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

% **Date of Reserve :28.07.2010**
Date of Decision :06.08.2010

\+ W.P.(C) 4437/2010

GNCT OF DELHI AND ORS ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

RS JEPH ..... Respondent
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG, J.
*

For orders see W.P.(C) No.51/2010

MOOL CHAND GARG, J

AUGUST 06, 2010 **PRADEEP NANDRAJOG,J**

Signature Not Verified
Digitally Signed By:AMULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

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

\+ W.P.(C) 51/2010

% **Date of Reserve :28.07.2010**
Date of Decision :06.08.2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

JAI BHAGWAN ..... Respondent
Through Nemo

WITH

\+ W.P.(C) 58/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

SANJAY DAWAR, STENOGRAPHER ..... Respondent
Through Mr. S.P.Mehta, Advocate

WITH

\+ W.P.(C) 67/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

D J GUPTA ..... Respondent
Through Mr.Shyam Babu, Advocate

WITH

\+ W.P.(C) 77/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh

Kr.Singh, Advocates

versus

GEETA MALHOTRA ..... Respondent
Through Mr.S.P.Mehta, Advocate

WITH

+ W.P.(C) 78/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

A K JAIN ..... Respondent
Through Mr.S.P.Mehta, Advocate

WITH

+ W.P.(C) 81/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

SOHAN LAL L.D.C ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

+ W.P.(C) 83/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

RAJESH SINGH STENO ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

+ W.P.(C) 87/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner

Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

SHASHI SINGH ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 88/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

KARAN SINGH YADAV ASTO ..... Respondent
Through Mr. Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 90/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

SATWANT KAUR ..... Respondent
Through Mr. Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 92/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

AMAR SINGH PEON ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 112/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

PRABHA JOSHI ..... Respondent
Through Mr.S.P.Mehta, Advocate

WITH

\+ W.P.(C) 113/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

MUSHTAQ AHMED, PEON ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 114/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

YAD RAM YADAV ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 115/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh

Kr.Singh, Advocates

versus

KIRAN VERMA PEON ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 116/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

RANJIT CHOUDHARY, STENO ..... Respondent
Through Mr.S.P.Mehta, Advocate

WITH

\+ W.P.(C) 117/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

SHAMSHER SINGH UDC ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 118/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

RAM BHAJAN, PEON ..... Respondent
Through Mr. Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 119/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

GANPAT SINGH ..... Respondent
Through Mr.S.P. Mehta, Advocate

WITH

\+ W.P.(C) 123/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

C P YADAV PEON ..... Respondent
Through Nemo

WITH

\+ W.P.(C) 124/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

AJAY KUMAR STENOGRAPHER ..... Respondent
Through Nemo

WITH

\+ W.P.(C) 129/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

SHRI CHAND ..... Respondent
Through Mr. S.P. Mehta, Advocate

WITH

\+ W.P.(C) 130/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

SWARAN GUJRAL ..... Respondent
Through Mr.S.P.Mehta, Advocate

WITH

\+ W.P.(C) 131/2010

GOVT OF NCT OF DELHI THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

BRAHAM SINGH PEON ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 265/2010

GOVT OF NCT OF DELHI AND ORS THROUGH COMMISSIONER, TRADE AND TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

VEENA ANAND ..... Respondent
Through Mr.Ajay K.Sharma, Advocate

WITH

\+ W.P.(C) 1084/2010

GOVT.OF NCT OF DELHI & ORS.THROUGH COMMISSIONER,TRADE & TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

ANIL KUMAR ..... Respondent
Through Mr.Abhay Kumar and Mr.Tenzing Tsering, Advocate

WITH

\+ W.P.(C) 1172/2010

GOVT. OF NCT OF DELHI & ORS.THROUGH COMMISSIONER,TRADE & TAXES ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

SMT.VIMLA SEHGAL ..... Respondent
Through Mr.Arvind Nayar, Advocate

WITH

\+ W.P.(C) 1857/2010

GOVT.OF NCT OF DELHI & OTHERS ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

PHOOL SINGH ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 1858/2010

GOVT.OF NCT OF DELHI & ORS. ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran,

Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

BRAHAM SINGH,LDC ..... Respondent
Through Mr.S.P.Mehta, Advocate

WITH

\+ W.P.(C) 3644/2010

GOVT.OF NCT OF DELHI & ORS. ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

ASHWANI KUMARI ..... Respondent
Through Nemo

WITH

\+ W.P.(C) 4437/2010

GNCT OF DELHI AND ORS ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

RS JEPH ..... Respondent
Through Nemo

WITH

\+ W.P.(C) 3056/2010

GOVT.OF NCT OF DELHI & ORS THROUGH PRINCIPAL SECRETARY (HOME) ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

RAJ KUMAR ..... Respondent
Through Mr.Sachin Chauhan, Advocate

\+ W.P.(C) 13806/2009

GOVT OF NCT OF DELHI AND ORS THROUGH PRINCIPAL SECRETARY (HOME) ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

DIGAMBER SINGH ..... Respondent
Through Mr.G.D.Gupta, Sr.Advocate with Mr.S.K.Sinha, Advocate

WITH

\+ W.P.(C) 49/2010

GOVT OF NCT OF DEKHI & ORS THROUGH PRINCIPAL SECRETARY ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

KRISHAN KUMAR ..... Respondent
Through Nemo

WITH

\+ W.P.(C) 50/2010

GOVT OF NCT OF DELHI AND ORS THROUGH PRINCIPAL SECRETARY(HOME) ..... Petitioner
Through Mrs.Avnish Ahalwat with Mrs.Simran, Mrs.Latika Choudhary and Mr.Nitesh Kr.Singh, Advocates

versus

VINOD KASHYAP ..... Respondent
Through Mr.Sachin Chauhan, Advocate

WITH

\+ W.P.(C) 721/2007

GOVT OF NCT OF DELHI AND ORS ..... Petitioner
Through Mr.Rajesh Kapoor with Mr.Nitesh, Singh, Advocates

versus

R.D. BOHET ..... Respondent
Through Mr.A.K.Behra, Mr.K.C.Baliasingh, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1.	Whether reporters of Local papers may be allowed to see the judgment?	Yes
2.	To be referred to the reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

