

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON: 10.09.2015

%

PRONOUNCED ON: 28.09.2015

+

W.P. (C) 7611/2003

YACUB KISPOTTA & ORS.

..... Petitioners

Through: Mr. Shrish Kr. Misra with Mr. Piyush
Dwivedi, Advocates.

versus

DIRECTOR GENERAL BSF & ORS.

..... Respondents

Through: Ms. Mahima Bahl, proxy for Mr. Akshay
Makhija, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.

1. The Petitioners are aggrieved by the respondent Border Security Force's (hereafter "BSF") action dismissing them from its services without holding any inquiry or giving them opportunity to explain their alleged misconduct in accordance with its parent law, the Border Security Force Act, 1968 ("the Act") or the Border Security Force Rules, 1969 ("Rules") framed thereunder.

2. The facts necessary to decide this case are that all the petitioners were enrolled as constables with BSF at different points of time. The first two Petitioners who had joined BSF in 1986 and 1987 as Constables were promoted subsequently to Head Constable and L. Naik. The third and fourth

petitioners had joined the BSF in 1994 and 1997. During the months of January- February 2000, five Companies of BSF were deployed for election duty in the erstwhile State of unified Bihar. All the petitioners were in 'F' Company, which was deployed at Chatru Bandu under Police Station Ranka, District Garhwa. The area was at that time pre-dominantly active with Maoist Communist Centre (MCC) and People's War Group (PWG) activities and was considered hyper sensitive and militancy prone. It is stated that the layout of the terrain with hilly features and thick forests around provided free movements to militants. The company was accommodated in the building of a Primary School. The polling booths under Police station Ranka were quite far from each other and were located in remote interior villages. It is alleged that the sensitivity of the area and the threat to security forces were reported in newspapers much before the elections.

3. The petitioners contend that on 11.02.2000 the Company Commander Shri Kartar Singh, Deputy Commander briefed the troops and informed that earlier the Company was to conduct patrolling duty in 18 polling booths on the election day i.e. 12.02.2000; however, later the instructions were changed and the company was directed to be deployed at the polling booths. In view of this, one section each of the company was to be deployed at a polling booth. In terms of the prevailing instructions, for the security of polling booths, a platoon consisting of 37 personnel was to be deployed. In this view, deployment of one company was alleged as highly inadequate having regard to the disturbed nature of the area.

4. The first two petitioners belonged to 16th Platoon but were shifted to 18th Platoon Section 7. The other petitioners were already in the 18th Platoon. On 11.02.2000 at about 1500 hrs, they were asked to proceed to polling

booth no. 232 at Village Kudrum along with Head Constable Hanumant Singh Sodha, Section Commander and others. Three sections left for Bishrampur cluster point, which was a distance of about 25 km. from Company Headquarters, where the section of the petitioners halted at night. On 12.02.2000 at about 0630 hrs the section of BSF comprising 9 personnel (the section was short of two persons as a section ordinarily consists of 11 persons) along with polling staff left for Kudram, Polling Booth No. 232 on foot and reached there at about 0730 hrs. The polling booth was in the building of a school. The petitioners say that the school building and its surrounding areas were thoroughly searched. Constable Didar Singh and Sanjeev Kumar, i.e. LMG No. 1 and 2 were positioned on the roof of the school building and the others were deployed all around the building. The petitioners L. Nk. JhariLal with 7.62 mm SLR and Ct. Umesh Chand with 51 mm Mortar were deployed behind the school building and Constable Nilkanth, L. Nk. Naveen, Ct. Chandra Pal. HC Hanumant Singh Soda took position towards the front of the school building. It is submitted that the school building was located in a depression/valley ringed on all sides by hilly terrain and surrounded by bushes. Besides, there were *arhar* (dal or lentil) crop of six feet height and wheat crop of 3 feet around the building. Polling started at about 0800 hrs on a slow pace. Head Constable Hanumant Singh Soda tried to establish contact on Porto type set with the Company Head Quarter but the same could not materialize. After some time the petitioners were informed by a villager that a large group of militants had passed through the village during the night, The company tried to contact higher officers at Headquarters and other Sections on radio set but this was in vain. At about 0945 hrs, Constable Chandra Pal again went on the roof with the radio set, but contact could not be established with higher officers at

Headquarters.

5. The petitioners say that at about 1000 hrs they, as well as other BSF personnel were attacked and subjected to heavy volume of firing from all around. The petitioners and all other personnel of the section retaliated the militants' fire with full strength and capability. Due to heavy fire from militants, three BSF personnel succumbed to death and two of them were seriously injured. After about 1.5 hours of firing from both sides, when the ammunition of the BSF personnel was exhausted, the militants closed in on the school building and overpowered the BSF personnel. It is alleged that the militants physically beat up and abused the petitioners. It is submitted that thereafter 100-150 militants lined up on the road and more were standing around the area. They forcibly snatched the arms from BSF personnel and went away shouting "*MCC Zindabad*". The militants were about 200-250 in number according to the petitioners. They also took the injured/dead militants wrapped in sheets.

6. After the militants had left, the petitioners, who survived the attack, tried to give first aid to their injured colleagues i.e. Ct. Chandra Pal and Ct. Sanjeev Kumar. They also found Head Constable Hanumant Singh Soda, L. Nk. Naveen Kumar and Constable Didar Singh lying dead. After some time Subedar Santokh Singh reached there in his Jeep with a guard and the petitioners apprised him about the incident. Those seriously injured were taken away by him in his Jeep. At about 1430 hrs, a civil dumper truck came at the place of occurrence. The Petitioners told the driver of the truck that if he met any BSF vehicle or troops, he should apprise them about the incident. The truck driver told that the BSF troops and SSP; later the BSF Commandant, Shri Thapaliyal and a Deputy Commandant, Shri Katar Singh

along with the Superintendent of Police of Garhwa reached the spot, and after due verification, took them away.

