

(2022) 03 MAN CK 0025
In the Manipur High Court
Case No : Writ Appeal No. 13, 14 Of 2021

State Of Manipur	Vs	APPELLANT
Yahiya Khan & Ors		RESPONDENT

Date of Decision : 11-03-2022

Acts Referred:

Indian Penal Code, 1860 — Section 121, 121A
Unlawful Activities (Prevention) Act, 1967 — Section 16(1)(b), 20
Arms Act, 1959 — Section 25(1)(a), 25(1B)
Explosives Substances Act, 1908 — Section 4, 5
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 10(6), 10(7)
Constitution Of India, 1950 — Article 311, 311(2), 311(2)(C), 311(3)

Citation : (2022) 03 MAN CK 0025

Hon'ble Judges : Sanjay Kumar, CJ; Lanusungkum Jamir, J

Bench : Division Bench

Advocate : Samarjit Hawaibam, M. Devananda

Final Decision : Allowed/ Partly Allowed

Judgement

Sanjay Kumar (CJ)

(Through video-conferencing)

(CAV)

[1] The State of Manipur is in appeal against two separate orders dated 27.01.2020 allowing W.P. (C) No. 838 of 2016 and W.P. (C) No. 249 of 2017. W.A. No. 13 of 2021 arises out of WP No. 838 of 2016 while W.A. No. 14 of 2021 pertains to W.P. (C) No. 249 of 2017.

[2] Heard Mr. Samarjit Hawaibam, learned Government Advocate, appearing for the appellant in both appeals; and Mr. M. Devananda, learned counsel, appearing for respondent No. 1 in both appeals.

[3] Md. Yahiya Khan, respondent No. 1 in these appeals, was appointed as a

Rifleman in the 4th India Reserve Battalion at Thenguchingjin in the State of Manipur on 21.08.2005. He was arrested on 19.05.2015 in connection with FIR No. 68(5)2015 registered on the file of Imphal City Police Station under Sections 121, 121A IPC; Sections 16(1)(b) and 20 of the Unlawful Activities (Prevention) Act, 1967; Sections 25 (1)(a) and 25(1B) of the Arms Act, 1959; and Sections 4 & 5 of the Explosives Substances Act, 1908 and remained in custody for more than 48 hours. He was accordingly placed under suspension with immediate effect by the Commandant of the 4th India Reserve Battalion, vide order dated 23.05.2015. The order indicated that, during the period of his suspension, the Headquarter of Md. Yahiya Khan was the Battalion Headquarter and he was not to leave the Headquarter without obtaining prior permission from the Commandant. The order also stated that he was entitled to get subsistence allowance as admissible under the rules during the period of suspension.

Md. Yahiya Khan filed W.P. (C) No. 838 of 2016 assailing the aforesaid suspension order dated 23.05.2015 and seeking a direction to the authorities to release his subsistence allowance from the date of suspension. This writ petition was filed in October, 2016. An affidavit-in-opposition was filed therein by the authorities on 01.03.2017.

[4] While matters stood thus, by order dated 25.03.2017, Md. Yahiya Khan was dismissed from service with immediate effect. Therein, the Under Secretary (Home), Government of Manipur, stated that the Governor of Manipur was satisfied under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution that in the interest of the security of the State, it was not expedient to hold an enquiry in the case of Md. Yahiya Khan's involvement and association with subversive activities and, on the basis of the information available, the Governor was satisfied that his activities were such as to warrant his dismissal from service and, accordingly, the Governor dismissed him from service with immediate effect. In turn, the Commandant of the 4th India Reserve Battalion issued order dated 27.03.2017 striking off the name of Md. Yahiya Khan from the strength of the unit with effect from 25.03.2017. His pay and allowances during the period of suspension were restricted to subsistence allowances.

Md. Yahiya Khan filed W.P. (C) No. 249 of 2017 challenging the dismissal order dated 25.03.2017 and seeking reinstatement in service.

[5] Affidavit-in-opposition was filed by the authorities in W.P. (C) No. 249 of 2017 in January, 2018. They stated to the effect that Md. Yahiya Khan had started working with CorCom (Coordination Committee - a conglomerate of seven valley-based militant outfits in the State of Manipur) and was one of its active workers. Details were given of his subversive activities during December, 2014, in relation to throwing of hand grenades, which led to his arrest on 19.05.2015. They further stated that investigation had revealed that Md. Yahiya Khan used to engage in activities supporting the underground elements by transporting arms and ammunitions and was paid money. Despite being a member of the India Reserve Battalion under the State Police Department, he continued to work for

the underground outfit. A Committee of Advisors was stated to have looked into the applicability of clause (c) of the second proviso to Article 311(2) and recommended that it would be inexpedient to hold an inquiry in the interest of the security of the State. The recommendation of this Committee was placed before the Home Department and, as required under the Rules of Business of the State Government, it was submitted to the Governor of Manipur for obtaining approval and satisfaction, through the Chief Minister, State of Manipur. The Governor of Manipur expressed satisfaction with the recommendation of the Committee on 19.09.2016 and thereupon, the Home Department, Government of Manipur, issued the dismissal order on 25.03.2017.