MOOL CHAND GARG, J.
*

1. We preface our decision by noting the argument of learned counsel for the petitioners, being that so reprehensible is the conduct of the respondents, who have been caught literally with their pants down of accepting bribe that this Court ought to extend no benefit to the respondents. It was urged that law has to be interpreted, in the instant case, keeping in view the grave misdemeanour of the respondents. In other words, the counsel for the petitioners urged that the respondents are not entitled to any hearing. The argument is emotional and is rejected at the outset for the reason a system governed by the rule of law requires dispute resolution as per law. The submission made by learned counsel for the petitioners can be best repelled by noting a dialogue between Sir Thomas More on the one side and his daughter Margret and his son-in-law Roper in the play "A Man For All Seasons" by Robert Bolt. It refers to an incident when Sir Thomas More was urged by his daughter, Margaret, and his son-in-law, Roper, to arrest a man they regarded as evil. The dialogue is as under:-

Margaret: "Father, that man's bad."
More: "There is no law against that."
Roper: "There is! God's law!"
More: "Then God can arrest him. I know what's legal, not what's right. And I'll stick to what's legal ... I am not God. The currents and eddies of right and wrong, which you find such plain sailing, I can't navigate. I'm not a voyager. But in the thickets of the law, Oh, there I'm a forester."
Roper would not be appeased and he levelled the charge that More would give even the Devil the benefit of law.
More: "Yes. What would you do? Cut a great road through the law to get after the Devil?"
Roper: "I'd cut down every law in England to do that!"
More: "Oh?....And when the last was down, and the Devil turned round on you, where would you hide, Roper, the laws from coast to coast – man's law, not God's – and if you cut them down -...D'you really think you could stand upright in the winds that would blow then?...**Yes, I'd give the Devil the benefit of law, for my own safety's sake**."

2. The very question which confronts us in this matter is as to whether the reasoning of the respondents concluding that it was not ***'reasonably practicable'*** to hold an enquiry before dismissing the respondents from their services by invoking second proviso to sub clause (b) of Article 311(2) of the Constitution of India in the prevailing circumstances at the relevant time was justified or not.

3. The circumstances in which enquiry can be dispensed with now stands explained in the guidelines forming part of Rule 19 of the CCS(CCA) Rules after the pronouncement of the judgment in the case of *Union of India Vs. Tulsiram Patel* (1985) 3 SCC 398 by the Hon'ble Supreme Court of India.

4. In the aforesaid matters petitioners after telecast of news item captioned Programme 'Vishesh' with caption 'Ghoos Mahal' on 08.03.2005 at about 9:30 p.m. by T.V. news channel 'Aaj Tak' wherein respondents posted in Tihar Jail were shown accepting money from the persons lodged in jail and from those coming to meet them; respondents posted in Trade and Tax Department were shown negotiating and accepting money from public for doing undue favours, as a kneejerk reaction suspended all the respondents. The petitioners also lodged an FIR against all the respondents under Sections 7, 12, and 13 of the Prevention of Corruption Act on 09.03.2005 itself.

5. Later on, vide separate orders dated 27.09.2005 passed in the case of respondents working in Tihar Jail and vide orders dated 08.09.2006 passed in the case of employees working in Trade and Tax Department of the said State Government the petitioners dismissed their services without holding any domestic enquiry on the pretext that the owners of the T.V. News Channel 'Aaj Tak' refused to associate themselves with any enquiry/investigation as may be conducted in the matter.

6. These orders were challenged by the respondents by filing appeals and supplementary appeals before the Appellate Authority which were dismissed with the only modification of converting 'dismissal' to 'removal'.

7. The respondents than approached the Central Administrative Tribunal Principal Bench New Delhi. A strange situation arose before the Tribunal, in as much as O.A. No.2884/2005, 2005/2005, 2897/2005, 2899/2005 and 2898/2005 were dismissed vide order dated 13.04.2006; while a petition filed by One R.D.Bohet being O.A.No.778/2006 was allowed by a coordinate bench of the Tribunal vide order dated 24.11.2006 without referring the matter to larger bench. A writ petition bearing No.721/2007 was also filed before this Court against the order passed on 24.11.2006 which stands admitted and is now being taken for disposal with other connected matters by this common order.

8. The Original Applications (O.As.) filed by the respondents were referred however to a larger Bench in view of the conflict of opinions in the two coordinate Bench of the Tribunal and were adjourned sine die in view of the pendency of W.P.(C) No. 721/2007. Later on, on an application filed by the applicant in OA No. 2561/2006, larger Bench revived the matters and disposed all of them vide order dated 31.08.2009 which is the common order impugned before us and is subject matter of the writ petitions. Various questions were framed by the full bench including the propriety of the later co-ordinate bench of the tribunal deciding the matter contrary to the earlier view of the Tribunal without referring the matter to a larger Bench. We are however concerned with the following question giving rise to the filing of the petitions before us:

i) *Whether in the facts and circumstances of the case, the power conferred by clause (b) of the second proviso to Article 311(2) of the Constitution read with Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1985 can be justifiably invoked and the impugned order sustained.*

9. The common ground taken by the respondents in the appeals filed before the Appellate Authority as also before the Tribunal was, that the reason given in the two orders dismissing the respondent " "that the News of Aaj Tak news channel declined in writing to allow their reporters and journalists to join in any investigation into the conduct of the applicant and consequently the case of the department become weak" for dispensing with the enquiry was contrary to Rule of Law not sufficient for reaching to the Conclusion that it was not practicable to hold the enquiry. It is also stated that the decision was also in accordance with the guidelines issued by the Government of India itself for invoking clause (b) of 2nd Proviso to Article 311 (2) of the Constitution of India.

10. The three conditions mentioned in sub-clause (6) to Rule 19 of the CCS (CCA), relevant for invoking of sub-clause (b) of the second proviso to Article 311(2) provides that;

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

(b) Where the civil servant by himself or though others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the enquiry or direct it to be held; or

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

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

12. Before the Appellate Authority, respondents submitted that the Orders passed by the disciplinary Authority in these cases do not meet the aforesaid test and thus the orders impugned in appeal were liable to be set aside. Further the respondents denied the allegations such as acceptance of money, allegation of existence of compact disc showing alleged persecution and corresponding with persons or relatives of persons and receiving money not owned by the respondents, etc. They also questioned the authenticity of the compact discs. It was also stated that in the order it was not even alleged that the respondent in any manner tried to contact the news channel or tried to influence or terrorize witnesses. It was also submitted that when regular departmental enquiry was ordered in case of similarly situated person i.e. one Dr.A.K.Bachawat there was no reason to discriminate with the respondents. However the appeals were dismissed vide common order dated 21.12.2005 and 24.10.2007 except that the decision to dismiss was converted in 'Removal'.

