IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1430/93 199

DATE OF DECISION 13.08.99.

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Yateendra Singh Jafa, IPS ....Petitioner

Sh. K.T.S. Tulsi, Sr. Counsel with Ms. Vikas Pawa & Gitanjali Goel, Advocates. ....Advocate for the Petitioner(s)

VERSUS

Union of India & Ors. ....Respondent

Shri N.S. Mehta ....Advocate for the Respondents.

CORAM

The Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
The Hon'ble Shri Mr. R.K. Ahooja, 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

CRR

(V. Rajagopala Reddy)
Vice-Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.1430/93

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New Delhi this the 13th day of August, 1999.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Yateendra Singh Jafa, IPS,
S/o Late Sh. H.C.S. Jafa,
R/o D-1/57, Satya Marg,
New Delhi. ...Applicant

(By Senior Advocate Shri K.T.S. Tulsi with Sh. V.K. Rao,
Sh. Vikas Pawa & Ms. Geetanjali Goel, Counsel)

-Vs.-

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Director General,
Border Security Force,
C.G.O. Complex,
Lodhi Estate,
New Delhi.

3. Director General of Police,
Jammu & Kashmir,
Police Headquarters,
Srinagar.

4. Shri T. Anantachari,
IPS (retd).,
Formerly Director General,
Border Security Force,
C.G.O. Complex,
Lodhi Estate,
New Delhi. ...Respondents

(By Advocate Shri N.S. Mehta)

O R D E R

By Reddy, J.

The applicant is a direct recruit of 1967 batch of officers of the Indian Police Service (IPS). He was posted in Kashmir and Punjab for a period of over 8 years. He was on deputation with the Border Security Force (BSF) at Srinagar from 1984-87 as Deputy Inspector General and again he was deputed to Kashmir from 1991-92 as Inspector General, BSF. He was,

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reverted to his parent department in April, 1992. It was submitted that a raid was carried out in a place near Srinagar on 24.3.92, leading to the capture of terrorists. These terrorists were found in possession of sizeable quantity of arms and ammunition. The raiding party seized the arms which were kept in a hide out. Subsequently, it came to light that gold ornaments were also seized besides the arms, during the raid. Subsequently, the applicant was posted as Inspector General (HQ) at New Delhi in April, 1992. An enquiry was held at New Delhi into the entire episode. It was constituted as a fact finding enquiry. During the enquiry several witnesses were examined, including the applicant. The enquiry officer submitted the report to Inspector General, B.S.F. Srinagar. As far as he was aware no adverse comments were made against him in the enquiry report. A chargesheet was issued to Ashok Kumar, DIG BSF and M.L. Purohit, Commandant, BSF and a departmental enquiry was conducted by the disciplinary authority and their services were terminated. Ashok Kumar, however, filed a Writ Petition in the Himachal Pradesh High Court and got an interim order by which he was directed to be reinstated in service. The Writ Petition was then pending.

2. The applicant submits that he came to know from reliable sources that an adverse recommendation was made against him by Sh. T. Anantachari, the then D.G. and on the basis of the adverse recommendation a decision was taken by R-1 to terminate his services without framing charge or holding enquiry under the Rules. It is also submitted that the 'Times of India' Delhi 22nd June, 1993 carried a news item that the applicant was found guilty of cornering heavy haul of arms, gold and cash from militants and that his case has been referred to the

Maharashtra Government as he belongs to the IPS cadre of that State.

3. On the above facts the OA is filed seeking the relief to quash/rescind/cancel the decision, if any, to impose on the applicant the penalty, major or minor and to direct the respondents not to take any disciplinary action against the applicant without framing charges and to hold an enquiry in accordance with the All India Services (Discipline & Appeal) Rules (for short, the Rules).

4. The learned Senior Counsel Shri K.T.S. Tulsi, appearing for the applicant, submits that it was learnt that a decision was taken to dismiss the applicant, by the respondents, from the IPS, without following the procedure as per the Rules. He contends that the respondents having initiated disciplinary enquiry as per the rules against Shri Ashok Kumar and Shri M.L. Purohit, who are said to have been involved in the same incident along with the applicant, there cannot possibly be any difficulty to hold a regular enquiry in the case of the applicant also before taking any action. It is, therefore, contended that no action can be taken against the applicant without holding enquiry in accordance with the Rules. It is further contended that the right of being heard before any adverse action was taken by the employer is a constitutional right guaranteed under Article 311 (2) of the Constitution and that right can be denied only if the respondents take the view that it was not reasonably practicable to hold an enquiry in accordance with law. Such a difficulty cannot arise in the present case as the other officers involved in the incident were given the liberty of answering the charge and after holding an enquiry alone they were dismissed from service.

