

(2013) 05 DEL CK 0425
In the Delhi High Court
Case No : Writ Petition (C) 6075 of 2011

Dhiraj Mohali

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Constitution of India, 1950 — Article 311(2), 311(2)(c)
Penal Code, 1860 (IPC) — Section 120B, 34, 365, 395, 420

Citation : (2013) 4 SCT 105

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sachin Chauhan, for the Appellant; Sachin Datta, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order dated August 25, 2010 passed in OA No. 1492/2008 whereby the challenge of the petitioner to the order of the President dated May 28, 2008 by which he has been dismissed from service under sub-clause(c) to second proviso to Article 311(2) of the Constitution of India has been rejected. The brief facts are the petitioner while working as JIO-II/WT of SIB Raipur Chattisgarh was arrested by the local police along with two other persons in March 2008 in connection with a criminal case No. 58/2006 under Sections 365/420/395/120-B/34 of IPC registered against them. He was put under deemed suspension and remained under suspension till his dismissal from service vide order dated May 28, 2008. The challenge to the order dated May 28, 2008 by the petitioner was primarily on the ground that sub-clause(c) to second proviso to Article 311(2) of the Constitution of India of the Constitution of India could not have been invoked only because an FIR is registered against him. According to him he is not involved in any activity which would consider prejudicial to the security of the State.

2. The case of the respondents in their reply is that the petitioner was involved in

subversive activities by establishing contacts with anti-social and anti-national elements during his detention in Central Jail, Raipur. A committee of advisors consisting of home Secretary, Director Intelligence Bureau, Secretary (Pers), DOP & T and Secretary, Department of Legal Affairs was formed as per DOP & T OM dated July 26, 1980 for taking action against the petitioner under Article 311(2) (c) of the Constitution of India. Based on the recommendation of the committee, which recommended dismissal of the petitioner from service under sub-clause(c) to second proviso to Article 311(2) of the Constitution of India, the President, who is the competent authority, after considering the material on record being satisfied that in the interest of security of State it was not expedient to hold enquiry imposed a punishment of dismissal of service on the petitioner.

3. The Tribunal had called for the file containing the material forming the basis of the President's decision. After summarising the law of the Supreme Court in cases where sub-clause(c) to second proviso to Article 311(2) of the Constitution of India has been invoked the Tribunal has concluded as under:-

The material, which was placed before the Advisory Committee included the criminal act of the Appellant in impersonating as CBI officer, threatening the diamond trader, beating him up and extorting rupees two lakhs and looting some jewellery from the said trader. The Committee has further been informed that the Applicant has developed relations with anti-social elements. Yet another allegation against the Applicant is about his developing close relations with subversive elements and leaders of such organizations, which engaged in activities prejudicial to the security of the Nation. While the criminal action of the Applicant in impersonating as CBI officer and beating up the jeweler, extorting bribe from him and developing contacts with anti-social elements are concerned, these in our considered opinion, would be irrelevant as far as action under Article 311(2)(c) of the Constitution is concerned. However, developing close relations and intimacy with subversive elements would very much be within the ambit of aforesaid Article of the Constitution. Making a developmental inquiry in this regard would not be expedient as the Applicant was serving the top most intelligence agency of the country and some secret material connected with the security of the country may become known publicly. In *Union of India and anr. Vs. Balbir Singh and ors.* (supra), the Honourable Supreme Court has held that even if some of the material on which action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material to sustain the action taken against the Government servant. It has also enjoined that the truth or correctness of the material would not be questioned by the Court and it would not go into the adequacy of the material. It would also not substitute its opinion for that of the President.

12. We would not like to go into the further details of the charge regarding association with subversive elements as it would not be desirable to make such charges public. It is indeed for this reason that the Article 311(2)(c) provides that the reasons for the satisfaction of the President would not be required to the

recorded in the order of dismissal, removal or reduction in rank.

4. We had heard the counsel for the parties. Mr. Sachin Chauhan, learned counsel appearing for the petitioner would reiterate the submission he made before the Tribunal that a criminal case pursuant to an FIR cannot be a ground to invoke sub-clause(c) to second proviso to Article 311(2) of the Constitution of India. According to him the respondents, for the first time in their reply has stated that the petitioner was found engaged in subversive activities during his detention in the Central Jail, Raipur by establishing contacts with anti-social and anti-national elements. He states that he had replied to the contents of the reply by filing a rejoinder.