13. It is thereafter the respondents approached the Tribunal where also similar issues were raised. The Tribunal allowed the applications vide common order dated 31.9.2009 holding that the orders

dismissing the respondents after concluding that it was not reasonably practicable to hold a departmental enquiry in these cases were not sustainable in law. The petitioners aggrieved from the aforesaid order filed the aforesaid writ petitions.

14. The order of dismissal passed in the case of Digambar Singh, an employee of Tihar Jail, (CWP No.13806/2009) which is similar to all other cases of Tihar Jail Employees setting out the reason for adopting the procedure as per the proviso of Sub clause 2 (b) of Article 311 of the Constitution of India is reproduced for the sake of reference:

"Office of the Director General (Prisons)
Prisons Headquarters: Tihar: New Delhi

F11(659):CJ:Vigilance:2005:2187 Dated 27/9/05

ORDER

WHEREAS onthe4th May, 2005 at about 9.30 PM, a news item was telecast on the AAj Tak news channel over Television with the caption, "Tihar Jail bana Ghoos mahal';

AND WHEREAS Shri Digambar Singh, Warder-599 posted at Central Jail No.2,Tihar Jail, New Delhi was shown accepting money in lieu of favours to be extended either to prisoners lodged in Jails or to those intending to meet them in contravention of the provisions of the Delhi Prisons Act, 2000 (Delhi Act 2 of 2002) and the rules made thereunder read with the Delhi Jail Manual;

AND WHEREAS the said Shri Digambar Singh, Warder-599 was placed under suspension vide this office order no. F-11(Misc.)/CJ/Vig./2005/998-1011 dated 4th May, 2005 and further a case FIR No. 25/2005 dated the 5th May, 2005 was registered, amongst others, against the said Shri Digambar Singh, Warder-599 under Sections 7,12 and 13 of the Prevention of Corruption Act, (49 of 1988) with the Police Station, Anti Corruption Banch, Old Secetariat: Delhi;

AND WHEREAS the above misconduct on the part of the said Shri Digambar Singh, Warder-599 is in violation of the following provisions of the Delhi Prisons Act 2000 (Delhi Act 2 of 2002) and the rules made thereunder read with the provisions of the Delhi Jail Manal, namely;

"Section 9 of the Delhi Prisons Act, 2000 (Delhi Act 2 of 2002)

Officers not to have business dealing with prisoners and others:-

(1) No officer of a prison shall sell or let, nor shall any person in trust or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner o have any money or other business dealings, directly or indirectly with any prisoner.

(2) No officer of a prison shall accept any gift from a prisoner or a person having any dealings with prison administration.

Rule 145 of Delhi Prisons (Inspection, Meetings and Duties of Officers) Rules 1988

(1) No subordinate officer shall, otherwise than with the special permission of the Superintendent, at any time:-

(a) Correspond or hold any intercourse of communication of any kind whatever with any relative or friend of any prisoners:
(b) hold any unauthorized communication of any kind whatsoever with any prisoner:
(C) correspond or hold any intercourse whatever with any discharged prisoner; or
(d) permit any discharge prisoner or any relative or intend of any such prisoner to visit or remain at his quarters

(2) No subordinate officer shall at any time:-

(a) hold any uncessary converse with any prisoner:
(b) treat any prisoner with familiarity; or
(c) discuss any matter relating to the discipline or regulations of the jail with or within the hearing of any prisoner:

The conduct clearly establishes that the said Shri Digambar Singh, Warder-599 had expressed his ready willingness to extend undue facilities and conveniences in lieu of monetary consideration and this amounted to grave misconduct unbecoming of a government servant and in violation of the Rule 3 of the Central Civil Services (Conduct) Rules, 1964;

AND WHEREAS the relevant compact disc has also been seen by me;

AND WHEREAS further the identity of the said Shri Digambar Singh, Warder-599 has also been established by a Committee of three jail officers constituted by the Director-General (Prisons) vide order No.F.11/Misc./CJ/Vig./2005/12/2 dated 26th May, 2005. On

the 2nd June, 2005 vide Committee report diary No. 1643/SCJ(HQ) dated 2nd June, 2005;

AND WHEREAS the videotape footage indicated that the money thus paid for extending undue facilities and conveniences to persons visiting on prisoners was in violation of the Delhi Prisons Act, 2000 (Delhi Act 2 of 2002) and the rules made thereunder read with the provisions of Delhi Jail Manual;

AND WHEREAS it is clear that the said Shri Digambar Singh, Warder-599 was not receiving money genuinely owed by him and the overwhelming presumption that can be drawn from this is that the said Shri Digambar Singh, Warder-599 was receiving illegal gratification as consideration in lieu of assurance to carry out various unauthorized and illegal requests which could not have been by way of (a) payment of his salary, (b) his receiving loans, (c) his receiving back loans/other money owed to him and (d) due to any other genuine or reasonable ground;

AND WHEREAS the owners of AAj Tak news channel have categorically declined in writing to allow their reporters and journalists to join in any investigation into the conduct of the said Shri Digambar Singh, Warder-599 in respect of news telecast made on 4th May, 2005. In view of this, I am satisfied that it has not been reasonably practicable to hold any departmental enquiry. In view of this, during any such departmental proceedings, had such enquiry been ordered, such crucial witnesses as the reporters/journalists of the Aaj Tak TV network would not have appeared for tendering evidence during the enquiry;

AND WHEREAS further the said Shri Digabar Singh, Warder-599 is an employee of a particularly sensitive department like Tihar Jail, and, therefore, it was expected of him to conduct himself with a high standard of integrity and honesty, but he did not do so;

AND WHEREAS in the Tihar Jail 'there is a wide variety of prisoners housed, many of whom are undertrials with previous convictions, convicts involved in murder/rape and other heinous offences, convicts involved in offences under the Arms Act. Explosive Act as also the NDPS Act and further TADA and POTA undertrials, dangerous prisoners like those involved in the attack on Parliament on 13th December, 2001 and other death sentence convicts and dangerous criminals transferred from other States, to mention a few. In these circumstances, given the propensity of the said Shri Digambar Singh, Warder-599 to accept favours and give information in lieu of illegal gratification, the very security of Tihar itself could be

jeopardized. Also, officials involved in such acts of misconduct can be instrumental in doing anything, ranging from fostering disaffection among prisoners facilitating their escape, to even facilitating an attack on the prison from external sources.

NOW, THEREFORE, in view of the above narrated facts and keeping in view the overall circumstances of the case I, R.P.Singh, Director General (Prisons), in exercise of the powers conferred by clause (b) of the second proviso to Article 311 (2) of the Constitution of India read with rule 19 of Central Civil Services (Classification Control and Appeal) Rules, 1965, hereby order that Shri Digambar Singh, Warder-599 shall stand dismissed from service with immediate effect.

