

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: August 09, 2016
Judgment delivered on: September 07, 2016

+ W.P.(C) 1191/2015

BALKAR SINGH

..... Petitioner

Through: Ms.Rekha Palli, Sr. Adv. with Ms.
Garima Sachdeva & Ms. Ankita
Patnaik, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms.Barkha Babbar and Mr.Akhil Suri,
Advs. for UOI

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is, to the order dated December 7, 2011 whereby the petitioner was dismissed from service on the ground that holding a regular departmental inquiry by serving charge memorandum and following the due procedure in the manner prescribed in Rule 36 of CISF Rules, 2001 ('Rules of 2001' in short) is not practically possible and to the order dated March 14, 2014, whereby his representation was rejected.

2. Some of the brief facts are, the petitioner was appointed as a

Constable in Central Industrial Security Force (CISF) on June 16, 2000. After completion of training at RTC Sidhabari, he was posted at CISF unit, NALCO, Angul with effect from May 01, 2001 and thereafter with effect from November 1, 2004 at Ranchi; from May 31, 2007 at BIOP DEP-5; from March 1, 2008 at SSG Greater Noida, from October 17, 2009 at CISF 6th Reserved Battallion, Deoli and with effect from November 1, 2010 at STPP Simhadri till the first impugned order dated December 7, 2011 was passed. It is his case that while working at NTPC Unit, Simhadri, he received a movement order dated October 21, 2011 whereby he was directed to proceed on temporary duty to CISF Headquarters, New Delhi on October 24, 2011. At the CISF Headquarters, the petitioner was asked by IG and DIG about his Facebook account and he truthfully told them as to how he joined the site and also told them that he neither did nor he could have disclosed any kind of information. It is also the case of the petitioner that as per the directions of the IG, the petitioner signed a written statement under duress and was not given a copy of his statement despite his request. After his return to the Unit, the petitioner was shocked to receive an order dated December 7, 2011, whereby he was informed that since he has involved himself in chatting on a social networking site namely Facebook with a

person whose identity has been established by very reliable sources, to be a person of neighbouring country and working as an under cover agent of that country and he is alleged to have exchanged information with that person, which is inimical to the interest of the organization and adverse to the overall public interest and therefore, he was being dismissed from service, since the respondent No.3 was of the opinion, it was not practicably possible to hold a regular departmental inquiry.

3. It is the case of the petitioner in the pleadings, so also argued by Ms. Rekha Palli, learned Senior Counsel for the petitioner that the dismissal of the petitioner after 11 years of an outstanding service on the ground that he had involved himself in chatting on social networking site namely “Facebook” with a person whose identity has been established by very reliable sources, to be a person of the neighbouring country and working as an under cover agent for that country and had exchanged information with that person, which is inimical to the interest of the organization and adverse to the overall public interest, is clearly untenable. She states, that the petitioner who was part of the 140 member U.N. Peacekeeping Mission at Haiti from October 17, 2009 to October 28, 2010, had joined Facebook and had befriended a girl namely Tanzeela Mazeed after checking that many of

his superior officers and colleagues were also on her friend list including SI Tiwari, S.K. Khan, Ct. Mishra and Commandant Ganguly and had been talking to her initially by believing that she was genuinely trying to befriend, but when she started asking questions regarding the Indian Army and other details of the CISF, the petitioner stopped communicating with her and when she threatened to inform his department, the petitioner immediately deleted his Facebook account which he had created.

4. Ms. Palli submitted that the petitioner who was a Constable and mostly remained posted in PSUs, had neither any confidential or any important information in his possession, nor he had given any information to Tanzeela Mazeed. The only information shared was regarding the names of some CISF Units, which in any case are in public domain. She submits that it was after more than one year of his return from the U.N. Mission, the petitioner was shocked to receive a movement order dated October 21, 2011 to report to the IG, CISF Headquarters, New Delhi where he told the IG and AIG about his Facebook account and how he had joined the website and also about the other CISF personnel on the friend list but was asked to write a statement as per the dictates of the IG, which he signed and though in the said statement also, the petitioner clearly stated that though he had chatted

