

Union of India and Another

Vs

Balbir Singh and Another

Civil Appeal No. 4736 of 1996

(D. P. Wadhwa, Sujata V. Manohar JJ)

05.05.1998

JUDGMENT

SMT. SUJATA V. MANOHAR, J. –

1. The respondent was enrolled as Sub-Inspector in the Delhi Police in the year 1967. In 1984 the respondent was working as a Sub-Inspector in Special Security District, New Delhi and was posted at the residence of the then Prime Minister, Mrs. Indira Gandhi for security purposes. On 31-10-1984 the then Prime Minister was assassinated by two members of her security staff, namely, Sub-Inspector Beant Singh and Constable Satwant Singh of the Delhi Police. In connection with the murder a criminal case was registered under Sections 307, 302 and 120-B of the Indian Penal Code read with Sections 25, 27, 54 and 59 of the Arms Act, 1959. The respondent was arrested in connection with the said criminal case. In view of his arrest on 8-12-1984 the respondent was placed under suspension. The order of suspension stated that a departmental enquiry will be conducted against the respondent.

2. In the course of investigation in the said criminal case certain material was received by the Intelligence Bureau. In view of the material so received and the information gathered by the Intelligence Bureau, a proposal was mooted by the Delhi Police for dismissal of the respondent from service on account of his being associated with subversive activities affecting the security of the State. In connection with action to be taken against government servants engaged in or associated with subversive activities undermining security of the State under proviso (c) to Article 311(2) without holding a departmental inquiry, the Ministry of Home Affairs, Government of India, Department of Personnel and Administrative Reforms, has formulated an office memorandum dated 26-7-1980. The memorandum, inter alia, enumerates different kinds of subversive activities. These include cases where government servants have engaged in activities of the following types which may affect/endanger the security of the State such as :

- (a) Membership of, or association with, any body or organisation declared unlawful after it was so declared;
- (b) participation in or association with any activity or programme -
 - (i) aimed at the subversion of the Constitution; or
 - (ii) aimed at the organised breach or defiance of the law involving violence; or
 - (iii) prejudicial to the interests of the sovereignty and integrity of India; or

(iv) which promotes on grounds of religion, race, language, caste or community, feelings of enmity or hatred between different sections of the people;

(c) association with organisations engaged in subversive activities, in secret organisations which while professing to work in a democratic way, in fact, engage in activities to overthrow the present political system, or organisations which have foreign inspiration and liaison for similar objectives.

In such type of cases the office memorandum provides that the case should be referred to a Committee of Advisors together with all relevant documents. The referral note should, inter alia, give particulars of specific facts, incidents or events which the department concerned feels, would justify action under the proviso to Article 311(2) of the Constitution and not under the normal disciplinary rules. It should also contain the basis and reliability of the evidence as also in what manner these facts, incidences or events show that the official could be brought within the meaning of the activities specified. In essence, the brief should contain material as would convince a reasonable person of the guilt which could, but for the confidentiality of the matter, be established in normal proceedings. The memorandum further provides that where the competent authority is the Head of a Department, if he and the Deputy Inspector General agree that sufficient grounds do not exist for proceeding against the employee under proviso (c) to Article 311(2) of the Constitution, the matter should be dropped. But in every other case, the Head of the Department should refer the case to the Administrative Ministry/Department with his recommendation. On receipt of the recommendation the case should be placed before a Committee of Advisors for its consideration. The Committee shall examine the case and make its recommendations.

3. The Committee is a High-Powered Committee of Advisors consisting of the Home Secretary; the Secretary, Department of Personnel and Administrative Reforms; the Secretary, Ministry of Law and Justice, the Secretary, Ministry/Department concerned with the case and the Director, Intelligence Bureau or his nominee who shall not be below the rank of Deputy Director. The Committee of Advisors is required to decide whether, inter alia, on grounds of national security and the nature of the allegations made against the suspect, it is or is not advisable or necessary to disclose the allegations against the suspect or to call for his reply thereto. The Committee, after considering all the facts, is required to recommend whether action should be taken for the dismissal or removal of the government servant from service under proviso (c) to Article 311(2) of the Constitution without a departmental enquiry. If the recommendation of the Committee of Advisors is for taking such action, the recommendation is required to be placed before the Minister in the Ministry of Home Affairs for his order. It is only thereafter that the order of dismissal under proviso (c) to Article 311(2) is, therefore, issued after a detailed examination of all relevant facts by a committee of very senior and experienced Administrators in various ministries with the approval of the ministries concerned.

