A BAKSHI SARDARI LAL (DEAD) THROUGH LRs & ORS. ETC.

v.

UNION OF INDIA & ANR.

B JULY, 31 1987

[RANGANATH MISRA AND M.M DUTT, JJ.]

Constitution of India, 1950: Article 311(2)(c) Police personnel—Dismissed from service—Enquiry dispensed with—Satis-
C *faction of President—Whether personal satisfaction necessary—Communication of reasons—Whether obligatory.*

Practice and procedure: Order of dismissal—Set aside for non-compliance of requirements of law—Whether employer entitled to pass
D *fresh order of dismissal after reinstatement—Leave of Court—Whether necessary.*

The Supreme Court having quashed in appeal the dismissal orders dated April 14, 1967 passed against the appellant-policemen, they
E **were served fresh orders of dismissal on June 5, 1971 in exercise of the power conferred under clause (c) of second proviso to Article 311(2) of the Constitution. The appellants challenged that these orders, without an inquiry as envisaged in Aritlce 311(2), were vitiated as the power under sub-clause (c) of the second proviso to that Article had not been exercised upon personal satisfaction of the President. On behalf of the**
F **respondent-Union of India, it was contended that the President had personally considered all the facts and circumstances of each case and, after having satisfied himself, passed the order that in the interest of the security of the State it was not expedient to hold the inquiry.**

The High Court held that the exercise of the power by the Presi-
G **dent under cluase (c) to the proviso to Article 311(2) was fully covered by clause (1) of Article 361 and the President was not answerable to any court for the exercise and performance of his powers and duties under this clause of the proviso to Article 311 and no court had jurisdiction to examine the facts and circumstances that led to the satisfaction of the President envisaged in clause (c) except probably on the ground of**
H **malafide, and dismissed the Writ Petitions.**

In the appeals before this Court, it was contended on behalf of the appellant that the impugned order of dismissal in 1971 which was claimed to have been passed on the personal satisfaction of the President was vitiated in view of the rule laid down in the case of *Shamsher Singh and Anr.* v. *State of Punjab,* that the appellants having been reinstated in service in terms of judgment of this Court, without leave of the Court, no second order of dismissal on the same material could have been passed, and that the High Court was wrong in holding that the sufficiency of satisfaction of the President was not justiciable.

Dismissing the appeals, this Court,

HELD: 1.1 The order of the President was not on the basis of his personal satisfaction as required by the Rule in *Sardari Lal's* case but was upon the aid and advice of the Council of Ministers, as required in *Shamsher Singh's* case. The dismissal order was, therefore, not vitiated. [711H, 712A]

1.2 This Court quashed the orders of dismissal earlier on account of non-compliance of the requirement of law and when the police officers returned to service it was open to the employer to deal with them in accordance with law. No leave of Court was necessary for making a fresh order in exercise of the disciplinary jurisdiction after removing the defects. [712B]

1.3 There was a constitutional obligation to record in writing the reason for the satisfaction that one of the sub-clauses was applicable and if such reason was not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional, and the communication of the reason to the aggrieved Government servant was not obligatory but perhaps advisable. [712D]

In the instant case, the record of the case indicates that the reason has been recorded though not communicated. That would satisfy the requirements of law. [712E]

Union of India & Anr. v. *Tulsiram Patel & Ors.,* [1985] 3 SCC 398, followed.

1.4 No malafides could be attributed to the impugned order of dismissal. The President's order is dated 2nd of June and the typed orders of dismissal bear the date of the following day. There is, there-

fore, no scope to suggest that typed orders representing Government's decision were available on the record by the time the matter was placed before the President. [712F]

[This Court has no sympathy for indiscipline. In an orderly force like police, indiscipline is bound to give rise to serious problems of administration. The Government had made it known that they intended to treat even these policemen liberally by giving them compassionate allowances. The situation would be met in a just way if lump-sum amounts are paid to the dismissed policemen who are alive or to their legal representatives in the case of those who are dead, at the rate of Rs.60,000 to Sub-Inspectors, Rs.50,000 to Head Constables and Rs.40,000 to Constables.] [713B, D-F]

Sardari Lal **v.** *Union of India & Ors.*, **[1971] 3 SCR 461 and** *Shamsher Singh & Anr.* **v.** *State of Punjab*, **[1975] 1 SCR 814, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1491—1501 of 1974.

