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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1136/92

Transfar Application No:

DATE OF DECISION: 24.1.1995

Shri Rajaram Bachchulal ____ Petitioner

Shri G.S.Walia ____ Advocate for the Petitioners

Versus

Union of India & Ors. ____ Respondent

Shri V.S.Masurkar ____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

1. To be referred to the Reporter or not ? —

2. Whether it needs to be circulated to other Benches of the Tribunal ? NO

(P.P.SRIVASTAVA)
MEMBER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 1136/92

Shri Rajaram Bachchulal ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri G.S.Walia
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

ORAL JUDGEMENT Dated: 24.1.1995
(PER: M.S.Deshpande, Vice Chairman)

The challenge by this OA. is to the chargesheet dated 12.2.1991 and the order of removal of the applicant passed on 30.12.1993.

2. The applicant was working as a Deputy Armament Supply Officer Grade II at Karanja, Dist. Raigarh. In 1988 he was promoted as Deputy Armament Officer Grade I and posted at Naval Armament depot Sunabeda, Orissa. He was served with a charge-sheet on 12.2.1991 because he did not join at the place to which he was transferred and remained absent from duty w.e.f. 28.12.1988 till the issuance of the charge-sheet. The applicant filed his statement of defence on 12.8.1991 by which he made allegations against the persons who were appointed as Enquiry Officer. He also made another representation against Enquiry Officer by the letter dated 9.9.1991. Despite his representations, an ex-parte enquiry was held by the Enquiry Officer on 20.8.1991 and he affirmed the charge that was framed against the applicant The President by the order dated 30.12.1993 passed an order of removal against the applicant.

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3. The first contention raised on behalf of the applicant was that the provisions of CCS (CCA) were not followed because it was obligatory on the Enquiry Officer to stay the enquiry by virtue of the instructions issued under the Government of India, Department of Personnel O.M. No. 39/40/70-Ests.(A) dated 9.11.1972 to stay the enquiry and to refer the application alongwith the relevant material to the appropriate reviewing authority and passing appropriate orders thereon.

4. It is, however, to be noted that that since the applicant was a civilian employee with the defence services, the provisions of Article 311 and the rules framed under Article 309 would not apply to him. This is obvious from the observations made by the Supreme Court in Union of India vs. K.S.Subramanian (A.I.R. 1989 SC 662) which lays down that :-

> "A civilian employee in Defence Service who is paid salary out of the estimates of the Ministry of Defence does not enjoy the protection of Article 311(2) which provides that 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. Article 311(2) thus imposes a fetter of the charges. Article 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. Protection of Article 311(2), is not available to a Civilian employee in defence service drawing his salary from the Defence/Estimates. That being the position, the exclusionary effect of Article 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. Therefore termination of service of such an employee without assigning reasons cannot be said to be illegal."

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It is also held in that case that :

> "The protection of Rulesof 1965 is also not available to such employee. The reason being that the 1965 Rules amongst 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. The said Rules cannot independently play any part since the rule making power under Art.309 is subject to Art.311."

5. The matter came up for consideration before this Tribunal in A.Chandramohan vs. Union of India & Ors. Administrative Tribunal Judgements, 1995 (1) p. 104 and when the decisionsin Indrajit Dutta vs. Union of India & Ors., 1992(1) ATJ 44 and Jit Singh vs. Union of India, OA.NO. 1530/90 decided on 22.3.1993 by the Principal Bench, New Delhi, it were pointed out was observed that both these decisions had followed the ratio of K.S.Subramanian's case and the basis of the decision of the Supreme Court was that Article 311 does not apply to civilian post for any action and that ratio would bind us.

6. Shri Walia, learned counsel for the applicant, however, referred to the observations in Para 7 in A.Chandramohan's case where it was pointed out that one reason which should weigh in this respect was that though it was not necessary, an inquiry was held in that case on specific charges against the applicant and that giving an additional opportunity should not be taken as a factor which would go against the departmental authorities and if they did afford an opportunity, they cannot be blamed. We reconsidered the proposition which we had laid down in A.Chandramohan's case and we do not feel persuaded to take a different view. Article 310 (1) of the Constitution provides :-

> "Tenure of office of persons serving the Union or a State. (1) Except as expressly

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> provided by this Constitution, every person who is a member of defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State."

Since there is no fetter on the right of the President to take action before terminating the services of an employee, no enquiry was necessary and this is the proposition which we had accepted in A.Chandramohan's case. Shri Walia, however, urged that if the President himself allowed an enquiry to be held upon certain charges, it should be expected that all the procedural safeguards which were prescribed under Article 311 would also apply to such an enquiry and that would lend protection to the employee. It is clear to us that there cannot be any estoppel against the statute and the most that would be said was that the President possibly felt that an opportunity should be given to the employee concerned to make his defence. That would, however, not restrict the President's power or put a fetter on his right to act under the powers vested in him under Article 310 of the Constitution.

