Central Administrative Tribunal
Principal Bench

OA No.4253/2012

Order reserved on : 02.06.2016
Order pronounced on : 12.07.2016

Hon'ble Mr. Justice. M.S. Sullar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Ahmad Mian Siddiqui,
S/o Shri Mohd. Mian Siddiqui,
1274, Pahari Imli ,
Churiwalan,
Delhi-110006.

...applicant

(By Advocate : Shri S.K. Gupta)

Versus

Union of India,
Through Secretary,
Ministry of Parliamentary Affairs,
Parliament House,
New Delhi-110001.

...respondent

(By Advocate : Dr. Chaudhary Shamsuddin Khan)

ORDER

Dr. B.K. Sinha, Member (A) :-

The applicant in the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985 read with Section 14 is aggrieved with the order of the respondent dated 20.11.2012 dismissing him from service under Article 310(1) read with clause (c) of the second proviso to Article 311 (2) of the Constitution of India in the interest of the security of the State without holding an enquiry.

2. The applicant has prayed for the following reliefs vide means of this OA :-

> "1. That the impugned orders Annexure A-1, may kindly be quashed and set aside.
>
> 2. That the respondent may kindly be directed to reinstate the applicant by way of restoring status quo ante with all promotions & benefits.
>
> 3. That any other benefit or relief which in the circumstances of the case deemed fit and proper be allowed to the applicant.
>
> 4. That the cost of the suit be awarded to the applicant."

3. The case of the applicant in very brief is that he had been appointed as a Stenographer Grade 'D' in the respondent department w.e.f. 05.11.1986 and was transferred from Deputy Secretary (Legislature) to Deputy Secretary (Administration), vide order dated 20.06.2000. In the meantime, an FIR was registered u/s 3/9 of Official Secret Act that one Shri Mohd. Riaz in criminal conspiracy with Pakistan Intelligence Officer, namely, Hashim based in Pakistan was collecting and communicating the document/information relating to defence matters of the country, whereby the security of the nation could be put to prejudice. The police party comprising of Inspector H.S. Gill, SI Gurudev Singh, SI Sunder Lal, ASI Janak Dass and ASI Nand Lal reached the place for apprehending the said Mohd. Riaz, S/o Mohd. Nawaz, R/o Village Moza Badhshey Wala PO and PS Depal Pur, Distt. Okara, Punjab, Pakistan. Checking up the bag led to recovery of the following documents:-

> "(1) Photocopy of brief notes on issues of Importance that may come up during budget session – 2000 of Military of Defence marked as "Confidential" containing – 40 sheets.
>
> (2) Photocopy of brief on Border Roads Organisation meeting of Parliamentary Consultative Committee of Military of Defence marked as "Restricted" containing 65 sheets.
>
> (3) First report –standing committee on Defence, Ministry of Defence containing – 23 sheet.
>
> (4) Fifth Report –standing committee on Defence, Ministry of Defence containing – 15 sheets."

4. Charges were framed U/s 120B IPC. On further interrogation, the said Mohd. Riaz disclosed that the documents had been obtained by him from the applicant working as PA in the Parliament House and were to be passed over to the Intelligence Officer of Pakistan. The applicant was arrested on the basis of this disclosure made by Mohd. Riaz and the case resulted in charge sheet U/s 120B IPC and U/s 3/9 of Official Secret Act, read with Section 120B of IPC. On 16.12.2005, the applicant was acquitted by the Trial Court, while Mohd. Riaz was convicted under Section 120B IPC and U/s 3/9 of Official Secret Act read with Section 120B IPC. The applicant on 24.02.2006 filed a representation. On 24.04.2006 an appeal U/s 378(3) Cr. P.C. was filed against the order of acquittal before the Hon'ble High Court of Delhi, which was pleased to remand the matter back to the Session Court and vide order dated 09.11.2011, the said Session Court was pleased to acquit the applicant again. On 20.11.2012, the applicant was dismissed vide impugned order under Article 310(1) read with clause (c) of the second proviso to article 311(2) of the Constitution of India without

holding inquiry. The applicant is here before this Tribunal against the impugned order seeking reversal of the same, as per the terms of prayer in paragraph 8.