From the Judgment and Order dated 21.12.1973 of the High Court of Delhi in C.W. Nos 954/71, 211 to 218 and 249 and 251 of 1972.

F.S. Nariman, U.S. Prasad, S.K. Mehta, M.K. Dua, S.M. Sarin, Aman Vachhar and R. Jagannath for the appellants.

Anil Dev Singh, Miss Halida Khatoon. P. Parmeswaran for the Respondents.

The judgment of the Court was delivered by

RANGANATH MISRA, J. These appeals are by certificate under Article 132 and involve the determination of the amplitude contained and nature of the power conferred on the President by clause (c) of the second proviso of Article 311(2) of the Constitution.

18 policemen—Sardari Lal and two others being Sub-Inspectors and the remaining being either Head Constables or Constables—of the Delhi Armed Police Force were dismissed from service by separate but similar orders dated 14th April, 1967, by way of punishment. They challenged those orders before the Delhi High Court mainly contend-

ing that the exercise of power under clause (c) of the second proviso to Article 311(2) was not upon President's personal satisfaction and as there had been no inquiry as mandated by Article 311(2), the dismissals were bad. The High Court did not accept the contention and rejected the writ petitions. The dismissed policemen carried appeals to this Court and by judgment dated 21st January, 1971 in *Sardari Lal* v. *Union of India & Ors.*, [1971] 3 SCR 461 a Constitution Bench of this Court set aside the judgment of the High Court in each of the writ petitions and quashed the several orders of dismissal on the ground that each of them was illegal, ultra vires and void. This Court held:-

> "On the principles which have been enunciated by this Court, the function in clause (c) of the proviso to Article 311(2) cannot be delegated by the President to any one else in the case of a civil servant of the Union. In other words, he has to be satisfied personally that in the interest of the security of the State, it is not expedient to hold the inquiry prescribed by clause (2). In the first place, the general consensus has been that executive functions of the nature entrusted by the Articles, some of which have been mentioned before and in particular those Articles in which the President has to be satisfied himself about the existence of certain fact or state of affairs cannot be delegated by him to any one else. Secondly even with regard to clause (c) of the proviso, there is a specific observation in the passage extracted above from the case of *Jayantilal Amrit Lal Shodhan*—[1964] 5 SCR 294—that the powers of the President under that provision cannot be delegated. Thirdly, the dichotomy which has been specifically introduced between the authority mentioned in clause (b) and the President mentioned in clause (c) of the proviso cannot be without significance. The Constitution makers apparently felt that a matter in which the interest of the security of the State had to be considered should receive the personal attention of the President or the head of the State and he should be himself satisfied that an inquiry under the substantive part of clause (2) of Article 311 was not expedient for the reasons stated in clause (c) of the proviso in the case of a particular servant."

Following the judgment of this Court, the dismissed policemen were reinstated in service with effect from 16th April, 1971. On 5th of June, 1971, fresh orders of dismissal were served on these policemen again

A invoking the power under clause (c) of the second proviso to Article 311(2) for dispensing with the inquiry. One of the representative orders is extracted below:-

> "Whereas you, Shri Sardari Lal, sub-Inspector being No. D-331 (present No. D-1177) of Delhi Police, held your
B office during the pleasure of the President."

> "And whereas the President, after considering all the facts and circumstances of your case, is 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
C it is not expedient to hold, in relation to you, such inquiry as is referred to in clause (2) of the said Article 311 of the Constitution."

> "Now, therefore, the President is pleased to dismiss you from service with immediate effect."

D

Several writ applications were again filed before the High Court. It was *inter alia* contended that the order of dismissal without an inquiry as envisaged in Article 311(2) was vitiated as the power under sub-clause (c) of the second proviso to Article 311(2) had not been made upon personal satisfaction of the President.

E

In the returns made to the Rule to two separate affidavits—one by the Inspector General of Police and the other by a Joint Secretary to the Union Government in the Ministry of Home Affairs—it was maintained that the President had personally considered all the facts and circumstances of each case and after having satisfied himself, pas-
F sed the order that in the interest of the security of the State, it was not expedient to hold the inquiry. The original orders of the President along with the connected papers were placed before the High Court and the High Court held:-

> "The contention, therefore, that the President himself did
G not pass the impugned orders is rejected. The question for decision then is whether the court can scrutinize and examine the facts and circumstances that led the President to arrive at the satisfaction that it was not expedient in the interest of the security of the State to hold the inquiry envisaged in Article 311(2) against the petitioners, and if
H so, to what extent."