[6] By Judgment dated 27.01.2020, a learned Judge allowed W.P. (C) No. 838 of 2016 on the ground that a review for modification or revocation of the suspension was not done within 90 days from the date of the order of suspension in terms of Rules 10(6) & 10(7) of the CCS (CCA) Rules, 1965, and the decision of the Supreme Court in *Union of India and Others vs. Deepak Mali* [(2010) 2 SCC 222]. The learned Judge further directed that subsistence allowance should be paid to him after he furnished a certificate to the effect that he was not employed anywhere during the period of suspension. This certificate was to be furnished within a week and the authorities were directed to make payment within a time frame thereafter.

[7] By a separate Judgment passed on the very same day, the learned Judge also allowed W.P. (C) No. 249 of 2017. The learned Judge opined that some reasons had to be recorded for dispensing with a departmental enquiry in terms of the Article 311(2) of the Constitution and found that no reasons were forthcoming either from the dismissal order or from the counter. Further, the learned Judge was of the opinion that the mandate of Article 311(2)(c) was that the satisfaction must be of the President or of the Governor, as the case may be, and such satisfaction must be personal and the power in that regard could not be delegated to any other authority. The learned Judge opined that, as a Committee of Advisors had made a recommendation and the Governor merely approved the same, it would not suffice to meet the requirement contemplated under Article 311(2)(c). On these grounds, the learned Judge held that the authorities had failed to satisfy the Court that the impugned dismissal order was passed in the interest of security and set it aside. The authorities were directed to reinstate Md. Yahiya Khan into service and give him a posting other than in the post which he was holding prior to the order of his dismissal. The period from the date of dismissal till the date of reinstatement was directed to be considered as in service for the purposes of pensionary benefits, if any.

The State of Manipur is aggrieved by these two judgments.

[8] Article 311 of the Constitution deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. It reads as under:

'(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State, shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or 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 those charges.'

The first proviso is not of relevance presently. The second proviso to Article 311(2) is germane to this adjudication and it reads thus: -

'Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) 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 reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.'

Article 311(3) provides that if, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

[9] The ambit and contours of the aforesaid Constitutional provision are well settled, given the abundance of case law thereon. The three clauses of the second proviso to Article 311(2) were considered by a Constitution Bench in *Union of India and Others vs. Deepak Mali* [(2010) 2 SCC 222]. This decision makes it clear that clauses (b) and (c) of the second proviso operate independently and in different spheres. The Bench pointed out that under clause (b), the satisfaction is of the disciplinary authority while under clause (c), it is of the President or the Governor of a State, as the case may be. Further, under clause (b), the satisfaction is with respect to it not being reasonably practicable to hold an inquiry, while under clause (c), it is with respect to it not being expedient in the interest of the security of the State to hold an inquiry. The Bench pointed out that clause (b) expressly requires that the reasons for dispensing with an inquiry should be recorded in writing but clause (c) does not require it, either expressly or impliedly.

The Constitution Bench also observed that the question, under clause (c), would not be whether the security of the State has actually been affected or not, as the expression used in that clause is 'in the interest of the security of the State' and it was pointed out that the interest of the security of the State may be affected

by actual acts or even the likelihood of such acts taking place. The Bench further pointed that what is required under clause (c) is not the satisfaction of the President or the Governor that the interest of the security of the State is or will be affected but the 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 so reached by the President or the Governor, per the Bench, must necessarily be a subjective satisfaction and the reasons for the satisfaction cannot therefore be required to be recorded in the order of dismissal nor can they be made public.

As regards the remedies available to an aggrieved Government servant, the Constitution Bench held that an appeal or revision, as the case may be, would lie in the case of a dismissal falling under clauses (a) and (b) and in the event such a person invokes the Court's power of judicial review, it would be open to the Court to interfere if the penalty imposed is found to be arbitrary or grossly excessive or out of proportion to the offence committed or not warranted by the facts and circumstances of the case. The Bench further opined that if it is a dismissal under clause (c), the satisfaction of the President or the Governor cannot be challenged in an appeal or revision.