7. In the present case, the applicant was given an opportunity to make his defence. He obviously did not avail of the opportunity which was given to him because he felt that he could ventilate his grievance about bias of the enquiry officer by taking recourse of the provisions of the CCS(CCA) Rules. He thus did not avail of the opportunity which was given to him for showing cause. If he by his own conduct did not avail of the opportunity, it is difficult to see how he could ask for protection to which he was not entitled under the provisions of the

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Constitution. We find that no exception can be taken to the order passed.

8. Shri Walia for the applicant urged that SLP No. 844/94 with SLP(C) 14184/93 had been preferred against the decision in Jit Singh & Ors. vs. Union of India & Ors. and that was dismissed by the Supreme Court on 31.3.1994. That was, however, a summarily dismissal and it cannot be regarded as a decision endorsing the proposition laid down by the Tribunal in Jit Singh's case. All that can be said is that the Supreme Court did not feel inclined to interfere in Jit Singh's case. Lastly, Shri Walia invited our attention to the plea which he has raised by Para 4.8 and 4.9 of the OA. by which it was contended that the action initiated under CCS(CCA) Rules, 1965 was without jurisdiction and therefore void-ab-initio because these rules were not applicable. It is difficult to see how this contention can help the applicant. No doubt the action was initiated under CCS(CCA) Rules in the case of the applicant, but the ultimate step taken by the President was within his power under Article 310 and merely because the action was initiated under CCS(CCA) Rules, in our view, that would not invalidate the action taken by the President in removing the applicant.

9. We, therefore, see no merit in the application. It is dismissed.

(P.P.SRIVASTAVA)
MEMBER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.

Heard
Connected
with OA-1134/92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, BOMBAY.

Original Application No.759/91.

A.Chandramohan. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

Appearances:-

Applicant by Shri Babu Marlapalle.
Respondents by Shri R.K.Shetty.

Oral Judgment :-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 4.10.1994.

By this application, the applicant challenges the penalty of compulsory retirement imposed upon him after holding a departmental inquiry.

2. The applicant was working as Joint General Manager, Ordnance Factory, Kirkee, Pune. He presented a TA/DA bill on 21.9.1987 and was passed for an amount of Rs.300/-. The charge against the applicant was that he had claimed Rs.392/- for the onward journey from Mettupalayam to Madras and Rs.392/- for return journey from Madras to Mettupalayam on 14.8.1987 being the fare for AC 1st Class by Train No.6 Nilgiri Express. He was called upon to substantiate his claim that he travelled by AC 1st Class by producing valid evidence. The applicant gave a reply to that letter on 21.1.1988 admitting that he had not travelled by 1st Class. However, an inquiry was held into the alleged false claim made by the applicant and the Enquiry Officer recorded his finding against the applicant. The

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Disciplinary Authority by its order dt. 20.3.1991 agreed with the finding and imposed the punishment of compulsory retirement on the applicant. The applicant contested that order by filing OA No.159/91, but withdrew it on 17.7.1991 as he wanted to file an application for review before the President. The application for review came to be filed before the President and on 21.10.1991 that application was rejected. The applicant has, therefore, approached this Tribunal again questioning the penalty of compulsory retirement imposed on him.

3. The first contention raised on behalf of the applicant was that the charge sheet had not been filed by the competent authority. The charge sheet (Annexure A-5) dt. 17.1.1989 opens with the words "The president of India proposes to hold an inquiry" and the Memorandum is signed by the Addl.DGOF/Member (Personnel), Ordnance Factory Board by order and in the name of the President of India. The order imposing the penalty was signed by the Under Secretary to the Government of India after stating that the President ordered the imposition of penalty of compulsory retirement from service. The contention of the learned counsel for the applicant was that the proceedings were not initiated by the authority who was competent to do so. Rule 13(under caption Authority to institute proceedings) of CCS(CCA) Rules, 1965 is as follows:

> "The President or any other authority empowered by him by general or special order may -
>
> (a) institute disciplinary proceedings against any Government servant;
>
> (b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 11."

The notification issued by the Ministry of Home Affairs

as amended upto 9.11.1980 gives the several authorities who shall authenticate orders or institute in the name of the President and the term 3 of the Schedule under the caption Ministry of Defence says that in the Ordnance Factories Organisation the authority to authenticate Orders and other Instruments are Director General/Additional Director General/Deputy Director General/ Assistant Director General. Sub-rule 1 of Rule 2 also mentions the names of Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary and Assistant Secretary to the Government of India as the authorities to authenticate the orders on Instruments. It is therefore, clear that the Memorandum as well as the order imposing the penalty had been signed by the authority who had the power to authenticate these documents on behalf of the President. We,therefore, see no merit in the contention that the orders initiating the inquiry and imposing the penalty were not passed passed by the authority empowered to do so.