While examining this aspect of the matter, the High Court relied on the ratio of the decision of this Court in *Sardari Lal's* case (supra) and examining the second aspect of the contention, the High Court held:-

> "The result, therefore, is that the exercise of power by the President under clause (c) to the proviso to Article 311(2) is fully covered by clause (1) of Article 361 and the President is not answerable to any court for the exercise and performance of his powers and duties under this clause of the proviso to Article 311 and no court has jurisdiction to examine the facts and circumstances that led to the satisfaction of the President envisaged in clause (c) except probably on the ground of mala fide."

The plea of mala fides is based upon the alleged factual situation that the respective impugned orders had already been taken by the Government and the President simply endorsed them was not entertained by the High Court and ultimately each of the writ petitions was dismissed.

Mr. Nariman, learned counsel appearing on behalf of the appellants has advanced three contentions in support of these appeals:-

(1) the impugned order of dismissal in 1971 which is claimed to have been passed on the personal satisfaction of the President is vitiated in view of the rule in the case of *Shamsher Singh & Anr.* v. *State of Punjab,* [1975] 1 SCR 814.

(2) appellants having been reinstated in service in terms of the judgment of this Court, without leave of the Court, no second order of dismissal on the same material could have been passed; and

(3) the High Court was wrong in holding that the sufficiency of satisfaction of the President was not justiciable.

The first aspect argued by Mr. Nariman is on the basis of the reversal of the view expressed by this Court in *Sardari Lal's* case (supra) by a later larger Bench judgment of this Court. The ratio in *Sadari Lal's* case came to be considered in *Shamsher Singh's* case (supra) by a seven-Judge Bench. Ray, CJ., who spoke for five members of the bench and with whom by a separate judgment, the remaining two learned Judges agreed spoke thus:-

A "The decision in Sardari Lal's case that the President has to be satisfied personally in exercise of executive power or function and that the functions of the President cannot be delegated is with respect not the correct statement of law and is against the established and uniform view of this Court as embodied in several decisions to which reference
B has already been made. These decisions are from the year 1955 up to the years 1971. The decisions are *Rai Saheb Ramjawaya Kapur* v. *State of Punjab*, [1955] 2 SCR 225; *A. Sanjeevi Naidu* v. *State of Madras,* [1970] 3 SCR 505 and *U.N.R. Rao* v. *Smt. Indira Gandhi*, [1977] Suppl. SCR 46. These decisions neither referred to nor considered in
C Sardari Lal's case."

"The President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his
D Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is
E not the personal satisfaction of the President or the Governor but the satisfaction of the President or Governor in the Constitutional sense in the cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercise all his powers and functions. The decision of any minis-
F ter or officer under rules of business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These Articles did not provide for any delegation. Therefore, the decision of Minister or Officer under the rules of business is the decision of the President or the Governor."

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In their writ petitions, each of the appellants had contended before the High Court, following the ratio of *Sadari Lal's* case which was then the law, that the President had not been personally satisfied before exercise of the power under the proviso to dispense with the inquiry and the respondents had taken pains to establish by pleading and produc-
H ing the original records that the President had satisfied himself person-

ally before be made the order dispensing with the inquiry. To reduce the argument on this aspect and to have an exact impression of how the impugned orders were made, we directed learned counsel appearing for the Union of India to produce the original record and the same has been put before this Court. It transpires therefrom that the papers were placed by the Ministry of Home Affairs for the consideration of the President by the Joint Secretary of the Union Territory of Delhi on 22nd of March, 1971, and were returned with a note of 20th of April, 1971, to the effect that the President would like to have the advice of the Council of Ministers in the matter. A draft note for the Cabinet was prepared relating to the matter and as the record indicates it got through the Cabinet and the Prime Minister recorded her approval. Thereafter, it was again placed before the President along with a note prepared on 25th May, 1971. The note clearly indicated:

> "President's Secretariat may kindly see their note extracted at pre-page 7/n. As desired by the President, the matter was placed before the Council of Ministers. A copy of the Note submitted to the Cabinet may kindly be seen at flag 'H'. The Cabinet has approved the proposal contained in paragraph 6 thereof. Minutes of the Cabinet meeting may be seen at flag 'I'."
>
> "It is requested that the matter may now be placed before the President for consideration."

