

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.8337/2008**

% **Date of Decision: 14.10.2009**

Sh.K.N.Pandey Petitioner

Through Dr.L.S.Chaudhary, Advocate.

Versus

Union of India Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has impugned the order dated 25th August, 2008 passed in O.A No.1589/2007 titled K.N.Pandey v. Union of India dismissing the original application challenging the orders dated 18th August, 1992 and 31st March, 2006 whereby Article 310(1) of the Constitution of India and Rule 19(iii) of CCS (CCA) Rules, 1965 were invoked to dispense with the holding of an inquiry against the petitioner and to dismiss him from service.

The petitioner was working as a Draftsman (L) in Naval Headquarters and was implicated in a criminal case under Section 3/5/9 of the Official Secrets Act along with nine other persons. The petitioner made a confessional disclosure statement on 8th September, 1990 admitting that in lieu of money he had been passing classified defence documents/designs to one Anand Brothers and thereafter to one Mohd.Waris from Pakistan High Commission.

As per the instructions for dealing with Government servants engaged in subversive activities issued by Department of Personnel and Training (DoP&T) on 1st August, 1985 and also the instructions contained in an amended O.M dated 26th July, 1980, a note was prepared detailing the conduct of the individual persons and the petitioner and the material against him and other persons involved in subversive activities. A committee of advisors on consideration of material recommended dispensation with the inquiry against the petitioner and his dismissal by invoking the doctrine of pleasure under Article 311 (2) (c) of the Constitution of India. The recommendation was placed before the Prime Minister and thereafter before the President who after satisfying himself had passed the order of dismissal and had held that it will not be expedient to hold an enquiry against the petitioner. The petitioner was acquitted of all charges in the related sessions case No.14/1996 vide judgment delivered on 5th July, 2001 by giving to him the benefit of doubt. After preferring an appeal for

reconsideration of his dismissal, the petitioner filed a writ petition being W.P(C) No.978/1999 against his order of dismissal which was disposed of by order dated 25th January, 2006. The dismissal of the petitioner was upheld. However, an observation was made to the effect that the respondents should re-examine the entire case by considering the materials relied upon in 1992 to dispense with the inquiry and the factors which led to the petitioner's acquittal in the criminal case. The Court also directed reconsideration of the issue whether the petitioner's service should be restored and whether an enquiry should be held against the petitioner.

The case of the petitioner was reconsidered and the order dated 31st March, 2006 was passed upholding the inquiry against the petitioner as well as upholding his dismissal from service. The petitioner assailed the order dated 31st March, 2006 in a review petition No.284/2006 filed before this Court in W.P(C) No.978/1999 which was disposed of by order dated 11th May, 2007 granting liberty to the petitioner to avail the remedies available to him in accordance with law. Consequent thereto the petition was filed the original application before the Tribunal which has been dismissed by order dated 25th August, 2008 which is impugned before us.

The petitioner has assailed the dispensation of inquiry against him and his dismissal from service by contending that there was enough time lag between the acts complained of and the dismissal order

passed by the respondents and therefore inquiry ought not to have dispensed with. The petitioner has also contended that the President himself had to be satisfied as to non expediency to hold the enquiry and it could not be delegated to any other person or authority. It is contended that the satisfaction arrived at in the case of the petitioner, is not that of the President but that of the conveying authority or of the Prime Minister. The order dispensing with the holding of the enquiry and dismissal from service is also assailed on the ground that it has been passed mechanically by filing a cyclostyled proforma.

The Tribunal has considered the pleas and contentions of the petitioner, especially the plea that the personal satisfaction has to be of the President to arrive at the conclusion for dispensing with the inquiry. Reliance has been placed on a Constitution bench judgment of the Supreme Court in 1985 (3) SCC 398, Union of India v. Tulsiram Patel holding that Clause (b) of the second proviso to Article 311 makes it clear that 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, the satisfaction to be arrived at is on the advice of the Council of Ministers and not a personal satisfaction of the President. Reliance has also been placed on instructions issued by the DOP&T on 26.07.1980 as amended on 01.05.1975 stipulating that whenever the Committee of Advisors recommends dismissal under

Article 311 (2) (c) of the Constitution of India, the recommendation should be submitted to the Prime Minister.

Regarding the scope of judicial review of the decision to dispense with the holding of the enquiry by the President, reliance has been placed on S.R.Bommai Vs Union of India, (1994) 3 SCC 1 and A.K.Kaul Vs UOI, (1995) 4 SCC 73 and UOI & Anr v. Balbir Singh & Anr, (1975) 5 SCC 216 and it has been held that judicial review is of the decision making process and not of the decision itself. Consequently the plea of the petitioner that the enquiry should have been conducted because there was sufficient time between the acts complained of and when the decision to dispense with the enquiry was taken, cannot be accepted. The enquiry is to be dispensed with on the satisfaction arrived at that it is not expedient to hold an enquiry based on circumstances and the material before the concerned authorities and not on the basis of availability of sufficient time. The enquiry is dispensed with considering that certain matters are not to be made public including the source of information and because it is not considered expedient in the interest of security, and not because sufficient time is not available for conducting the enquiry. The finding of the Tribunal cannot be faulted on this ground in the facts and circumstances.

The plea that the enquiry should have been conducted as there was sufficient time till the order of dismissal was passed can also be not allowed to be raised by the petitioner, as the said plea was not taken up

before the Tribunal. Similarly, the plea that the order has been passed mechanically by filling a cyclostyled proforma has not been raised before the Tribunal nor has been taken in the grounds in the writ petition. It has not been contended that the plea was taken before the Tribunal and has not been considered by the Tribunal. Therefore, these pleas cannot be considered in the facts and circumstances for assailing the order of the Tribunal dated 25th August, 2008.

It is also apparent that the Tribunal has considered the record including the note put up before the Council of Ministers and the Advisory Committee, confessional statement of the petitioner and other circumstances and all the pleas and contentions raised before it by the Petitioner and there does not appear to be any irregularity and illegality in order of the Tribunal. The Petitioner has failed to point out any such illegalities in the order impugned before us which will call for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, without any merit and it is dismissed.

ANIL KUMAR, J.

OCTOBER 14, 2009

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VIPIN SANGHI, J.