7. It is submitted that on 05.07.2000 suddenly the petitioners along with other personnel who survived the militant attack on 12.02.2000 were put into close arrest without assigning any reason for the same and a Staff Court of Inquiry (hereafter referred to "SCOI") was started. The SCOI recorded the evidence of several witnesses, and the petitioners have annexed the witnesses statements of 3 civilians – voters present in the polling booth as well as teachers, who were there on election duty. These witnesses, it is submitted, supported the petitioners' plea that the BSF company was hopelessly outnumbered and was subjected to unrelenting fire all round. It is stated that they had to surrender and give up their arms because there was threat to the civilians as well as the petitioners' injured comrades. The petitioners contend that BSF personnel fought and resisted the attack valiantly, and given the availability of ammunition, the retaliation could go on for 15 minutes; in the meanwhile three of the personnel were fatally injured and two others severely so, so as to render them incapable of fighting. The building was attacked by gunfire all around, as ascertained by the Deputy Commandant, who stated so in the SCOI.

8. It is stated that thereafter on 26.07.2000, a Record of Evidence ("RoE") was ordered under Rule 48. This was with the object of conducting inquiry and taking down evidence concerning charges under Section 14 (c) and 40 of the Act with respect to the petitioners permitting the militants to take away arms and ammunition worth ₹2,20,897.48/-. A number of witnesses were examined and cross-examined in the RoE proceedings which were completed on 28.01.2001. Thereafter on 02.03.2001, Ct. Sanjeev

Kumar and Ct. Chander Pal, who had received bullet injuries during the incident were released from close arrest. On 03.03.2001, i.e. the next day, it was directed that the petitioner's trial would be conducted by the General Security Force Court ("GSFC") on the said charges, i.e. Section 14(c) and Section 40. Their custodial detention continued under close quarters. In the wake of all these developments, on 26.03.2002, the petitioners were asked to receive a Show Cause Notice under Rule 22 proposing the termination of their services because in the opinion of the competent authority, GSFC trial was not reasonably expedient and practicable. The competent authority tentatively expressed the opinion that their further retention of the services was not desirable. The petitioners resisted the Show Cause Notice and replied on 22.04.2002, specifically asking for copies of the findings and remarks of the Court of Inquiry proceedings as well as those of the superior officers. On 08.05.2002, after their detention for almost two years, they were served with dismissal letters. The petitioners appealed against this decision; but without any relief. Their appeals were rejected on 02.12.2002 and 16.01.2003.

9. Mr. Shirish Mishra, learned counsel relies upon the testimonies (of independent witnesses, i.e. the civilians who were present during the incident as well as the other BSF personnel who had deposed during the SCOI and Record of Evidence) to contend that the act they were accused of- i.e. cowardice during the attack and subsequent loss of government property- could not be attributed to them. It is contended by Sh. Mishra that in any case the opinion of the respondents that it was not reasonably practicable to hold an inquiry could not be said to be based upon materials such as could stand in a court of law. In this regard, learned counsel relied upon the

decision of the Constitution Bench of the Supreme Court in *Union of India v. Tulsiram Patel* 1985 (3) SCC 398. Emphasizing that judicial review is available wherever the opinion recorded is perverse or based on irrelevant material, or where it is so unreasonable that no reasonable person can form such opinion, learned counsel stated that the facts of the present case show that there was no material at all to hold the petitioners' conduct blameworthy.

10. It was also argued that after the RoE, the Commandant, in view of the depositions taken down, has various options under Rule 51(2)- i) he can dismiss the charge, ii) re-hear the charge and award a summary punishment or iii) try the accused by a Summary Security Force Court ("SSFC") where he is empowered to do so or iv) apply to competent authority to convene a Court for the trial of the accused. In the present case, having formed the opinion that it was necessary to constitute a GSFC to go into the incident after hearing the RoE, the respondents could not have sought recourse to Rule 22. Highlighting that Rule 22 is akin to proviso to Article 311(ii) of the Constitution, enabling the Central Government to dispense with the services of a public employee or a government servant only under extreme circumstances where it is not reasonably practicable to hold a trial, it was argued that no such elements were present in the instant case. Learned counsel submitted that the very fact that as many as 13 witnesses deposed during the SCOI and RoE - including the BSF personnel as well as several independent witnesses who corroborated the petitioner's version that they were not at fault, disclosed that holding of a trial was not only practicable but necessary. If the BSF were to conclude that the petitioners were guilty of a serious charge of abandoning their comrades or not resisting the attack, it

was a slur on their honour and cast an indelible stigma on their character. Given the nature of the material, i.e. availability of witnesses whose security was not under threat and who were available at all times - even almost two years after the incident, the opinion formed that it was not "reasonably practicable" to hold a trial was without material. It was submitted that the BSF wanted to short-circuit a further proceeding by way of a SSFC which could have resulted in their exoneration and instead resorted to dispense with inquiry altogether and dismissing them from the services.

11. The respondents, in their counter affidavit as well as during the course of hearing resisted the writ petitions and argued that the facts and circumstances taken in entirety justified the conclusion of the competent authority that it was not reasonably practicable or expedient to hold a trial. The BSF contended that the statements of PWs-1 to 4 and PWs-10 and 11 clearly showed that the petitioners failed in the performance of their duties when under heavy attack from the militants. It was submitted that the petitioners had not taken adequate measures to secure the area and ensure that the entire building was checked beforehand. The casual nature of performance of their duties were evident from the fact that there was no material showing that the militants had been counterattacked or that they had been met with any resistance. It was submitted that when the Company Commander and the Commandant went to visit the area, there were no civilians and that the explanation afforded was not only unconvincing but it appeared to be completely false.