It is further directed that Shri Digambar Singh, Warder-599k shall deposit all government properties given to him, i.e., identity card, uniform articles with the Prison Department immediately on the receipt of this order.

(R P SINGH)
DIRECTOR GENERAL (PRISONS)"

15. Similar orders of dismissal were also passed in the cases pertaining to the employees of Trade and Tax department vide orders dated 08.07.2006.

16. A perusal of the orders would show that the basic reason for dispensing to hold that the enquiry in the aforesaid matters was that the TV Channel "Aaj Tak" vide their letter dated April, 19, 2005 addressed to the Addl. Secretary, Directorate of Vigilance, GNCTD has informed that as a policy, the company does not allow any of its personnel including reporters, journalists etc. to join investigation of any kind of who have performed their onerous duty in the public interest to inform the public the ill-wills in the society. Moreover, Channel "Aaj Tak", being a 24X7 channel, they cannot afford any of their journalist/reporters to join any investigation as they are busy in news and current affairs matters.

17. In the case of jail employees additional ground was that *in the Tihar Jail "there is a wide variety of prisoners housed, many of whom are undertrials with previous convictions, convicts involved in murder/rape and other heinous offences, convicts involved in offences under the Arms Act. Explosive Act as also the NDPS Act and*

further TADA and POTA undertrials, dangerous prisoners like those involved in the attack on Parliament on 13th December, 2001 and other death sentence convicts and dangerous criminals transferred from other States, to mention a few".

18. Vide common order dated 31.08.2009 the Tribunal has allowed all the petitions and gave the following directions to the petitioners:

> "30. In view of the discussion made above, whereas we approve the view taken by the Division Bench of this Tribunal in OA No.778/2006 for some reasons which may be the same and for some reasons which may be in addition to the view taken by the Division Bench, we do not approve and thus overrule the view taken by the co-ordinate Bench of this Tribunal in OA Nos.2884/2005, 2005/2005, 2897/2005, 2899/2005 and 2898/2005.
>
> 31. All these Applications are accordingly allowed. Impugned orders passed by the concerned authorities, be it the disciplinary or the appellate authorities, are set aside and quashed. The respondents would be, however, at liberty to proceed against the applicants departmentally. We are conscious that there can be only zero tolerance for corruption, but before a person is thrown away by such a stigma which may not only ruin his career but also his reputation in society, the orders should be passed only after following the due procedure. While, however, setting aside the orders, as mentioned above, we pass no orders of reinstatement of the employees/applicants. It may be recalled that before the orders terminating services of the applicants were passed, they were under suspension. They would thus remain under suspension and may be, at the most, entitled to subsistence allowance from the date they were dismissed. It will be exclusively up to the authorities to continue their suspension during the pendency of departmental enquiry against them. Considering the nature of the case, we direct the authorities to conduct the enquiry on day-to-day basis and pass final orders, insofar as, at least the disciplinary authority is concerned, as expeditiously as possible and preferably within a period of six months from today. If the employees may not cooperate, then for reasons to be recorded the respondents may even proceed ex parte against them, or seek orders on that behalf from this Tribunal. In view of the peculiar facts and circumstances of this case, costs of this litigation are made easy."

19. Some other observations made by the Tribunal which reflects the reasoning in coming to the aforesaid decision are also reproduced hereunder:

> "24. We have no doubt in our mind that the judgments relied upon by the learned counsel representing the respondents (Petitioners herein), have no parity whatsoever with the facts of the case in hand. We have already mentioned that by and large, reasons dispensing with the enquiry, whether good or not, would depend upon facts and circumstances of each case. The judicial decisions wherein it was proved to the hilt that the witnesses who could prove the charge were intimidated, terrorized and threatened with their lives, would have no parity with the facts of the present case, where the witnesses have expressed their inability to join the investigations, being busy, and where their attendance could be enforced through not only persuasion but also by process of law.
>
> 25. Shri Rakesh Khanna, learned counsel representing the respondents, while referring to the order of dismissal, the order passed by the appellate authority, the role of the employees clearly shown or seen accepting bribe at their workplace, no denial by the employees of the allegations of misconduct shown in the video footage, as also in the pleadings, and by their conduct, would contend that there was no need whatsoever to hold an enquiry against the employees. Elaborating the contention as noted above, the counsel would contend that the order of dismissal came to be passed after the TV telecast, which the employees also must have seen. Electronic media had highlighted the incident for several days. If it was the case of the employees that the sting operation was bogus, they ought to have proceeded against the TV channel Aaj Tak for defamation and also by filing criminal case against them. The very fact that they kept quiet over the issue would be an implied admission on their behalf of the misconduct alleged against them. When the order of termination came about, the applicants would still take no step to proceed against the news channel. They have done nothing in that regard till date. When the appeals were dealt with and the employees were shown the video footage, they would yet not deny their role in the episode, or that they were not the persons shown accepting bribe. The counsel has placed reliance upon some observations made by the Honble Supreme Court in a recent decision in the matter of R. K. Anand (supra). We have given our thoughtful consideration to the contentions of the learned counsel as noted above, but do not find any merit therein. We may observe at the very outset that the concerned

authorities had such evidence in their possession which may substantially prove the guilt of the employees, does not appear to be a ground to dispense with the enquiry. If that was to be so, no enquiry may be held in any sting operation. Such course to be adopted would be fraught with dangerous propositions and evil propensities. The media, and in particular the electronic media, would then assume the role of complainant, prosecutor and judge, all rolled in one. The basic or fundamental governance, be it administrative or judicial, in our country is based upon checks and balances. If the media is to be made so powerful without any checks and balances, some times, if not always, most innocent citizens may suffer having been framed up. We may not illustrate, but there is no dearth of cases where sting operations have been found to be doctored or morphed. There is no dearth of cases as well which may appear to be open and shut cases, but when put to trial, they end up in a smoke. It is not unknown that in trap cases where an employee may have accepted bribe and caught on spot, the courts in the consequent trials have held the money to have been thrust upon the employee out of sheer grudge, vindictiveness or mala fides. In our considered view, no one in this country can be condemned without being heard. No doubt, insofar as the employees are concerned, enquiry against them can be dispensed with, but that has to be based upon cogent grounds to be mentioned in writing, and we do not accept the contention raised by Shri Khanna that if the evidence available with the prosecution or the department may clearly show it to be a case of delinquency of an employee, it would be a good ground to dispense with the enquiry.