5. The learned counsel for applicant has principally used the following six arguments in support of his prayers :-

(i) In the first instance the four documents that have been seized from the applicant were all in public domain and any citizen of India could have had access to that. Therefore, there is no way that the applicant could have violated the official secret or would have posed any threat to security of India in any form.

(ii) There has been no direct evidence forthcoming to establish any form of conspiracy. The applicant has not been seen passing the documents which were in public domain.

(iii) The applicant could not have had access to these documents as he was Stenographer in a Division through which these documents did not pass.

(iv) The penalty has been awarded after a lapse of 12 years since the incident. The applicant had been arrested on 20.09.2000 and the chargesheet has been filed on 11.12.2000. However, the order of dismissal has come 12 years late on 20.11.2012. Thus the unusual delay of 12 years has served to undermine the validity of the punishment.

(v) The applicant submits that while the said Mohd. Riaz has been convicted, there is not a least shade of evidence to connect him with the crime. The order of the learned Additional Session Judge was pronounced in open court on 09.11.2011 and has since attained finality. Therefore, the applicant deserves to be reinstated.

(vi) The case does not warrant use of Article 310(1) read with clause (c) of the second proviso to Article 311(2). In the least, it was the straight forward charge that the applicant had supplied sensitive documents to the accused Mohd. Riaz. Since the documents were in public domain, the use of Article 310(1) read with clause (c) of the second proviso to Article 311(2) to dismiss him without proceeding was not called for and was against the norms of natural justice.

6. The learned counsel for respondents referred to para 5.10 of his counter affidavit and submitted that the applicant had alleged that the respondents had dismissed him from service without an enquiry despite the fact that he stood acquitted by the Court of competent jurisdiction. The decision to dismiss the applicant under the authority of Articles 310 and 311 had been taken on the basis of the gravity of charges, the nature of offence and the persons involved. Dr. Ch. Shamsuddin Khan, learned counsel for respondents further submitted that the decision to dismiss the applicant without holding a trial was a reasonable decision taken in the interest of the security of the State after having perused the

report of IB in this regard. It was not feasible to hold a trial under the attending circumstances for the same would have served to make public many vital State secrets and would have also blown the covers of secret operatives.

7. We have perused the pleadings of the rival parties along with such documents as have been adduced and citations relied upon on either side and have patiently heard the arguments advanced by the learned counsel for the parties.

8. The material facts submitted have not been refuted by the respondents. The fact remains that one Mohd. Riaz, a citizen of Pakistan had been caught with certain documents said to have been given by the applicant. The applicant was arrested, chargesheeted and discharged on technical grounds of non-sanction of the prosecution; subsequently on a remand from the Hon'ble High Court of Delhi, the evidence was assessed by the competent court and again the applicant had been discharged. The learned Trial Court while examining the documents adduced and such other material/oral evidence came to the conclusion as extracted below for the sake of the clarity :-

> "**Conclusion**
>
> 87. In view of the above discussion, this court comes to the conclusion that prosecution has failed to establish that it is only the accused who communicated or passed on this information, contained in the aforesaid documents to Mohd. Riaz, since convicted. Consequently, Ahmed Mian Siddiqui (accused) is hereby acquitted of the accusation levelled against him.

> 88. While parting with the judgment, it may be mentioned here that in the Ministry of Parliamentary Affairs, Government of India, numerous documents are received from various Departments/Ministries for consideration, adoption and presentation. Many of these documents fall in the category of secret documents, others in the category of restricted documents and yet other confidential in nature. As has been noticed in this case, some documents received in the office of Deputy Secretary (Legislature), Parliament House, New Delhi were handled upto five levels in all and prosecution has not been able to pin-point as to at which stage copies of those documents came to be prepared and by whom, before the same reached the foreign agent. In the given situation, this Court feels that in order to fix liability of an offender, from amongst the staff/officers employed in various sections of the Parliament House, New Delhi, custody of suchlike documents containing official secrets needs to be restricted only to one or two officers. Further, in case of preparation of photocopies of suchlike documents, record needs to be maintained by the concerned custodian of record, regarding the date of the document being photocopied and about the designation of the officer engaged in preparing photocopies. Secret special indelible mark also needs to be put even on the so prepared photocopies, so as to find out as to from whose custody and as to at which stage the document or the copy went out and came to be communicated to unauthorised person."

