

**Central Administrative Tribunal
Ernakulam Bench**

OA No.250/2013

Wednesday, the 26th day of October, 2016

CORAM

**HON'BLE MR.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P.GOPINATH, ADMINISTRATIVE MEMBER**

Dr. M.S.Syed Ismail Koya
Director (under orders of termination of service)
Department of Science & Technology
Union Territory of Lakshadweep
Kavaratti. Applicant

(By Advocate: Mr.Ramesh Babu, Sr with Mr.N.Krishna Prasad)

Versus

1. Union of India represented by
its Secretary,
Ministry of Science & Technology
Technology Bhavan, New Mehrauli Road
New Delhi-110 016.
2. The Administrator
Union Territory of Lakshadweep
Secretariat, Kavaratti-682 555
3. Under Secretary
to the Government of India (Vigilance)
Ministry of Science and Technology
Technology Bhavan, New Mehrauli Road
New Delhi-110 016. Respondents

By Advocate:

Mr.N.Anilkumar, Sr.PCGC for R1 & 3
Mr.S.Radhakrishnan for R2

The Original Application having been heard on 3/10/2016, the Tribunal delivered the following order on 26th October, 2016:-

ORDER

By N.K.Balakrishnan, Judicial Member

As per Annexure A10 order dated 18/2/2013, the President ordered a penalty of dismissal of the applicant from service. It was communicated to the applicant as per Annexure A11 letter dated 4/3/2013. Annexure A9 is the copy of the advice dated 8/2/2013 given by the UPSC to the Ministry concerned, as per which the latter was informed that the Commission considered that the ends of justice would be met if the penalty of dismissal from service is imposed on the applicant/the charged officer.

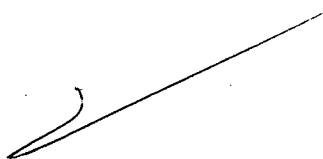
2. While working as Assistant Professor in the College of Fisheries, Panagad, Kerala, the applicant was deputed to the Administration of Union Territory of Lakshadweep as Deputy Director (Science & Technology). While working as such on deputation, the first respondent (Administrator) appointed the applicant to the post of Deputy Director, Department of Space and Department of Science & Technology with effect from 1/2/1990. Annexue A1 order was issued by the then Administrator of Union Territory of Lakshadweep.

3. The applicant contends that he was actually an appointee of the President of India in terms of Article 239 (1) of the Constitution of India. The post of Deputy Director (Science & Technology) was upgraded to revised scale of pay of Rs.3000-4500 w.e.f. 17.8.1993 in Group-A post vide Annexure A2. Thereafter the post of Deputy Director was re-designated to that of Director as per Annexure A3 order dated 8.3.2006. While the

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applicant was working as Deputy Director Department of Science & Technology he was given additional charge as Director (Information, Publicity & Tourism). He was arrayed as an accused in CC 3/2006 before the Special Court for CBI Cases, Kavarathi. After trial, he was convicted and sentenced by that Court for various offences including offence under the Prevention of Corruption Act and was sentenced to rigorous imprisonment for 2 years each and also with fine. That has been challenged by the applicant by filing criminal appeal which is now pending before the High Court of Kerala as Criminal Appeal No.33/2010. After receipt of the advice from the UPSC, vide Annexure A9, an order of dismissal from service was passed against the applicant vide Annexure A10 which was served on the applicant through Annexure A11 office memorandum dated 4.3.2013. Hence Annexures A9 to A11 are challenged by the applicant in this Original Application.

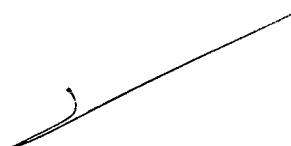
4. The applicant contends: The order of dismissal is unsustainable in law; the disciplinary authority is the President but no decision was taken by the President and hence Annexue A20 order is illegal. Since Annexure A1 order of appointment was issued by the President, no authority below the President can remove or dismiss the applicant from service. Annexure A10 order is in violation of Article 311 (1) of the Constitution of India. It was passed on the eve of the applicant's retirement on 30.6.2013. The representation made by the applicant was not considered before passing Annexure A10 order. There was violation of the principles of natural justice. In Annexure A8 representation the applicant had stated several grounds but none of them was



considered while passing the impugned order. The penalty imposed on the applicant is against the doctrine of proportionality. Hence Annexure A10 order of dismissal from service is to be set aside.