26. In a given set of circumstances, availability of overwhelming evidence may be one of the grounds to dispense with the enquiry, but in no case, it can be the sole ground. In the present case also, at the most, availability of the evidence, overwhelming according to the respondents, but disputed by the applicants, is also one of the grounds for dispensing with the enquiry. *The first and the foremost reason is that the employees of the news channel Aaj Tak would not appear. If the first and the primary reason for dispensing with the enquiry is to be rejected, the second with regard to availability of clear evidence with the respondents against the employees, cannot sustain. We may also mention that even though, Shri Khanna may state the present case to be one where authentic and unrebutted evidence was available with the respondents to pin down the employees with the allegations of corruption against them, but so is not even said by the respondent authorities. It may be recalled that while referring to the video footage indicating that the money was paid for extending unauthorised and illegal*

favours, the concerned authorities observed that overwhelming presumption could be drawn. The authorities had also thus not gone beyond drawing an overwhelming presumption."

(Emphasis added)

20. Before us, It is the submissions of the petitioners that the order passed by the Tribunal is liable to be set aside inter alia for the following amongst other reasons:

i) That under Article 311(2) (b) of the Constitution of India, enquiry can be dispensed with when it is not reasonably practicable to hold an enquiry. Since the News channel refused to send their reporters for evidence, Disciplinary authority terminated services of those who were clearly visible in CD accepting money from an outsider and before taking such action disciplinary authority constituted a committee of officers to identify those who were clearly caught on the camera accepting money.

ii) That none of the Respondents in their OA or Appeal have denied their presence nor have initiated any proceedings against the Aaj Tak News Channel, in case the telecast was false reporting. Moreso, even in the forensic report, voice has been matched and hence the authenticity of the CD also stands proved.

iii) That the case of the Respondent is distinguishable from one Dr A.K. Bachawat in whose case regular enquiry is being held, because he had already retired by the time action was initiated against the said officers; hence proceedings had to be initiated under Rule 9 of CCS (Pension) Rules, 1972.

iv) It has also been argued that during the proceedings undertaken by the Appellate Authority respondents have also seen the video take. Even in appeal the respondents have not taken a stand that they were not the persons who were shown in the disc as the person involved in accepting bribes. It is also stated that when large scale of officials starting from Group IV to Gazetted Officer are

caught on a camera taking bribe, there is no need to hold a full fledged enquiry. It was thus submitted that dispensing with the services of those employees by invoking provisions of Article 311(2)(b) of the Constitution of India was fully justified for also sending a message that corrupt officers will not be tolerated.

(v) It is stated that before the Tribunal it was argued by the petitioners that it is difficult to construe that there is any technical fabrication involved in recording just to put the charged official down. The committee of three jail officers had seen the concerned CDs and had identified the persons. In fact the Tribunal also watched the CDs and video tape. The Court even wanted production of chip as a primary evidence but it could not be made available. Though an additional affidavit was filed on behalf of the petitioners wherein it was pointed out that the video cassette of the sting operation contains recording of all the 82 officials of Sales Tax Department accepting bribe from the bribe givers in their office without any fear and hesitation. The sting operation was shot by Shri Jalal Kathuriya, Cameraman by Spy Camera in A-S-F format. After that,, the recording was transferred in a digital shape. The produced video cassette was prepared from the digital storage in the Video Room which was absolutely unedited and nothing had been added or deleted/altered/added in the cassette. All the gadgets instruments used in the sting operation 'Ghoos Mahal' have been re-used and as such news channels do not have any record of the sting operation except the video cassette which is the true copy of the sting operation prepared by the above-said mechanical devise. The video cassette was sent to the CFSL for voice comparison which gave positive results.

(vi) It has been submitted that the material which was available with the authorities and which was also

produced before the appellate authority where the respondents were also made aware to what is the material against them and even before the Tribunal and therefore there was no necessity to set aside the orders passed by the petitioners which in the facts of the case were fully justified for taking recourse to provisions of Article 311(2)(b) inasmuch as in view of the overwhelming evidence available with the authorities and the refusal of the news channel officials to come and participate in the enquiry in case it was so said instituted was suffice for concluding that it was a fit case to dispense with the enquiry and to pass the orders whereby the respondents were dismissed on account of serious misconduct committed by them which involves accepting bribe on the face of it shows that the respondents who were dealt with only after the satisfaction of their identity by the three members of the Committee who saw the cassettes and only after satisfaction of the identity of the persons concerned, gave their report to the Government and it was on that basis the disciplinary authority has taken action against the respondent which is fully justified. It is thus submitted that the orders passed by the Tribunal is liable to be quashed. Taking into consideration the legal provisions enshrined in Article 311(2)(b) of the Constitution of India and the facts of this case.

21. The petitioners have relied upon the following judgments:

1. A.K.Sen & Ors. Vs. UOI & Ors., *1983 (4) SCC 641*
2. Kuldip Singh Vs. State of Punjab & Ors., *1996 (10) SCC 659*
3. Sahadeo Singh & Ors. Vs. Union of India & Ors., *(2003) 9 SCC 75*.
4. Ajit Kr. Nag Vs. Gen. Manager, Indian Oil Corporation Ltd. *(2005) 7 SCC 764*.
5. Director Town Planning Maharashtra & Anr. Bhalchandra V Kukkarni, *(2006) 5 SCC 464*.
6. Romesh Kr. Sharma Vs. UOI & Ors. *(2006) 6 SCC 510*.
7. Southern Railway Officers Association & Anr. Vs. UOI *(2009) 9 SCC 24*

22. On the other hand, the respondents while supporting the order

passed by the Tribunal have urged that the order terminating the services of the respondents without holding an enquiry proceeds primarily on the ground that the news channel who was instrumental in conducting the sting operation declined to send their employees for leading evidence before any authority. This is despite the fact that those very witnesses stand included in the list of witnesses in a departmental enquiry instituted by the petitioners against one Dr.A.K.Bachawat and the said enquiry is going ahead without any difficulty. It is submitted that this ground alone urged by the respondents does not satisfy the test for dispensing with regular enquiry for imposing major penalty such as dismissal from service, is not in accordance with the scheme of Article 311(2)(b) of the Constitution of India. It is contrary to the guidelines issued by the Government of India after the decision was given in Tulsi Ram Patel's case (Supra). As regards the plea that there is overwhelming evidence is also not sufficient to dispense with the enquiry inasmuch as if evidence is available with the petitioners there is no reason as to why enquiry be not held.