12. It was argued that the Recording Officer took down the RoE, noticed and recorded the statements of witnesses on a priority basis even though he was assigned those duties aside from his own duties as the Second-in-

Command ("2IC"), the Drawing and Disbursing Officer ("DDO") as well as the officiating Commandant. The RoE proceedings were concluded on 03.01.2011. It was submitted that the decision to try the petitioners by GSFC was approved by the competent authority. The BSF made efforts to commence the trial and corresponded with the District Magistrate, Garhwa to intimate availability of police witnesses. However, despite repeated reminders, nothing transpired. It was submitted that in these circumstances, it was felt that no purpose could be served in holding a trial and the competent authority concluded that it was not reasonably expedient or practicable in fact to hold a GSFC.

13. Highlighting the submissions and averments made in the counter affidavit, learned counsel submitted that the following circumstances clearly displayed failure on the part of the petitioners and in fact pointed to their cowardice. It was argued that firstly no casualty was inflicted on the militants who were allegedly 100 or 150 in number. Being trained soldiers, the petitioners should have caused or inflicted maximum casualty or damage to the militants. Secondly, it was submitted that the statement of Subedar Santokh Singh, who deposed in the RoE and who was the first man to visit the polling booth after the incident showed that no proper defence was taken by the section. Utter casualness was shown by the petitioners in allowing the civilians and militants to come close to the deployment which resulted in killing and injury to BSF personnel and loss of weaponry and ammunition. Learned counsel thirdly highlighted the statement of Deputy Commandant Kartar Singh to the effect that the petitioners were very close to the school building and were not tactically deployed at the final stage, resulting in militants closing in on the premises which in turn caused heavy casualties to

BSF and loss of arms and ammunition. The fact that only a small quantity of ammunition was recovered from the place of incident showed that the petitioners did not resist the militants' fire and surrendered, exhibiting cowardice. It was argued that the firing by the militants was not retaliated effectively and one militant equipped with medicines gave an injection to Constable Sanjeev Kumar who was injured. This clearly indicated that the militants had developed sympathy towards BSF personnel after they surrendered their weapons. It was lastly argued that in the opinion of the Court of Inquiry, the first petitioner, in the performance of the duties of Section 2IC, miserably failed in his functioning as he neither exercised fair control nor deployed the 51mm mortar tactically. He also committed blunder by ordering two light machine guns which were deployed in positions that resulted in the ineffectiveness of one of them and the other being neutralized by reason of Constable Didar Singh's fatal injury. It was submitted that the petitioner and Constable Umer Chand failed to make use of the 9 mm pistol and 10 live rounds issued to them for personal safety. The 55 mm mortar also was not positioned tactically in anticipation of the threat.

14. It was argued that the decision whether to hold an inquiry or dispense with it on the ground that it was not reasonably practicable or expedient to do so is a subjective one and the Courts have a limited role in overseeing that decision in judicial review. In support of this proposition, learned counsel relied upon the decision of the Supreme Court in *The Chief of Army Staff v. Major Dharampal Kukreti*, AIR 1985 SC 703. Counsel urged the court not to exercise its discretion and grant relief, given the fact that there was no dispute about the attack and that the petitioners could not defend the polling booth and furthermore, that they allowed the militants to rob them of

weapons and ammunitions. In these circumstances, he argued that it would not be appropriate to hold that the BSF's decision that it was not practicable to hold an inquiry was unjustified.

Provisions of the Act

15. Before a discussion on the merits, it would be necessary to extract the relevant provisions of the Act and the Rules, i.e. the Border Security Force Rules, 1969. The same are as follows:

I Provisions of the Act

Section 14. Offences in relation to the enemy and punishable with death. —
Any person subject to this Act who commits any of the following offences, that is to say, —

(a) shamefully abandons or delivers up any post, place or guard, committed to his charge or which it is his duty to defend; or

(b) intentionally uses any means to compel or induce any person subject to this Act or to military, naval or air force law to abstain from acting against the enemy or to discourage such person from acting against the enemy; or

(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or...

shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Section 40. Violation of good order and discipline. —

Any person subject to this Act who is guilty of any act or omission which though not specified in this Act, is prejudicial to good order and discipline of the Force shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

48. Punishments awardable by Security Force Courts.—

(1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale following, that is to say,—

(a) death;

(b) imprisonment which may be for the term of life or any other lesser term but excluding imprisonment for a term not exceeding three months in Force custody;

(c) dismissal from the service;

(d) imprisonment for a term not exceeding three months in Force custody;

(e) reduction to the ranks or to a lower rank or grade or place in the list of their rank in the case of an under-officer;

(f) forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion

(g) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(h) fine, in respect of civil offences;

(i) severe reprimand or reprimand except in the case of persons below the rank of an under-officer

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active duty;

(k) forfeiture in the case of person sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal;

(l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence for which he is convicted is made good.

(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

49. Alternative punishments awardable by Security Force Courts.—

Subject to the provisions of this Act, a Security Force Court may, on convicting a person subject to this Act of any of the offences specified in sections 14 to 45 (both inclusive) award either the particular punishment with which the offence is stated in the said sections to be punishable or, in lieu thereof, any one of the punishments lower in the scale set out in section 48 regard being had to the nature and degree of the offence.

64. Kinds of Security Force Courts.—

For the purposes of this Act there shall be three kinds of Security Force Courts, that is to say,—

- (a) General Security Force Courts;*
- (b) Petty Security Force Courts; and*
- (c) Summary Security Force Courts.*

70. Summary Security Force Court.—

(1) A Summary Security Force Court may be held by the Commandant of any unit of the Force and he alone shall constitute the Court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or subordinate officers or one of either, and who shall not as such, be sworn or affirmed.