5. The respondents resisted the petition contending as follows:-

The President of India was the appointing authority of the applicant who was holding Group-A post prior to the date of DoPT order dated 14.7.2005. As such the President is the disciplinary authority of the applicant by virtue of his control over the services vide Articles 73 and 310 of the Constitution of India. Annexure A10 order dated 18.2.2013 passed by the Department of Science & Technology dismissing the applicant from service was in fact issued "by order and in the name of the President" by virtue of Article 77 (1) of the Constitution. Article 77 (3) of the Constitution confers power for making rules for convenient transaction of the business of the Govt of India and for allocation among ministers of the said business. Accordingly the disciplinary case in respect of the applicant was decided at the level the Minister for Science & Technology, Govt of India. Annexure A10 order dated 18.2.2013 was passed in the name of the President. The Under Secretary is only the officer who conveyed the order of the disciplinary authority, the President of India. The applicant was convicted by the Special Judge for offences u/s 120-B of IPC read with 420, 468 & 471 of IPC and u/s 13 (2) read with section 13 (1)(d) of the Prevention of Corruption Act. The applicant was sentenced to undergo rigorous imprisonment for 2 years each and to pay fine of Rs.50,000/- each on three counts making a total of



Rs.1,50,000/- as fine with a default sentence of 6 months each. In view of the same the disciplinary authority, invoking the power under Rule 19 of the CCS (CCA) Rules, initiated action and final order was passed after following the procedures prescribed. The applicant was given opportunity to make his representation. That representation was considered by the disciplinary authority. UPSC was duly consulted in the matter. Therefore, there was no violation of any of the statutory rules or the principles of natural justice. The order of penalty of dismissal from service was issued based on the factum of his conviction and sentence passed for offences as mentioned earlier. The penalty was imposed by a competent authority after following the procedure prescribed. As such the Original Application is only to be dismissed.

6. A rejoinder was filed by the applicant disputing some of the statements made by the respondents in the reply statement.

7. The point for consideration is whether Annexure A10 order of dismissal from service is liable to be set aside on any of the grounds urged by the applicant.

8. We have heard the learned counsel appearing for the parties and have also gone through the pleadings and documents.

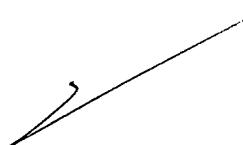
9. Annexure A1 order dated 6.4.1990 would show that the Govt of India, Ministry of Science & Technology – Department of Science & Technology granted permission to absorb the applicant as Deputy Director (Science and Technology) w.e.f. 1.2.1990 in the scale of pay of Rs.2000-3500. By virtue of the sanction so issued by the Govt of India, the Administrator, Lakshadweep

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absorbed the applicant as Deputy Director (Science & Technology) w.e.f. 1.2.1990. Annexure A2 shows that the pay of the applicant was revised to that of Rs.3000-4500 w.e.f. 17.8.1993. Annexure A3 order dated 8.3.2006 shows that the post of Deputy Director (Science & Technology) was redesignated as ex-officio Director (Science & Technology) w.e.f. 8.3.2006. It was made clear that it was done for administrative convenience and that it does not confer any monetary or other benefits.

10. The contention raised by the applicant regarding his so called meritorious service and the conferment of certain testimonials etc. can have no relevance to the facts of the case since the order of dismissal was passed by the respondents invoking Rule 19 of the CCS (CCA) Rules. The fact that the applicant was convicted by the special judge for CBI cases for offences u/s 420, 468 and 471 read with 120-B of IPC and also for offence u/s 13 (1) (d) read with section 13 (2) of Prevention of Corruption Act, 1988 is not in dispute. The fact that an appeal is pending before the Hon'ble High Court challenging the said conviction and sentence passed against him is no ground to contend that the power under Rule 19 should not have been invoked by the respondents. The applicant was sentenced to undergo rigorous imprisonment for 2 years and Rs.50,000 each on all the three counts would show the gravity of the offence and the punishment awarded on the applicant.

