

(2011) 09 DEL CK 0153
In the Delhi High Court
Case No : Writ Petition (C) 3011 of 1991

Maj. Gen. A.K. Mehta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Army Act, 1950 — Section 18

Constitution of India, 1950 — Article 226, 311, 311(2), 32

Citation : (2011) 09 DEL CK 0153

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Arvind K. Nigam and Mr. Rohit Singh and Bhuvanesh Sehgal, for the Appellant; Jyoti Singh and Mr. Anuj Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The Petitioner has filed the writ petition raising a grievance that on impertinent reasons, the Respondents have terminated his services and prays that the order be quashed.

2. The impugned order dated 20.3.1991 rests on the Presidential power of administrative dismissal, a power conferred by Section 18 of the Army Act 1950 which Section reads as under:

18. Tenure of service under the Act - Every person subject to this Act shall hold office during the pleasure of the President.

3. The genesis of present action lies, when on completion of the Petitioner's tenure in Indian Peace Keeping Force, his name was forwarded for approval to be appointed as Joint Secretary (Military Wing). As per the Respondents there being adverse intelligence inputs against the Petitioner his name was withdrawn on 30.3.1990 and further it was decided that Petitioner be requested to seek voluntary retirement and as alleged in the counter affidavit filed, the reason was alleged weakness of character of the Petitioner which constituted a potential

security risk. The Petitioner did not seek voluntary retirement and hence the impugned order was passed.

4. Petitioner alleges, a fact not denied, that commissioned in the Indian Army in December 1957 the Petitioner earned promotions to the rank of Major General and the Military Career was exceptionally brilliant. Petitioner held key and sensitive posts in the Defence Planning Staff of the Chief of Staff Committee in the Ministry of Defence, firstly as a Brigadier and then as a Major General.

5. Petitioner alleges that Respondent No. 2 held a strong prejudice against him which got accentuated when Petitioner expressed strong views while working in the Defence Planning Staff at a point of time when Respondent No. 2 was associated with him. It is also alleged by the Petitioner that he had an acrimonious argument with Respondent No. 3 as a result Respondent No. 3 also held a strong prejudice against the Petitioner. As per the Petitioner, on 24.5.1988 Respondent No. 3 summoned him and showed a file containing, what Petitioner alleges false and contrived allegations against the Petitioner, and that his representations there against were unjustifiably rejected.

6. Petitioner alleges that there is no objective material on which the adverse findings qua the Petitioner have been made on the file and that the order terminating his service is a camouflage.

7. In the counter affidavit filed it is asserted that on sensitive information, of secret and classified nature, received against the Petitioner, action was taken inasmuch as Petitioner's continued service would be a potential risk to the security of the State.

8. It may be noted that an undertaking obtained from the Petitioner not to challenge the action on the assurance that he would be paid full pension is relied upon by the Respondents to plead estoppels against the Petitioner, to which the Petitioner responds that he was forced to sign the undertaking.

9. Needless to state allegations of mala-fide pleaded in the writ petition are denied by the Respondents.

10. Administrative dismissal dispenses with an inquiry or a trial and is akin to the power under Article 311(2) of the Constitution of India and thus one may seek guidance from the jurisprudence on the subject. In the decision reported as *Union of India and Another Vs. Tulsiram Patel and Others*, , the Supreme Court held:

Where a government servant is dismissed, removed or reduced in rank by applying Clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether Clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by Clause (3) of Article 311 to the

disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by Clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to Clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.

11. In the decision reported as Union of India and Another Vs. Balbir Singh and Another, it was held:

If an order passed under Article 311(2) proviso (c) is assailed before a court of law on the ground that the satisfaction of the President or the Governor is not based on circumstances which have a bearing on the security of the State, the Court can examine the circumstances on which the satisfaction of the President or the Governor is based; and if it finds that the said circumstances have no bearing whatsoever on the security of the State, the Court can hold that the satisfaction of the President or the Governor which is required for passing such an order has been vitiated by wholly extraneous or irrelevant considerations.

12. In the decision reported as Kuldeep Singh Vs. The Commissioner of Police and Others, , it was held:

It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

13. Suffice would it be to state that a Court can examine the circumstances and the material on which the satisfaction of the President is based and if it finds that the material or circumstances alleged have no bearing whatsoever on the security of the State, appropriate orders can be passed.

14. The writ petition has remained pending for long and order sheet is replete with directions to the Respondents to produce the original record for perusal by the Court.

15. Learned Counsel for the Respondents informs today that the relevant record is missing and that there is no possibility to trace the same.

16. It was the obligations of the Respondents to have preserved the record. Except for pleading in the counter affidavit that there was sufficient material to take action, nothing else has been supplied and we do appreciate that if the nature of the material was sensitive, the Respondents could not have annexed the same with the counter affidavit. But, that does not mean that the Respondents should have been negligent and lose the record for they knew that though not to be shown to the Petitioner, it had to be produced for perusal by the Court.

17. Under the circumstances the dead-lock has to be resolved in favour of the Petitioner because he cannot lose by default. The onus is on the Respondents to prima facie justify the action taken and in the absence of record being produced by the Respondents, the onus against the Respondents remains. Thus, the writ petition has to be allowed.

18. We allow the writ petition and quash the order terminating the services of the Petitioner and hold that the petitioner would be entitled to a deemed reinstatement till he would have superannuated in service with all consequential benefits except actual salary, which we deny for the reason the Petitioner has won on a technical point and additionally for not have performed the duties. However, for purposes of pensionary benefits the said period would be reckoned as service rendered to determine the last drawn salary payable with the usual increments which the Petitioner would have earned till he would have superannuated from service. The pension would be re-fixed with reference to the average emoluments drawn for the preceding 10 months in the context of the date on which Petitioner would have superannuated from service.