

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 16 of 2016**

Lakshmikant Tiwari S/o Ramavtar Tiwari, Aged About 30 Years R/o
Ramnagar Ward No.3, Takhatpur, PS Takhatpur, District Bilaspur,
(Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home,
Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur,
(Chhattisgarh)
2. The Director General Of Police, Police Head Quarters, Chhattisgarh,
Raipur, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Bilaspur Range, Bilaspur, District Bilaspur,
(Chhattisgarh)
4. Superintendent Of Police, Rajnandgaon, District Rajnandgaon,
(Chhattisgarh)
5. Superintendent Of Police, Janjgir Champa, District Janjgir Champa,
(Chhattisgarh)

---- Respondents

Writ Appeal No. 31 of 2016

Sanjay Baghel S/o Shri Ramadhin Baghel, Aged About 36 Years R/o
Village Aman Nagar, Mowa Post Mowa, District Raipur (Chhattisgarh)

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Home Department, DKS
Bhawan Raipur (Chhattisgarh) [now Mantralaya, Mahanadi Bhawan,
Naya Raipur, District Raipur (Chhattisgarh)]
2. The Director General Of Police, Police Head Quarters, Civil Lines,
Raipur (Chhattisgarh)
3. Inspector General Of Police, Durg Range District Durg (Chhattisgarh)
4. Superintendent Of Police, Rajnandgaon, District Rajnandgaon,
(Chhattisgarh)

---- Respondents

Writ Appeal No. 30 of 2016

Shantilal Sahu S/o Late Shri Khemlal Sahu, Aged About 32 Years R/o
Ramnagar, Muktidham Road, In Front Of Arvind Book Depot, Bhilai,
Post Supela, District Durg, (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, D.K.S. Bhawan Raipur (Chhattisgarh), (Now Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Durg Range, District Durg, (Chhattisgarh)
4. Superintendent Of Police, Rajnandgaon, District Rajnandgaon, (Chhattisgarh)

---- Respondents

Writ Appeal No. 33 of 2016

Gopiram Sahu S/o Shri Keshavram Sahu, Aged About 29 Years R/o Adarsh Chauk Ward No. 43 Village - Lakholi, District Rajnandgaon (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, D. K. S. Bhawan Raipur (Chhattisgarh) , [Now Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur (Chhattisgarh)
3. Inspector General Of Police, Durg Range District Durg (Chhattisgarh)
4. Superintendent Of Police, Rajnandgaon, District Rajnandgaon (Chhattisgarh)

---- Respondents

Writ Appeal No. 34 of 2016

Likeshwar Kumar Sahu S/o Shri Motiram Sahu, Aged About 30 Years R/o Village Raja Bhanpuri, Post Pendri, P.S. Rajnandgaon District Rajnandgaon (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, D. K. S. Bhawan Raipur (Chhattisgarh) [now Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)]
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Durg Range, District Durg, (Chhattisgarh)
4. Superintendent Of Police, Rajnandgaon, District Rajnandgaon, (Chhattisgarh)

---- Respondents

Writ Appeal No. 28 of 2016

Ganesh Singh Dhurve S/o Shri Pancham Dhurve, Aged About 43 Years
R/o Police Line Kabirdham P.S. Kabirdham, District Kabirdham
Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Thorough The Secretary, Home Department D.K.S. Bhawan Raipur Chhattisgarh Now Mantralaya Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Durg Range, District Durg, (Chhattisgarh)
4. Superintendent Of Police, Kabirdham, District Kabirdham Chhattisgarh
5. Superintendent Of Police, Rajnandgaon, District Rajnandgaon Chhattisgarh

---- Respondents

Writ Appeal No. 23 of 2016

Suraj Prakash Dixit S/o Shri A. K. Dixit, Aged About 31 Years R/o Sipat Road Sarkanda, P.S. Sarkanda, Bilaspur, District Bilaspur, (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, D.K.S. Bhawan Raipur (Chhattisgarh), (Now Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Durg Range, District Durg, (Chhattisgarh)
4. Superintendent Of Police, Rajnandgaon, District Rajnandgaon, (Chhattisgarh)

---- Respondents

Writ Appeal No. 24 of 2016

Sanjay Verma S/o Khem Singh Verma, Aged About 31 Years R/o Village Semari, PS Patan, District Durg, (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, Mahanadi Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
2. Director General Of Police, Police Head Quarters, Chhattisgarh, Civil

Lines, Raipur, (Chhattisgarh)

3. Superintendent Of Police , Rajnandgaon, District Rajnandgaon, (Chhattisgarh)
4. Superintendent Of Police, Durg, District Durg, (Chhattisgarh)

---- Respondents

Writ Appeal No. 27 of 2016

Tejnath Dahariya S/o Shri Ledgaram Dahariya, Aged About 36 Years R/o Village Nayakbandha, Post & Thana Abhanpur, District Raipur, (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, D.K.S. Bhawan, Raipur (Chhattisgarh) (Now Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Durg Range, District Durg, (Chhattisgarh)
4. Superintendent Of Police, Rajnandgaon, District Rajnandgaon, (Chhattisgarh)