74. Powers of a Summary Security Force Court.—

(1) Subject to the provisions of sub-section (2), a Summary Security Force Court may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a Petty Security Force Court for the trial of the alleged offender, an officer holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the sections 14, 17 and 46 of this Act, or any offence against the officer holding the court.

(3) A Summary Security Force Court may try any person subject to this Act and under the command of the officer holding the court, except an officer, or a subordinate officer.

(4) A Summary Security Force Court may pass any sentence which may be passed under this Act, except the sentence of death or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be,—

(a) one year, if the officer holding the Security Force Court has held either the post of Superintendent of Police or a post declared by the Central Government by notification to be equivalent thereto, for a period of not less than three years or holds a post of higher rank than either of the said posts; and

(b) three months, in any other case.

II Provisions of the Rules

22. Dismissal or removal of persons other than officer on account of misconduct.—

(1) When it is proposed to terminate the service of a person subject to the Act other than an officer, he shall be given an opportunity by the authority competent to dismiss or remove him, to show cause in the manner specified in sub-rule (2) against such action: Provided that this sub-rule shall not apply—

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a Security Force Court; or

(b) where the competent authority is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity of showing cause.

(2) When after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence: Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion, its disclosure is not in the public interest.

(3) The competent authority after considering his explanation and defence if any may dismiss or remove him from service with or without pension: Provided that a Deputy Inspector-General shall not dismiss or remove from service, a Subordinate Officer of and above the rank of a Subedar.

(4) All cases of dismissal or removal under this rule, shall be reported to be Director-General.]

23. Dismissal or removal by Central Government.—Where the Central Government is satisfied, for reasons to be recorded in writing that—

(i) it is not reasonably practicable to follow the procedure laid down in the said rules, or

(ii) it is not expedient, in the interests of the security of the State, to follow such procedure, it may order the dismissal, or removal from the Force of a person subject to the Act without following the procedure laid down in rules 20 and 21.

36. Arrest when to be imposed.—

(1) Any person charged with,—

(i) an offence under section 14, or clause (a) clause (b) of section 16, or section 17 or section 20 or sub-section (1) of section 21.

*(ii) a civil offence punishable with death or imprisonment for life....
shall be placed under arrest*

47. Charges not to be dealt with summarily.—*A charge for an offence under section 14 or section 15 or clauses (a) and (b) of section 16, or section 17 or clause (a) of section 18 or clause (a) of section 20 or clause (a) of section 24 or section 46 (other than that for simple hurt or theft) or a charge for abetment of or an attempt to commit any of these offences shall not be dealt with summarily.*

48. Record of evidence.-(1) *1[The officer ordering the record of evidence may either prepare the record of evidence himself or detail another officer to do so.*

(2) The witnesses shall give their evidence in the presence of the accused and the accused shall have right to cross-examine all witnesses who give evidence against him.

2[Provided that where statement of any witness at a court of inquiry is available, examination of such a witness may be dispensed with and the original copy of the said statement may be taken on record. A copy thereof shall be given to the accused and he shall have the right to cross-examine if he was not afforded an opportunity to cross-examine the witness at the Court of Inquiry.]

(3) After all the witnesses against the accused have been examined, he shall be cautioned in the following terms; “You may make a statement if you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence.” After having been cautioned in the aforesaid manner whatever the accused states shall be taken down in writing.

(4) The accused may call witnesses in defence and the officer recording the evidence may ask any question that may be necessary to clarify the evidence

given by such witnesses”

49 Abstract of evidence.—(1) *An abstract of evidence shall be prepared either by 1[the officer ordering it] or an officer detailed by him.*

(2)(a) *The abstract of evidence, shall include-*

(i) *signed statements of witnesses wherever available or a precis thereof,*

(ii) *copies of all documents intended to be produced at the trial.*

(b) *Where signed statements of any witnesses are not available a precis of their evidence shall be included.*

(3) *A copy of the abstract of evidence shall be given by the officer making the same to the accused and the accused shall be given an opportunity to make a statement if he so desires after he has been cautioned in the manner laid down in sub-rue (3) of Rule 48:*

Provided that the accused shall be given such time as may be reasonable in the circumstances but in no case less than twenty four hours after receiving the abstract of evidence to make his statement.

51. Disposal of case against an enrolled person by Commandant after record or abstract of evidence.—

(1) *Where an officer has been detailed to prepare the record of evidence or to make an abstract thereof he shall forward the same to the Commandant.*

(2) *The Commandant may, after going through the record or abstract of evidence—*

(i) *dismiss the charge, or*

(ii) *rehear the charge and award one of the summary punishments, or*

(iii) *try the accused by a Summary Security Force Court where he is empowered so to do, or*

(iv) *apply to a competent officer or authority to convene a court for the trial of the accused.*

170. Composition.—*A Court of inquiry may consist of one or more members. Persons not subjected to the Act may be appointed as members when the Court is to investigate matters of a specialised nature, and when*

officers subject to the Act with specialist qualifications are not available to be members.]

171. Assembly.—*A Court of inquiry may be assembled by order of a Commandant or any officer or authority superior to the Commandant.*

173. Procedure of Courts of inquiry.—

(1) The proceedings of a Court of inquiry shall not be open to the public. Only such persons may attend the proceedings as are permitted by the Court to do so.

(2) The evidence of all witnesses shall be taken on oath or affirmation.

(3) Evidence given by witnesses shall be recorded in narrative form unless the Court considers that any questions and answers may be recorded as such.

(4) The Court may take into consideration any documents even though they are not normally proved.

(5) The Court may ask witnesses any question, in any form, that they consider necessary to elicit the truth and may take into consideration any evidence, whether the same, is admissible under the Indian Evidence Act, 1872 (1 of 1872) or not.

(6) No counsel, or legal practitioner shall be remitted to appear before a Court of inquiry.

(7) Provisions of section 89 shall apply for procuring the attendance of witnesses before the Court of inquiry.