[10] Be it noted that in *Sardari Lal vs. Union of India* [(1971) 1 SCC 411], the Supreme Court had held that the satisfaction of the President or the Governor under Article 311(2)(c) was his personal satisfaction and he himself must reach such satisfaction as delegation was not possible. However, this decision was overruled by a Constitution Bench in *Samsher Singh vs. State of Punjab* [(1974) 2 SCC 831]. It was pointed out therein that the President or the Governor would act upon the advice of the Council of Ministers and, therefore, it would not be necessary that the satisfaction must be personal to the President or the Governor, as the case may be. This legal position was affirmed in *Tulsiram Patel* (*supra*).

[11] In *A.K. Kaul and another vs. Union of India and another* [(1995) 4 SCC 73], the Supreme Court observed that in a case where the validity of an order passed under clause (c) of the second proviso to Article 311(2) is assailed before a Court, it would be open to the Court to examine whether the satisfaction of the President or the Governor is vitiated by malafides or is based on wholly extraneous or irrelevant grounds, and for that purpose, the Government is obliged to place before the Court the relevant material on the basis of which satisfaction was arrived at. This decision indicates the scope of judicial review in a case pertaining to clause (c) of the second proviso to Article 311(2)

[12] In *Union of India and another vs. M.M. Sharma* [(2011) 11 SCC 293], the Supreme Court considered whether it would be necessary to disclose reasons in a case falling under clause (c) to the second proviso to Article 311(2). The High Court had held to that effect but the Supreme Court reversed the view and observed that it is not mandatory to disclose reasons as to why the President or the Governor, as the case may be, had arrived at the satisfaction that it was not

expedient in the interest of the security of the State to hold a departmental inquiry. The original record was placed before the Supreme Court in that case and having perused the same, the Supreme Court noted that a High-Level Committee considered the entire record and came to the conclusion that action could be taken for dismissal under clause (c) to the second proviso to Article 311(2). The same was accepted by the President and thereupon, the order of dismissal came to be passed.

[13] It is therefore clear that there is no necessity for reasons to be recorded or disclosed in a case falling under clause (c) of the second proviso to Article 311(2). In fact, in para 25 of the judgment in W.P. (C) No. 249 of 2017, the learned Judge himself observed that there is no requirement to record any reason while applying sub-clause (c). However, this paragraph contradicted para 21 of the judgment, wherein the learned Judge observed that reasons were not found. Significantly, the learned Judge did not call for the original record pertaining to the case and examine the same, though the edict in A.K. Kaul (*supra*), requires the Court to examine such record.

[14] In the light of this settled legal regime, we are not inclined to accept the contention of Mr. M. Devananda, learned counsel, that clause (c) of the second proviso to Article 311(2) would come into play only after operation of clause (b) thereof. As already pointed out *supra*, both these clauses operate in different spheres altogether and through different authorities. As such, there is no question of clause (b) being applied as a condition precedent for clause (c) to come into operation. Learned counsel is unable to cite any case law to support this bombastic proposition. In consequence, all the judgments cited by the learned counsel relating to clause (b) of the second proviso to Article 311(2) are eschewed from consideration, as they have no relevance whatsoever to a case falling under clause (c) thereof.

[15] Further, in the light of the settled legal position, the argument of the learned counsel that absence of reasons would invalidate the order of dismissal passed against Md. Yahiya Khan does not hold water. All that is required is that there must be application of mind as to whether or not it is expedient in the interest of the security of the State to hold an inquiry against Md. Yahiya Khan and if such subjective satisfaction has been arrived at by the Governor of the State of Manipur, without any malafides or extraneous considerations, it is not for this Court to sit in appeal over the same or substitute its own subjective opinion.

[16] Office Memorandum dated 16.08.2008 was issued by the Department of Personnel and Administrative Reforms (Personnel Division), Government of Manipur, setting out instructions apropos Government servants engaged in or associated with subversive activities and revising the procedure to deal with them. This Memorandum provided for a Committee of Advisors to be constituted, comprising the Chief Secretary, Government of Manipur; the Principal Secretary (Home), Government of Manipur; the Director General of Police, Manipur; the Secretary, Department of Personnel and Administrative Reforms; the Secretary

(Law); the Secretary of the Department concerned with the case; and the Deputy Director General (SIB). This Committee was to decide first whether the allegations made against the suspect should be disclosed to him and he should be given an opportunity to furnish his explanation or whether, on the grounds of national security or the nature of the allegations made, it would not be advisable or necessary to disclose the allegations against the suspect or to call upon his reply thereto.