9. The matter has been appealed against by the delinquent and is pending consideration before the Hon'ble High Court of Delhi. A delay of 12 years between the incident and the order of dismissal has been well acknowledged by the respondents who have tried to explain away the same on account of procedural work involved. The only issue to be decided by us is that whether there was some material available with the respondents who arrived at the decision of the use of Article 310(1) read with clause (c) of the second proviso to Article 311(2).

10. Accordingly, the file relating to the matter had been produced before us and we had an occasion to go through. Our considered finding in this regard is that there is the requirement of the criminal law justice and that departmental proceedings are entirely at different footing. While in criminal case the facts need to be established beyond reasonable doubt while in departmental proceedings the establishment is limited to preponderability of occurrence. Hence, the two differ in degree of evidence required. It is very much possible that an accused discharged from criminal liability may still be held accountable for departmental absence. In this regard a reference is made here to the ***Bharti Cellular Limited v. Union of India*** MANU/SC/0798/2010. However, in the instant case, there were no proceedings at all. As such, the only relevance of putting this point on record is that the highest form of satisfaction of the Government has been invoked strong enough to keep the matters under the wraps and away from the public caze.

11. We take note of Article 310 of the Constitution whereby civil employees of the Union or the States hold their posts at the pleasure of the Government and their services are terminable at the will of the President or Governor under the doctrine of pleasure. However, the Constitution also has placed certain limitations when it concerns dismissal, removal or reduction in rank as provided under Article 311 of the Constitution, providing security and safeguards to the civil servants/employees. These limitations are:

> "i) Such an employee shall not be dismissed or removed by the authority subordinate to that by which he was appointed.
>
> ii) Such an employee can not be dismissed, removed from service nor his rank reduced without holding an enquiry and giving him a reasonable opportunity of being heard."

12. However, the second safeguard provided for holding an enquiry before dismissal or removal or reduction in rank and entitlement to audi alteram partem, is not available under three situations, as provided under the clauses (a), (b) and (c) of second proviso to sub-clause (2) of Article 311 of the Constitution as follows.

> "a) Under clause (a) of the second proviso, a person can be dismissed or removed or reduced in rank without holding any enquiry, on the ground of misconduct which has led to his conviction on a criminal charge.
>
> b) The holding of enquiry also can be dispensed with where the authority, empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for some reason, to be recorded by that authority in writing, it is not reasonable to hold such an enquiry as provided under clause (b).
>
> c) It will also not be required to hold an enquiry where the President or the Governor, as the case may be, is satisfied that in the interest of security of the State, it is not expedient to hold such an enquiry, under clause (c)."

13. Thus, though normally, a person cannot be dismissed or removed from service or reduced in rank except by holding a departmental enquiry and giving him reasonable opportunity of being heard, as provided under clause (2) of Article 311 of the Constitution of India, yet holding of enquiry can be dispensed with under three situations as mentioned above.

14. In the present case, we are concerned only with the third situation as provided under clause (c) of the second proviso to clause (2) of Article 311 under which the petitioners/appellants were dismissed from service without holding any enquiry as the Governor of the State was of the opinion that it was not expedient to hold enquiry in the interest of the security of the State before dismissing them from service. Therefore, we would restrict ourselves to the relevant laws which govern the aforesaid provision of the Constitution and examine as to whether in the present cases, the aforesaid provision of the Constitution dispensing with the holding of enquiry had been properly applied or not.