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5. Shri N.S. Mehta, learned counsel appearing for the respondents, however, contends that the OA is absolutely premature and is, therefore, liable to be dismissed in limine on this ground alone. He submits that the OA is not maintainable on mere apprehension. The applicant is at liberty to question if an action was taken against him and if he is aggrieved by such an action. The learned counsel further submits that the Government has not taken any action in this regard against the applicant. He, therefore, contends that there is no need to consider the matter on merits at all. Before considering the rival contentions it is necessary to refer to the interim order passed by the Tribunal. Pending the OA, the Tribunal upon consideration of the facts and circumstances of the case granted an interim direction, by its order dated 9.9.93, directing the respondents not to resort to any action under Article 311 (2) of the Constitution without holding regular disciplinary enquiry. Aggrieved by the order the respondents carried the matter to the Supreme Court filing SLP No.19671/94. The same was dismissed by order dated 10.11.94, which reads as follows:

> "Delay condoned.
>
> No Affidavit is filed as contemplated by this Court's order dated 5.8.1994 inspite of two opportunities being given. The petition for Special Leave is dismissed.
>
> It is made clear that the petitioners are not precluded from taking such disciplinary proceedings against the respondent as are permissible in law."

6. It is now useful to notice some of the findings given by the Tribunal in its order as learned counsel relied upon the same. It was found, inter alia, that when apparently there was no difficulty in holding enquiry against Shri Ashok Kumar and another, in respect of the same incident the respondents cannot hold the applicant guilty without an enquiry according to the rules. Accepting the contention based upon the ratio

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laid down by the Supreme Court in **Jaswant Singh v. State of Punjab** (AIR 1991 SC 385), it was also found that it was not permissible to take any action pursuant to Art. 311 (2) of the Constitution without holding a disciplinary enquiry. Accordingly, the Tribunal justifying the applicant's apprehension passed the interim order. Learned counsel seeks to draw strength from the findings of the Tribunal in support of his arguments. But it should be noticed that the Tribunal was considering whether the applicant has established a prima facie case to grant the interim directions. Law is well settled that the findings arrived at in passing interim orders are not binding upon nor even influence the Tribunal while disposing of the OA. It is not also correct to say that the Supreme Court approved the order, as the Supreme Court has not gone into the merits of the matter. The SLP was dismissed only on the ground of default of the respondents in filing the necessary affidavit. It may only be said that the interim order has become final. Again, if we look into the order in the SLP, we find that the Supreme Court has made it clear that the respondents are not precluded from taking disciplinary action against the applicant in accordance with law. Such an action includes an order being passed under Article 311 (2) of the Constitution.

7. The basis for the OA is the alleged decision of the respondents to remove the applicant from service without holding any enquiry. The learned counsel for the respondents submits that the Government has not taken any decision in this regard and that in view of the interim order dated 9.9.93, the Government is precluded from taking any action ~~till~~ now. The premise on the basis of which the OA is filed falls to the ground. Now

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let us address ourselves to the second relief, seeking a direction not to take any action under Article 311 (2) of the Constitution without initiating disciplinary enquiry. It is not in dispute that the applicant has a right to invoke the jurisdiction of this Tribunal as and when such an order was passed. Nothing is brought to our notice why the OA should be entertained without such an order being passed. Ordinarily the jurisdiction of this Tribunal is invoked only after an order of termination was passed. We do not find any reason to depart from such practice. Section 19 of the Administrative Tribunals Act, 1985 gives right to an aggrieved person to approach this Tribunal. Admittedly, the applicant is not aggrieved by any action or order of the respondents. Further, it is not the case of the applicant that the respondents are not precluded from taking action under Article 311 (2) of the Constitution. But, his case is that the action of the respondents under Article 311 (2) cannot be arbitrary and that the satisfaction that an enquiry, according to the rules, was not reasonably practicable, should be supported by sufficient evidence. It is also his case that there cannot be any difficulty in holding an enquiry when such an enquiry has been held against the other two culprits. It is true that the right of being heard is guaranteed under Art. 311 (2) of the Constitution, before any action is taken against the Government servant. However, this right can be taken away in certain circumstances, where it is found that it was not reasonably practicable to hold an enquiry in accordance with law. It is true that the law is well settled that such a satisfaction should be supported by sufficient evidence, thereby precluding the authorities in denying arbitrarily the above constitutional guarantee. But, in order to ascertain whether the applicant has been denied his constitutional guarantee of being heard, the Government should first take an action by passing an order

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invoking its jurisdiction under Article 311 (2) (b) of the Constitution. In the absence of such an order it is not possible for this Court to consider whether such an action is in accordance with law or not or that it violated the constitutional guarantee. In the present case, as submitted by the learned counsel for the respondents Shri Mehta, the Government has not taken any decision in this regard in deference to the interim directions granted by the Tribunal in its order dated 9.9.93. He, however, submits that the Government will take action strictly in accordance with law. It should also be kept in mind that the Supreme Court has already made it clear that the Government is not precluded from taking action in accordance with law. If any direction is given by this Tribunal, we would be only prejudging the issue, since the question of validity of the order or whether the respondents have rightly exercised their power under Article 311 (2)(b) ~~will~~ for ~~have~~ to be decided only on the basis of the order that may be passed. At this stage, we will not be right in interdicting the respondents in exercising their constitutional rights.

8. In view of the aforesaid discussion, we are constrained to hold that this OA is pre-mature and is not maintainable. The O.A. is dismissed accordingly on the preliminary objection of maintainability. There shall be no order as to costs.

(R.K. Ahooja)
Member (A)

(V. Rajagopala Reddy)
Vice-Chairman(J)

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