The Committee has to record its reasons as to the adequacy and veracity of the evidence available and makes its recommendation as to whether there is no case for taking action against the official or whether action may be taken for dismissal or removal from service under proviso (c) to Article 311(2) of the Constitution. If the latter recommendation is made by the Committee, then the same should be placed before the Home Minister by the Home Department and then, the Minister-in-Charge of the Department concerned. In case the Minister-in-Charge agrees with the Home Minister, the Secretary of the said Ministry is to issue orders endorsing a copy of the order to the Department of Personnel and Administrative Reforms and the Home Department. In the event of disagreement between the Ministers, the matter is to be placed before the Chief Minister for final orders and then forwarded to the Governor, State of Manipur, for appropriate further orders.

[17] Perusal of the original record placed before this Court reflects thus: Letter dated 24.06.2015 was addressed to the Superintendent of Police, Imphal West District, Manipur, by the Sub-Divisional Police Officer, Imphal, intimating the factum of the arrest of Md. Yahiya Khan in relation to FIR No. 68 (5)2015 of City P.S. u/Ss. 121/121-A IPC, 20/16(1)(b) UA (P) Act, 25(1)(a)/ (1-B) Arms Act & 4/5 Expl. Subs. Act. Thereupon, letter dated 29.06.2015 seems to have been addressed by the Superintendent of Police, Imphal West, to the Commandant, 4th India Reserve Battalion, Manipur, Thenguchingjin, informing him that Md. Yahiya Khan had been arrested in connection with his involvement in FIR No. 68(5)2015 of the City Police Station. The Commandant accordingly addressed letter dated 16.07.2015 to the Inspector General of Police (Adm.), Manipur, submitting relevant documents for taking necessary action under Article 311(2) (c) of the Constitution in relation to Md. Yahiya Khan's involvement in subversive activities endangering the security of the State.

The Director General of Police, Manipur, then addressed letter dated 20.01.2016 to the Home Department, Government of Manipur, requesting that necessary action be taken against Md. Yahiya Khan of the 4th IRB and two other Riflemen of the 5th IRB under Article 311(2)(c) of the Constitution for their involvement in subversive activities endangering the security of the State. The Committee of Advisors, constituted under the OM dated 16.08.2008, convened a meeting on 19.09.2016 to look into the matter. After considering the Note put up before it in relation to these three personnel, the Committee recorded Minutes of the Meeting dated 19.09.2016, opining that it was satisfied that the accused officials had willingly indulged in the activities of an organization declared unlawful which

were prejudicial to the security of the State and as such, it was not advisable to disclose the allegations against them or call upon them to reply thereto. The Committee accordingly recommended their dismissal from service under Article 311(2)(c) of the Constitution as it was not expedient to hold a departmental inquiry in the interest of the security of the State as their prejudicial activities affected the security of the State.

The Note File reflects that the recommendation of the Committee of Advisors was forwarded the Home Department and after it was cleared and the Chief Minister, State of Manipur, endorsed the same, it was sent to the Governor's Secretariat for approval. The Governor affixed her signature in the Note File on 17.01.2017, duly approving the proposal to remove the three personnel, including Md. Yahiya Khan, under clause (c) of the second proviso to Article 311(2) of the Constitution. Pursuant thereto, the impugned order of dismissal dated 25.03.2017 came to be issued.

[18] Mr. M. Devananda, learned counsel, would contend that the sequence of events set out in the affidavit-in-opposition of January, 2018, demonstrates that the authorities acted with malafides. He would point out that the affidavit-in-opposition dated 01.03.2017 filed in W.P. (C) No. 838 of 2016 did not disclose the factum of the Governor having expressed satisfaction as long back as on 19.09.2016 with regard to the inexpediency of holding a departmental inquiry against Md. Yahiya Khan and the urgency with which the Commandant struck off the name of Md. Yahiya Khan from the strength of the 4th India Reserve Battalion unit at Thenguchingjin, i.e., two days after the date of the dismissal order, further demonstrated the malafide nature of the action.

[19] We find no merit in this argument. The subject matter of W.P. (C) No. 838 of 2016 was the suspension of Md. Yahiya Khan from service and his entitlement to subsistence allowance. The issue of a departmental inquiry being held against him did not arise for consideration in the said writ petition and, therefore, there was no requirement for the authorities to say anything about it in their affidavit-in-opposition filed on 01.03.2017. That apart, the date '19.09.2016' mentioned in the other affidavit pertained to the recommendation of the Committee of Advisors and not the approval by the Governor. The wording in the affidavit is misleading, no doubt, but the original record reflects that the Governor's approval was on 17.01.2017. However, the file was in circulation since September, 2015, and there was no undue urgency or haste in dealing with the matter. Further, once the order of dismissal came to be passed on the strength of the satisfaction expressed by the Governor, the action of the Commandant in giving effect to it within two days can hardly be said to be a sign of undue urgency or haste. As it is a uniformed service, such measures have to be taken without any delay.