15. There has been a series of landmark judicial pronouncements by the Hon'ble Supreme Court relating to the said provision, beginning with the case of Sardari Lal Vs Union of India, MANU/SC/0656/1971 : 1971(3) SCC 461 : 1971 (1) SCC 411 followed by the Constitution Bench decision in Shamsher Singh Vs State of Punjab MANU/SC/0073/1974 : 1974 (2) SCC 831 and relied in later decisions.

16. In Sardari Lal (supra), the Hon'ble Supreme Court held that the satisfaction of the President or the Governor under Article 311(2) second proviso, clause (c) is his personal satisfaction. Thus, it was held that unless the President or the Governor himself reaches such a satisfaction as to the expediency of not holding enquiry in the interest of the security of the State, any order passed by invoking the said provision of Article 311 will be vitiated. The Hon'ble Supreme Court in that case took the view that, a matter in which the interest of the security of the State

had to be considered, should receive the personal attention of the President or the Head of the State and he should be himself satisfied that an inquiry under the substantive part of clause (2) of Article 311 was not expedient for the reasons stated in clause (c) of the proviso in the case of a particular civil servant. It was further held that this function could not be delegated or allocated to anyone else by the President or the Head of the State.

17. This decision in Sardari Lal (supra) was, however overruled by the Constitution Bench decision in Shamsher Singh (supra). The Hon'ble Supreme Court in Shamsher Singh (supra) elaborately discussed the principles of law qua, the role and the power of the President and the Governor keeping into consideration the parliamentary form of governance, where the Cabinet plays a vital role as in Britain, which has been adopted in India, as opposed to the Presidential form of governance as followed in the United States of America, and held that unless the provisions of the Constitution expressly require the President or the Governor to exercise his powers in his discretion, the President or the Governor has to act on the advice of the Council of Ministers. Based on the aforesaid principle, it was held that the satisfaction of the President or the Governor as mentioned in clause (c) of the second proviso to sub-clause (2) of Article 311 is to be arrived at on the advice of the Council of Ministers as provided under Article 163 of the Constitution, and actions have to be taken/executed in the name of the Governor in terms of the rules of business framed by the Governor as provided under Article 166 of the Constitution of India. In this regard, it may be apposite

to reproduce the relevant portions of the judgment in Shamsher Singh (supra) as follows:

> "**28.** Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.
>
> **29.** The executive power is generally described as the residue which does not fall within the legislative or judicial power. But executive power may also partake of legislative or judicial actions. All powers and functions of the President except his legislative powers as for example in Article 123, viz., ordinance making power and all powers and functions of the Governor except his legislative power as for example in Article 213 being ordinance making powers are executive powers of the Union vested in the President under Article 53(1) in one case and are executive powers of the State vested in the governor under Article 154(1) in the other case. Clause (2) or clause (3) of Article 77 is not limited in its operation to the executive action of the government of India under clause (1) of Article 77. Similarly, clause (2) or clause (3) of Article 166 is not limited in its operation to the executive action of the government of the State under clause (1) of Article 166. The expression "Business of the government of India" in clause (3) of Article 77, and the expression "Business of the government of the State" in clause (3) of Article 166 includes all executive business.
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> **30.** In all cases in which the President or the governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his council of Ministers he does so by making rules for convenient transaction of the business of the government of India or the government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the

President or the governor for the exercise of any power or function by the President or the governor, as the case may be. as for example in Articles 123, 213, 311(2) proviso (c), 317, 252(1), 356 and 360 the satisfaction required by the Constitution is not the personal satisfaction of the President or of the governor but is the satisfaction of the President or of the governor in the constitutional sense under the Cabinet system of government. The reasons are these. It is the satisfaction of the council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. Neither Article 77(3)nor Article 166(3) provides for any delegation of power. Both Articles 77(3) and 166(3) provide that the President under Article 77(3) and the governor under Article 166(3) shall make rules for the more convenient transaction of the business of the government and the allocation of business among the Ministers of the said business. The Rules of Business and the allocation among the Ministers of the said business all indicate that the decision of any Minister or officer under the Rules of Business made under these two articles, viz., Article 77(3) in the case of the President and Article 166(3) in the case of the governor of the State is the decision of the President or the governor respectively.

