusion of Art.311(2) by reason of second proviso thereunder. We are also concerned with the exclusion of Art.311(2) if not by second proviso but by the nature of post held by the respondent. We have earlier said that the respondent is not entitled to protection of Art. 311(2), since he occupied the post drawing the salary from the defence estimates. That being the position, the exclusionary effect of Art.311(2) deprives him the protection which he is otherwise entitled to. In other words, there is no fetter in the exercise of the pleasure of the President or the Governor.

11. It was, however, argued for the respondents that 1965 Rules are applicable to the respondent, first, on the ground that R.3(1) thereof itself provides that it would be applicable, and second, that



the Rules were framed by the President to control his own pleasure doctrine and, therefore, cannot be excluded. This contention, in our opinion, is basically faulty. The 1965 Rules among others, provide procedure for imposing the three major penalties that are set out under Art.311(2). When Art.311(2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule-making power under Art.309 is subject to Art.311. This would be the legal and logical conclusion."

8. Full Bench of this Tribunal in O.A.No.2044/90 decided on <sup>21</sup>1-3-94 has further elaborated the position with regard to civilian employees in different Services, as under:-

<sup>Para 12.</sup>  
"From the various cases cited as discussed in the preceding paras, the following legal propositions would emerge in regard to the rights of civilian employees in the defence services:

- i) These employees are not entitled to the benefits of Art.311 of the Constitution of India when their services are sought to be terminated under Art.310 of the Constitution. They cannot also claim rights similar by virtue of the service rules since the service rules must conform to the provisions of the Constitution. Any rule which eradicates or limits the powers of the President/Governor under Article 310 would be ultra vires.
- ii) The power under Art. 310 can be exercised by any minister or officer under the rules of business framed either under Art.77(3) or under Art.116(3) or in exercise of powers vested in them by rules framed in this behalf, that is, the pleasure of the President or the Governor can be exercised by a minister/officer on whom the President or the Governor confers or delegates the power.

22

- iii) The right to opportunity by reason of applicability of the principles of natural justice is expressly excluded to defence employees and civilian employees in the defence services when their services are terminated exercising the 'pleasure doctrine' by virtue of Art.310 read with Art.311 of the Constitution of India.
- iv) Where the power under Art.310 of the Constitution has not been delegated by the President and the appointing authority/disciplinary authority seeks to remove such an employee, without affording him a reasonable opportunity, the exercise of such a power would be arbitrary and violative of Art.14 of the Constitution. The procedure prescribed by the Government in such cases viz., applying the CCS(CCA) Rules is a valid procedure and subverts or satisfies the test of 'audi alteram partem'. Consequently, non-compliance with the rules in such a case would be illegal and ultra vires of Art.14."

Thus it is well established that as far as the applicant is concerned, the pleasure doctrine of the President could be invoked and there can be no fettering in the exercise of this power by the President.

9. It has also been held in Union of India Vs. Tulsiram Patel reported in AIR(1985)3 SCC in para 143 that President's subjective satisfaction is not justiciable. Relevant para reads as under:-

"143.- In the case of Clause (b) of the 2nd proviso, clause (3) of Art. 311 makes the decision of the disciplinary authority that it was not reasonably practicable to hold the inquiry final. There is no such clause in Art.311 with respect to the satisfaction reached by the President or the Governor under clause (C) of the 2nd proviso. There are two reasons for this. There can be no departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor, and



27

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 equally cannot be the judge of expediency or in expediency. 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 Governor under clause (C) is subjective satisfaction and, therefore, would not be a fit matter for judicial review."

10. Having followed the provisions of Art.310, the issue of show cause notice does not arise. Reference to Rule 19(iii) of CCS (CCA) Rules, 1965 in the impugned order alongwith reference to Art.310 of the Constitution does not take away the legality of the order though such a reference to Rule 19(iii) was not necessary in the circumstances.

11. The case of Bhaskara Reddy Vs. Govt. of Andhra Pradesh (1981 Lab. IC<sup>18</sup>) was relied upon by the ld. counsel of the applicant to bring out that if allegations are launched against an accused employee, the enquiry into those allegations in a departmental proceedings could not be against the interest of the internal security. In the context of the observations made by the Supreme Court in Tulsi Ram Patel's case about the subjective satisfaction of the President not being justiciable this citation relating to an order passed by the Andhra Pradesh High Court in 1981 does not give much support to the applicant.

12. In Major Dewan Singh Vs. UOI reported in 1973 SLJ 173 it has been held that the affected person has got a right to be heard before any action affecting the pensionary right is taken. But this order was made in the context of the relevant pension regulation of the army as then existed. At that time the regulation mentioned that pension may at the

pleasure of the President be forfeited or be granted at a rate not exceeding that for which the person would be otherwise qualified had he retired on the same date. In the rules applicable to the applicant in this O.A. dismissal entails for forfeiture of past service and no discretion has been vested with the authority to grant pension, even partly. In view of this, this citation also does not help the cause of the applicant.

13. For similar reasons, the other citation (AIR 1973 SC 834) is also not of help to the applicant.

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

P. J. Thiruvengadam

(P.T.THIRUVENGADAM)  
Member (A).