4. In the present case, in view of the information and documents in the possession of the Intelligence Bureau, the entire matter was placed before the Committee of Advisors constituted as per the said memorandum. The Committee of Advisors recommended that the respondent should be dismissed from service under proviso (c) to Article 311(2) in view of the material which was placed before it. On the basis of this recommendation, an order was issued under proviso (c) to Article 311(2) by the President of India dismissing the respondent w.e.f. 16-3-1985. The order expressly stated that a departmental enquiry ordered vide office order dated 8-12-1984 against the respondent was thereby dropped.

5. In the criminal trial, the respondent was convicted along with two others and was sentenced to death. The appeal of the accused was dismissed by the High Court which upheld that conviction. However, on appeal to the Supreme Court the respondent by an order of the Supreme Court dated 3-8-1988 was acquitted [vide SCC para 46 onwards, *Kehar Singh v. State (Delhi Administration)* ((1988) 3 SCC 609 : 1988 SCC (Cri) 711)].

6. On 23-4-1990 the respondent filed an application before the Central Administrative Tribunal, Principal Bench, New Delhi, challenging his order of dismissal dated 16-3-1985. He prayed for quashing the order and for a direction to the appellant herein to reinstate him in service with retrospective effect, with all consequential benefits. The Tribunal, by its order dated 8-8-1994 dismissed the application on the ground of limitation. This Court, however, granted a special leave petition filed by the respondent and by its order dated 22-8-1995 directed the Tribunal to treat the application as having been filed within time and to examine the validity of the order of dismissal in the light of the decision of this Court in *A. K. Kaul v. Union of India* ((1995) 4 SCC 73 : 1995 SCC (L&S) 922 : (1995) 30 ATC 174) (SCC p. 73). The Tribunal thereafter examined the application of the respondent on merit. By its impugned order dated 14-12-1995 the Tribunal allowed the application of the respondent. Hence the present appeal has been filed by the appellants challenging the order of the Tribunal.

7. In the case of *A. K. Kaul v. Union of India* ((1995) 4 SCC 73 : 1995 SCC (L&S) 922 : (1995) 30 ATC 174) this Court has examined the extent of judicial review permissible in respect of an order of dismissal passed under second proviso clause (c) of Article 311(2) of the Constitution. This Court has held that the satisfaction of the President can be examined within the limits laid down in *S. R. Bommai v. Union of India*. ((1994) 3 SCC 1). The order of the President can be examined to ascertain whether it is vitiated either by mala fides or is based on wholly extraneous and/or irrelevant grounds. The court, however, cannot sit in appeal over the order, or substitute its own satisfaction for the satisfaction of the President. So long as there is material before the President which is relevant for arriving at his satisfaction as to action being taken under clause (c) to the second proviso to Article 311(2), the court would be bound by the order so passed. This Court has enumerated the scope of judicial review of the President's satisfaction for passing an order under clause (c) of the second proviso to Article 311(2). The Court has said, (1) that the order would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant grounds; (2) even if some of the material on which the action is taken is found to be irrelevant the court would still not interfere so long as there is some relevant material sustaining the action; (3) the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President; (4) the ground of mala fides takes in, inter alia, situations where the proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power; (5) the court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Council of Ministers are the best judge of the situation and that they are also in possession of information and material and the Constitution has trusted their judgment in the matter; (6) this does not mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive. (cf. also *Union Territory, Chandigarh v. Mohinder Singh* ((1997) 3 SCC 68 : 1997 SCC (L&S) 633).)

8. 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.

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 has 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(2). Therefore, the President has issued an order under proviso (c) to Article 311(2).

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. Govt. of A. P.* ((1981) 1 SLR 249 (AP)) 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.

11. The appeal is, therefore, allowed. The impugned order of the Tribunal is set aside and the application filed by the respondent before the Tribunal is dismissed. There will, however, be no order as to costs.