(8) Before giving an opinion against any person subject to the Act, the Court will afford that person the opportunity to know all that has been stated against him, cross-examine any witnesses who have given evidence against him, and make a statement and call witnesses in his defence.

(9) The answers given by a witness to any question asked before the Court shall not be admissible against such a witness on any charge at any subsequent occasion except a charge of giving false evidence before such Court.

174. Courts of inquiry when to be held.—

(1) A Court of inquiry may be held to investigate into any disciplinary matter or any other matter of importance.

(2) In addition to a Court of inquiry required to be held under section 62, a Court of inquiry shall be held in the following cases:—

(a) (i) *All unnatural deaths of persons subject to the Act or of other persons within the Force lines, an immediate report shall be sent through the messenger to the officer-in-charge of the Police Station within whose jurisdiction the place of such unnatural death is.*

(ii) *In cases when such report cannot, for any reason be delivered within a reasonable time, a Court of inquiry shall be held into such unnatural death.*

(iii) *Immediately on receipt of information of an unnatural death the Commandant or the senior most officer of the Battalion present shall prepare a report on the proforma set out in Appendix XIII.*

(b) *All injuries sustained by persons subject to the Act which are likely to cause full or partial disability. The Court shall in such case determine whether such injuries were attributable to service or not.*

(c) *All financial irregularities, losses, theft and misappropriation of public or Force property, where it is necessary to obtain the order of a superior officer on such irregularities, loss, theft or misappropriation.*

(d) *All losses of secret documents and any other material of secret of above security classification. Such a Court of inquiry shall be ordered by an officer or authority superior to the unit Commandant having the lost document or material on its charge.*

(e) *All damage to private persons or property in respect of which there is likely to be a claim against the Government or the Force.*

175. Action on the proceedings of a Court of inquiry.—*The proceedings of a Court of inquiry shall be submitted by the Presiding Officer to the officer or authority who ordered the Court. Such officer or authority on receiving the proceedings may either pass final orders on the proceedings himself, if he is empowered to do so, or refer them to a superior authority."*

16. By reason of Section 14 (c), whenever a BSF personnel "*shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice..*" he commits an offence of such a grave nature as to warrant imposition of extremely severe punishments. Section 40 is a general residuary offence aimed at maintaining the good order and discipline of the force. By reason of Rule 36, someone charged with a Section 14 violation has to be kept under close arrest. Rule 47 mandates that

such offences are not to be dealt with summarily, i.e. by summary court martial. Thus, BSF views the cowardly conduct of its employee, resulting in surrender of arms or ammunition with such severity that a summary trial is insufficient. The offence in fact calls for convening of a General Summary Force Court. These aspects assume considerable importance, when juxtaposed with other facts, as would be seen presently.

SCOI and Record of Evidence

17. It is critical to discern the nature of evidence which emerged in the SCOI and RoE directed by the BSF. The records of the respondents relating to the RoE were produced before and perused by us. PW-1 Chander Pal Singh and PW-2 Sanjeev Kumar, the two BSF personnel who suffered injuries during the attack, deposed. Their testimonies establish that about 50-60 electors had cast their votes when the premises were suddenly attacked by militants. The latter were taking advantage of the foliage and trees surrounding the building; PW-1 claimed to have retaliated the fire. He witnessed the fatal attack on L. Nk. Naveen Kumar. He was injured. His weapons and ammunition were taken away after he fell unconscious; he also deposed that initially, the militants, numbering 150 were firing from a distance of 200 yards; but they closed in after the fatalities and injuries to the BSF personnel. He also stated having fired 40 rounds at the militants but was unable to say how many were killed or injured. PW-2 mentioned about how after being informed that militants had visited the village previously, efforts were unsuccessfully made to contact the battalion. BSF personnel searched the polling booth and its surrounding 75-100 yards but did not, at that time, see anyone. Around 10 AM the polling booth and school premises were under heavy attack by militants. Dildar Singh was manning an LMG

from the front of the building. PW-2 manned the rear of the building. Didar took the position at the left side, later, on the terrace; PW-2 went over to the right side. Didar Singh was shot; PW-2 jumped down. He was hit by a bullet. He too stated that there were about 150 militants who attacked the building; he answered the questions of the recording officer and said that he had fired at the militants. He also stated that 3 constables in all had positioned themselves at the rear side of the school premises.

18. PW-3 Subedar Santokh Singh belonged to a section which stayed on at Bandu (Chatru) and was detailed to patrol the area. He deposed that when reaching Boriya Bunkar, he found the place deserted and was informed that militants had attacked a nearby polling booth. He rushed to Booth No 232, i.e. Kudram and saw L. Nk. Jhari Lal. He stated that BSF personnel had been attacked and some of them had died and he saw the first petitioner. PW-1 and PW-2 were unconscious. Umesh Chander gave him a loaded pistol which he took and the witness, i.e. PW-3 departed to the Ranka station at around 12:15 PM. He stated that the Kudrum area was undulating and that the defence of the BSF unit/section in the polling booth was not right. In cross examination, he admitted that Umesh Chander might have told him that he left behind the pistol the time he changed positions. PW-4 visited the spot at around 3:15 and found four dead BSF personnel, including the Section Commander. He went to the school building terrace and found empty cases of 7.62 MMTCN. He came down and found other cases of 7.62 mm.

19. PW-6 deposed about the arms and ammunitions issued to the members of Section 7 deployed for Bandu; it consisted of three magazines and 50 rounds for rifleman, one LMG, 12 magazines and 300 rounds to

LMG men; 6 bombs and 6 para bombs with a pistol and magazine and 10 rounds were issued to the mortar man. PW-8 reached the spot after the event and stated that Jhari Lal was screaming. He was shouting that four of his comrades were dead and two injured; the militants had threatened to return. This witness and PW-7 stated that they did not observe that any defence had been formed at the site. PW-9 received information over wireless at 11:30 about the attack at polling booth 232, and deposed that he immediately forwarded the message to the Company Commander who was 15 kms away at a polling booth named Bena. He admitted to the possibility of communication failure due to distance and intervening obstruction such as forest.