---- Respondents

Writ Appeal No. 32 of 2016

Purushottam Sharma S/o Late Shri Bhuneshwar Sharma, Aged About 45 Years R/o Village Bhalapur Tahsil Mungeli, District Mungeli (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, D.K.S. Bhawan Raipur (Chhattisgarh), (Now Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Durg Range, District Durg, (Chhattisgarh)
4. Superintendent Of Police, Kabirdham, (Chhattisgarh)

---- Respondents

Writ Appeal No. 29 of 2016

Rajesh Kanojia S/o Shri Suresh Chandra Kanojia, Aged About 40 Years R/o Suraj Laundry, Sector -9, Shop No. 37, Bhilai, District Durg Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department D.K.S. Bhawan Now Mantralaya Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Durg Range, District Durg, (Chhattisgarh)
4. Superintendent Of Police, District Rajnandgaon Chhattisgarh

---- Respondents

Writ Appeal No. 22 of 2016

Ghanshyam Karsh S/o Late Shri Mohan Lal Karsh, Aged About 30 Years
R/o Ward No. 20, Back Side Of Vinay Takij, District Janjgir Champa
(Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, DKS. Bhawan Raipur (Chhattisgarh) [now Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)]
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Bilaspur Range, District Bilaspur (Chhattisgarh)
4. Superintendent Of Police, District Janjgir Champa (Chhattisgarh)

---- Respondents

Writ Appeal No. 17 of 2016

Santosh Kumar Sahu S/o Champa Lal Sahu, Aged About 34 Years R/o-
48 Quarter, PTS. Rajnandgaon, District Rajnandgaon (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Director General Of Police, Police Head Quarters, Chhattisgarh, Raipur, Civil Lines, Raipur (Chhattisgarh)
3. Inspector General Of Police, Durg Range Durg, District Durg (Chhattisgarh)
4. Superintendent Of Police, Rajnandgaon, District Rajnandgaon (Chhattisgarh)

---- Respondents

And

Writ Appeal No. 25 of 2016

Shiv Kumar Suryavanshi S/o Shri Hardev Prasad Suryavanshi, Aged About 36 Years R/o Railway Station Datkanhar, Post Datkanhar, P.S. Rajnandgaon, District Rajnandgaon, (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, D.K.S. Bhawan Raipur (Chhattisgarh) (Now Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
2. The Director General Of Police, Police Head Quarters, Civil Lines, Raipur, (Chhattisgarh)
3. Inspector General Of Police, Durg Range, District Durg, (Chhattisgarh)
4. Superintendent Of Police, Rajnandgaon, District Rajnandgaon, (Chhattisgarh)

---- Respondents

For Appellants	:	Shri Rajeev Shrivastava, Shri Mateen Siddique, Shri Jitendra Pali, Shri Malay Shrivastava, Ms. Ruchi Nagar, Ms. Shailja Shukla, Advocates.
For Respondents	:	Shri Prafull N Bharat, Additional Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

C A V Judgment

Per Navin Sinha, Chief Justice

25/02/2016

1. The present appeals arise from a common order dated 20.11.2015 in Writ Petition (S) No. 7611 of 2011 and analogous writ petitions. The Learned Single Judge declined to interfere with the order of the Superintendent of Police, dispensing with departmental enquiry under Article 311(2) (b) of the Constitution while dismissing the Appellants from service. The facts and questions of law arising for consideration being common, the appeals have been heard together and are being disposed by a common order.

2. The Appellants are armed police personnel posted in the districts of Rajnandgaon, Janjgir-Champa and Kabirdham. On 10.8.2009 they were asked to report at the Rajnandgaon police lines for a general call at 9:00 pm along

with 40 others. They were briefed to report for duty at 2:00 am on 11.8.2009 for proceeding to camp Madanwada for a special anti-naxal operation involving strategic tactical movements. Those having genuine difficulties were permitted to seek exemption for specified reasons. Three persons were granted exemption on a request made by them for personal and familial reasons. There is no challenge of discrimination under Article 14 of the Constitution while granting exemption.

3. Consequent to the failure of the Appellants, 15 in number, to report at 2:00 am on 11.8.2009 for proceeding to camp Madanwada, though present at the Rajnandgaon police lines, they were suspended on 11.8.2009. A preliminary report was submitted by the Reserve Inspector on 18.8.2009. The Additional Superintendent of Police then submitted his report dated 23.8.2009. The Appellants were terminated on 24.8.2009/ 25.8.2009/ 5.9.2009 by a speaking order without holding departmental enquiry in exercise of powers under Article 311(2) (b) of the Constitution by the respective Superintendents of Police. The departmental appeals were dismissed as also the mercy appeals.