[20] The further argument of Mr. M. Devananda, learned counsel, is that no assistance was rendered by the Council of Ministers to the Governor, as spelt out in *Tulsiram Patel* (supra). This argument also does not merit acceptance. The

original record reflects that the recommendation of the Committee of Advisors was looked into by the Home Minister and thereafter, by the Chief Minister himself. Advice of the Council of Ministers does not mean that each and every member of the Cabinet has to be consulted on issues arising under clause (c) of the second proviso to Article 311(2). By the very nature of the confidentiality to be maintained, it would suffice if the concerned Minister looks into the matter and submits inputs to the Governor.

[21] Lastly, the finding of the learned Judge that the Governor's satisfaction has to be personal and could not be delegated runs contra to the law laid down by the Constitution Bench in *Samsher Singh* (supra). Further, the constitution of a Committee of Advisors and the reliance placed by the Governor upon the recommendation of such Committee stands protected by the edict of the Supreme Court in *M. M. Sharma* (supra). The findings of the learned Judge to the contrary are therefore unsustainable.

[22] On the above analysis, we find that the order of dismissal passed against Md. Yahiya Khan did not merit interference and the learned Judge erred in setting it aside. We accordingly set aside the Judgment & Order dated 27.01.2020 in W.P. (C) No. 249 of 2017. As we have upheld the dismissal order dated 25.03.2017, the question of reinstating Md. Yahiya Khan in service in terms of the said Judgment & Order no longer arises. Further, his suspension from service stands merged with his dismissal from service thereafter. However, the learned Judge held the suspension to be illegal on the ground that review thereof had not been undertaken under Rules 10(6) & 10(7) of the CCS (CCA) Rules, 1965. In this regard, it may be noted that the very applicability of the said rules was contested by the authorities but the learned Judge did not render a decision thereon. That issue was stated to be pending consideration before this Court, in terms of the affidavit-in-opposition filed in that writ petition. Therefore, the finding of the learned Judge that the suspension of Md. Yahiya Khan stood invalidated on the strength of the said rules cannot be sustained and is liable to be set aside.

[23] Further, as regards the entitlement of Md. Yahiya Khan to subsistence allowance, it may be noted that Fundamental Rule 53(2) specifically states that no payment of subsistence allowance shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

In the affidavit-in-opposition filed in W.P. (C) No. 838 of 2016, the authorities specifically stated that though he was asked to furnish such a certificate, Md. Yahiya Khan failed to do so. No rejoinder was filed in response to this affidavit-in-opposition. Though the learned Judge fixed a time frame for submission of such a certificate, no material has been placed before us in proof of its submission within that time. However, as subsistence allowance is a matter of right conferred upon a suspended employee, it is not open to the authorities to deny him the benefit of such subsistence allowance during the period of his suspension. The

Commandant, 4th IRB, also made this clear in his final Order dated 27.03.2017.

We accordingly grant one week's time to Md. Yahiya Khan to submit a certificate in terms of FR 53(2). In the event he does so, the same shall be verified and if found to be true and acceptable, the authorities shall release the subsistence allowance payable to Md. Yahiya Khan for the period of his suspension, prior to his dismissal from service, within one month of the submission of such certificate.

[24] In consequence, W.A. No. 13 of 2021 is allowed in part, setting aside the direction of the learned Judge, in the Judgment & Order dated 27.01.2020 in W. P. (C) No. 838 of 2016, invalidating the suspension order and directing reinstatement of Md. Yahiya Khan in service.

However, the portion of the order relating to payment of subsistence allowance to Md. Yahiya Khan for the period of his suspension from service shall stand confirmed, subject to Md. Yahiya Khan furnishing a certificate as required under FR 53(2) with one week from the date of receipt of a copy of this order and in the event the same is found to be true and acceptable, the authorities shall release the subsistence allowance due and payable to him for the period of his suspension from service prior to his dismissal from service, within one month from the date of submission of such certificate.

W.A. No. 14 of 2021 is allowed, setting aside the Judgment & Order dated 27.01.2020 in W. P. (C) No. 249 of 2017 and confirming the dismissal order dated 25.03.2017 passed against Md. Yahiya Khan.

The original record shall be returned to an authorized Government Advocate by the Registrar (Judicial) of this Court under proper acknowledgment.

In the circumstances, there shall be no order as to costs.

A copy of the order shall be supplied online or through whatsapp to the learned counsel for the parties.