20. PW-10 Commandant, Communication Branch, A.C. Thapliyal spoke about reaching the site of the attack and observing the following:

- (1) The four petitioners were standing near the school building on the road without weapons;
- (2) The dead bodies of the four BSF personnel killed during the attack;
- (3) Bullet marks around the school building upon inspection/observation;
- (4) Being told by the petitioners about the attack, retaliation by them and their having exhausted ammunition, after which the militants closed in upon them overpowering them and robbing them of weapons and ammunitions.

The witness stated that the BSF was unable to mount a counter attack till two or three days later because of a shortage of troops. He also corroborated the petitioners' version about the terrain and location of the school building in a low lying area, surrounded by bushy undergrowth and ringed by small hills. Two drains, one in front of the school and another on the lower side,

provided cover to the militants. The witness also corroborated PW-4's testimony about siting of an LMG over the school, presence of 7.62 mm empty cases and that a position had been taken by Jhari Lal over an old and dilapidated building as well as some 7.62 empty casing lying around. He testified that *"rest of the soldiers were deployed around as they told me."* PW-12 an ASI/Clerk, produced documents, including 8 statements of witnesses who had deposed; they were villagers. The recording officer took them on the record as Exhibits E to E-6.

21. Each of the petitioners were given opportunity to make a statement after being cautioned that anything they said could be used against them. The first petitioner stated about the attack by about 150 militants, who had taken cover in a couple of houses nearby. He described the attack in detail, and that a stone piece hit his right eye, which incapacitated him. He stated how BSF personnel retaliated the fire; the death and injury to the others and that when he was counter attacking, his rifle went silent due to lack of ammunitions. He said how he was surrounded by the militants and one of them armed with an AK-47 weapon, took away the rifle. The second petitioner too had the same version; he described the attack, death and injury of the BSF personnel; how initially he could not counter attack, but later, when he did so, reaching a stage when he ran out of ammunition. He too was surrounded by militants, hit, lost consciousness after falling down and was robbed of his weapon. The third petitioner, Umesh Chand was positioned with the 51 mm mortar; he described about checking the security of the area before the polling; the attack; his effort to throw a grenade at the militants, being pricked by the grenade pin, being surrounded by militants, who took away the mortar. The fourth petitioner described how at the time of the

attack, he took his position behind a tree, observed Naveen Kumar being attacked and his death, leaving his position and going to the right side of the school. His weapon ran out of ammunition. He was surrounded by about 8-10 militants some of whom overpowered, beat him and snatched his rifle and three magazines. He said that the militants were armed with AK-47, LMGs and .303 rifles. He stated that the militants had carried their injured accomplices in a sheet and fastened a hanky on Sanjeev Kumar and Chander Pal.

22. The petitioners have annexed the testimonies of several independent village witnesses who deposed in the SCOI. The Respondents in their counter affidavit accept these statements as a matter of record. Rajmatiya Devi who went to the polling booth to cast her vote and was present at the time the militants attacked the polling booth sustained bullet injuries. She deposed that there was exchange of fire between the militant group and BSF personnel and she sustained a bullet injury. Mohd. Saghir Ansari, an Assistant Teacher was deputed on election during at polling booth no 232. In his statement Ansari, a member of the polling staff, stated that on the date of polling BSF personnel were alert on their duties and the number of him, according to his statement were not more than 100. Paulus Tirkey, an Assistant Teacher and the Presiding Officer of the Polling Booth, specifically stated that the BSF Personnel fought well and no communication could be established.

Analysis and Conclusions

Circumstances when an inquiry into charges of misconduct can be dispensed with

23. It is established by the authorities that the decision whether the circumstances are such as to conclude that holding an inquiry is not reasonably practicable, is within the domain of executive decision making-of the disciplinary authority. However, that has to be based on objective facts. The court's role in judicial review is confined to considering whether the reasons were germane and relevant. *Tulsiram* (supra) is a judgment of the Constitution Bench of the Supreme Court on the meaning of not "reasonably practicable" in relation to the inability of the executive government or executive authority to hold an inquiry, in the context of proviso to Article 311 (2) of the Constitution. The Court held as follows:

"138. ...In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."

Indian Railway Construction Co v. Ajay Kumar, 2003 (4) SCC 579 states held this:

"12. ... What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with the enquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry."

Earlier, in *Union of India v. R. Reddappa*, 1993 (4) SCC 269 the Supreme Court held that:

“5. ... The jurisdiction to exercise the power under Rule 14(ii) was dependent on existence of this primary fact. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule then the action was vitiated due to erroneous assumption of jurisdictional fact therefore the Tribunal was well within its jurisdiction to set aside the orders on this ground. An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order.”

Kuldip Singh v. State of Punjab, 1996 (10) SCC 659 is a decision for the authority that Courts do examine in judicial review whether the material which influences the decision to say that it is not reasonably practicable to hold inquiry is such as supports the view of the government, or is so inadequate that intervention is called for.