4. Learned Counsel for the Appellants in Writ Appeal No. 17 of 2016 and Writ Appeal No. 25 of 2016 submitted that the Learned Single Judge erred in holding that the reasons for dispensing with disciplinary proceedings was not amenable to judicial review. The Appellant in Writ Appeal No. 25 of 2016 had represented on 10.8.2009 itself for permission to proceed to Dongargarh for bringing his personal items of daily use. He got delayed in return due to late arrival of the train. The first batch with which he was to leave for Madanwada having left, his request to be allowed to proceed with second batch was rejected. There was no justification to brand him a 'coward'. The normal principle was that no person in government service should be dismissed, removed or reduced in rank without a departmental proceeding. The useless formality theory had no application to an order made under Article 311(2) (b) of

the Constitution. The words 'not reasonably practicable to hold such enquiry' cannot be given such a wide import to allow a presumptive state of affairs by the authorities. There has to be a subjective satisfaction for reasons to be recorded in writing why it was not reasonably practicable to hold such enquiry. The reasons were amenable to judicial review. Dispensing with enquiry was a serious matter to the prejudice of the government servant concerned and therefore the standards of scrutiny in such a case must be higher. If the order dispensing with an enquiry was but a ruse or was based on irrelevant grounds and considerations not germane, invocation of this extraordinary power could be struck down.

5. If a preliminary enquiry could be held by the Reserve Inspector who recorded the statements of the Appellants also, there can be no justification for not holding a full fledged departmental enquiry. The consequences for the Appellants were serious by permanent loss of livelihood. The Appellants had never refused to proceed on the special anti-naxal operation. The Respondents had themselves decided to exempt those who may have had difficulties. The Appellants had expressed their difficulties with documentary proof which has not been considered. The Learned Single Judge has erred in distinguishing 2006 (1) CGLJ 398 (State of Madhya Pradesh v. R.P.Katiyar) without appreciating that Special Leave Petition against the same has been rejected. The Learned Single Judge further erred in not appreciating the ratio laid down in (1985) 3 SCC 398 (Union of India v. Tulsiram Patel) for dispensing with a departmental enquiry observing at paragraph 130 that it was only in cases where there was no possibility of evidence being given or available due to threats, intimidation and terrorizing of witnesses, it could be said that it would not be reasonably practicable to hold an enquiry. A disciplinary proceeding could not be lightly or arbitrarily dispensed with in order to avoid holding of an enquiry because the department's case may be weak and may fail. These factors are not beyond judicial review if a challenge is laid out. Similar was the view in (1991) 1 SCC 362 (Jaswant Singh v. State of Punjab)

holding that rhetorical incantation of threats by employees and physical injury to witnesses by associates without any materials in support of the same could not be sufficient reason to dispense with a departmental enquiry. It was incumbent on the Respondents to display objective consideration of facts for arriving at a decision to dispense with the enquiry. Such decision could not be at the whim or caprice of an officer or *ipse dixit* of the authority concerned.

6. Learned Counsel for the Appellants in rest of the appeals with the exception of Writ Appeal No. 28 of 2016 submitted that the Respondents have acted arbitrarily by adopting pick and choose method contrary to Article 14 of the Constitution. If exemption could be granted to three persons from proceeding in the special anti-naxal operation, there is no justification why the explanation by the Appellants with regard to their illness or that of their family members and consequent inability to proceed on duty could not be considered and granted. The Appellants had produced medical certificates of themselves or their parents none of which have been considered properly. The defence taken by the Appellants based on the medical certificates issued by the Government Hospital at Rajnandgaon as reasons for their inability to proceed on 11.8.2009 due to previous illness or that of their family members was a question of fact. Nothing precluded the Respondents from cross-verification of these facts which could be done in a departmental enquiry where witnesses could be examined and cross examined. It was not a case where the Appellants absented without any valid justification or no evidence whatsoever could be led.

7. Invoking Article 14 of the Constitution to allege discrimination, reliance was placed on an order dated 23.1.2011 passed by the Superintendent of Police, Mahasamund dismissing one Sanjay Tiwari and Nain Das on similar grounds of cowardice due to failure to proceed on anti-naxal operations but after holding departmental proceedings. The dismissal also was set aside and reinstatement was ordered by the Inspector General of Police in appeal. If in

similar circumstances departmental enquiry could be held there is no justification for the respondents not to have done so in the present case. It is wrong for the Respondents to contend that the Appellants were being deployed for any special operation which was exceptional in nature as sought to be contended. It was a routine deployment like from Mahasamund to Rajnandgaon evident from the movement order dated 10.8.2009.