5. Mr. Sachin Datta, learned counsel for the respondents had justified the order of the Tribunal and had also stated the impugned action in terms of order dated May 28, 2008 was taken by the President in terms of the recommendation of the committee constituted in terms of DOP & T instructions. He states that the competent authority was satisfied that the activities of the petitioner were such and that it was not expedient in the interest of the security of the State to hold an enquiry.

6. We have also thought it fit to peruse the file containing the material forming the basis of the decision, as was done by the Tribunal. After perusing the file it is seen that the committee considered the material available on the record and prima facie was of the conclusion that action be taken for his dismissal under sub-clause(c) to second proviso to Article 311(2) of the Constitution of India. In the present case charges against the petitioner are of very serious nature. The petitioner was working in a very sensitive post. The disclosure of material would effect the interest of the security of the State. The law enjoins that there is no obligation on the part of the competent authority to communicate the reasons for invoking sub-clause(c) to second proviso of Article 311(2) of the Constitution of India.

7. The Tribunal had considered the law laid down by the Supreme Court in the case reported as Union of India and Another Vs. Tulsiram Patel and Others, . A.K. Kaul and another Vs. Union of India and another, and A.K. Kaul and another Vs. Union of India and another, . and concluded: "developing close relations and intimacy with subversive elements would very much be within the ambit of aforesaid Article of the Constitution. Making a departmental enquiry in this regard would not be expedient as the Applicant was serving the top most intelligence agency of the country and some secret material connected with the security of the country may become known publicly. In Union of India & Anr. Vs. Balbir Singh & Ors., (supra), the Hon"ble Supreme Court has held that even if some of the material on which action is taken is found to be irrelevant the Court would still not interfere so long as there is some relevant material to sustain the action taken against the Government servant".

8. Recently the Supreme Court in the case of reported as Union of India (UOI)

and Another Vs. M.M. Sharma, while dealing with action under sub-clause(c) to second proviso to Article 311(2) of the Constitution of India has held as under:-

24. The records indicate that there are sufficient reasons and materials on record as to why the service of the respondent was dispensed with in the interest of the security of the State. We are also satisfied that the reasons contained in the records establish that in the facts of this case holding of an enquiry was rightly dispensed with in the interest of security of the country. We must hasten to add that the Tribunal had in the earlier round of litigation upheld the action of the appellants in dispensing with the enquiry in the interest of the security of the State. The said order of the Tribunal has also become final and binding. Therefore, challenge in the present round of litigation is whether the appellants are justified in awarding the punishment of dismissal from service on the respondent which also deprives him from getting any pensionary benefit.

25. The original records were placed before us, which we have perused. The allegations against the respondent are very serious which could jeopardise the sovereignty and integrity of India. The records also disclose the highly objectionable activities and conduct of the respondent which is unbecoming of a responsible government servant. The Inquiry Committee took the decision of not disclosing the grounds for taking action against the delinquent officer under sub-clause (2) of the second proviso to Article 311(2) of the Constitution because disclosure of the same or holding of an inquiry has the potential to jeopardise national security and relations with a neighbouring country and such disclosure could lead to gross embarrassment to the Government of India. The Intelligence Bureau has already conducted an inquiry and findings of the inquiry officer were based on the written statement of the suspected officer and other officers; analysis of phone records; and recovery of photographs from the laptop of the respondent. In that context and in view of the reasons recorded it was concluded that the allegation had far-reaching effects and therefore it was decided to dispense with holding of any inquiry in the matter and also to dismiss him from service.

26. A very high-level committee considered the entire record and the allegations against the respondent and on the basis of the materials available on record, the committee prima facie came to the conclusion that action could be taken for his dismissal under sub-clause(c) to the second proviso to Article 311(2) of the Constitution. The aforesaid recommendation is available on record and the High Court could have called for such record and therefrom satisfy itself that there are sufficient and cogent reasons recorded for taking action under Article 311(2)(c) of the Constitution and also for imposing the penalty for dispensation of the service of the respondent by way of dismissal from the service.

27. In our considered opinion, in the present case, charges against the delinquent officer being very serious and also in view of the fact that the respondent was working in a very sensitive post, it cannot be said to be a case of disproportionate punishment to the offence alleged. The reasons recorded in the

official file against the person for dismissing him from service need not be incorporated in the impugned order passed.

9. In view of the aforesaid position coupled with the fact the Tribunal in para 12 observed as under:-

12. We would not like to go into further details of the charge regarding association with subversive elements as it would not be desirable to make such charges public.

10. We do not find any infirmity in the impugned order.

11. The writ petition is dismissed. No costs.

CM No. 12272/2011

In view of the decision in the writ petition, the same has become infructuous.