PETITIONER:
DIRECTOR GENERAL OF ORDNANCE SERVICES & ORS.

Vs.

RESPONDENT:
P.N. MALHOTRA

DATE OF JUDGMENT30/01/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MANOHAR SUJATA V. (J)

CITATION:
1995 AIR 1109 1995 SCC Supl. (3) 226
JT 1995 (2) 98 1995 SCALE (1)402

ACT:

HEADNOTE:

JUDGMENT:
1 Delay condoned.
2. Leave. granted. Heard counsel for both the parties.
3. This appeal is preferred against the judgment of the Central Administrative Tribunal, New Delhi allowing the Original Application filed by the respondent and declaring that the order dismissing him from service is void and declaring further that he should be deemed to have continued in service.
4. The respondent is a civilian employee in the defence services. A disciplinary enquiry was held against him in
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respect of certain charges. On the basis of the said enquiry, he was dismissed from service by the competent authority on 22.3.1990. An appeal preferred by him was dismissed by the appellate authority, against which he approached the Central Administrative Tribunal. Number of grounds were urged by him in the Original Application filed by him, all of which were refuted and denied by the appellants (respondents in the Original Application) in their counter-affidavit.
5. At the time of hearing of original application, the counsel for the respondent raised the submission that the CCS (CCA) Rules, 1965, whereunder the disciplinary enquiry has been held, have no application to the respondent and, therefore, the entire enquiry was void. Reliance was placed upon the decision of the Supreme Court in Union of India & Anr. v. K.S.Subramanian (1989 Suppl.(1) 331). The Tribunal upheld the said plea and granted the declaration aforementioned. The Tribunal, however, declined to award back wages while directing at the same time that the subsistence allowance paid to the respondent shall not be recovered. The Tribunal also observed that its order doe,, not prevent the appellants (respondents in the original application) to take appropriate legal proceedings against the respondent in accordance with law and in the light of

the decision in K.S.Subramanian. With respect to its jurisdiction-to entertain an original application from a civilian employee working in defence services, the Tribunal held, following the decision of Calcutta Bench of the Tribunal, that it has the jurisdiction.

6. When this SLP came up for admission before us, it was represented by the learned counsel for the appellants that in an identical matter, viz., SLP (C) No. 19202 of 1991, this Court had granted notice and stay. Accordingly, we entertained the SLP and stayed the operation of the order under appeal.

7. In K.S.Subramanian case, it was held by a 3-Judge Bench, following an earlier decision of this court, that a civilian employee in military service "who was drawing his salary from the Defence Estimates could not claim the protection of Article 311(2) of the Constitution". The Court added: "That being the position, the exclusionary effect of Article 311(2) deprives him of the protection which he is otherwise entitled to. In other words, there is no fetter on the exercise of the pleasure of the President or the Governor." It was further held that the CCA Rules of 1965 also have no application to such an employee. It was observed that "when Article 311(2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule-making power under Article 309 is subject to Article 311. This would be the legal and logical conclusion." Accordingly, it was held that the dismissal of such an employee cannot be faulted on the ground of not complying with the requirements of Article 311(2). We may mention that as far back as 1971, a Constitution Bench of this Court held in Lekh Raj Khurana v. Union of India (1971 (3) SCR 908) that a civilian employee in Defence Services, drawing his salary from defence estimates is not entitled to the protection of Article 31 1. We may also mention in this behalf that in another decision of the three-Judge Bench in Union of

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India and Another v. K.S.Subramanian (1977 (1) SCR 87) there are certain observations to the effect that "the 1965 Rules are applicable when disciplinary proceedings are taken", but these observations were made after first recording a finding that the Respondent in that case being a temporary employee, the 1965 Rules had no application to his case. Though this case was not referred to in the later decision in Union of India and Another v. K.S.Subramanian (1989 Supp. (1) SCC 33 1), yet it cannot be said that there is any inconsistency between the two cases (which incidentally bear the same cause title). As stated above, in the first K.S.Subramanian case, the employee was only a temporary employee and this Court found that-the 1965 Rules did not contain any rule' which provided for the termination of an employee like the one concerned therein. Even if we read the said decision as holding that the 1965 Rules do apply to such employees, particularly in view of Rule 3(1), even then the order of the Tribunal cannot be sustained.