8. Reliance was placed on (2000) 10 SCC 196 (Ex-Constable Chhote Lal v. Union of India), (2010) 13 SCC 88 (Davinder Singh v. State of Punjab), (2012) 10 SCC 215 (Reena Rani v. State of Haryana), (2014) 13 SCC 244 (Risal Singh v. State of Haryana), 2012 (2) CGLRW 321 (Shrikrishna Pandey v. Chhattisgarh Vidhan Sabha) and 2014 (3) MPLJ 704 (Purushottam Ivne v. State of Madhya Pradesh) in support of the submission that dismissal after dispensing with a departmental enquiry under Article 311(2) (b) was not sustainable. Termination was an extremely harsh step and should be the last resort as provided in Regulation 226 of the Chhattisgarh Police Regulations. The Respondents in their counter-affidavit have wrongly stated that full fledged departmental enquiry was held. It is but evidence of the satisfaction of the Respondents that a departmental enquiry was feasible.

9. Learned Counsel for the Appellant in Writ Appeal No. 28 of 2016 reiterated the submissions including from Tulsiram Patel (supra) to submit that it was only in specified nature of cases as discussed therein that enquiry could be dispensed. The present was not one such case. To dispense with an enquiry compelling circumstances must exist. Graveness of the charge was not relevant and it was the grounds for dispensing with the enquiry which must meet the test of judicial review. The present was not a case where no evidence could be available to be proved or disproved in a departmental proceeding. The reasons sought to be urged by the Respondents of cowardice in not reporting for duty becomes a disputed fact in view of their respective defence of illness which would therefore have to be the subject matter of a

departmental enquiry.

10. Learned Additional Advocate General in reply submitted that the three ingredients to invoke Article 311(2)(b) of the Constitution for dispensing with an enquiry were (a) the conduct of the delinquent must be such which entails dismissal, removal or reduction in rank, (b) the subjective satisfaction of the authority that enquiry was not reasonably practicable and not that it was impossible, and (c) the reasons must be recorded in writing. Undoubtedly, the reasons must be relevant and germane and not irrelevant or based on extraneous considerations. Judicial review would lie to that extent only. The termination order in the present case meets all the three conditions. It holds for reasons discussed that it was a fit case for dismissal. The satisfaction of the authority why it was not reasonably practicable to hold enquiry has been recorded in writing. There could be no standardized or rigid yardstick of cowardice to be established by evidence in a departmental enquiry as discussed in the dismissal order. In support of the order dispensing with departmental enquiry reliance was placed on (2015) 8 SCC 86 (*Ved Mitter Gill v. Union Territory Administration, Chandigarh*).

11. It was next submitted that the Appellants were one of the 40 persons specially trained in guerrilla jungle warfare tactics at the CTJW College, Kanker. They were asked to fall in line on 10.8.2009 at 9:00 pm and were instructed to report for proceeding to Madanwada camp on 11.8.2009 at 2:00 am. Three persons expressed genuine difficulties and were granted exemption. If any of the Appellants had requested exemption there was no reason why it would not have also been considered. The remaining 37 persons including the Appellants expressed no difficulty. It is not the case of the Appellants that they were not present physically on call at 9:00 pm on 10.8.2009. That itself falsifies the medical certificates of illness were earlier dates sought to be relied upon reflecting that they were fabricated defences. A month earlier on 12.7.2009, there had been a major mishap when a Superintendent of Police and 29 police

personnel were killed in Madanwada. The special operation with tactical movements was necessitated because of the same. The Appellants were not ordinary policemen but had been given specialized training in jungle warfare. Apparently, the conditions were similar to war. Not reporting for departure of 15 persons enbloc suddenly, naturally had its repercussions and affected the anti-naxal operation as also the morale of others which could also have created issues of general indiscipline at the eleventh hour. Evidently, the Appellants were very seriously apprehensive of their own lives in view of the recent incident on 12.7.2009 and therefore were reluctant to proceed on duty displaying cowardice.

12. The satisfaction of the authorities that it was not reasonably practicable to hold enquiry had complete relevance to the conduct of the Appellants and its impact on the special anti-naxal operation defeating the very purpose for which the Appellants had been engrafted and trained, crucially affecting the anti-naxal operation. The explanations sought to be urged were not furnished on the spot at 9:00 pm on 10.8.2009 as in that event, subject to the satisfaction of the authorities exemption may have been granted as was granted to three others. It is not the case of the Appellants that they sought exemption on 10.8.2009 which was wrongly not considered or that they were asked to bring any documentary proof before their request for exemption could be considered. The defence sought to be urged was but an after thought at the Appellate stage.

13. The preliminary enquiry held by the Reserve Inspector was not to examine if the Appellants had a valid defence or not but only to ensure that each one of them were actually and factually missing and did not report for duty on 11.8.2009 at 2:00 am for departure to Madanwada before appropriate orders were passed.