for 3-4 months he had not disclosed anything and had clearly told her that “Indians are not sold”. In substance, it is the submission of Ms. Rekha Palli that the respondents had presumed that the petitioner had exchanged information which is inimical to the interest of the organization or the Country. The said presumption is without any basis. She states that the petitioner denies that he had exchanged any information, which was inimical to the interest of the organization or the country. According to her, the aspect whether the petitioner has exchanged any information, which was inimical to the interest of the organization or to the country can be proved only by way of a detailed inquiry. Even if, Tanzeela Mazeed cannot be called in the proceedings, the respondents would be still at liberty to procure the information from the Facebook Inc. Hence, it is not a case where the inquiry is not practicable. She would rely upon the judgments in the case reported as *(2006) 13 SCC 581 Tarsem Singh vs. State of Punjab and others; 172 (2010) Delhi Law Times 163 (DB) Govt. of NCT of Delhi and ors vs. Jai Bhagwan; LPA 1238/2014 Md. Salam vs. Union of India and others decided by the High Court of Judicature at Patna on November 30, 2015.*

5. On the other hand, Ms. Barkha Babbar, learned counsel appearing for

the respondents has submitted that AIG (VIG) CISF Headquarters had, vide letter dated November 4, 2011 informed the Group Commandant and CISF Headquarters, Hyderabad that CISF Headquarters has been officially informed by a sister intelligence agency that the petitioner has been in contact on Facebook with an agent of Pakistan and had been exchanging information through draft mode by creating an exclusive Gmail ID for this exchange on instructions from this person. When he was called to the CISF Headquarters on October 24, 2011 he confessed to having given bank account number and certain information regarding CISF Units in Rajasthan and his Email address to Tanzeela Mazeed, who has been identified to be a Pakistan agent. She had submitted that the fact that the petitioner created a separate Email ID, gave his house address, gave her his bank account number, the names of his colleagues and his cell number, the petitioner had indulged in highly inappropriate internet talk on the forces which is inimical to public interest and the information parted out cannot be said to be out of innocence or ignorance. The petitioner, during his questioning denied any wrongful contact and only when confronted with the name of Tanzeela Mazeed, he lost his composure and came out with the statement. Ms. Babbar has drawn our attention to the statement given by the petitioner. She states,

the competent authority was convinced, no regular inquiry could be held against the petitioner and at the same time, his continuance is detrimental to the interest of the department and will be against public interest, therefore on consideration of facts and circumstances of the case, the Disciplinary Authority awarded him, the penalty of dismissal from service vide order dated December 7, 2011. To justify the impugned action, she would rely upon the following judgments:-

- (i) ***(1985) 4 SCC 252 Satyavir Singh and Ors v. Union of India & Ors.;***
- (ii) ***(1986) 2 SCC 112 Shivaji Atmaji Sawant V. State of Maharashtra & Ors;***
- (iii) ***(2003) 9 SCC 75 Sahadeo Singh & Ors vs Union of India & Ors.***

6. Having heard the learned counsel for the parties, the only issue arises for consideration is, whether in the facts of this case, the respondents could have dispensed with the regular departmental inquiry and dismissed the petitioner by invoking Rule 39(ii) of the Rules of 2001, which is reproduced as under:-

“39 (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or”

7. Before we deal with the submissions made by the learned counsel for

the parties, the position of law on this issue, which is relatable to Article 311(2) (b) of the Constitution of India, is quite well settled. First we deal with the judgments referred to by the learned counsel for the parties.

8. Insofar as the judgment of the Supreme Court in *Tarsem Singh (supra)* is concerned, in the said case, the Supreme Court was concerned with facts wherein the petitioner was charge sheeted for three allegations. On the basis of the said allegations, the 4th Commando Battalion, Bahadurgarh, Patiala on a purported satisfaction that the petitioner could win over the aggrieved people as well as witnesses from giving evidence by threatening and other means, decided a formal departmental inquiry proceedings need not be initiated. The said Authority further took into consideration the report of the preliminary inquiry conducted through the DSP and on that basis, opined, there seems no need to a regular departmental inquiry against him. The petitioner was dismissed from service. The appeal filed by the petitioner was also rejected. Thereafter, the petitioner filed a writ petition before the High Court. The High Court dismissed the petition filed by the petitioner. The Supreme Court noting the ground on which the formal inquiry was dispensed with held that no material was placed or disclosed either in the order or before the Court to show that subjective satisfaction