24. *Union of India & Ors. v. Harjeet Singh Sandhu*, 2001 (5) SCC 593 examined and re-visited the law in the light of the decision in *Tulsiram Patel* and summarized the principles applicable. The court held as follows:

“33. ... We may with advantage refer to certain observations made by the Constitution Bench (majority view) in Union of India v. Tulsiram Patel, (1985) 3 SCC 398. Article 311(2) proviso (b) contemplates a government servant being dismissed or removed or reduced in rank, dispensing with an enquiry, if it is not reasonably practicable to hold such enquiry. The Constitution Bench dealt with meaning of the expression reasonably practicable and the scope of the provision vide paras 128 to 138 of its judgment. The Constitution Bench pertinently noted that the words used are “not reasonably practicable” and not

“not practicable” nor “impracticable” (as is the term used in sub-rule (2) of Rule 14 of the Army Rules). Thus, the decision in Tulsiram Patel case may not ipso facto throw light on the issue before us but some of the observations made by the Constitution Bench can usefully be referred to. A few illustrative cases mentioned by the Constitution Bench, wherein it may be “not reasonably practicable” to hold an enquiry, are:- (SCC pp. 502-503, para 129)

(i) a situation which is of the creation of the concerned government servant himself or of himself acting in concert with others or his associates;

(ii) though, the government servant himself is not a party to bringing about of a situation yet the exigencies of a situation may require that prompt action should be taken and not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities.

34. ... The Constitution Bench has further held that disciplinary enquiry is not expected to be dispensed with lightly or arbitrarily or out of ulterior motive or merely to avoid the holding of an enquiry or because the departments case against the government servant is weak and must fail. It is not necessary that a situation which makes the holding of an enquiry not reasonably practicable should exist before the disciplinary enquiry is initiated against the government servant; such a situation can also come into existence subsequently during the course of an enquiry. Reasonable practicability of holding an enquiry is a matter of assessment to be made by the disciplinary authority. The satisfaction of the authority is not immune from judicial review on well settled parameters of judicial review of administrative decisions. However, if on the satisfaction reached by the authority two views are possible, the court will decline to interfere.”

25. In *Satyavir Singh v. Union of India* (1985) 4 SCC 252 the dispensing with of an inquiry was based on the view that witnesses, including senior police officials, were intimidated and therefore, would not have been able to speak freely or at all. The Supreme Court upheld the government's view and decision. It was held, *inter alia*, that:

“108. In examining the relevancy of the reasons given for dispensing with the inquiry, the court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgment over the reasons like a Court of first appeal in order to decide whether or not the reasons are germane to clause (b) of the second proviso or an analogous service rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

26. *Sahadeo Singh v. Union of India*, (2003) 9 SCC 75 was a case where the petitioners were accused of theft of public property. The fact gathering preliminary inquiry showed their culpability and involvement; however, the authority which decided to dispense with a regular disciplinary enquiry felt that holding it would have entailed danger to the lives and security of the public witnesses, who feared for their lives. The conclusion of the authority that holding an inquiry was not reasonably practicable was, therefore, upheld.

27. In the present case, the following objective facts emerge from an overall consideration of the materials, including the witnesses such as the BSF personnel examined in the RoE/SCOI and the independent witnesses:

(i) 9 BSF personnel were deployed for election duty on the fateful day, i.e. 12.02.2000. Ordinarily, the Section strength was to be 11;

(ii) After reaching the site in the early hours of 12.02.2000, the BSF personnel, including some of the petitioners reconnoitered the area, i.e. the school building where the polling was to be held and its surroundings to determine the security of the polling booth;

(iii) The school building was in a low-lying area surrounded by hilly ground which contained bushes. The school was also surrounded by a thick crop growth. These inhibited visibility;

(iv) There were two drains - one at a lower level from where militants could hide and mount their attack. As such, the polling booth/building was vulnerable to attack.

(v) The polling was underway when militants, numbering around 100 or so, suddenly attacked and fired at the building from every angle. The polling station came under unrelenting heavy fire from the militants.

(vi) Within a few minutes, three BSF personnel were fatally wounded and died while retaliating. Two others, i.e. PWs-1 and 2 were seriously injured and fell down. The petitioners were the surviving BSF personnel who continued with the counterattack. All of them claimed to have run out of ammunition and were individually - at different points of time - were

surrounded and beaten by the militants and their weapons were snatched from them.

(vii) The prosecution witnesses, i.e. PWs-4 and 10 and who reached the spot were told about the manner of attack and how the petitioners were deprived of weapons and ammunition. A prosecution witnesses, i.e. PWs-10 observed the school building and found bullet marks all around. He also noticed bullet casings and shells lying at the places mentioned by the petitioners.

(viii) The petitioners' version about the failure to establish communication and the measures taken by them to counterattack the militants was corroborated by the independent testimony of villagers. It was also corroborated partly by the testimony of PW-9.

(ix) The petitioners were taken into close quarters custody on 05.07.2000 and were kept in that condition for two years. Thus, the villagers who deposed had no cause to feel threatened by the petitioners; equally it could not be said that the villagers were induced to depose in their favour.

28. *Tulsiram Patel* (supra) noticed that the expression used is '*not reasonably practicable*' and not '*impracticable*'. Relying on Oxford English Dictionary the court held:

"130. ... '*practicable*' means '*Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible*'. Webster's Third New International Dictionary defines the word '*practicable*' *inter alia* as meaning '*possible to practice or perform : capable of being put into practice, done or accomplished: feasible*'. Further, the words used are not '*not practicable*' but '*not reasonably practicable*'. Webster's Third New International Dictionary defines the word '*reasonably*' as '*in a reasonable manner: to a fairly*

sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

The court observed that situations which may fall within the "not reasonably practicable" zone cannot be catalogued; at the same time, it illustrated those that could be viz, where the public employee *"particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority."* (para 130)

The court held, importantly that

"...The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty...."

29. A three Judge Bench of the Supreme Court, in *Chief Security Officer & Ors. v. Singasan Rabi Das* (1991) 1 SCC 729, held that:

"5. ... It is common ground that under Rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witness of the security/other railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry..."