8. We are also unable to see how the decision in K.S.Subramanian (1989 Supp.(1) SCC 331) could have been understood by the Tribunal as enabling it to declare that the dismissal of the respondent is void and to further declare that he should be deemed to have been continuing in service. The said decision in fact militates against the respondent, since according to it, the respondent does not enjoy the protection of Article 311(2) or the 1965 Rules. It is

relevant to notice that in the last para of the Judgment, this Court states: "In the result, the appellants (Union of India) succeed on the question of law, but the respondent retains the decree in his favour purely on compassionate grounds". The compassionate grounds are state in the preceding paragraph.

9. We may now refer to the recent decision of this Court dated September 6, 1994 in Civil Appeal Nos.5392-93 of 1993, Union of India v. Indrajit Datta. It was also a case where a civilian employee whose salary was paid out of the estimates of Ministry of Defence challenged his removal on the ground that the aforesaid 1965 Rules, whereunder the disciplinary enquiry was held have no application to him. In that case too, the Tribunal had set aside the removal order on the same ground as in this case. After noting the reasoning of the Tribunal, this court (a Bench of two learned Judges) observed: "we see no ground to interfere with the reasoning and the conclusions reached by the Tribunal". The Court at the same time, referred to the submission of the learned counsel for the Union and dealt with it in the following words:

> "Mr.V.C.Mahajan, learned counsel appearing for the appellants has, however, contended that by following the procedure prescribed under the rules no prejudice was caused to the respondent, rather he was benefitted as the rules of natural justice were complied with before passing the order of removal. According to him, his services could have been terminated on the basis of pleasure doctrine under Article 310 of the Constitution of India and simply because he was given an opportunity to defend the charges he cannot have any grievance as no prejudice was caused to him. We find some plausibility in the contention but keeping in view the facts and circumstances of this case, we are not inclined to go into the same. It is not disputed that in the year 1984 respondent submitted resignation to join a shipping company. The
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> resignation was not accepted and instead he was subjected to the disciplinary proceeding under the Rules. We are not inclined to interfere with the impugned judgment of the Tribunal. The appeals are dismissed. No costs."
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> (emphasis added)

10. The teamed counsel for the appellants submits that the respondent cannot be said to have suffered any prejudice by following the procedure prescribed by 1965 Rules. He submits that the said Rules are nothing but a codification of the principles of natural justice. Indeed, it is submitted, they are more specific, more elaborate and more beneficial to the employee than the broad principles of natural justice. If we assume for the sake of argument that the respondent was entitled to insist upon an enquiry before he could be dismissed, we must agree with the submission of the learned counsel for the appellants. We must also say that this Court cannot be said to have approved the view taken by the Tribunal in that case (which is the same as in this case). In view of the peculiar circumstances of that case, this Court held, "we are not inclined to interfere with the impugned judgment of the Tribunal." The earlier

sentence in the judgment to the effect that "we see no ground to interfere with the reasoning and the conclusions reached by the Tribunal" must be read alongwith the subsequent opinion aforesaid and in the light of all the observations made.

11. We must also mention that neither the Tribunal has stated - nor the respondent has suggested - that there are any other Rules applicable to disciplinary enquiries against such civilian employees which have not been followed - much less has it been stated that any such Rules are qualitatively different or more beneficial to the respondent.

12. The order under appeal shows, that though several grounds were raised in the original application filed by the respondent, the only point urged by his counsel at the time of arguments before the Tribunal was the one relating to inapplicability of the 1965 Rules. No other contention appears to have been urged.

13. In the circumstances, the appeal is allowed and the order of the Tribunal is set aside. The order dismissing the respondent as confirmed by the appellate order is restored. No costs.

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