31. Further the Rules of Business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the governor, that the executive power shall be exercised by the President or the governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the governor that there shall be a council of Ministers to aid and advise the President or the governor, as the case may be, are sources of the Rules of Business. These provisions are for the discharge of the executive powers and functions of the government in the name of the President or the governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions

> entrusted to a Minister (see Halsbury's Laws of England 4th Ed., Vol. 1, paragraph 748 at p. 170 and Carltona Ltd. v. Works Commissioners (1943) 2 All ER 560)."
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> (emphasis added)

18. The Hon'ble Supreme Court again clarified the aforesaid legal position as regards the said provision of Article 311(2) in Union of India Vs. Tulsiram Patel, MANU/SC/0373/1985 : (1985) 3 SCC 398 in para 59 thereof, as follows:

> "**59.** The position, therefore, is that the pleasure of the President or the Governor is not required to be exercised by either of them personally, and that is indeed obvious from the language of Article 311. Under clause (1) of that article a government servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed. The question of an authority equal or superior in rank to the appointing authority cannot arise if the power to dismiss or remove is to be exercised by the President or the Governor personally. Clause (b) of the second proviso to Article 311 equally makes this clear when the power to dispense with an inquiry is conferred by it upon the authority empowered to dismiss, remove or reduce in rank a government servant in a case where such authority is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, because if it was the personal satisfaction of the President or the Governor, the question of the satisfaction of any authority empowered to dismiss or remove or reduce in rank a government servant would not arise. Thus, though under Article 310(1) the tenure of a government servant is at the pleasure of the President or the Governor, the exercise of such pleasure can be either by the President or the Governor acting with the aid and on the advice of the Council of Ministers or by the authority specified in Acts made under Article 309 or in rules made under such Acts or made under the proviso to Article 309; and in the case of clause (c) of the second proviso to

> Article 311(2), the inquiry is to be dispensed with not on the personal satisfaction of the President or the Governor but on his satisfaction arrived at with the aid and on the advice of the Council of Ministers."

(emphasis added)

19. The Hon'ble Supreme Court in Tulsiram Patel's case went on to elaborately explain the conditions which must be satisfied before invoking any of the exceptional clauses of the second proviso under Article311(2). It held that, the second proviso to clause (2) of Article 311 can be applied only when the conduct of the Govt. servant is such that he deserves the extreme penalty of dismissal/removal or reduction in rank. However, before imposing any of the aforesaid penalties, the requirement of holding an enquiry and following audi alteram partem as contemplated under Article 311(2) can be dispensed with only under three situations as provided under clauses (a), (b) and (c) of the second proviso to Sub-clause (2) of Article 311. Since, we are not concerned with the situations contemplated under clauses (a) and (b), but under clause (c), we confine our discussion on the law relating to clause (c).

20. As to when clause (c) of the second proviso to Article 311(2) can be invoked has been elucidated by the Hon'ble Supreme Court in Tulsiram Patel's case (supra) by holding that the prime consideration for invoking the said clause (c) is the expediency or inexpediency of not holding the enquiry which must be related to the interest of the security of the State. Thus, satisfaction of the President or the Governor must, be with respect

to the expediency or inexpediency of holding enquiry in the interest of the security of the State. This satisfaction of the Governor, which, however, has to be arrived at with the aid and advice of the Council of Ministers, is on the issue that it would not be advantageous or fit or proper or suitable in the interest of the security of the State to hold an enquiry. Such a satisfaction may be reached because of the secret information received by the Govt. and making known such information may result in the disclosure of the source of information which may be prejudicial to the interest of the security of the State. The Hon'ble Supreme Court went on to observe that the reasons for arriving at such satisfaction by the President or the Governor under clause (c) is not required to be recorded in the order of dismissal, removal or reduction in rank nor can be made public as held in para 141, 142 and 143 of the judgment in Tulsiram Patel's case which read as follows:

> "**141.** The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of these situations these which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in

which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military Forces. Disaffection in any of these Forces is likely to spread, for disaffected or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a paramilitary force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or para-military Forces. How important the proper discharge of their duties by members of these Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984, Article 33 provided as follows:

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> Thus, the discharge of their duties by the members of these Forces and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred upon Parliament to restrict or abrogate to them.