arrived at by the authority was based on objective criteria. The Court held, the reasoning for dispensing with the departmental proceedings was not supported by any document. The Supreme Court was of the view, if a preliminary inquiry could be conducted, it failed to see any reason as to why a formal departmental inquiry could not have been initiated against the petitioner. The Supreme Court had referred to its judgment in the case reported as *(1991) 1 SCC 362 Jaswant Singh vs. State of Punjab* and *(1985) 3 SCC 398 Union of India vs. Tulsiram Patel* and allowed the petition by holding that in view of the fact that no material has been placed by the respondents to satisfy the Court that it was necessary to dispense with a formal inquiry, in terms of proviso (b) appended to clause (2) of Article 311 of the Constitution of India, the impugned orders cannot be sustained.

9. Insofar as the judgment of this Court in the case of *Govt. of NCT of Delhi and ors vs. Jai Bhagwan (supra)*, the facts were that the Govt. of NCT of Delhi after telecast of news item captioned Programme “Vishesh with caption “Ghoos Mahal” on March 08, 2005 at about 9:30 p.m. by T.V. news channel Aaj Tak wherein respondents posted in Tihar Jail were shown accepting money from the persons lodged in jail and from those coming to meet them. Similarly, respondents posted in Trade and Tax Department

were shown negotiating and accepting money from public for doing undue favours, as a kneejerk reaction suspended all the respondents. The petitioners also lodged an FIR against all the respondents under Prevention of Corruption Act. Later on, vide order dated September 27, 2005 passed in the case of respondents working in Tihar Jail and vide order dated September 08, 2006 passed in the case of employees working in Trade and Tax Department of the said State Government, the petitioners dismissed their services without holding any domestic enquiry on the pretext that the owners of the T.V. News Channel Aaj Tak refused to associate themselves with any enquiry/investigation as may be conducted in the matter. The said orders were challenged by the respondents by filing appeals before the Appellate Authority which were dismissed with the only modification of converting “dismissal” to “removal”. The Central Administrative Tribunal wherein the Original Applications were filed, referred the matter to a larger Bench. The Tribunal vide common order dated August 31, 2009 had set aside and quashed the impugned orders giving liberty to the petitioners to proceed against the respondent. Before the High Court, the challenge of the petitioners was that the inquiry was dispensed with as it was not practicable to hold an inquiry as the news channel refused to send the reporters for

evidence. Various other grounds were also raised by the petitioners. This Court in para 41, after noting the facts in detail was of the view that only because the witnesses have expressed their inability to join investigation being busy, cannot be a reason for dispensing with the inquiry as their presence can be secured by application of law available in the Statute Books for their appearance. This Court had further held that an inquiry can be held by issuing a show-cause notice and giving a copy of the telecast to the delinquent employees and give them an opportunity to explain before taking a final view as to whether it is a case where a regular department enquiry under Rule 14 of the CCS(CCA) Rules should be held or further enquiry be dispensed with. However, this has also not been done by the petitioners. The plea that the respondents have seen the recordings and therefore, they were aware of their role in the episode and none of them disputed their presence at the location or their appearance in the cassettes which were telecast is of no consequence as playing of such cassettes before the Appellate Authority would not meet the requirement of the principles of natural justice at the Enquiry Officer level.

10. Insofar as the judgment of the Patna High Court is concerned, there the Court was concerned with the facts wherein the petitioner was dismissed

from service under Rule 39(ii) of the Rules of 2001 on an incident of July 5, 2010 when he was assigned “B” shift duty from 1 pm to 9 pm at the Barauni unit for gate checking. The petitioner did not turn up for duty and allegedly remained absent without any intimation and prior permission of the competent authority. He was also not found in the unit barrack. The Shift-in-Charge of the Barauni Unit made a general diary entry to the aforesaid effect at CISF Control Room of Indian Oil Corporation, Barauni at about 3:00 PM. On the same day, the police out post, FCI, Barauni intimated the CISF Control Room on telephone that at about 1.15 AM, the petitioner was apprehended by local people indulging in an act of molestation of a minor girl, aged about 12 years, with an intention to commit rape. The local people handed him over to the police. The father of the victim got registered a case for the offence under section 376/511 of the IPC. The petitioner therein was taken into custody. On the very next day of incident i.e. July 6, 2010, the petitioner was dismissed from service by the Group Commandant, CISF, Group Headquarter, Patna, taking recourse to Rule 39(ii) of the Rules. The petitioner aggrieved by the order of the Group Commandant, dismissing him from service filed a departmental appeal, which was also rejected on September 9, 2010. The revision preferred before the IG, CISF, was also