14. Reliance on order dated 23.1.2011 with regard to two persons at Mahasamund is completely misplaced. It related to a case of constables

posted at Mahasamund and transferred to Rajnandgaon in a routine manner. They were not specially trained for guerrilla jungle warfare at CTJW College, Kanker. It was a case of unauthorised absence by not joining duty at Rajnandgaon. The case is completely different and distinguishable on facts. The order dated 10.8.2009 itself states that the deployment was for a special anti-naxal operation requiring tactical movements of 142 persons along with Special Task Force. Learned Additional Advocate General also relied on Tulsiram Patel (*supra*) to urge that the present case squarely fell within the ratio of those cases where it was not reasonably practicable to hold departmental enquiry.

15. The primary question arising for our consideration is if the Respondents were justified in dispensing with departmental enquiry prior to ordering dismissal of the Appellants. Does it suffer from arbitrariness warranting interference in judicial review and the limitations for the same? The legal principles with regard to Article 311(2)(b) abound in judicial precedents and its applicability will have to be adjudged in the facts of the present case.

16. The gist of the impugned order of dismissal in Hindi, translated by us into the English language reads as follows:-

"That the Appellants had been deputed on an anti naxal operation for search and patrolling in Madanwada area on 11.8.2009. They absented themselves from the important duty without information in an unauthorised manner despite clear directions on 10.8.2009 at night to report for duty. Three persons who sought exemption for valid reasons were granted the same. The Appellants did not mention any difficulties and seek exemption. Keeping the anti naxal operation a secret, they were asked to report for duty at 2:00 am. They did not report and on verification were found absent from the police line. Arms had been allotted to them earlier. The preliminary enquiry had revealed a collective coward conduct. Madanwada area was a densely naxal affected area and the police had been regularly ambushed including killing of the Superintendent of Police and 29 police personnel. The sudden disappearance of the Appellants without depositing their arms makes it evident that they were apprehensive of their own safety in going to Madanwada for lack of courage to do so and had displayed their cowardice conduct in having

disappeared without information. This coward behaviour of the Appellants was extremely dangerous as cowardice of the Appellants could percolate and affect the self confidence of others deployed for duty and create fear psychosis amongst others during operations also. In an operation, where command, control, discipline, coordination, assistance and courage was required, coward conduct of running away from the operation made the Appellants dangerous to be retained in the force as in conditions of pressure due to nature of the duty, possibility of their indulging in irresponsible fire out of fear and thereby harming their own force members cannot be ruled out. The anti-naxal operation was akin to war. No force could carry out such an operation with cowards who did not have courage to face the enemy. It was essential that each member of the force displays courage and any indication of cowardice was required to be suppressed, lest the force becomes directionless. It was therefore necessary to identify such coward behaviour and eradicate it in the larger interest of the force. The matters could not be deferred in decision making till indiscipline, insubordination and cowardice became rampant causing irreversible damage to the force. It was not reasonably practicable to hold an enquiry with regard to this cowardly behaviour of the Appellants because there was no defined yardstick of cowardice and its meaning would depend on each fact situation and cowardice could not be measured on basis of collected evidence. Cowardly conduct had been displayed by the Appellants even before the actual deployment on duty by sudden disappearance for which in the facts of the present case no further evidence was required."

17. The undisputed facts are considered necessary to be collated first. The Appellants belong to the armed police Force of Chhattisgarh. They have been given specialised training in guerrilla jungle warfare involving tactical movements at the CTJW College, Kanker for dealing with the naxal problem in the State. The operations in nature are akin to a war like situation and cannot be handled by all and sundry policemen except those specially trained for the purpose.

18. On 10.8.2009, the Superintendent of Police, Rajnandgaon ordered deputing the Appellants along with 120 others to camp Madanwada for a special anti naxal operation till further orders. The special operation involved tactical movements which otherwise means strategic decisions and strategic movements involving an action plan intended to achieve a particular objective in a specified situation. These being matters completely within the executive

domain and not within the purview of the Court, we are not inclined to consider the submission that there was nothing special about the deployment of the Appellants to camp Madanwada and that it was a routine deployment. The allegation of discrimination by meting out different treatment to persons from Mahasamund said to be similarly situated leaves the Court unimpressed. The Court is informed that Mahasamund is not an area affected by the naxal problem. They were being sent on general duty to Rajnandgaon and deployment was not at a camp in a deeply naxal affected area involving tactical strategic movements. They had absented unauthorisedly for long periods of time and were not specially trained in guerrilla jungle warfare at the CTJW College, Kanker. The two situations being factually different, the question of invoking Article 14 to allege discrimination by following two different procedures with regard to identically situated persons does not merit any consideration.