On 2nd June, 1971, the President made the following order:-

> "I have considered the cases of the eighteen Police officers, whose names are given in the list appended to this order. I have also considered all the facts and circumstances of their cases stated in the notes of the Ministry of Home Affairs, dated March 22, 1971, and May 25, 1971."
>
> "I am satisfied, under paragraph (c) of the proviso to clause (2) of Article 311 of the Constitution, that in the interest of the security of the State it is not expedient to hold an inquiry into the case of any one of these Police Officers. I accordingly order that these eighteen Police Officers be dismissed from service with immediate effect."

It is clear from what has been extracted above that the order of the President was not on the basis of his personal satisfaction as required

A by the Rule in *Sardari Lal's* case but was upon the aid and advice of the Council of Ministers, as required in *Shamsher Singh's* case. In view of this factual position, learned counsel for the appellants fairly stated that there was no force in his first contention.

We see no force in the second point canvassed by Mr. Nariman. B This Court quashed the orders of dismissal on account of non-compliance of the requirements of the law and when the Police Officers returned to service it was open to the employer to deal with them in accordance with law. No leave of this Court was necessary for making a fresh order in exercise of the disciplinary jurisdiction after removing the defects.

C

Now coming to the third contention of Mr. Nariman, the matter appears to have been concluded by the judgment of this Court in the case of *Union of India & Anr.* v. *Tulsiram Patel & Ors.*, [1985] 3 SCC 398. Those were also cases of striking railwaymen against whom orders of dismissal had been made after dispensing with the inquiry by exer- D cise of powers under the same proviso. Four learned Judges representing the majority spoke through Madon, J. and this Court held that there was a constitutional obligation to record in writing the reason for the satisfaction that one of the sub-clauses was applicable and if such reason was not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be E void and unconstitutional. The Court further stated that communication of the resaon to the aggrieved Government servant was not obligatory but perhaps advisable. The record of the case produced before us clearly indicates that the reason has been recorded though not communicated. That would satisfy the requirements of the law as indicated in *Tulsiram Patel's* case. The plea of mala fides as had been F contended before the High Court and casually reiterated before us arises out of the fact that typed orders dated 3rd of June, 1971, were already on record in the file when the papers were placed before the President; such a contention is without any substance. The President's order is dated 2nd of June and the typed orders of dismissal bear the date of the following day. In this setting, there is no scope to suggest G that typed orders representing Government's decision were available on the record by the time the matter was placed before the President.

All the legal contentions have failed. Ordinarily in such a situation, the appeals have to be dismissed. Mr. Nariman, however, has placed before us for consideration a statement made by the Home H Minister before the Lok Sabha on 18th of December, 1978. Therein he had stated:-

"..... 18 persons who have been dismissed by invoking clause (c) of the proviso to Article 311(2) will be considered for grant of compassionate allowances." A

This statement was also reiterated in the papers placed before the President. Obviously the Government intended to pay them compassionate allowances. We have no sympathy for indiscipline. In fact, in an orderly force like the Police, indiscipline is bound to give rise to serious problems of administration. It is, however, unnecessary to go into that aspect of the matter as the Government had made it known that they intended to treat even these 18 policemen liberally by giving them compassionate allowances. The matter has been sufficiently protracted, the first order of dismissal was made a little more than 20 years back and in the meantime some of the policemen out of this group of 18 have died. In such circumstances to leave this matter for a future date for fixing compassionate allowance would not be just and proper. We had suggested to the learned counsel appearing for the Union of India to have instructions and give us an indication of what was in view of the Government when compassionate allowance was thought of. There has been no response yet. We are not prepared to detain delivery of the judgment on that ground. In our opinion, the situation would be met in a just way if instead of paying a recurring allowance, a lump sum amount is paid to the policemen who are alive or their legal representatives in the case of the policemen who are dead. We accordingly direct that in the case of Sub-Inspectors who were dismissed, a lump sum amount of Rs.60,000 (Rupees Sixty Thousand only), in the case of Head-Constables who were dismissed a sum of Rs.50,000 (Rupees Fifty Thousand only) and in the case of Constables a lump sum of Rs.40,000 (Rupees Forty Thousand only) should be paid within one month from today. B C D E F

The appeals are dismissed subject to the direction for payment of the lump sum amounts indicated above in lieu of compassionate allowance. There would be no orders for costs.

N.P.V. Appeals dismissed. G