rejected on October 30, 2010. The writ application filed against order of dismissal also met the same fate on March 26, 2014. The Division Bench in the Intra-Court appeal relied upon the judgment of the Supreme Court in the case of *Satyavir Singh (supra)* and was of the view, the reasoning given by the Disciplinary Authority for not holding departmental inquiry, was on an apprehension that initiation of an enquiry may generate communal sentiments among two religious communities and the inquiry would attract a lot of public attention, media coverage and adverse comments, which may tarnish the image of the force. On the other hand, a departmental action would help in maintaining the discipline and conduct of the members of the force and furthermore, it was improbable to summon the witnesses, who were strangers and passerby. The aforesaid reasoning given by the Disciplinary Authority was held to be irrelevant and cannot be a ground for dispensing with the departmental inquiry.

11. The Court also rejected the ground that it was improbable to summon the witnesses by holding that it is not a case of the respondents that the father and daughter were not willing to depose in the inquiry against the petitioner. The Court held no reason has been assigned as to why the father or the victim/girl who could be the best witnesses, could be chosen to be not

examined. Furthermore, there is no material on record to even remotely come to the conclusion that the petitioner either had threatened the victim, her father or the officials.

12. Insofar as the judgments relied upon by the learned counsel for the respondents are concerned, in *Satyavir Singh vs. Union of India (supra)*, the Court referred to its judgment in *Tulsiram Patel's case (supra)*, wherein The Counter-Intelligence Section (CIS) of the Research and Analysis Wing (RAW) of Government of India located in New Delhi introduced as a security measure the requirement of showing identity cards by the employees when going from one floor to the other. The employees of the RAW started agitation against this measure. The agitation took aggressive turn and several employees held the Director and an Assistant Director as hostages in a room in order to have their demand conceded. The police had to intervene to release the officers. A number of agitators were arrested on various charges under Penal Code and they were later suspended under Rule 10(1)(b) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The employees demanded immediate withdrawal of the criminal cases and the said security measure and resorted to pen-down strike. This resulted in future suspension of some more employees who were taking

a leading, active and aggressive role in the agitation and indulging in these activities. The pen-down strike gradually spread to other offices of the RAW in New Delhi as well as in different parts of India including Lucknow and Jammu. The position was fast deteriorating. Employees were being instigated into further acts of indiscipline and insubordination and loyal employees and senior officers were being intimidated. Meetings and demonstrations were regularly being held within the office premises and their precincts and there was no possibility of any witness coming forward to give evidence against the appellants who were said to have taken a leading part in this agitation. The atmosphere was charged with tension and there did not seem any hope of the situation becoming normal. Ultimately, the appellant-employees were dismissed from service without holding any inquiry by orders issued by appointing authority under clause (b) of the second proviso to Article 311(2) of the Constitution read with Rule 19 of the Central Services Rules. The orders stated that whereas they had been indulging in “various acts of misconduct, indiscipline, intimidation and insubordination”, “regularly holding meetings and demonstrations unauthorisedly and in violation of specific orders”, “resorted to coercion, intimidation and incitement of other fellow employees” due to which the

atmosphere became “so tense and abnormal that no witness would cooperate with any proceedings”, that the authority was satisfied that the circumstances were such that it was “not reasonably practicable to hold a regular inquiry” and that “the penalty of dismissal from service should be imposed” on the appellants. When the first batch of dismissal orders was served upon some of the appellants on December 8, 1980, the pen-down strike was called off on December 9, 1980. The appellants approached the High Court under Article 226. The High Court dismissed the writ petitions of the appellants. In appeals before Supreme Court it was inter alia contended that the orders were passed mala fide and the reasons given therein for dispensing with the inquiry were not true and that the inquiry was reasonably practicable. Dismissing the appeals Supreme Court.

The Supreme Court in paras 108, 109 and 110, has held as under:-

“(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.

(109) Where it is alleged that Clause (b) of the second proviso or an analogous service rule was applied mala fide, the Court will examine the charge of mala fides. A mere bare allegation of mala fides without any particulars of mala fides will not, however, amount to a plea of mala fides and requires to be ignored.

(110) If the reasons for dispensing with the inquiry are not communicated to the concerned civil servant and the matter comes to Court, the Court can direct the reasons to be produced and furnished to the civil servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non- production of the written reasons.”

13. In *Satyavir Singh (supra)*, the Supreme Court considered the grounds on which the inquiry was dispensed with, that the co-workers may not be available as witnesses, which ground was challenged by the petitioner stating that there were policemen and police officers posted inside and outside the building and they were available to give evidence and that superior officers were also available to give evidence. The crucial and material evidence against the Appellants would be that of their co-workers for these co-workers were directly concerned in and were eye-witnesses to the various incidents. The Court was of the view, where the disciplinary authority feels that crucial, and material evidence will not be available in an inquiry because the witnesses who could give such evidence are intimidated and would not come forward and the only evidence which would be available, namely of policemen, police officers and senior officers, would only be peripheral and cannot relate to all the charges and that, therefore, leading only such evidence may be assailed in a court of law as being a mere farce of an inquiry and a deliberate attempt to keep back material witnesses, the disciplinary authority would be justified in coming to the conclusion that an inquiry is not reasonably practicable. The Supreme Court relied upon the affidavit on behalf of the respondents wherein copies of the written reasons

for dispensing with the inquiry were also annexed. The Supreme Court dismissed the petition.

14. In *Shivaji Atmaji Sawant (supra)*, the Supreme Court was concerned with the dismissal of police constables under Section 25(1) of the Bombay Police Act, 1951 by dispensing with the inquiry. The Supreme Court while answering to one of the contention that the reasons for dispensing with the inquiry did not accompany the order, has held, that recording of reasons is a condition precedent to the application of clause (b) of the second proviso to Art. 311(2) and, if such reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. The Supreme Court in *Tulsiram Patel's case* and also held that though it was not necessary to record reasons for imposing the penalty, it would be advisable to record them in the final order so as to avoid an allegation that the reasons were not recorded in writing before passing the final order but were subsequently fabricated.

15. In *Sawant's* case there is a finding of the Supreme Court that the impugned order of dismissal itself sets out the reasons that it is not reasonably practicable to hold the inquiry. The Supreme Court held that the said order records that some Members of the Bombay City Police Force

including Sawant had been instigating others in the acts of insubordination and indiscipline and were instigating them to withdraw from their lawful duties, inciting them to violence any mutiny, joining rioting mobs and participating in arson, looting and other criminal acts, wilfully disobeying orders of superior officers and that these acts had created a situation in Bombay whereby the normal functioning of the police force had been rendered difficult and impossible and that in view of these facts and circumstances, any attempt to hold a departmental inquiry by serving a written charge-sheet and following the procedure laid down in the Bombay Police(Punishments & Appeal) Rules, 1956 would be frustrated by the collective action of these persons and it was therefore not practicable to hold such an enquiry. The Supreme Court rejected the contention as raised and upheld the action of the respondent applying clause (b) of the second proviso to Article 311(2) of the Constitution. Similarly, in the case of one Velankar, the Supreme Court on noting the reasons, has held that clause (b) of the second proviso to Article 311(2) has been rightly applied.

16. Insofar as ***Sahadeo Singh and ors (supra)*** is concerned, the Supreme Court upheld the reasoning given by the Disciplinary Authority, dispensing with the inquiry on the ground that no independent evidence was expected

against the appellants in view of the prevailing fear among the witnesses.

The said ground was held to be justified by the Supreme Court.

17. Having noted the aforesaid position of law and perused the impugned order dated December 7, 2011, which reads as under, it is clear that competent authority has recorded reasons for dispensing with the inquiry in the order of dismissal itself.