19. The Appellants do not dispute that they were asked to fall in line at 9:00 pm on 10.8.2009 at the Rajnandgaon police lines. In none of the writ petitions have the Appellants contended that they were not present on that date and time. Likewise it is not in dispute that the Reserve Inspector at this time informed them of the movement at 2:00 am on 11.8.2009 and invited requests for exemption. None of the Appellants sought any exemption. Three persons who requested were granted exemption on personal or familial grounds. It stands to reason that if 40 persons specially trained in guerrilla jungle warfare were given movement orders to deeply infested naxalite area for a special tactical operation and 15 of them suddenly did not report for the movement, the entire action plan of the State goes awry. It was not a routine deployment for law and order duties or controlling traffic. Barely a month ago on 12.7.2009, there had been a major incident at camp Madanwada where the Superintendent of Police and 29 police personnel were killed because of naxal problem. Presumably, the special operation was occasioned due to the same. The contention of the Additional Advocate General that the Appellants

knowingly and willingly absented themselves without justification apprehensive for their own safety in view of the recent incident cannot be brushed away lightly and has to be considered by the Court seriously.

20. The medical certificates sought to be produced by the Appellants before the appellate authority could well have been placed before the Reserve Inspector at 9:00 pm on 10.8.2009. The medical certificates claiming illness and absence from duty since prior to 10.8.2009 is but a fabrication of evidence for the purpose of the case in absence of any denial that they were not present on call at 9:00 pm on 10.8.2009. The defence of illness taken by them is therefore but a sham and fraudulent in nature.

21. Learned Additional Advocate General has produced before us the original attendance register of the Doctors at the Government District Hospital, Rajnandgaon from January, 2009 to December, 2009. We have examined the signatures of the medical personnel on duty and compared it with the medical certificates sought to be presented by the Appellants in support of their defence. Suffice it to observe that not only are the certificates produced by the Appellants suspicious, but the signatures also are doubtful on comparison.

22. The contention that if the Reserve Inspector could hold a preliminary enquiry and record the statements of the Appellants, regular enquiry could well have been held, also leaves the Court unimpressed. The preliminary enquiry was not for the purpose of examining whether they had a valid defence or not. That opportunity ended on 10.8.2009 at 9:00 pm. As contended by the Learned Additional Advocate General, it was only to ascertain that only those 15 who were absent without justification were proceeded against by cross verification. The explanation by some of them that they went to fetch their belongings and the train got delayed is too fanciful to merit consideration. The responsibility in a uniformed armed police force was theirs to report in time.

23. There is also a common pattern in the defence taken by at least three of the Appellants in Writ Petition (S) No. 925 of 2012 (Writ Appeal No. 33 of 2016), Writ Petition (S) No. 999 of 2012 (Writ Appeal No. 23 of 2016) and Writ Petition (S) No. 7611 of 2012 (Writ Appeal No. 17 of 2016) that they were taken ill since earlier on 29/31.7.2009 and were told to rest at home because no bed was vacant in the hospital. In none of them, the nature of the illness is mentioned except that they claimed to have collapsed during training. In Writ Petition (S) No. 924 of 2012 (Writ Appeal No. 31 of 2016), no specific illness has again been pleaded. Similar is the situation in Writ Petition (S) No. 7613 of 2012 (Writ Appeal No. 30 of 2016). In the latter, the medical certificate purported to be dated 4.8.2009 is counter signed by the Civil Surgeon on 4.8.2010. In Writ Petition (S) No. 2463 of 2015 (Writ Appeal No. 24 of 2016), the defence is that he was absent from 4:00 pm on 10.8.2009 to 8:00 am on 11.8.2009 but there is no pleading that he was on sanctioned leave. In Writ Petition (S) No. 424 of 2012 (Writ Appeal No. 32 of 2016), it is claimed on a medical certificate that the Appellant was suffering from Rheumatic Heart Disease and Angina and had been advised further investigation. No material was placed of the further investigation and how he was found medically fit by the police authorities for deployment. In Writ Petition (S) No. 996 of 2012 (Writ Appeal No. 28 of 2016), the claim is that he gave a leave application but no such document was placed on record.

24. Article 311(2)(b) of the Constitution reads as follows:

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

(1) xxx xxx xxx

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

XXX XXX XXX

Provided further that this clause shall not apply -

(a) xxx xxx xxx

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or”

The provision has been the subject matter of much judicial consideration in several cases and stands well defined to be applied appropriately in the facts of each case. No generalised principles can be applied devoid of the facts of a case. Dealing with Article 311(2) (b) it was observed in 1984 Supp SCC 554 (Workmen v. Hindustan Steel Ltd.) as follows :-

“4.....What is obligatory is to specify the reasons for the satisfaction of the authority that it was not reasonably practicable to hold such an inquiry. Once the reasons are specified and are certainly subject to limited judicial review as in a writ for certiorari, the court would examine whether the reasons were germane to the issue or was merely a cloak, device or a pretence to dispense with the inquiry and to impose the penalty.....”