142. 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 Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient; disadvantageous in the circumstances, unadvisable impolitic." The same dictionary defines "expedient" as meaning inter alia "advantageous; fit, proper, or suitable to the circumstances of the case." Webster's Third New International Dictionary also defines the term "expedient" as meaning inter alia "characterized by suitability, practicality, and efficiency in achieving a particular end: fit, proper, or advantageous under the circumstances." It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head. Whenever, therefore, the President or the Governor in the Constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a 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.
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> **143.**.....
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> **144.** It was further submitted that what is required by clause (c) is that the holding of the inquiry should not be expedient in the interest of the security of the State and not the actual conduct of a government servant which would be the subject-matter of the inquiry. This submission is correct so far as it goes but what it overlooks is that in an inquiry into acts affecting the interest of the security of the State, several matters not fit or proper to be made public, including the source of information involving a government servant in such acts, would be disclosed and thus in cases such as these an inquiry into acts prejudicial to the interest of the security of the State would prejudice the interest of the security of the State as much as those acts would."
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> (emphasis added)

21. The Hon'ble High Court of Manipur at Imphal in ***Md. Abdul Khalique and Ors. Vs. The State of Manipur and Ors.*** WP(C) Nos. 706 and 707 of 2009 and 476 of 2013 and WA Nos. 2 and 3 of 2013, was faced with identical question. Here it is necessary for us to revisit the articles 310 and clause (c) of Article 311 (2) :-

> "20. In the light of the above, the principles thus enunciated by the Hon'ble Supreme Court as regards the application of clause (c) to second proviso to Article 311(2) which have been consistently followed in subsequent cases may be summarised as follows:

i) The pleasure of the President or the Governor in arriving at the subjective satisfaction that in the interest of the security of the State it is not expedient to hold an enquiry as contemplated under clause (c) of the second proviso to sub-clause (2) of Article 311 is not a personal satisfaction of the President or the Governor, but, is a satisfaction to be arrived at with the aid and advice of the Council of Ministers.

ii) Any order of dismissal or removal or reduction in rank invoking the aforesaid provision is justiciable and can be examined by the Court as to whether such a satisfaction of the President or Governor is vitiated by malafide or is based on wholly extraneous or irrelevant grounds.

iii) To examine the aforesaid, the Govt. is under obligation to produce all the relevant materials which are the basis for arriving at such a satisfaction.

iv) While examining the materials which form the basis for arriving at the subjective satisfaction by the Governor, the Court will not look into the sufficiency or correctness of the materials.

v) However, the Courts can examine whether the facts have been verified or not.

vi) The Court will not substitute its opinion for that of the President/Governor, but the materials in question have to be such as would induce a reasonable man to come to the conclusion in question.

vii) Even if some of the materials on which the action is taken are found to be irrelevant, the Court will not interfere, if there are some relevant materials to support the action.

In the light of the aforesaid general principles governing the aforesaid provision of Article 311(2) second proviso, clause (c), we may proceed to examine the individual petitions/writ appeals."

22. The applicant has relied upon the case of ***Union of India & Anr. Vs. Balbir Singh & Anr.*** (1998) 5 SCC 216. In the instant case, the respondents had been serving at the residence of the then Hon'ble Prime

Minister Indira Gandhi for security purpose. A criminal case was instituted for assassination of Mrs. Gandhi on 30.01.1984 in which the respondents were arrested and were placed under suspension. The Government of India had set up an Advisory Committee, which defined certain kind of subversive activities where action was to be taken under proviso of Article 310 and 311 of the Constitution and not under normal disciplinary rules and order under Article 311(2) was issued after a detailed examination of the relevant facts by set of a very senior and experienced administration. The respondents were convicted and sentenced to death which was reversed by the Hon'ble Supreme Court leading to acquittal of the respondents. He, therefore, filed an OA before the Principal Bench challenging the order of his dismissal and his application was allowed.