4. The next submission of the learned counsel for the applicant was that the UPSC had not been consulted under Article 320 of the Constitution. Proviso to clause 3(c) reads:

> "That the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor,... as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

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Under the Union Public Service Commission (Exemption from Consultation)Regulations, 1958, under Clause 5(2) it shall not be necessary to consult the Commission in regard to any disciplinary matter affecting a person belonging to a Defence Service (Civilian). According to the Respondents it was not therefore necessary to consult the UPSC while imposing the the penalty on the applicant and therefore the Commission had not been consulted. The learned counsel for the applicant urged that the applicant did not belong to Defence Service (Civilian) in whose case the exemption might apply, but to the cadre of the Ordnance Factory. Defence Services has been defined under Rule 2 of Appendix 16 of CCS(CCA) Rules, 1965. Under Rule 2(e) of Appendix to CCS (CCA) Rules, 'Defence Services' means services under the Government of India in the Ministry of Defence, paid out of the Defence Services Estimate, and not subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950). The Respondents have filed at Ex-R 16 Demand No.21 Defence Ordnance Factories, Defence Services Estimates for the year 1991-92 in respect of Defence Ordnance Factories. It is therefore clear that the Ordnance Factories would fall within Defence Services. Civilian Services under the Defence Services would also therefore fall in the genus Defence Services and it is therefore clear that since the applicant belonged to the Defence Services (Civilian) it would not be incumbent on the President to consult the UPSC before imposing the penalty of compulsory retirement on the applicant.

5. The learned counsel for the applicant drew our attention to the observations in Union of India V/s.

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K.S.Subramanian (A.I.R. 1989 SC 662) which lays down that :

> "A civilian employee in Defence Service who is paid salary out of the estimates of the Ministry of Defence does not enjoy the protection of Article 311 (2) which provides that 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 heardin respect of the charges. Article 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. Protection of Article 311(2), is not available to a Civilian employee in defence service drawing his salary from the Defence/ Estimates. That being the position, the exclusionary effect of Article 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. Therefore termination of service of such an employee without assigning reasons cannot be said to be illegal."

It is also held in that case that:

> "The protection of Rule of 1965 is also not available to such employee. The reason being that 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. The said Rules cannot independently play any part since the rule making power under Art.309 is subject to Art.311."

The appeal by the Union of India came to be allowed, but the Respondent was allowed to retain the decree in his favour purely on compassionate grounds. We are not concerned with the ultimate order that came to be passed, but the proposition which has been laid down in the above case. Left to itself, this case would not lend any assistance to the applicant's cause.

6. The learned counsel for the Respondents, however, referred us to the two decisions of this Tribunal. The first is Indrajit Dutta V/s. Union of India & Ors. (1992(1) ATJ 44) where while purporting to follow the Subramanian's case the Calcutta Bench of the Tribunal

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held that the entire disciplinary proceedings started by the suspension order and thereafter was mis-conceived and did not have any legal consequence and so the punishment order is equally mis-conceived was quashed. This decision was followed in Jit Singh V/s. UOI (OA No.1530/90) decided on 22.3.1993 by the Principal Bench, New Delhi and a similar order came to be passed. The learned counsel for the applicant urged that the conclusion reached by the two Benches of the Tribunal after considering K.S.Subramanian's case and other decisions of the Supreme Court to the same effect would bind us and if we are not inclined to grant the same relief as was granted by the two Benches, we should refer the matter to a Larger Bench for re-consideration. The basis of the decisions of Supreme Court, that Article 311 of the Constitution does not apply to a civilian employee holding the post of connection with defence and that is the ratio which will bind us and not the fact how those decisions were applied by the two benches of this Tribunal.

7. We agree that normally we should have referred the matter to a Larger Bench if we disagreed with the proposition of law as laic down by the two other Benches of this Tribunal. However, in view of the clear cut enunciation of law in K.S.Subramanian V/s. UOI, we do not think that such a course is called for. One reason which should weigh with us in this respect is that though it was not necessary, an inquiry was held here on specific charges against the applicant. The applicant had admitted that he had not travelled by 1st Class and had raised a defence that he had travelled by his own Car and that defence was rejected as an after-thought by the Enquiry Officer and this finding was affirmed by the Disciplinary Authority. There was, therefore, a compliance with the principles of natural

justice even though the service rules did not apply. The learned counsel for the applicant urged that since the applicant had admitted that he had not travelled by the 1st Class as was the charge against him, then no inquiry was at all necessary and he should have been straightaway visited with the penalty which the authority would have normally imposed on him at that stage itself. We do not think that giving an additional opportunity to the applicant should be taken as a factor which would go against the departmental authorities. If they did afford an opportunity, they cannot be blamed.

8. It was lastly urged on behalf of the applicant that should we consider the penalty as being dis-proportionate to the charge, which in the submission of the learned counsel was trivial and we should in the light of the decision in SBI V/s. Narendra Kishore Endow and another [(1994) 27 ATC 149] remit the case for decision to the Disciplinary Authority. We really do not see how this case would help the applicant. We do not consider the charge against the applicant as being trivial. He was a responsible high ranking Officer of the Defence Organisation and if it is apparent from the charge proved against him that he could not resist the temptation of making a small financial gain while travelling on duty, the departmental authorities had sufficient basis for inferring that the penalty of compulsory retirement should be visited on him. We do not therefore consider it necessary to remit the case to Disciplinary Authority for re-consideration of the penalty.

9. In the result, we see no merit in the application. We dismiss it. No order as to costs.

(P.P.SRIVASTAVA)
MEMBER(A)

(M.S.DESHPANDE)
VICE-CHAIRMAN