11. Annexure A9 is the advice dated 8.2.2013 given by the UPSC. It shows that after considering the entire matter in detail, the UPSC considered that ends of justice would be met if penalty of dismissal of the applicant from

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service is passed. Consequent to Annexure A9 advice issued by the UPSC, Annexure A10 order dated 8.2.2013 was passed. Learned senior counsel appearing for the applicant strongly assailed Annexure A10 order contending that it was issued by an authority incompetent to issue the order of dismissal. It is not in dispute that Annexure A1 order of appointment was issued by the President of India. Therefore, no authority subordinate to the President of India can issue an order of dismissal from service. The learned senior counsel would submit that Annexure A10 order was issued by the Ministry of Science & Technology (Department of Science & Technology). The order was conveyed by the Under Secretary to the Govt of India. But Annexure A10 order itself shows that it was issued "**by order and in the name of the President**". Therefore it is abundantly clear that the order was passed by the President of India though the order was conveyed to the applicant by the Under Secretary to the Govt of India. When it is specified that it was issued "**by order and in the name of the President**", the contention that it was not issued by the President of India cannot be sustained at all.

12. The learned senior counsel for the applicant would submit that the caption given to Annexure A10 would clearly show that it was issued by the Govt of India (by the Ministry of Science & Technology-Department of Science & Technology) and as such it must have been issued only by the Minister concerned. It was specifically mentioned in the reply statement in para 11 that the representation submitted by the applicant was considered by the Hon'ble Minister of Science & Technology on behalf of the President. It



is also contended that by virtue of the power conferred under Article 77 of the Constitution of India, the rules of business were framed, which confers power on the minister concerned to exercise the power of disciplinary authority as well. Hence according to the respondents, the disciplinary action in respect of the applicant was taken and decided at the level of the Hon'ble Minister of Science & Technology, Govt. of India. Since the Minister has acted by virtue of the power conferred under Article 77 (3) of the Constitution of India and as it was done as per the rules of business, the contention that Annexure A10 order was passed not by a competent authority must fall to the ground. Since Annexue Annexure A10 order itself makes it clear that it was issued "by order and in the name of the President of India", the contention to the contrary cannot be sustained at all.

13. Section 8 (b) (iii) of the General Clauses Act, 1897 makes it clear that Central Government shall include in relation to the administration of a Union Territory, the Administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution. Article 239 says that every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify. Section 3(23) says that the Govt shall include both the Central Government or any State Government. Section 3(58) defines State to mean State specified in the First Schedule to the Constitution and shall include a Union Territory. Section 3 (62A) defines Union Territory to mean any Union Territory specified in the First Schedule to the

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Constitution and shall include any other territory comprised within the territory of India but not specified in that Schedule.

14. Article 77 of the Constitution of India has relevance in this context, which reads as follows:-

“Conduct of Government Business

Art. 77. (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

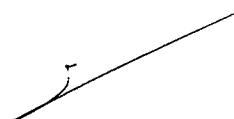
(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.”

(Underlined to lay emphasis)

It is not in dispute that Annexure A10 order was authenticated in the manner specified in the Rules. That is why it is specifically stated in the order as “**by order and in the name of the President**”.

15. Article 77 (2) has been laid much emphasis by the respondents pointing out that when an order or other instrument is made or executed in the name of the President and when it is authenticated in such manner as specified in the rules made by the President, the validity of such an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President. Since it is made clear in Annexure A10 order that it was passed “**by order and in the name of the President**”, in view of Article 77 (2), the applicant cannot question the validity of the order which has been so authenticated as mentioned in Article 77. Hence the challenge made by the



applicant questioning the competence of the authority who issued the order is seen to be bereft of any merit.

