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Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training
ESTT.(Estt. A-III)
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(Dated 25 November, 2022)

OFFICE MEMORANDUM

Special Procedure in Disciplinary Action

Hon'ble Supreme Court, on 11.07.1985, in Civil Appeal No.6814 of 1983, Civil Appeal No.3484 of 1982 etc. in the case of Tulsi Ram Patel and others, delivered a judgment regarding the scope of second proviso to Art. 311(2) of the Constitution.

2. Article 311 of the Constitution of India

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(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.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

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.*

(3) 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.

3. The essence of the judgment and scope of exceptional situations listed in clauses (a), (b) and (c) of the second proviso to Art. 311(2) were clarified by Department of Personnel & Training vide OM No. 11012/11/85-Estt.(A) dated 11.11.1985 and 04.04.1986 in the following paragraphs.

4. Article 311(2) of the Constitution concerns itself with the punishment of dismissal, removal or reduction in rank, which comes in the category of major punishment under the service rules providing the procedure for disciplinary action against Government servants. The first step in that procedure is the service of a memorandum of charges or a charge sheet, as popularly known, on the Government servant, listing the charges against him and calling upon him, by a specified date, to furnish a reply either denying or accepting all or any of the charges. An inquiry hence commences under the service rules with the service of the charge sheet. Obviously, if the circumstances even before the commencement of an inquiry are such that the disciplinary authority holds that it is not reasonably practicable to hold an inquiry, no action by way of service of charge sheet would be necessary. On the other hand, if such circumstances develop in the course of inquiry, a charge sheet would already have been served on the Government servant concerned. It is only in three exceptional situations listed in clause (a), (b) and (c) of the second proviso to Article 311(2) that the requirement of holding such an inquiry may be dispensed with.

[Para 2 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

[Para 3 of the OM No. 11012/11/85-Estt.(A) dated 04.04.1986]

5. Even under these exceptional circumstances, the judgement does not give unbridled power to the competent authority when it takes action under any of the three clauses in the second proviso to Art. 311(2) of the Constitution or any service rule corresponding to it. The competent authority is expected to exercise its power under this proviso after due caution and considerable application of mind. The principles to be kept in view by the competent authority while taking action under the second proviso to Art. 311(2) or corresponding service rules have been defined by the Supreme Court itself. These are reproduced in the succeeding paragraphs for the information, guidance and compliance of all concerned.

[Para 3 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

Action under clause (a) of the Second Proviso to Article 311(2)

6. When action is taken under clause (a) of the second proviso to Art. 311(2) of the Constitution or rule 19(i) of the CCS (CC&A) Rules, 1965 or any other service rule similar to it, the first pre-requisite is that the disciplinary authority should be aware that a government servant has been convicted on a criminal charge. But this awareness alone will not suffice. Having come to know of the conviction of a government servant on a criminal charge, the disciplinary authority must consider whether his conduct, which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty be. For that purpose, it will have to peruse the judgement of the criminal court and consider all the facts and circumstances of the case. In considering the matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. This, however, has to be done by the disciplinary authority by itself. Once the disciplinary authority reaches the conclusion

that the government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the government servant. This too has to be done by the disciplinary authority by itself. The principle, however, to be kept in mind is that the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

[Para 4 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

7. After the competent authority passes the requisite orders as indicated in the preceding paragraph, a government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the person who was in fact, convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies available to him and still wants to pursue the matter, he can seek judicial review. The court (which term will include a Tribunal having the powers of a Court) will go into the question whether the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case or the requirements of the particular service to which the government servant belongs.

[Para 5 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

Action under clause (b) of the Second Proviso to Article 311(2)

8. Coming to clause (b) of the second proviso to Art. 311(2), there are two conditions precedent which must be satisfied before action under this clause is taken against a government servant. These conditions are:-

(i) There must exist a situation which makes the holding of an inquiry contemplated by Art. 311(2) not reasonably practicable. What is required is that holding of inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be :-

(a) where a civil servant, through or together with his associates, terrorises, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

(b) where the civil servant by himself or with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

(ii) Another important condition precedent to the application of clause (b) of the second proviso to Art. 311(2), or rule 19(ii) of the CCS(CC&A) Rules, 1965 or any other similar rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art.311(2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should he recorded separately in the relevant file. In spite of this legal position, it would be of advantage to incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order or penalty. While the reasons so given may be brief, they should not be vague or they should not be just a repetition of the language of the relevant rules.