25. The provision finds elaborate consideration in Tulsiram Patel (supra) which also states that no exhaustive examples could be cited with regard to what may be reasonably practicable or not. The exigency of a situation may require that prompt action should be taken as in absence of the same it may result in trouble spreading and the situation worsening and at times becoming uncontrollable. The absence of prompt action may be construed as sign of weakness on part of the authorities and encourage the concerned to persist with their deviant behaviour. The prompt action may have an element of deterrence which may be unavoidable and necessary committance of the action by the concerned leaving the authorities with no other option. The words 'not reasonably practicable to hold an enquiry' cannot be equated with it 'being impracticable to hold an enquiry'. It will always remain a question to be judged in the facts of each case whether it was reasonably practicable to hold an enquiry. There was a distinction between reasonable practicability and absolute impracticability. The standard of test would be the opinion of a reasonable man taking a reasonable view in the prevailing situation. No

standard formula could be laid down when it would be reasonably not practicable to hold an enquiry and when it would be. If an atmosphere of general indiscipline and insubordination prevails, reasonable practicability of holding an enquiry is a matter of subjective assessment of the disciplinary authority on the spot who knows best what is happening. The finality attached to the opinion of the disciplinary authority under Article 311(3) of the Constitution will not bar judicial review to examine charge of *mala fides*, relevancy of the reasons and the taking into consideration of irrelevant materials. In examining the relevancy of the reasons, the fact situation obtaining when decision was taken will naturally have to be kept in mind. The Court would however not sit in judgment over the decision of the disciplinary authority like a Court of appeal. The issue would have to be judged in light of the then prevailing situation on the spot and if two views are possible, the Court would decline to interfere. To dispense with departmental enquiry in a given case had to be based on the subjective satisfaction of the authority concerned but the reasons must be based on objective criteria as observed in (2006) 13 SCC 581 (Tarsem Singh v. State of Punjab).

26. But before the aforesaid principles can be invoked, it is necessary for the disciplinary authority to establish that the act was of a nature which entailed dismissal, removal or reduction in rank. There must be a subjective satisfaction of the authority on the spot that it was not reasonably practicable to hold enquiry. The reasons why it was not considered reasonably practicable to hold enquiry must be recorded in writing before the punishment was imposed. The availability or non-availability of witnesses cannot be the sole deciding criteria regarding the reasonable practicability of an enquiry. The reasons recorded must be relevant and germane and it must not be based on extraneous consideration or be a ruse for dispensing with enquiry.

27. The Appellants were specially trained in jungle warfare operations to operate in warlike situations involving tactical and strategic movements. The

special anti-naxal operation in a deeply infested area was a very serious matter in view of the killing of several policemen and the Superintendent of Police barely one month ago. Their sudden abstention would cause the government planning and strategy to go completely awry. It was an act of gross indiscipline having implications beyond the immediate Appellants. It cannot be said that no grounds existed for an administrative decision for dismissal. The Appellants despite being in a disciplined uniformed armed force were more concerned about their own safety rather than the call of duty. The decision to dispense with the enquiry was subjective in nature in the facts and circumstances of the case. The reasons that it was not reasonably practicable to hold departmental enquiry was then based on objective criteria that cowardly conduct could not be quantified on any tangible basis and its meaning intent and scope would depend on the facts of each case. No evidence could be led in the facts of the case with regard to the cowardly conduct of the Appellants in having abandoned their post. The situation was akin to running away from the battlefield no sooner that enemy fire started. What would constitute cowardice in a given fact situation was the subjective decision of the authorities on the spot better suited to assess the situation in reality. The decision to dispense with the enquiry will have to be tested from the point of view of the ordinary man with common prudence based on the facts of a case. No mala fides have been alleged.

28. Reference may appropriately be made to (1996) 10 SCC 659 (Kuldip Singh v. State of Punjab). The Appellant questioned his dismissal under Article 311(2)(b) which was similarly affirmed by the appellate authority. A similar challenge was urged that holding of a departmental proceeding by collecting evidence was not an impossibility. Nonetheless, declining to interfere, it was observed as follows : -

“....Moreover, appellate authority has also agreed with the disciplinary authority that there were good grounds for coming to the conclusion that it was not reasonably practicable to hold a disciplinary enquiry against the appellant. There is no allegation of

mala fides levelled against the appellate authority. The disciplinary and the appellate authorities are the men on the spot and we have no reason to believe that their decision has not been arrived at fairly. The High Court is also satisfied with the reasons for which the disciplinary enquiry was dispensed with. In the face of all these circumstances, it is not possible for us to take a different view at this stage.”

29. In (1997) 3 SCC 68 (Union Territory, Chandigarh v. Mohinder Singh), the respondent was dismissed under Article 311(2)(b). The appeal was also dismissed. A preliminary enquiry had been held on basis of which dismissal was ordered. The Administrative Tribunal interfered and the order was set aside by the Supreme Court considering the finality of the decision taken under Article 311(3) of the Constitution in the given facts situation declining to exercise powers of judicial review to examine justiciability of the order.