16. It is contended that the President who is the executive Head of a Union Territory does not function as the Head of the Central Government but as the Head of the Union Territory under the powers specially vested in him under Article 239. It is further contended that the President in regard to Union Territories occupies a position analogous to that of a Governor in a State. Though the Union Territories are centrally administered under the provisions of Article 239, they do not become merged with the Central Government and they form part of no State and yet are the territories of the Union, it is further contended. There can be no doubt regarding the position that even those functions which are required by the Constitution to be performed subject to the satisfaction of the President, namely, under Proviso (c) to Article 311 (2), could be delegated by Rules of Business made under Article 77 (3), to a Minister or to a Secretary to the Govt of India because satisfaction in those Articles read with other relevant provisions of the Constitution does not indicate the satisfaction of the President or the Governor personally but in the constitutional sense. As per the Rules of Business, such a power could be delegated to a particular Minister or official under the Rules of Business, framed under Article 77 (3). Though such an order expressed in the name of the President can be subject to judicial review, the contention that it was not issued by the President cannot be sustained at all. There can also be no doubt that Article 77 (3) does not involve any delegation. When a function is

allocated under the Rules of Business, the decision of the Minister or officer who is allocated that function and the order that emerges become the decision and order of the Minister. It is not contended by the applicant that such an order requires the personal signature of the President. What is required is that they are to be expressed in the name of the President and are to be authenticated in the manner laid down under Article 77 (2) of the Constitution. Though a distinction was tried to be drawn between the State and the Union Territory, that plea cannot be sustained in view of the definition contained in Section 3 (58) of the General Clauses Act which says that the State shall include a Union Territory. Therefore, the contention that the Rules of Business referred to in Article 77 cannot have any relevance to the Union Territory also cannot be sustained.

17. The appointing authority is defined in Rule 2 (a) of CCS (CCA) Rules, which reads as follows:-

"(a) "Appointing authority", in relation to a Government servant,

means -

(i) the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or

(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or

(iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or

(iv) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post,

whichever authority is the highest authority."



18. Rule 19 based on which action was initiated against the applicant is also relevant in this context, which reads as under:-

19. Special procedure in certain cases

Notwithstanding anything contained in Rule 14 to Rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit:

1[Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under Clause (1'):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

19. In a case where a Government servant has been convicted in a court of law of an offence so as to render further retention in public service of a Government servant prima facie undesirable, the disciplinary authority may, if it comes to the conclusion that an order with a view to imposing penalty on the Government servant on the ground of conduct which had led to his conviction in a criminal charge should be issued, issue such an order without waiting for the decision in the First Court of Appeal. If such an order is passed, the UPSC should be consulted where such consultation is necessary. Therefore, though the appeal filed by the applicant against the conviction and sentence is pending before the Hon'ble High Court, that does not preclude the respondents from initiating action under Rule 19 as quoted above. Annexure A9 would make it clear that before the order was passed, UPSC was



consulted. It was after Annexure A9 advice was received, Annexure A10 order of dismissal was issued by the President. It is also not in dispute that notice was issued to the applicant, pursuant whereto he submitted a representation and that representation was considered by the authority concerned. Therefore, there was no infraction of any of the statutory rules.

20. Since Annexure A10 order of dismissal was issued by the President of India it is beyond any cavil of doubt that it was not issued by any authority subordinate to that by which the applicant was appointed. The inquiry contemplated under Article 311 (2) was not necessary in view of the Proviso thereto which says that Article 311 (2) does not apply where a person is dismissed or removed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge. At the risk of repetition, it has to be stated that the act of a Minister or official who is authorized by the Rules of Business under Article 77 (3) of the Constitution is an act of the President in whom the function or power is vested by the Constitution. In the light of what have been stated above, we have no hesitation to hold that Annexure A10 order was passed by the President though it was communicated to the applicant by Under Secretary to Govt of India. Therefore, the main challenge made against Annexure A10 order cannot be sustained. As the applicant was convicted and sentenced by the Special Judge for CBI cases for offences as mentioned earlier, it was a clear case that the applicant was liable to be dismissed from service on the ground of such a conduct which led to his conviction on a criminal charge. Due opportunity was given to the applicant

to submit his representation. There was no violation of the principles of natural justice. The penalty imposed on the applicant is not shockingly disproportionate so as to interfere with the same. The penalty of dismissal from service does commensurate with the gravity of the offence with which the applicant was convicted and sentenced by the competent criminal court.

We find no reason to interfere with the order of dismissal (Annexure A10) passed by the disciplinary authority, namely the President of India. Accordingly this OA fails and it is accordingly dismissed.


(P. Gopinath)
Administrative Member


(N.K. Balakrishnan)
Judicial Member

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