23. Respondents besides relying upon the judgment delivered by the Supreme Court in the case of Tulsi Ram Patel (Supra) have also relied upon the following judgments:

i) Chief Security Officer & Ors. Vs. Singhasan Rabi Das, AIR 1991 Supreme Court 1043
ii) Satyavir Singh Vs. UOI, 1986 SCC (L&S) 1
iii) Jagdish Vs. UOI, O.A. dated 1515/2001 decided on 07.02.2003
iv) Mehant Ram Das Prakash Vs. Ramesh Cahnder & Ors. (1999) (IX) SCC 420.

24. We have heard the submissions made on behalf of the parties and have perused the records.

25. In the present case as stated above, the basic reason for dispensing with the enquiry is that TV channel Aaj Tak vide their letter dated 19.04.2005 addressed to Additional Secretary, Directorate of Vigilance, GNCTD informed that as a policy, the company would not allow any of its personnel including reporters, journalists etc. to join investigation of any kind, as they performed their onerous duty in the public interest to inform the public the ill-

wills in the society, and that, the channel Aaj Tak being a 24x7 channel, they could not afford any of their journalists to join any investigation as they are busy in news and current affairs matters. It is only on the basis of the aforesaid the disciplinary authority recorded its satisfaction that it was not reasonably practicable to hold a departmental enquiry and that had such enquiry been ordered, such crucial witnesses as the reporters/journalists of Aaj Tak TV Network would not have appeared for tendering evidence, and without their active assistance in the matter of conduct of enquiry, no meaningful enquiry could have been held. In addition to that they have also referred to overwhelming presumption drawn from the video footage.

26. The Tribunal has not agreed with the aforesaid reasons in view of the Departmental Inquiries (Enforcement of attendance of Witnesses and Production of Documents) Act, 1972 which permits the disciplinary authority or the enquiry authority as the case may be to summon and compel attendance of witness and production of documents necessary for holding an enquiry in departmental proceedings. In fact, this act was framed in view of the recommendations of Santhanam Committee and as per the provisions contained in Section 2 of the Act, which applies to every departmental enquiry, Inquiring Authority is empowered to enforce the attendance of witnesses and production of documents in accordance with the powers conferred on the said authority under Section 5 of the aforesaid Act. The Act of 1972 has been added as a separate chapter. The Central Vigilance Commission has also emphasized that he provisions of the aforesaid act can be taken recourse to in cases recourse to in cases where there is possibility of private witnesses, who are required to provide crucial evidence, evading appearance before the enquiring authority, and that the Act is applicable to all enquiry proceedings where lack of integrity is a charge or part of a charge, and further that the enquiring authority authorized under the Act is conferred with the powers of a trial court to summon witnesses/documents, and such summons shall be served through a District Judge. Accordingly the reasoning of the disciplinary authority

to dispense with the enquiry only on the aforesaid ground was held to be incorrect fallacious and arrived at in ignorance of law.

27. In the impugned order the Tribunal further observed that the two sting operations which were carried out by the TV news channel Aaj Tak on 08.03.2005 and 04.05.2005 and the news was telecast on the same day when the sting operations were carried out. It is, however, of importance to note that while the orders dismissing the employees of Trade and Tax Department were passed on 08.09.2006 and the appeals filed by them was dismissed on 23.11.2007; with respect to the sting operations pertaining to Tihar Jail the same was carried out on 04.05.2005 and the telecast was done on the same day. The employees were suspended and criminal cases registered against them on the next day itself. They were dismissed from service on 29.09.2005 and their appeals were dismissed on 02.02.2006. *In these circumstances the Tribunal has observed that it was not a case of any emergent situation and sufficient time had lapsed which would have enabled the disciplinary authority to hold an enquiry in this matter.*

28. The Tribunal relying upon the case of Constable Jagdish Kumar in OA No.2353/2006, 5.10/07; Raja Ram Vs. Speaker Lok Sabha and Ors. 2007 (3) SCC 184; Sudesh Kumar Vs. State of Haryana and Ors. 2005 (11) SCC 525 has also observed that when allegations made against an employee are based upon video footage, dispensation of enquiry has not been found favour by the Apex Court.

29. Some observation made by the Tribunal in para 12 of the impugned order which highlights discrimination qua the present respondents in the matter of holding a departmental enquiry viz-a-viz one Sub-Inspector of Police on whom also sting operation was undertaken by the same news channel and where enquiry was held is also reproduced:

> "In OA No.265/2006 in the matter of Krishan Kumar V. Govt. of NCT of Delhi & Others, a misc. application bearing MA No.2317/2006 came to be filed during pendency of the OA. The prayer in the misc. application is to permit the applicant to place on records additional affidavit. In the additional affidavit it has inter alia been pleaded that the same news channel had carried out a sting operation in

respect of some officials of Delhi Police. In that connection SI (Exe.) Sobhen Barik was chargesheeted on 14.07.2005. He had made demand of Rs. 50,000/- and the incident of demanding money was recorded by the channel Aaj Tak, which was so mentioned in the chargesheet issued against him. It is further mentioned in the chargesheet issued against him. It is further mentioned that the charge against the SI was not only of asking for money but also of running from the camera after he realized that the conversation was being recorded. It was subsequently telecast by the TV channel and watched by public. Even though, the incident of demanding and accepting bribe was of 03.11.2004, SI Sobhen Barik was chargesheeted on 14.07.2005, far before at least the employees of the Trade & Taxes department were dismissed from service, and far before the appeals of the employees of the jail department were dismissed. The disciplinary or the appellate authority knew or were at least supposed to know that by the time they passed their respective orders, an employee of the police department was being proceeded departmentally on the allegations which could be proved only by those who carried out the sting operation and who were from the same TV channel Aaj Tak only. It is then pleaded n the additional affidavit that the correspondent who conducted the sting operation was Shri Dhirender Pundir, and his name was listed in the list of witnesses dated 14.07.2005 as PW-10. On 07.11.2005, Shri Pundir appeared and deposed in the departmental enquiry."

30. The Tribunal also noticed about the case of Head Constable Ramesh of CRPF who was on duty in Central Jail Tihar on the date of sting operation and who allowed the car of the reporter inside the jail and was seen in the CD opening main gate for allowing the car to enter after accepting the money but he was not dismissed from service by invoking Articles of 311 sub-Clause (2).