23. The Hon'ble Supreme Court where the matter ultimately had landed up held that there was no material to infer any malafide. For the sake of clarity relevant paras 9 and 10 have been extracted hereinbelow:-

> "9. In the present case, there is no material to infer any mala fides. What is required to be seen is whether the order is based on material which is wholly extraneous or irrelevant, having no bearing whatsoever on the security of the State. The Tribunal had called upon the appellants to produce the entire confidential material on which the order is based. The Tribunal h as held that at least two of the files placed before it are highly confidential. They all relate to the activities of the respondent which have a bearing on the security of the State. This is not a case where there is absolutely no material relating to the activities of the respondent prejudicial to the security of the State. The entire material gathered by the Intelligence Bureau was placed before a very high level Committee of

> Advisors under the procedure prescribed by the Government Memorandum. This was precisely for the purpose of ensuring that when a Government servant is dismissed without enquiry, there should be cogent material to indicate that it is necessary to do so in the interest of the security of the State. The material was examined by the Advisory Committee. Thereafter, it advised the dismissal of the respondent under proviso (c) to Article 311(@). Therefore, the President has issued an order under proviso (c) to Article 311(2).
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> 10. In our view, this was not a case where there was no relevant material. The Tribunal could not have substituted its own judgment for the satisfaction of the President of India. The Tribunal is under a misapprehension when it holds that if the respondent could be criminally prosecuted a Departmental Enquiry could have been held on the basis of this same material. The respondent placed reliance on the observations to this effect made by the Andhra Pradesh High Court in B. Bhaskara Reddy v. Government of Andhra Pradesh (1981 (1) SLR 249. The Tribunal has not noted that the material which was placed by the Intelligence Bureau before the Advisory Committee and the President did not relate merely to the assassination of the Prime Minister. It related to various other activities of the respondent as well, which the authorities considered as prejudicial to the security of the State. The fact that the respondent was subsequently acquitted by this Court in the criminal trial will not make any difference to the order which was passed by the President on the totality of material which was before the authorities long prior to the conclusion of the criminal trial."

24. In the instant case, we are swayed with the fact that the acquittal of the applicant was based upon a higher degree of proof required. Hence, the appreciation of evidence would be altogether different from what it would have been in departmental proceedings had it been taken place. The accused Mohd. Riaz was convicted of possessing classified documents with an intention to pass them on to an enemy country.

Though there has been no material or oral evidence to prove that it was the applicant who had provided the documents to Mohd. Riaz but in departmental proceedings had it been so conducted, the question would have arisen of preponderance of probability. The moot question remains from where Mohd. Riaz obtained these documents and how could he name the applicant. Hence, the applicant is not totally in clear as an appeal is the continuation of the trial. In the ***Additional District Magistrate Jabalpur Vs. Shiv Kant Shukla Etc. Etc.*** 1976 AIR 1207, 1976 SCR 172, Hon'ble Supreme Court clearly held that so long as it continued, a person could not be considered to be finally acquitted.

25. At the end, we are fully convinced on the basis of the records perused that the danger of breach of national security remains real in the opinion of the respondent Ministry. We are bound to set a store by its opinion that the Ministry is handling documents of sensitive categories including the ultra sensitive documents. What documents are sensitive and from which an enemy can glean vital information can only be decided by the body of experts. The Intelligence Bureau is that body of experts that deals with counter espionage and hence, in best position to advise the Government. Continued to be so, a fresh view can be taken once the Hon'ble High Court of Delhi where this matter is *lis pendens* arises at a final decision.

26. Therefore, we have no alternative except to dismiss the OA, with liberty to the applicant to approach this Tribunal should he be acquitted in the appeal before the Hon'ble High Court of Delhi. No costs.

(Dr. B.K. Sinha)
Member (A)

(Justice M.S. Sullar)
Member (J)

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