“ORDER

WHEREAS, *CISF No.00440316 Constable/GD BALKAR SINGH is serving in CISF Unit, STPP (NTPC) Simhadri w.e.f 01.11.2010.*

2. **AND WHEREAS,** *the said CISF No.004460316 Constable/GD BALKAR SINGH has been presently deployed with CISF Unit STPP (NTPC) Simhadri to provide security cover to the Public Sector Undertaking w.e.f 01.11.2010.*

3. **AND WHEREAS,** *the said CISF No.004460316 Constable/GD BALKAR SINGH has involved himself in chatting on a social networking site namely Facebook with a person whose identity has been established by very reliable sources to be of a person of neighbouring country and working as undercover agent for that country. He has exchanged information with that person which is inimical to the interest of the organization and adverse to the overall public interest.*

4. **AND WHEREAS,** *the said CISF No.004460316 Constable/GD BALKAR SINGH is a trained member of Force*

and having knowledge of various aspects and resources of CISF functioning and any further leakage of information would further harm the interest of the department and be against public interest. CISF guards & number of installations in the strategic and economic importance of the country. Exchanging information about them and Central Armed Police Force deployed there is detrimental to the security interests of the organizations. Thus, he has created such a situation by involving himself with an outsider working as an undercover agent for a hostile foreign country where he has rendered himself unworthy of any further retention in the Force.

5. **AND WHEREAS**, under these prevailing circumstances, the undersigned is fully convinced and of the opinion that any attempt of holding a regular departmental enquiry by serving charge memorandum and following the due procedure in the manner prescribed in Rule 36 of the CISF Rules 2001 is not practicably possible as the other person is an outsider and it is difficult to get in touch with that person and to bring the statement of that person on record for the disciplinary process and at the same time retention of said Constable in security Force anymore would be detrimental to interest of department and will be against public interest.

6. **AND WHEREAS**, on consideration of the facts and circumstances of the case of the view that the penalty of “**Dismissal from Service**” should be imposed upon CISF No. 004460316 Constable/GD BALKAR SINGH.

7. ***NOW THEREFORE, in exercise of the powers conferred by Rule 32 read with sub Rule (ii) of Rule 39 of CISF Rules, 2001, I hereby order that CISF No. 004460316 Constable/GD BALKAR SINGH be Dismissed from Service with immediate effect.***

8. *A copy of this order be served upon the CISF No. 004460316 Constable/GD BALKAR SINGH."*

18. The aforesaid reasoning satisfies the test laid down by the Supreme Court in ***Union of India and another v. Tulsiram Patel's case (supra)***. In the said case, the Constitution Bench, while dealing with the exercise of power under Article 311(2) (b), has ruled as under:-

"130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "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."

19. Having said so, from the perusal of the aforesaid reasoning and noting the allegation against the petitioner of divulging information with regard to CISF Units and his colleagues, is surely an aspect, which is detrimental to the security interest of the organization, moreso, when the person to which the information has been divulged, is an under cover agent of a hostile foreign country and such person to whom the information divulged, is an important witness, who cannot be produced in the disciplinary proceedings. The plea of Ms. Palli that the information divulged can be obtained from the Facebook Inc. is also not sustainable, when such company is based abroad. In any case, such is not the case of the petitioner also in his representation made to the Director General of the CISF. It is not a case where there was no material before the competent authority while dispensing with the

inquiry. There was material in the form of a statement of the petitioner himself and the information given by the Sister Intelligence Agency and on analyzing the same, if the competent authority concludes that in the scenario, it is not possible to hold an inquiry, this Court is of the view that the same cannot be faulted.

20. This we say, because in examining the relevancy of the reasoning 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. In the prevailing situation, the view taken in the impugned order is justified as even if a departmental inquiry is held, the charges against the petitioner cannot be proved in the absence of a crucial witness. In *Union of India and another v. Tulsiram Patel's case (supra)*, the Supreme Court held where two views are possible, the Court will decline to interfere. Accordingly, we do not find any merit in the writ petition. The same is dismissed. No Costs.

V. KAMESWAR RAO, J

INDIRA BANERJEE, J

SEPTEMBER 07, 2016/ak