30. If all the authorities were to be considered in the backdrop of the facts of the present case, there cannot be any doubt that the sudden and inexplicable *volte face* of the BSF, from its earlier decision to hold a General Security Force Court, to altogether dispense with any inquiry and follow Rule 22 is utterly indefensible. The only inkling as to why it was not reasonably practicable to hold an inquiry is that BSF states that its attempt to secure the presence of independent witnesses through the local police was not successful. This explanation, in the counter affidavit, and even on the record is less than credible, to say the least. The BSF at the outset was of opinion that a full-fledged inquiry into the incident was necessary, as

evidenced by the fact that the four petitioners and two others, i.e. injured BSF personnel were kept in close arrest, under Rule 36. This procedure is mandatory wherever the charge contemplated is an offence under Section 14- as the present case undoubtedly is. Thirdly, a SCOI was held and thereafter a Record of Evidence was conducted. Several witnesses deposed about the incident; they were cross examined. The petitioners' statements too were recorded, after administering warnings to them. Rule 47 mandates that in cases involving Section 14 violation, summary proceedings cannot be resorted to. The RoE and the SCOI proceedings showed that not only witnesses were available, but willingly deposed during these proceedings. These proceedings were held for almost a year. 13 BSF personnel deposed; the statements of eight others, mostly villagers who had witnessed the incident- either voters or others posted on election duty, showed that there was no atmosphere of fear which could threaten them. Indeed, to avoid such a situation, the petitioners were kept under close arrest for two years.

31. The law thus, from *Tulsiram Patel* onwards is that while the competent authority can dispense with an inquiry if it is not reasonably practicable, that view should be grounded on reasons. The courts can exercise judicial review to decide whether there was any material to determine the reasonableness of such view. *Singasan Rabi Das* is closest in the facts to the circumstances of the present case. The court rejected the view that holding an inquiry would have resulted in humiliation of the witnesses rendering them ineffective, was sufficient to say that it was not reasonably expedient to hold an inquiry. *Chandigarh Administration v. Ajay Manchanda* AIR 1996 SC 3152 is authority for the proposition that vague

inferences are insufficient for a sustainable opinion that inquiry is not reasonably practicable.

32. In the present case, the availability and willing participation of the witnesses in the RoE belies the BSF's assertion that it was not reasonably practicable to hold a Force Court. On the contrary, it was highly doubtful if the petitioners would have been held guilty at all, given what transpired during the inquiry especially taking into account the testimonies of BSF personnel and independent witnesses. The BSF appears to have acted on prejudice- a fact borne out by the circumstance that the two injured personnel who survived the attack, i.e. PW-1 and PW-2, too were kept under close arrest, but subsequently released. Their participation and role is not distinguishable from the role attributed to the petitioners. The BSF's prejudice and predisposition to say that the petitioners were somehow culpable is apparently based on the fact that they were unharmed and not injured. The three dead BSF personnel could not tell any tales; the two surviving injured were spared after initial suspicion. However, in the case of the petitioners, since a full SCOI and RoE did not reveal anything damaging, and they were in fact not proceeded with after February, 2002, the BSF apparently felt that they had to be somehow got rid of.

33. We note with distress that in the note-sheet contained at page 246 in a "GSFC correspondence file" in relation the four petitioners, the BSF machinery has deliberately chosen not to provide the materials that the petitioners sought in their initial reply to the show cause notice under Rule 22.

“May like to peruse the applications dt 22/4/02 submitted by HC Y Kispotta and 03 others of 200 BN BSF attached with this Unit for disciplinary purpose placed [illegible]

02 Vide above quoted letters they have sought page no 1 to 10 and page no 96 to 123 of SCOI proceedings, copy of which has been provided under Annexure-I.

03 In this connection it is submitted that contents of page 1 to 10 and page no 96 to 123 are as under

Page no 1 Order of SCOI

Page no 2 Msg of [] HQPB to 06 BN regarding SCOI

Page no 3 Msg of [] HQPB to 06 Incident reg death of BSF Pers

Page no 4 to 10 Delay report in connection with SCOI

Page no 96 to 123 Findings and opinions of the Court

04 On verbal advice of the DC (Law) []HQBSF [], the pages furnished above were not provided to the pers of 200 Bn BSF.

05 Submitted for your kind perusal and further order please.

26/4

06 Adjt Submitted for your kind perusal and further order pl.

27/4

07 2I/C- AOL

08 1. S/n with rule position on the Subject

2. Also check w/ [] SHO

29/4

09 []

Sir,

Contents of the pages mentioned at Para 03 seems to be unwanted for the accused. However, since they have requested to be provided the copies of the said pages, if appd, we may seek advice of SHQ BSF []

For perusal and further order pl

30/4”

34. It is clear that based on the materials already on record, their dismissal could not have been justified and therefore the relevant pages were withheld from the petitioners. The manner that the dismissal was ultimately undertaken leads to the irresistible conclusion that since there was no incriminating material against them, the inquiry was dispensed with altogether as a matter of convenience. Perhaps one can only speculate that if a General Security Force Court were to be held, the role of more senior officials would have come under scrutiny, given the extent of underpreparedness - possibly lack of any intelligence and shortfall in ammunitions issued to the section. Given the long passage of time, the available materials on record, and our finding as to the manner in which the dismissal was

reached, we do not consider it necessary nor would it be expedient in the interests of justice that the matter be remanded for further enquiry.

35. In these circumstances, we quash the termination orders dated 08.05.2002 and direct the Respondents to reinstate all the Petitioners in service from the date of their illegal termination i.e. 08.05.2002. They shall be entitled to all consequential benefits including increments, pay revision and due consideration for promotions in accordance with the applicable rules and policy. However, arrears of salary shall be restricted to 50%. An Order of reinstatement and consequential pay fitment/fixation shall be issued within 8 weeks and amounts shall be paid in 12 weeks. The writ petition is allowed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

SEPTEMBER 28, 2015