DISPENSING WITH DEPARTMENTAL ENQUIRY

THE DECISION of the Supreme Court in *Union of India* v. *Tulsiram Patel*,[1] raises substantial questions of law as to the interpretation of articles 309, 310 and 311 of the Constitution.

Article 310 embodies the doctrine of pleasure generally governing tenure of the government employees. By way of exception article 311 engrafts certain safeguards on it in the case of three major penalties, *viz.*, dismissal, removal from service (*i e.*, discharge) and reduction in rank. The two safeguards are: (*i*) the penalty cannot be inflicted by an authority lower in rank than the appointing one; and (*ii*) holding of an enquiry giving reasonable opportunity of being heard to the concerned employee. The second safeguard is withdrawn, *inter alia*, when clause (*c*) of the second proviso of article 311 becomes applicable which provides that the enquiry may be dispensed with when the President or the governor is satisfied that it is not expedient to hold the enquiry in the interest of the security of the state.

Under the following service rules framed by the President an enquiry is provided for:

(*a*) Rule 14 of the Railway Servants (Discipline and Appeal) Rules 1968 (Railway Servants Rule);

(*b*) Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 (Civil Services Rules); and

(*c*) Rule 37 of the Central Industrial Security Force Rules 1969 (C.I.S.F Rules).

Tulsiram, respondent in one of the appeals, was governed by the civil services rules. The respondents in the other appeals were governed by the rules of the other services mentioned above. One common factor in this case is that all the service rules provide for an enquiry before removal from service, the other being that enquiry was dispensed with under the proviso to article 311.

Two questions of vital importance arise in this connection, *viz.*, (*i*) can the President or the governor delegate to a subordinate authority the function of dispensing with the enquiry ? and (*ii*) what is the effect of such an order? Does it dispense with the enquiry provided for under the service rules made under article 309 of the Constitution by the President or the Governor?

As regards the first question, according to the majority judgment of the court, delivered by Madon J., it is open to the President or the governor to delegate the power of dispensing with enquiry. His personal

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1. A.I.R. 1985 S.C. 1416.

satisfaction is not required. No doubt the Supreme Court in *Babu Ram Upadhya*[2] held that the satisfaction should be that of the President or the governor personally because the government servant holds his office at the pleasure of the President or the governor, as the case may be, and not anybody else. But that ruling was superseded by the Supreme Court itself in a later case, *viz.*, *Moti Ram Deka.*[3] The majority view in *Tulsiram* follows the later case.

Coming to the second point the majority view in the instant case is that once the enquiry is dispensed with under the proviso to article 311 no enquiry need be held even if the service rules provide for it. In such a case the service rules would be repugnant to article 310 which would in that situation govern the government servant.

We may accept the view that the personal satisfaction of the President is not a *sine qua non* for the exercise of the power to dispense with enquiry. But the question whether thereby the enquiry provided for by the service rules can also be dispensed with, is not free from doubt. If the rules do not provide for an enquiry they would be in the line of fire of article 14. The latest view about this article is that it strikes at arbitrariness in all governmental action. If this is so the rules ignoring enquiry would be void for arbitrariness. Such rules may be applied with "an evil eye and an unequal hand" and so would be void under article 14. Now the majority view says that if the rules provide for an enquiry it would be hit by article 310 itself. In this way a deadlock results. It cannot, therefore, be a correct solution to the problem involved. It is submitted that a reconciliation is possible and a *via media* can be found. The rules must provide for an enquiry, which need not, however, be so elaborate as is contemplated by article 311. It can be a minimal one giving the employee concerned an opportunity to show that some mistake had occurred or that his part in it can be dealt with by punishment lesser than removal from service. This is precisely what is advocated by the minority in this case following an earlier Supreme Court decision itself, *viz.*, *Challappan.*[4] The majority went out of its way in overruling *Challappan.* It is respectfully submitted that since the service rules have been made by the President himself under article 309 it is not open to the government to contend that they are invalid under article 310. The rules must be regarded in the circumstances as the principles which would govern the President in exercising his powers under article 310. Thus viewed the following conclusions would emerge:

(*i*) The rules under article 309 are not repugnant to article 310. The majority view in the instant case is erroneous on this point.

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2. *State of Uttar Pradesh* v. *Babu Ram Upadhya,* A.I.R. 1961 S.C. 751.

3. *Moti Ram Deka* v *General Manager, N.E.F. Railways,* A.I.R. 1964 S.C. 600.

4. *Divisional Personnel Officer, Southern Railway* v. *T.R. Challappan,* A I.R. 1975 S.C. 2216.

(*ii*) It is open to the President to amend the rules, if necessary.

(*iii*) Such amendment, however, cannot dispense with a minimal enquiry since article 14 would then come in the way.

(*iv*) The view in *Challappan*, that a minimal enquiry is necessary even if the proviso to article 311 is invoked, is essentially sound and should not have been overruled in *Tulsiram*.

So far as labour law is concerned it is submitted that the enquiry provided by the rules cannot in any case be dispensed with. The employees in the public sector are not governed by article 311 but by article 14 So there must be an enquiry before they can be dismissed. Usually those employees of the government who are governed by article 311 are in a more advantageous position than those in the public sector. *Tulsiram* places employees in the public sector in a more advantageous position than their counterpart in the government. This is a *reductio ad absurdum*, resulting from the majority view. It is, therefore, respectfully submitted that the majority view requires reconsideration and departmental enquiries for government employees be put on the same footing as domestic enquiries for public sector employees.

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