[Para 6 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

9. A question has been raised whether, in a case where Clause (b) of the second proviso to Article 311(2) of the Constitution is invoked, the disciplinary authority may dispense with the issuing of charge memo listing the charges. Clause (b) is attracted in a case where the disciplinary authority concludes, "that it is not reasonably practicable to hold such an inquiry". The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under:-

"*It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry*."

[Para 2 of the OM No. 11012/11/85-Estt.(A) dated 04.04.1986]

10. In para 8(i) above, certain illustrative cases have been enumerated where the disciplinary authority may conclude that it is not reasonably practicable to hold the inquiry. It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example, referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to

anticipate such circumstances as those that are likely to arise, possibly later in time, as grounds for holding that it is not reasonably practicable to hold the inquiry and, on that basis, dispense with serving a charge sheet on the Government servant.

[Para 4 of the OM No. 11012/11/85-Estt.(A) dated 04.04.1986]

11. It is true that the Art. 311 (3) of the Constitution provides that the decision of the competent authority under clause (b) of the second proviso to Art.311(2) shall be final. Consequently, the decision of the competent authority cannot be questioned in appeal, revision or review. This finality given to the decision of the competent authority is, however, not binding on a Court (or Tribunal having the powers of a Court) so far as its power of judicial review is concerned, and the court is competent to strike down the order dispensing with the inquiry as also the order imposing penalty, should such a course of action he considered necessary by the court in the circumstances of the case. All disciplinary authorities should keep this factor in mind while forming the opinion that it is not reasonably practicable to hold an inquiry.

[Para 7 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

12. Another important guideline with regard to this clause which needs to be kept in mind is that a civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (b) of the second proviso to Art. 311(2) or an analogous service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him, unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application. Even in such a case the hearing of the appeal or revision applicable should be postponed for a reasonable length of time for the situation to return to normal.

[Para 8 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

Action under clause (c) of the Second Proviso to Article 311(2)

13. As regards action under clause (c) of the second proviso to Art. 311(2) of the Constitution, what is required under this clause is the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Art. 311(2). This satisfaction is of the President or the Governor as a constitutional authority arrived at with the aid and advice of his Council of Ministers. The satisfaction so reached by the President or the Governor is necessarily a subjective satisfaction. The reasons for this satisfaction need not be recorded in the order of dismissal, removal or reduction in rank; nor can it be made public. There is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by disciplinary authority subordinate thereto, a departmental appeal or revision will lie. In such an appeal or revision, the civil servant can ask for an inquiry to be held into his alleged conduct, unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Article 311(2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review.

However, if it is alleged that the satisfaction of the President or Governor, as the case may be, had been reached mala fide or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judicial review because, in such a case, there would be no satisfaction, in law, of the President or the Governor at all. The question whether the court may compel the Government to disclose the materials to examine whether the satisfaction was arrived at mala fide or based on extraneous or irrelevant grounds, would depend upon the nature of the documents in question i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not.

[Para 9 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

Conclusion

14. The preceding paragraphs clarify the scope of clauses (a), (b) and (c) of the second proviso to Art. 311(2) of the Constitution, Rule 19 of CCS (CCA) Rules, 1965 and other service rules similar to it, in the light of the judgements of the Supreme Court delivered on 11.07.1985 and 12.09.1985. It is, therefore, imperative that these clarifications are not lost sight of while invoking the provisions of the second proviso to Art. 311(2) or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is arbitrary or mala fide. So far as clauses (a) and (c) and service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking clause (b) of the second proviso to Art. 311(2) or any similarly worded service rule, absolute care should be exercised and it should always be kept in view that action under it should not appear to be arbitrary or designed to avoid an inquiry which is quite practicable.

[Para 10 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

15. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink of the OMs. List of the OMs mentioned in this document is as under:

(a) OM No. 11012/11/85-Estt.(A) dated 11.11.1985

(b) OM No. 11012/11/85-Estt.(A) dated 04.04.1986

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