31. The Tribunal also observed that in respect of the incident criminal cases under Section 7, 12 and 13 of the Prevention of Corruption Act read with Section 120B of the IPC stood registered. The respondents placed on record the list of witnesses who have to be examined in Court seized of the criminal trial. Admittedly, those who carried out the sting operations were cited as witnesses. The statements of all these witnesses were recorded under Section 161 Cr.PC. They fully cooperated with the prosecution not only in making statement under Section 161 Cr.PC, but in supplying the material

available with them as well. Even though, we are conscious that the provisions contained in Cr.PC are such that a person cannot refuse to be a witness if his evidence may be relevant in a criminal trial, and if he may refuse, he can be prosecuted as well, but the fact that those who carried out the sting operation were cooperating and despite the letter dated 19.4.2005 of the news channel Aaj Tak, had willingly made their statements and supplied the material, ought to have been a factor for consideration by the concerned authorities but no such change has been shown in their attitude.

32. The Tribunal further noticed that in terms of a notice issued by this Court to the news channel Aaj Tak, they supplied unedited and complete version of the telecast (audio and visual) before this Court by the learned counsel who appeared for the TV Today Network. The CDs were ordered to be kept in safe custody subject to further directions. Even though these directions were given by this Court in connection with the security in jail but it shows that the material which is available can be produced and if not produced can be summoned.

33. The Tribunal has also taken note of the judgment given by this Court in the case of Surinder Kumar who filed W.P.(C) 1758/2008 against the order passed by the Tribunal in O.A.No.2362/2006 whereby he challenged a decision of his dismissal from service by invoking provisions of Article 311 (2) (b) of the Constitution the departmentally where the enquiry against him was dispensed with and order dismissing him from service was passed. The writ petition against the order of the Tribunal was assailed before this Court by way of W.P.(C).1758/2008 which was also dismissed by this Court on 24.04.2008. In the said case, the dismissal of ASI Surinder Kumar was based upon the recordings shown to NDTV yet this Court made the following observations:

> *"In our opinion, it is reasonably practicable to conduct the departmental enquiry in the present case of sting operation. The department could have proved the charge against the respondent by examining the witnesses from NDTV who carried out the sting operation. We are further of the view that conducting of the departmental enquiry in sting operation is all the more necessary in order to rule*

out the possibility of any motivated action in sting operation. Whether such a sting operation was genuine or not has to be proved by cogent evidence and for this, it is not difficult to produce the material witnesses."

34. Tribunal has also observed that neither the employees were given any opportunity to explain the allegations levelled against them before the order of dismissal was passed nor a show cause notice was given to them in this regard nor they were associated with any fact finding enquiry. Even before the Appellate Authority the record does not show that in every case the Lieutenant Governor has seen the CD himself or the employees got a chance to see the same. There is nothing on record to show that the employees were specifically asked to respond about allegations of accepting the bribe allegedly shown in the video footage. Mere acceptance of money by the employees himself does not pin down them with accepting bribe or illegal gratification unless and until the person who allegedly gave bribe comes in the witness box and says so.

35. The Tribunal has further observed that from the affidavit filed by the News channel it could not be inferred that the CD produced was a true version of its original as it was prepared from digital storage in the video room of the News Channel. The Tribunal has further observed that from the transcription relied upon it is not possible to make out as to whether the employees had demanded money and if so for what purpose. In some of the cases there is no transcription of dialogue between the employees and those who conducted the sting operation.

36. Now, coming to the citations relied upon by the respondents we find that in the case of *Sudesh Kumar Vs. State of Haryana and Ors.* 2005 (1) SCC 525 pursuant to preliminary enquiry a dealing clerk was dismissed from service without regular departmental enquiry on being satisfied that it was not reasonably practical to hold an enquiry. Reason recorded for such satisfaction was that the complainant being a foreigner may leave the country in the midst of the enquiry and that he was not likely to name the delinquent official during the departmental proceedings. Here also, reliance was placed upon a

news item appearing in Hindi Daily on 01.12.1999 where reference was place upon a complaint made by Japanese national, after a preliminary enquiry D.S.P. Yogender Nehra , taking note that the Japanese national may have to leave the country and he was also not willing to name the delinquent officer as he feared harassment , but the statement of ASI Shiv Dutt, in-charge, security branch, and ASI Lal Singh clearly revealed that it was HC Sudesh Kumar who was posted as foreign registration clerk in the district police office on 1.10.1999, and he had processed the visa extension case of the foreign national, and that he had also deposited the extension fee of Rs.2160/- in State Bank of Patiala, having satisfied that there was no doubt whatsoever about the identity of Sudesh Kumar who accepted illegal gratification, dispensed with the enquiry. It was also mentioned in the order that the Japanese national was likely to leave the country. Despite the facts as mentioned above, where the foreign national felt threatened and was leaving the country and thus, may not be available for making statement, the order of dismissal of the appellant was *set aside by holding that dispensing with a regular departmental enquiry was improper.*

37. The view taken by the Tribunal that raw footage of video film seen by someone who is to appreciate the evidence may have some evidentiary value, but, the edited version of the video film cannot be made the sole basis for returning a finding. Unless, therefore, corroborated, it would have no evidentiary value. In this regard reference was to a judgment delivered by the Apex Court in *Raja Ram Pal Vs Speaker, Lok Sabha & Others* [(2007) 3 SCC 184].

38. In the case of *Ex. Constable Chotey Lal Vs. Union of India* 2000 (10) SCC 196 and Ors. also relied upon by the respondents dealing with the opinion that it was not reasonably practical to hold the enquiry in the facts of that case the Apex Court has been pleased to observe as follows:

> ***"3.*** *Mr Yadav, learned counsel appearing for the appellant contends that though the employer has the power to dispense with an enquiry under Article 311(2), second proviso, clause (b) of the Constitution but the conditions precedent for exercising that power*

have now been indicated in several decisions of this Court and in the present case, those conditions precedent cannot be said to have been satisfied. Mr Choudhary, the learned Senior Counsel appearing for the respondents, on the other hand, contended that the appellant himself being a Police Constable could have influenced the witnesses who would have come in the departmental enquiry and if on that ground the departmental authorities apprehended that the enquiry would not be reasonable and fair, the conclusion cannot be interfered with.

Having examined the rival contentions of the parties and bearing in mind the law laid down by this Court indicating the circumstances under which the enquiry under Article 311(2), second proviso, clause (b) of the Constitution can be dispensed with and applying the same to the facts and circumstances and the reasons advanced by the authorities in arriving at the decision, we have no hesitation to come to the conclusion that the order dispensing with the departmental enquiry is not in accordance with law and necessarily the order of dismissal cannot be sustained. We accordingly set aside the order of dismissal passed against the appellant and permit the departmental authority to hold an enquiry if so desired, in accordance with law and come to the conclusion in the said proceeding."

39. At this stage we may also observe that in the case of *Union of India Vs. Tulsiram Patel* (1985) 3 SCC 398 which is a landmark in dealing with cases of this nature this Apex Court had been pleased to hold:

"Although Clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the enquiry."

40. Now coming to the judgments relied upon by the petitioners we find that those judgments do not come to the rescue of the petitioners in the peculiar facts of this case inasmuch as:

a) In the case of *A.K.Sen*(Supra) the Apex Court was concerned with maintenance of discipline as of vital importance for armed force in the case, when members of the force began an agitation for recognition for the ground on several demands which escalated into a full scale battle, it was held that no

person with any reason/sense of responsibility can say that in such a situation holding of enquiry was reasonably practical

b) The case of *Kuldip Singh* (supra) pertains to dismissal of the appellant in that case who was found indulging in activities prejudicial to effective functioning of the police force, as he had close links with extremists and was found helping them by providing information of the Police Department.

c) In case of Sahadeo Singh & Ors. Vs. UOI & Ors. no independent evidence was available.

d) In the case of *Romesh Kr. Sharma* (supra), the appellant was dismissed from service under Section 20(1) r/w Rule 17 dispensing with enquiry, which was challenged as being illegal and the enquiry was abandoned midway. The Court observed that under proviso to rule 17, Chief of Army Staff & Other officers are competent to order removal without complying with the procedure set out in the main part of the rule after certifying that it was not reasonably practicable to comply with the provisions set out and the fact that the enquiry was not qua the appellant but it related to the incident, held that there was nothing wrong with the order of dismissal. Thus, it was a case of defence services, the petitioners cannot derive any parity with that case.

e) Similarly, the judgment in Southern Railway Officers Association & Anr. Vs. UOI was also given in peculiar facts and circumstances of that case.

41. Taking into consideration the judgments cited before us by the parties and also taking note of the observation made by the Tribunal, we agree that reasons dispensing with the enquiry whether good or not, would depend upon facts and circumstances of each case. In a case where it is proved to the hilt that the witnesses who could prove the charge were intimidated, harassed and threatened with their lives, would certainly have no parity with the facts of the present case only because the witnesses have expressed their inability to join investigation being busy, cannot be a reason for dispensing with the

enquiry as their presence can be secured by application of law available in the Statute Books for their appearance.

42. Having gone through the entire material we are constrained to opine that the way the Government has proceeded in dismissing the services of the respondents by dispensing with the enquiry for the reasons stated in the orders as quoted is contrary to rule of law which is the basis of good governance and constitutional obligation imposed upon the Government. It is true that prevailing corruption in the Government offices has been exposed by the news channel and everybody would commend their effort in doing so and also ask for forthwith dismissal of the corrupt officials who were exposed. As a means for curbing the menace, they may also opine that a short cut has been adopted by the petitioners (of dispensing with the enquiry) was justified. However difference between the perception of an individual is then to be guided by the rule of law. One of the basic principle embodied in *Rule of Law* is to abide by Principles of Natural Justice which imbibes inherent principles of *audi alteram partem*, that is to say, nobody is condemned unheard.

43. As observed by the Apex Court the rule of *audi alteram partem* requires an opportunity of hearing to a person who is likely to be affected in a decision to be taken by a disciplinary authority. He or she is certainly entitled to hearing may be only by issuance of a show cause notice even if the situation is urgent. We can make reference to the case of *K.I. Shephard & Ors Vs. Union of India and Ors* (1987) 4 SCC 431.

44. It would be relevant to take note of para 13 of the judgment in this case, which reads as under:

> *"13. Natural justice has various facets and acting fairly is one of them. RBI which monitored the three amalgamations was required to act fairly in the facts of the case. The situation necessitated a participatory enquiry in regard to the excluded employees. Since the decision to exclude them from service under the transferee banks is grounded upon a set of facts the correctness whereof they deny, if an opportunity to know the allegations and to have their say had been afforded, they could have no grievance on this score. The action deprives them of their livelihood and brings adverse civil consequences and could obviously*

not be taken on the ipse dixit of RBI officers without verification effects. It is quite possible that a maneuvering officer of the banking company adversely disposed of towards a particular employee of such bank could make a report against such employee and have him excluded from further service under the transferee bank. The possibility of exclusion on the basis of some mistake such as to identity cannot also be ruled out. There is all the more apprehension of this type as the process has to be completed quickly and very often the records of a large number of employees have to be scrutinised. We are of the view that rules of natural justice apply to administrative action and in the instant cases the decision to exclude a section of the employees without complying with requirement of natural justice was bad."

45. An enquiry can be held by issuing show cause notice and giving a copy of the telecast to the delinquent employees and give them an opportunity to explain before taking a final view as to whether it is a case where a regular department enquiry under Rule 14 of the CCS(CCA) Rules should be held or further enquiry be dispensed with. However this also has not been done by the petitioners in this case. The arguments submitted on behalf of learned counsel for the petitioners that during the course of hearing of the appeal the respondents have seen the recordings and, therefore, they are aware of their role in the episode and none of them disputed their presence at the location or their appearance in the cassettes which were telecast is of no consequence as playing of such cassettes before the Appellate Authority would not meet the requirement of the principles of natural justice at the Enquiry Officer level.

46. While we are of the opinion that to dispense with the enquiry was wrong, we should not be understood as saying that the depth of the enquiry should be equivalent to that of a trial before a criminal court. The least which could have been done was to initiate an enquiry, place a copy of the cassette on the enquiry file, supply a copy of the cassette as telecast to the employee, give the employee opportunity to explain, though not necessarily record all explanations that he gives. Evidence of someone like a committee of officers who have seen the telecast and/or of those who carried out the telecast could be recorded. Thereafter, the committee or the enquiry officer can

view and come to their conclusion as to whether it would be in the interests of justice to prematurely terminate the services or take some other action as may be thought proper.

47. A modicum of depth at the enquiry would have sufficed. We should also not be understood as saying that the witnesses from the channel would be required for such enquiry. We need not go into further details of what ought to be done at the enquiry as it is for the disciplinary authority/enquiry officer to determine, and rest, content with noting that in our view the dispensing with the enquiry was not justified.

48. Taking all these facts into consideration, we find ourselves in agreement with the conclusion reached by the Tribunal, though for somewhat different reasons, as we have noted above.

49. In view of the aforesaid, the writ petitions are dismissed with no orders as to costs.

sd/-
MOOL CHAND GARG, J

sd/-
PRADEEP NANDRAJOG,J

AUGUST 06, 2010
anb/ag