30. The issue fell for consideration again in (2009) 9 SCC 24 (Southern Railway Officers Association v. Union of India), it was observed as follows:

“30. An order of a disciplinary authority in a case of this nature, as laid down by this Court in Tulsiram must be judged by a court exercising power of judicial review by placing himself in his armchair. The disciplinary authority was a man at the spot. He acted on the basis of a report made to him. He also knew about the written poster having been displayed. The atmosphere which was prevailing in the workshop must be known to him. Not only the disciplinary authority, but also the appellate authority, having regard to the material brought on record, arrived at the said finding.”

31. The Learned Single Judge has aptly relied on (1996) 1 SCC 302 (State of Uttar Pradesh v. Ashok Kumar Singh) highlighting the importance of the uniformed disciplined force requiring strict adherence to the norms of duty. Judicial precedents abound with regard to the standards of conduct and discipline in service that would apply to a uniformed disciplined service vitally different from a normal civilian service as the very edifice of a uniformed disciplined force requires adherence to discipline, courage and devotion to duty. The situation would have been no better if the Appellants after having proceeded to Madanwada would have suddenly turned their back at the

strategic tactical operation due to fear vitally affecting the very operation itself. It was a boon for the others that the Appellants displayed their cowardice without having caused major loss to the operation at an opportune time which prevented major loss and casualties to the operation.

32. The guiding principles for resort to and interpretation of Article 311(2)(b) of the Constitution along with the limits of judicial review has been recently considered in *Ved Mitter Gill* (supra) relied upon by the Learned Additional Advocate General. Elucidating the well settled principles for dispensation of enquiry for reasonable cause quoting extenso from *Tulsiram Patel* (supra) in its application to the facts of a case it was observed that the first pre-requisite to sustain an order would be that the delinquency alleged should be such as would justify any one of the three punishments of dismissal, removal or reduction in rank. Reasons in support of the same must find reflection in the order dispensing with the enquiry. The second ingredient was the decision of the competent authority that it was not reasonably practicable to hold a regular departmental enquiry. The satisfaction would naturally have an element of subjectivity in it in a given facts of a case and there can be no standardized definition or rule in respect of the same. The third essential ingredient was recording of the objective reasons by the disciplinary authority of its satisfaction preceding the order of dismissal.

33. Reliance by the Appellants on *R.P.Katiyar* (supra) is of no help as rightly held by the Learned Single Judge as it is distinguishable on its own facts holding that there were witnesses available who could have deposed what exactly transpired during the naxal ambush of the police station to warrant surrender. Departmental proceedings had been held against certain other police men at the same police station and thus there was no justification to dispense with the enquiry against the individual. The observation in *Purushottam Ivne* (supra) referring to Regulation 226 that dismissal was to be considered as a last resort cannot be applied as a general ratio and would

depend on the facts of each case. The Appellant therein was a Constable (Peon) proceeded with departmentally. The appellate order was not reasoned. It is completely distinguishable on its own facts.

34. Shrikrishna Pandey (supra) is also completely distinguishable on its own facts as it related to service in Vidhan Sabha and no issues of specially trained police personnel in guerrilla warfare abandoning duty at opportune moment fell for consideration.

35. Ex-Constable Chhote Lal (supra) does not contain narration of facts and only discusses the guiding principle that normally enquiry was not to be dispensed with.

36. Davinder Singh (supra) concerned volunteers under the Punjab Home Guards Act. It did not deal with an order dispensing with enquiry under Article 311(2)(b) and any consideration of Article 311 was completely eschewed as the facts were entirely different which is again of no help to the Appellants. Relief came to be granted on grounds of arbitrariness in termination only.

37. In Reena Rani (supra), the appellant was alleged to have developed close relation with a person in custody. The order of the Superintendent of Police did not disclose any reason why it was not reasonably practicable to hold a departmental enquiry. It was specifically acknowledged by the Additional Advocate General and there was no record available also which could have supported the order for dispensing with a regular departmental enquiry. The case is again completely distinguishable on its own facts.

38. Risal Singh (supra) concerned a corruption of sting operation regarding an Assistant Sub Inspector broadcast on the television leading to dismissal under Article 311(2)(b) of the Constitution. It was set aside on the ground that dismissal dispensing with the enquiry was bereft of any reason and therefore invalid. The case is again distinguishable on its own facts.

39. The discussion as aforesaid leads us to the conclusion that for invoking the powers under Article 311(2)(b) for dispensing with a departmental enquiry before dismissal the delinquency must be of a nature to warrant dismissal. There must be a subjective decision in the facts of a case to dispense with the enquiry. It may be open for judicial review only if the reasons are not germane and are found to be irrelevant. The reasons why it was not practicable to hold departmental enquiry must be based on objective criteria reduced to writing which again shall be open for judicial review in its limited jurisdiction. If these conditions were fulfilled finality would attach to it under Article 311(3) of the Constitution. The Court will not step into the shoes of the authorities to decide what was the appropriate course of action at the given point of time.

40. Resultantly it is held that the appeals being devoid of merit are dismissed. There shall be no order as to costs.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE