

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. 8305 of 2016 (O&M)

Reserved on : 18.12.2018

Date of decision : 25.3.2019

Sukhjinder Singh

.... Appellant

versus

Central Administrative Tribunal, Chandigarh and others ... Respondents

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice B. S. Walia**

Present Mr. Ashok Aggarwal, Senior Advocate with
Mr. Mukul Aggarwal, Advocate, for the petitioner.

Mr. Pankaj Jain, Advocate, for respondent nos. 2 to 4.

Rajiv Sharma, J.

1. The present writ petition has been filed by the petitioner against order dated 4.3.2016 (Annexure P12) passed in OA No. 592/CH of 2013 by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal').

2. The brief facts necessary for the adjudication of the case are that the petitioner was working as Inspector with respondent no.4. He had applied for grant of earned leave from 19.5.2009 to 17.7.2009 to visit USA and Canada. It was sanctioned by the competent authority. He had to come back to join duty on 20.7.2009. However, he submitted an application for extension of earned leave by another two months with effect from 20.7.2009

to 20.9.2009. Vide communication dated 6.9.2009, he was asked to submit application in proper proforma supported by medical certificate or resume duty immediately, failing which disciplinary proceedings would be initiated against him. He came back and submitted his joining report on 24.1.2012, before Additional Commissioner of Central Excise. However, the fact of the matter is that he was dismissed from service vide impugned order dated 24.1.2012 (Annexure P9). The appeal preferred by the petitioner against the imposition of punishment was also dismissed by the appellate authority vide order dated 25.3.2013 (Annexure P11). It is in these circumstances that the petitioner filed the Original Application before the Tribunal.

3. It would be pertinent to mention here at this stage that the petitioner was served with a memorandum dated 25.5.2011 (Annexure P13). The petitioner was dismissed from service by resorting to proceedings under Rule 19 (ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter to be referred as, 'the 1965 Rules'). The gist of charge-sheet dated 25.5.2011, which was issued under Rule 14 of the 1965 Rules, was that the petitioner remained on unauthorised leave from 18.7.2009 to 25.5.2011. The petitioner has placed on record copy of the charge-sheet.

4. It would be appropriate at this stage to reproduce Rule 19 (ii) of the 1965 Rules, which reads as under:-

“19. Special procedure in certain cases

Notwithstanding anything contained in Rule 14 to Rule 18-

- (i) xx xx xx
- (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

- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

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5. We have gone through the impugned order dated 24.1.2012 passed by the Commissioner and Disciplinary Authority, whereby the petitioner was dismissed from service. It is stated in the order that on 20.9.2011 the charge-sheet was posted at the address given by the petitioner in his fax message received on 20.9.2011, however, no response was received from the charged officer. Reply was also not filed by the petitioner. He was given sufficient time to respond. On 2.1.2012, a public notice was published in three local newspapers i.e. 'The Tribune', 'Dainik Bhaskar' and 'Desh Sewak', English, Hindi and Punjabi, respectively. It was explicitly made clear that in case no reply was received from the charged officer, the case would be finalized under Rule 19(ii) of the 1965 Rules. It was also mentioned that the petitioner had sought extension of medical leave but had not attached any medical certificate. He was informed that his leave has been rejected and he was directed to join his duties immediately, failing which disciplinary proceedings would be initiated against him. He was again asked to submit the application for extension of leave and was directed to join his duty vide letter dated 12.1.2010. The disciplinary authority has given findings that the petitioner had been intentionally staying away from his duties on one pretext or the other. He was willfully

and unauthorisedly absent from duty from 18.7.2009 till 25.5.2011 as he did not join his duties despite repeated directions. He had shown negligence in performing his duties and failed to maintain devotion to duty which was unbecoming of a government servant and, thus, contravened Rule 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964 (hereinafter to be referred as, 'the 1964 Rules'). The operative portion of the order rendered by the Disciplinary Authority reads as under:-

“11. From the facts mentioned above, it is proved that Sh. Sukhjinder Singh, Inspector has been intentionally staying away from his duties on one pretext or other. He is willfully and unauthorisedly absent from duty from 18.07.2009 till date as he has not joined his duty despite repeated directions. Thus, he has shown negligence in performing his duties, and failed to maintain devotion to duty which is unbecoming of a Govt. servant and has, hence, contravened the provisions of Rule 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964. Further, I am reasonably convinced that no inquiry is possible in such circumstances and therefore, I dispense with the same and proceed to pass final order in the case on the basis of merit and circumstances of the case by taking recourse to Rule 19(ii) of the CCS (CCA) Rules, 1965.

12. In view of the above discussions and findings, I hold that charges against the charged officer stands proved and as such he is liable for imposition of major penalty under Rule 11 of the CCS (CCA) Rules, 1965. Accordingly, I pass the following order:

ORDER

I impose major penalty of "Dismissal from Service" upon Sh. Sukhjinder Singh, Inspector w.e.f. the date of issuance of this order under Rule 11(ix) of the

CCS (CCA) Rules, 1965.”

6. The petitioner filed an appeal against order dated 24.1.2012 (Annexure P9). The same was dismissed by the appellate authority vide order dated 25.3.2013 (Annexure P11), by holding that the charges alleged against the petitioner were correct and the imposition of major penalty under Rule 11 of the 1965 Rules was appropriate.

7. The petitioner was in Canada and was in regular correspondence with the officials, however, the public notices were issued in three local newspapers, namely, 'The Tribune', 'Dainik Bhaskar' and 'Desh Sewak', English, Hindi and Punjabi, respectively. The petitioner was asked to submit his reply by way of these notices, failing which the matter was to be finalized under Rule 19(ii) of the 1965 Rules. The gist of charge-sheet was that the petitioner remained on unauthorised leave from 18.7.2009 to 25.5.2011.

8. The petitioner had argued before the learned Tribunal that the action of the official respondents which led to his dismissal was in violation of principles of natural justice. Regular inquiry was required to be held. It was also argued that it was not a serious misconduct, which could warrant resorting to Rule 19(ii) of the 1965 Rules. The official respondents supported the impugned judgment. According to the contents of the reply filed by the respondents before the Tribunal, the petitioner was asked to submit fresh application with medical certificate. He did not comply with the order. Thus, charge-sheet was issued to him on 25.5.2011. However, the letters issued to the petitioner were received back with the remarks '*unclaimed, refused and addressee left India*'. He was given 10 days time to

file reply on the basis of public notices issued in the newspapers. He failed to do so. This amounted to serious misconduct. Thus, Rule 19(ii) of the 1965 Rules was invoked.

9. The learned Tribunal came to the conclusion that since it was not possible to serve the petitioner and he did not respond to the notices for joining duty, the disciplinary authority was left with no other option except to proceed under Rule 19(ii) of the 1965 Rules. The Tribunal also came to the conclusion that scope of judicial review in disciplinary proceedings was limited.

10. The leave of the petitioner was sanctioned. Thereafter, he submitted an application for extension thereof. He was requested to substantiate his plea by annexing the medical certificates. Notices were published in three newspapers, which were in circulation in India. The Court can take judicial notice of the fact that these newspapers are not read in Canada. Charge-sheet was sent to the petitioner. He was asked to submit reply. Once the proceedings had been initiated against the petitioner under Rule 14 of the 1965 Rules, the same could be concluded ex-parte instead of resorting to Rule 19 (ii) of the 1965 Rules. The procedure under Rule 14(4) of the 1965 Rules is that the petitioner had to be served with charge-sheet. Thereafter, the delinquent is to furnish reply. Reply furnished is required to be considered by the disciplinary authority. If disciplinary authority is satisfied with the reply, the inquiry proceedings are closed. However, if the disciplinary authority is not satisfied with the reply, the decision is to be taken to proceed with the matter. Thereafter, inquiry officer is appointed along with the presenting officer. The inquiring authority

permits the department to produce the evidence. When the evidence is closed, the government servant is required to give his defence in writing as he may prefer. The government servant is permitted to examine himself on his own behalf if he so prefers. Thereafter, his evidence is closed and the inquiring authority may permit the parties to file written briefs of their respective case.

11. Sub-Rule 20 of Rule 14 of the 1965 Rules, specifically lays down that if the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of this rule, the Inquiring Authority may hold the inquiry ex-parte.

12. We have already noticed that once the charge-sheet was issued to the petitioner, then without completing the codal formalities under Rule 14 of the 1965 Rules, the disciplinary authority wrongly proceeded under Rule 19(ii) of the 1965 Rules leading to dismissal of the petitioner from service.

13. The disciplinary authority in para 11 of the order dated 24.1.2012 has held that the petitioner had not joined his duty from 18.7.2009, thus, he has shown negligence in performing his duties and failed to maintain devotion to duty which was unbecoming of a government servant and therefore, it was held that it was not reasonably practicable to hold inquiry in such circumstances, therefore, he dispensed with the same and proceeded to pass final order. The disciplinary authority appears to have

already made up its mind that the petitioner was negligent in discharging of his duties and failed to maintain devotion to duty and was unbecoming of a government servant. Therefore, he held that no inquiry was possible and dispensed with the same and passed the final order of dismissal of the petitioner from service. However, under Rule 19(ii) of the 1965 Rules, the disciplinary authority was required to record the reasons in writing that it was not reasonably practicable to hold an inquiry in the manner provided in the rules.

14. The government has issued instruction vide letter dated 4.7.1972 where action against the absconding official is required to be taken. The same are given as under:-

(6) Action against absconding officials.-

The cases of loss and fraud are usually reported to the Police and officials involved are placed under suspension. A scrutiny of these cases reveals that some of the departmental officials involved in such cases abscond and are not apprehended by the Police. The officials continued to be under suspension till they surrender or are apprehended by the Police and prosecuted. This results in two things, firstly, the cases drag on for a long time and secondly, if and when the absconding officials are apprehended and proceeded against, they are required to be paid the subsistence allowance if they produce a certificate of non-employment.

2. After careful consideration, it has been decided that in such cases the competent Disciplinary Authorities may take the following actions:-

- (a) A certificate should be obtained from the local Police authorities to the effect

that the whereabouts of the officials concerned are not known. This certificate should be placed on record in the concerned file.

- (b) A brief statement of allegations and charges should be prepared and kept on the file.
- (c) The Disciplinary Authority should himself record on the file the fact that the whereabouts of the officials concerned are not known and that the Police authorities have also certified to that effect and therefore, it is not reasonably practicable to hold the inquiry contemplated under Rule 14 of the CCS (CCA) Rules, 1965. The Disciplinary Authority can then take recourse to Rule 19 (ii) of CCS (CCA) Rules, 1965, wherein enquiry has to be dispensed with. Reasons for not holding enquiry should then be recorded in writing and the Disciplinary Authority should issue orders imposing such penalty as it deems fit. The allegations and charges have to be briefly discussed in the punishment order. Normally in such cases, the punishment that could be meted out would be either removal or dismissal from service.

[D.G., P.&T.'s Letter No. 4-22/PT-72/INV, dated the 4th July, 1972.]”

15. It is evident from the language of these instructions that the disciplinary authority may seek a certificate from the local police authorities

to the effect that the whereabouts of the officials concerned are not known.

The certificate should be placed on record in the concerned file. A brief statement of allegations and charges should be prepared and kept on the file.

16. The disciplinary authority is required to record on the file the fact that the whereabouts of the officials concerned are not known and the police authorities have also certified to that effect and therefore, it is not reasonably practicable to hold the inquiry contemplated under Rule 14 of the 1965 Rules.

17. In the instant case, the inquiry should have been held against the petitioner. The reasons assigned for dispensing with the inquiry by the Disciplinary Authority are neither cogent nor convincing, more particularly when it had already made up its mind to dismiss the petitioner. The Disciplinary Authority without holding any inquiry has held that the petitioner had failed to maintain devotion to duty which is unbecoming of a government servant and has contravened the provisions of Rule 3(1)(ii) and 3(1)(iii) of the 1964 Rules. He has also used the expression that charges against the petitioner stood proved without holding any inquiry. The Disciplinary Authority has only repeated the language of Rule 19(ii) of the 1965 Rules. The decision should be based on objective facts and not merely on *ipse-dixit* of the Disciplinary Authority.

18. In State of Madhya Pradesh vs Chintaman Sadashiva Waishampayan AIR 1961 SC 1623, their Lordships of Hon'ble the Supreme Court have held that when an order of dismissal passed against a public servant is challenged by him in a petition filed in the High Court under Article 226 of the Constitution of India, it is for the High Court to consider

whether the constitutional requirements of Article 311 (2) have been satisfied or not. Their Lordships of Hon'ble the Supreme Court opined as under:-

“10. Mr. Khaskalam has strenuously contended before us that in not supplying the copies of the documents asked for by the respondent the enquiry officer was merely exercising his discretion, and as such it was not open to the High Court to consider the propriety or the validity of his decision. In support of this argument he has referred us to the decision of the Patna High Court in *Dr. Tribhuwan Nath v. State of Bihar*, AIR 1960 Pat 116. In that case the public officer wanted to have a copy of the report made by the anti-corruption department as a result of a confidential enquiry made by it against the said officer; and the enquiry officer had rejected his prayer. When it was urged before the High Court that the failure to supply the copy of the said report constituted a serious infirmity in the enquiry and amounted thereby to a denial of a reasonable opportunity to the public officer, the High Court repelled the argument, and held that the officer was not entitled to a copy of the report unless that report formed part of the evidence before the Enquiry Commissioner and was relied upon by him. "When, however, the report was not at all exhibited in the case, nor was it referred to nor relied upon by the Commissioner", said the High Court, "there was no meaning in contesting it, and consequently absence of opportunity to meet its contents involved no violation of constitutional provisions". In our opinion, this decision cannot assist the appellant's case because, as we have already pointed out, the documents which the respondent wanted in the

present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Article 226 it is for the High Court to consider whether the constitutional requirements of Article 311(2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted *bonafide* but that does not mean that the discretionary order passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Article 311(2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of Law. As Venkatarama Aiyar, J. has observed in *Union of India v. T. R. Varma*, 1958 SCR 499 at p. 507 : (S) AIR 1957 SC 882 at p. 885) "stating it broadly and

without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them". It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. That is the view taken by the High Court, and in the present appeal which has been brought to this Court under Article 136 we see no justification for interfering with it. In this connection it would be relevant to refer to the decision of this Court in *Khem Chand v. Union of India*, 1953 SCR 1080 : AIR 1958 SC 300 where this Court has emphasise the importance of giving an opportunity to the public officer to defend himself by cross-examining the witnesses produced against him."

19. In *State of Andhra Pradesh and others vs S. Sree Rama Rao* AIR 1963 SC 1723, their Lordships of Hon'ble the Supreme Court have held that the High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory

rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some consideration extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. Their Lordships of Hon'ble the Supreme Court have held as under:-

“7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Art, 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the

evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or ;where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

20. In Union of India vs H. C. Goel AIR 1964 SC 364, their Lordships of Hon'ble the Supreme Court have held that in dealing with a writ petition filed by public servants who have been dismissed, or otherwise dealt with so as to attract Article 311 (2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. Their Lordships have held as under:-

“20. This conclusion does not finally dispose of the appeal. It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the

Government is based on no evidence whatever. It is a conclusion which is perverse and-, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311 (2), the High Court under Art. 226 has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this, position in law.”

21. Their Lordships of Hon'ble the Supreme Court while dealing with the similar issue in State of Assam vs Mohan Chandra Kalita and another AIR 1972 SC 2535, have held that charges cannot be sustained if the opinion is based on conjectures and there was no evidence against the delinquent. The relevant paragraphs of the judgment are extracted below:-

“6. As we said earlier, there was no charge against

the respondent that he had not paid the full amounts to those entitled to compensation or that he had authorised anyone to collect any fee. This enquiry into extraneous allegations with which the respondent was not charged must have certainly prejudiced the enquiry officer against the respondent. Even if we were to ignore this aspect, there is no evidence to connect the respondent with the allegation that he had authorised the collection of Garibhara much less can it be said, as averred in the charge, that he realised from those persons to whom compensation was being paid certain percentage of compensation money due to them for payment of hire charges of the vehicle in which he had visited the office of the Mauzadar from Dhekiajuli.

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8. This evidence does not establish that the S.D.C. had either authorised the collection or that the amount was collected at his instance or that he even connived at it. On the other hand as the A.D.M. Deka admitted, when he asked Tajimudin he informed him that the amount was being collected at the instance of Hiren Saika who immediately on seeing him ran away. According to Tajimudin, two other persons, namely, Mohidar Deka and Moniram Gaonbura were also collecting Garibhara amounts. It appears to us that because compensation amounts were being paid everyone was trying to collect whatever he could from those recipients. There was no need for the respondent to collect any money for payment of taxi charges because he could recover those from the Government and in fact he had recovered that amount from the government. There is no dispute that he did express his difficulty in finding a conveyance to come to Missamari

as indeed he had to come there on that day in a school bus. He was not sure whether he could get a conveyance to come there the next day and naturally he informed those concerned that if he cannot get any conveyance and come there they should go to Dhekiajuli. It is at that stage that they suggested that he should come in a taxi and they will pay for it; but this did not imply that the S.D.C. had consented to anyone collecting moneys for the hire or much less permit them to pay for the hire on his behalf. All this merely shows that the suggestion that they should come to Dhekiajuli would seriously inconvenience them and they were even prepared to pay his taxi fare if he came to Missamari. Their earnest entreaties must have persuaded the S.D.C. to come there in a taxi. Beyond this, there is no evidence to show that he had wanted them to pay for his taxi or authorised them to collect money for it. The High Court was therefore right in quashing the order of the A.D.M. Tezpur on the ground that there was no evidence to sustain the charge.”

22. In Bhagat Ram vs State of Himachal Pradesh and others 1983

(2) Supreme Court Cases 442, their Lordships of Hon'ble the Supreme Court have held that where principles of natural justice are violated, writ of certiorari can be issued by the High Court. The opinion of their Lordships is extracted below:-

“10. Let us make it abundantly clear that we are not sitting in appeal over the findings of the Enquiry Officer. In a petition under Article 226, the High Court does not function as a court of appeal over the findings of Disciplinary Authority. But where the finding is utterly perverse, the court can always interfere with the same. We may refer in

this connection to Union of India v. H. C. Goel 1964 (4) SCR 728, Gajendragadkar, J. speaking for the Court observed as under:

It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by the public servants who have been dismissed, or otherwise dealt with so as to attract Article 311(2), the High Court Under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence.

After applying this test in that case, the court proceeded to have a close look at the evidence that was led in the case and in the circumstances of the case rejected the evidence

of Shri Rajagopalan, who ; claimed to have given the bribe and reached the conclusion that the finding of the Government holding the delinquent officer guilty of accepting bribe was perverse and unsupported by any evidence. More or less ; the facts before us almost lead to the same conclusion.

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13. That conclusion poses another question as to what relief we should give in this appeal. Ordinarily where the disciplinary enquiry is shown to have been held in violation of principle of natural justice, the enquiry would be vitiated and the order based on such enquiry would be quashed by issuance of a writ of certiorari. It is well settled that in such a situation, it would be open to the disciplinary authority to hold the enquiry afresh. That would be the normal consequence.

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15. The question is once we quash the order, is it open to us to give any direction which would not permit a fresh enquiry to be held ? After all what is the purpose of holding a fresh enquiry. Obviously, it must be to impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh enquiry. What option is open to us in exercise of our jurisdiction under Article 136 to make an appropriate order. We believe that justice and fair play demand that we make an order of minor penalty here and now without being unduly technical apart jurisdiction, we are fortified in this view by the decision of this Court in

Hindustan Steels Ltd., Rourkela v. A. K. Roy 1969 (3) SCC 513 where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand, this Court further observed, that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair to or conducive to the interest of the parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view, the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50% of the arrears from the date of termination till the date of reinstatement.”

23. In Union of India and another vs Tulsiram Patel AIR 1985 SC 1416, their Lordships of Hon'ble the Supreme Court have held that dispensation of inquiry under Clause (b) of Second Proviso to Article 311 (2) is not to be done lightly or arbitrarily by the Disciplinary Authority. The decision of the Authority is to be justiciable. Their Lordships have also held that the inquiry can be dispensed with even during the course of inquiry. Their Lordships have also held that the reasons of dispensation of disciplinary inquiry must be recorded. The reasons need not contain detailed particulars but must not be vague or just repetition of language of proviso. Their Lordships have also held that there is no obligation that the reasons be communicated to the government servant. It is, however, better that they are

communicated. Relevant paras therefrom are extracted as under:-

“125. Some of the orders impugned before us refer only to one or the other of the three clauses of the second proviso to Article 311 (2) for dispensing with an inquiry without referring to the relevant service rule, some refer both to a clause of the second proviso and the relevant service rule, while the others refer only to the relevant service rule without making any mention of the particular clause of the second proviso which has been applied. The question is whether the omission to mention the particular clause of the second proviso or the relevant service rule makes any difference.

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132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry

has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311 (2).

133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must proceed the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particular, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was

satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.” (emphasis supplied)

24. Their Lordships of Hon'ble the Supreme Court in Workmen of Hindustan Steel Limited and another vs Hindustan Steel Limited and others 1984 (Supp.) Supreme Court Cases 554, have held that the reasons for satisfaction regarding dispensing with inquiry should be germane to the issue. Relevant paragraph from the aforesaid judgment is extracted below:

“6. The view we are taking gets some support from a decision of this Court. In a slightly different situation, this Court in *L. Michael v. Johnston Pumps India Limited* 1975 (1) SCC 574 observed that discharge simplicitor on the ground of loss of confidence when questioned before a court of law on the ground that it was a colourable exercise of power or it is a mala fide action, the employer must disclose that he has acted in good faith and for good and objective reasons. Mere ipse dixit of the employer in such a situation is of no significance. Where a disciplinary enquiry is dispensed with on the specious plea that it was not reasonable practicable to hold one and a penalty of dismissal or removal from service is imposed, if the same is challenged on the ground that it was a colourable exercise of power or mala fide action, the same situation would emerge and the employer must satisfy the Court the good and objective reasons showing both proof of misconduct and valid and

objective reasons for dispensing with the enquiry. In our opinion, when the decision of the employer to dispense with enquiry is questioned, the employer must be in a position to satisfy the Court that holding, of the inquiry will be either counter-productive or may cause such irreparable and irreversible damage which in the facts and circumstances of the case need not be suffered. This minimum requirement cannot and should not be dispensed with to control wide discretionary power and to guard against the drastic power to inflict such a heavy punishment as denial of livelihood and casting a stigma without giving the slightest opportunity to the employee to controvert the allegation and even without letting him know what is his misconduct.” (emphasis supplied).

25. The issue regarding dispensation of inquiry was also considered by their Lordships of Hon'ble the Supreme Court in Satyavir Singh and others vs Union of India and others 1985 (4) Supreme Court Cases 252. Their Lordships while interpreting clause (b) of the second proviso to Article 311(2) and Rule 19 (ii) of the 1965 Rules, culled out the principles laid down in Tulsiram Patel's case (supra), have held as under:-

“XI. Clause (b) of the Second Proviso

(55) There are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311 (2) can be applied. These conditions are:

- (i) there must exist a situation which makes the holding of an inquiry contemplated by Article 311 (2) not reasonably practicable, and
- (ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry.

(56) 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.

(57) It is not a total or absolute impracticability which is required by clause (b) of the second proviso. 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.

(58) The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

(59) It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be -

- (a) where a civil servant, 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
- (b) where the civil 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, or
- (c) where an atmosphere of violence or of general

indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

(60) The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and must fail.

(61) The word "inquiry" in clause (b) of the second proviso includes a part of an inquiry. It is, therefore, not necessary that the situation which makes the holding of an inquiry not reasonably practicable should exist before the inquiry is instituted against the civil servant. Such a situation can also come into existence subsequently during the course of the inquiry, for instance, after the service of a charge sheet upon the civil servant or after he has filed his written statement thereto or even after evidence has been led in part.

(62) It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it, the civil servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority.

(63) The recording of the reason for dispensing with the inquiry is a condition precedent to the application of clause (b) of the second proviso. This is a

Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. It is, however, not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated.

(64) The reason for dispensing with the inquiry need not contain detailed particulars but it cannot be vague or just a repetition of the language of clause (b) of the second proviso.

(65) It is also not necessary to communicate the reason for dispensing with the inquiry to the concerned civil servant but it would be better to do so in order to eliminate the possibility of an allegation being made that the reason was subsequently fabricated.

(66) The obligation to record the reason in writing is provided in clause (b) of the second proviso so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc.

(67) It is, however, better for the disciplinary authority to communicate to the concerned civil servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reason had been subsequently fabricated. It would also enable the civil servant to approach the High Court under Article 226

or, in a fit case, the Supreme Court under Article 32.

(68) The submission that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry cannot be accepted. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that administrative work carried out by senior officers should be paralysed just because a delinquent civil servant either by himself or along with or through others makes the holding of an inquiry by the designated disciplinary authority or inquiry officer not reasonably practicable.

(69) In a case falling under clause (b) of the second proviso it is not necessary that the civil servant should be placed under suspension until such time as the situation improves and it becomes possible to hold the inquiry because in such cases neither public interest nor public good requires that salary or subsistence allowance should be continued to be paid out of the public exchequer to the concerned civil servant. It would also be difficult to foresee how long the situation would last and when normalcy would return or be restored. In certain cases, the exigencies of a situation would require that prompt action should be taken and suspending a civil servant would not serve the purpose and sometimes not taking prompt action might result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble makers as a sign of weakness on the part of the authorities and thus

encourage them to step up their activities or agitation. Where such prompt action is taken in order to prevent this happening, there is an element of deterrence in it but this is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities.

(70) The contention that where an inquiry into the charges against a civil servant is not reasonably practicable, none the less before dispensing with the inquiry there should be a preliminary inquiry into the question whether the disciplinary inquiry should be dispensed with or not is illogical and is a contradiction in terms. If an inquiry into the charges against a civil servant is not reasonable practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable.

(71) Where a large group of members of the Central Industrial Security Force Unit posted at the plant of the Bokaro Steel Ltd. Indulged in acts of insubordination, indiscipline, dereliction of duty, abstention from physical training and parade, taking out processions, shouting inflammatory slogans, participating in the 'gherao' of supervisory officers, going on hunger strike and 'dharna' near the Quarter Guard and Administrative Building of the Unit, indulging in threats of violence, bodily harm and other acts of intimidation to supervisory officers and loyal members of the said Unit, and thus created a situation whereby the normal functioning of the said Unit of the Central Industrial Security Force was made difficult and impossible, the disciplinary authority was justified in applying clause (b) of the second proviso to those who were considered

responsible for such acts. Clause (b) of the second proviso to Article 311 (2) was also properly applied in the cases of those members of the Central Industrial Security Force who were considered responsible for creating a similar situation at Hoshangabad.

(72) In cases such as the above, it is not possible to state in the order of dismissal the particular acts done by each of the members of the concerned group as such cases are very much like a case under Section 149 of the Indian Penal Code.

(73) In situations such as the one where a large group acting collectively with the common object of coercing those in charge of the administration of the Central Industrial Security Force and the Government to compel them to grant recognition to their Association and to concede their demands, it is not possible to particularize in the orders of dismissal the acts of each individual member who participated in the commission of these acts. The participation of each individual might be of a greater or lesser degree but the acts of each individual contributed to the creation of a situation in which a security force itself became a security risk.

(74) Railway service is a public utility service within the meaning of clause (a) of section 2 of the Industrial Disputes Act, 1947, and the proper running of the railway service is vital to the country.

(75) Where, therefore, the railway employees went on an illegal all-India strike without complying with the provisions of Section 22 of the Industrial Disputes Act, 1947, and thereby committed an offence punishable with imprisonment and fine under section 26 (1) of the said Act and the situation became such that the railway

services were paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, and the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for in order to bring the situation to normal. In these circumstances, it cannot be said that an inquiry was reasonably practicable or that clause (b) of the second proviso was not properly applied. The fact that the railway employees may have gone on strike with the object of forcing the Government to meet their demands is not relevant because their demands were for their private gain and in their private interest and the railway employees were not entitled in seeking to have their demands conceded to cause untold hardship to the public and prejudicially affect public good and public interest and the good and interest of the nation.

(76) The quantum and extent of the penalty to be imposed in cases such as the above would depend upon the gravity of the situation at a particular centre and the extent to which the acts said to be committed by particular civil servants, even though not serious in themselves, in conjunction with acts committed by others contributed to bringing about the situation. The fact, therefore, that at a particular centre certain civil servants were dismissed from service while at some other centres they were only removed from service does not mean that the penalties were arbitrarily imposed.”

26. Similar issue was considered by Hon'ble the Supreme Court in Jaswant Singh vs State of Punjab and others 1991 (1) Supreme Court Cases 362. Their Lordships have held that subjective satisfaction of the authority that it was not reasonably practicable to hold such inquiry is open to judicial

review. The authority is obliged to show that its satisfaction was based on objective facts and in the absence of any independent material justifying reliance on clause (b) of the second proviso, the order of dismissal could not be sustained. The relevant extract of the aforesaid judgment are extracted below:-

“5. The impugned order of April 7, 1981 itself contains the reasons for dispensing with the inquiry contemplated by Article 311(2) of the Constitution. Paragraph 3 of the said order, which we have extracted earlier, gives two reasons in support of the satisfaction that it was not reasonably practicable to hold a departmental enquiry against the appellant. These are (i) the appellant has thrown threats that he 'with the help of other police employees will not allow holding of any departmental enquiry against him and (ii) he and his associates will not hesitate to cause physical injury to the witnesses as well as the enquiry officer. Now as stated earlier after the two Revision Applications were allowed on October 13, 1980, the appellant had rejoined service as Head Constable on March 5, 1981 but he was immediately placed under suspension. Thereafter, two show cause notices dated April 4, 1981 were issued against him calling upon him to reply thereto within 10 days after the receipt thereof. Before the service of these notices the incident of alleged attempt to commit suicide took place on the morning of April 6, 1981 at about 11.00 a.m.. In that incident the appellant sustained an injury on his right arm with a knife. He was, therefore, hospitalised and while he was in hospital the two show cause notices were served on him at about 10.00 p.m. on April 6, 1981. Before the appellant could reply to the said show cause notices the

third respondent passed the impugned order on the very next day i.e. April 7, 1981. Now the earlier departmental enquiries were duly conducted against the appellant and there is no allegation that the department had found any difficulty in examining witnesses in the said inquiries. After the Revision Applications were allowed the show cause notices were issued and 10 days time was given to the appellant to put in his replies thereto. We, therefore, enquired from the learned counsel for the respondents to point out what impelled respondent No. 3 to take a decision that it was necessary to forthwith terminate the services of the appellant without holding an inquiry as required by Article 311 (2). The learned counsel for the respondents could only point out clause (iv)(a) of sub-para 29(A) of the counter which reads as under :

"The order dated 7-4-81 was passed as the petitioner's activities were objectionable, He was instigating his fellow police officials to cause indiscipline, show insubordination and exhibit disloyalty, spreading discontentment and hatred, etc. and his retention in service was adjudged harmful."

This is no more than mere reproduction of paragraph 3 of the impugned order. Our attention was not drawn to any material existing on the date of the impugned order in support of the allegation contained in paragraph 3 thereof that the appellant had thrown threats that he and his companions will not allow holding of any departmental enquiry against him and that they would not hesitate to cause physical injury to the witnesses as well as the enquiry officer if any such attempt was made. It was incumbent on the respondents to disclose

to the Court the material in existence at the date-of the passing of the impugned order in support of the subjective satisfaction recorded by respondent No. 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsi Ram's case :

"A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the Government servant is weak and must fail."

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the counter filed by the third respondent it is contended that the appellant, instead of replying to the show clause notices, instigated his fellow police officials to disobey the superiors. It is also said that he threw threats to beat up the witnesses and the Inquiry officer if any departmental inquiry was held against him. No particulars are given. Besides it is difficult to understand how he could have given threats, etc., when he was in hospital. It is not shown on what material the third respondent came to the conclusion that the appellant had thrown threats as alleged in

paragraph 3 of the impugned order. On a close scrutiny of the impugned order it seems the satisfaction was based on the ground that he was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. This allegation is based on his alleged activities at Jullundur on April 3, 1981 reported by SHO/GRP, Jullundur. That report is not forthcoming. It is no one's contention that the said SHO was threatened. The third respondent counter also does not reveal if he had verified the correctness of the information. To put it tersely the subjective satisfaction recorded in paragraph 3 of the impugned order is not fortified by any independent material to justify the dispensing with the inquiry envisaged by Article 311 (2) of the Constitution. We are, therefore, of the opinion that on this short ground alone the impugned order cannot be sustained.”

27. Their Lordships of Hon'ble the Supreme Court in Chief Security Officer and others vs Singasan Rabi Das 1991 (1) Supreme Court Cases 729 have held that the reasons that it was considered not feasible or desirable to produce witnesses of the security/ other railway employees since that would expose the witnesses and make them ineffective in the future and 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 were insufficient reasons to dispense with the inquiry. The relevant para of the judgment is extracted below:-

“5. In our view it is not necessary to go into the submissions made by Dr. Anand Prakash because we

find that in this case the reason given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. 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 witnesses 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.”

28. In Chandigarh Administration, Union Territory, Chandigarh and others vs Ajay Manchanda and others 1996 (3) Supreme Court Cases 753, their Lordships of Hon'ble the Supreme Court have held that decision

of the empowered authority that holding of departmental inquiry was not reasonably practicable, would be challenged on the ground of absence of requisite satisfaction on the part of the empowered authority or the satisfaction having been formed mala fide. Para 4 of the judgment is extracted below:-

“4. It is true that clause (3) of Article 311 declares further that when a question arises whether it is reasonably practicable to hold an inquiry, the decision of the competent authority shall be final on that question. But that does not mean that the scope of judicial review is excluded altogether. In *State of Rajasthan v. Union of India* 1977 (3) S.C C.592, it was held that clause (5) of Article 356 (introduced by Constitution 38th Amendment Act and deleted by the 44th Amendment Act, which provided that: “notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.”) does not preclude the court from entertaining the challenge to a notification under Article 356 (1) on the ground that the requisite satisfaction was formed malafide or that it was founded on extraneous grounds, because it was pointed out, in either of those cases, there is in law no satisfaction as contemplated by clause (1) of Article 356. It has been held by this Court in *S.R.Bommai v Union of India* (1994 (3) SCC I) that even in the matter of exercise of power under Article 356 of the Constitution, the satisfaction of the President, while undoubtedly subjective, is not beyond the judicial scrutiny of the courts under Article 32 or Article 226, as the case may be. The parameters of judicial review

enunciated in S.R.Bomma have been held applicable in A. K. Kaul v. Union of India (1995 (4) S.C.C.73) to a matter arising under proviso (c) to Article 311 (2). A reading of clauses (b) and (c) of the second proviso would establish that, if at all, the power under clause (b) is more circumscribed than the power under clause (c).

29. In Prithpal Singh vs State of Punjab 2006 (13) Supreme Court Cases 314, their Lordships of Hon'ble the Supreme Court have held that existence of exceptional situation based on sufficient material before disciplinary authority so as to arrive at a positive and categorical finding in that regard is necessary for dispensing with the inquiry. Relevant paragraphs of the judgment are extracted below:-

“6. It is not in dispute that pursuant thereto or in furtherance of the said order dated 18.10.1988, Appellant was reinstated in service. Thereafter the departmental proceedings were held and therein the charges, having not been proved, were dropped. Once in the disciplinary proceedings the appellant was exonerated of the charges framed against him, the question of taking recourse to Clause (b) of the 2nd Provision appended to Clause (2) of Article 311 of the Constitution of India did not and could not arise. It is unfortunate that although, the same had been duly noticed by the learned Trial Judge, it failed to receive due attention of the appellate court as also of the High Court. The very purpose, for which the said provision was enacted, had lost its relevance once a departmental proceeding was held. The Director General of Police, while passing the order dated 5.2.1990, furthermore failed to take into consideration that in an appeal preferred by the delinquent from such an order it was

obligatory on the part of the disciplinary authority to produce all records to show that there were enough materials before the disciplinary authority to arrive at a positive and categorical finding that in the departmental proceeding the witnesses were not likely to depose. It was not done. Resultantly, the entire proceeding became vitiated in law.

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9. Holding of a departmental proceeding is the rule. The 2nd Proviso appended to Article 311(2) of the Constitution of India provides for an exception. It is a trite law that existence of such an exceptional situation must be shown to exist on the basis of relevant materials. In this case, even such a question did not arise as a departmental proceeding had been held and the appellant was not found guilty therein. Once he was exonerated of the charges, the question of issuing an order of dismissal against him and that too, upon dispensation of a formal inquiry, did not arise.”

30. In Tarsem Singh vs State of Punjab and others 2006 (13) Supreme Court Cases 581, their Lordships of Hon'ble the Supreme Court have held that subjective satisfaction of authority, must be based on objective criteria. The reasons for dispensing with the inquiry must be supported by documents. In absence of any material to show that it was necessary to dispense with the formal inquiry in terms of proviso (b) to Article 311 (2) it was held that order of dismissal dispensing with formal inquiry could not be sustained. Relevant paragraphs of the judgment are extracted below:-

“11. We have noticed hereinbefore that the formal enquiry was dispensed with only on the ground

that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means. No material has been placed or disclosed either in the said order or before us to show that subjective satisfaction arrived at by the statutory authority was based upon objective criteria. The purported reason for dispensing with the departmental proceedings is not supported by any document. It is further evident that the said order of dismissal was passed, *inter alia*, on the ground that there was no need for a regular departmental enquiry relying on or on the basis of a preliminary enquiry. However, if a preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canon of fair play and justice. The appellate authority, as noticed hereinbefore, in its order dated 24.6.1998 jumped to the conclusion that he was guilty of grave acts of misconduct proving complete unfitness for police service and the punishment awarded to him is commensurate with the misconduct although no material therefor was available on record. It is further evident that the appellate authority also misdirected himself in passing the said order in so far as he failed to take into consideration the relevant facts and based his decision on irrelevant factors.

12. Even the Inspector General of Police in passing his order dated 26.11.1999, despite having been asked by the High Court to pass a speaking order, did not assign sufficient or cogent reason. He, like the appellate

authority, also proceeded on the basis that the appellant was guilty of commission of offences which are grave and heinous in nature and bring a bad name to the police force of the State on the whole. None of the authorities mentioned hereinbefore proceeded on the relevant material for the purpose of arriving at the conclusion that in the facts and circumstances of the case sufficient cause existed for dispensing with the formal enquiry. This aspect of the matter has been considered by this Court in *Jaswant Singh v. State of Punjab & Ors.*, AIR 1991 SC 385, wherein relying upon the judgment of the Constitution Bench of this Court, *inter alia*, in *Union of India & Anr. v. Tulsiram Patel & Ors.*, 1985 (Supp) 2 SCR 131, it was held :

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

13. In that case also like the present one, the attention of the Court was not drawn to any material existing on the date of passing of the impugned order in support of the allegations contained in the order dispensing with the departmental enquiry.

14. In view of the fact that no material had been placed by the respondents herein to satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) appended to clause (2) of Article 311 of the Constitution of India, we are of the opinion that the impugned orders cannot be sustained and they are set aside accordingly. The appellant is directed to be

reinstated in service. However, in view of our aforementioned findings, it would be open to the respondents to initiate a departmental enquiry against the appellant if they so desire. Payment of back wages shall abide by the result of such enquiry. Such an enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of communication of this order.”

31. In Southern Railway Officers Association and another vs Union of India and another 2009 (9) Supreme Court Cases 24, their Lordships of Hon'ble the Supreme Court have held that the reasons to dispense with inquiry must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority for dispensing with inquiry cannot be arbitrary. It must be based on objectivity. Relevant paragraphs of the judgment are extracted below:-

“19. The second proviso appended to Article 311, however, makes three exceptions in regard to constitutional requirement to hold an enquiry. clause (b) whereof provides that in a case where the disciplinary authority is satisfied that it is not reasonably practicable to hold such enquiry, subject of course to the condition that therefor reasons are to be recorded in writing. Recording of reasons, thus, provides adequate protection and safeguard to the employee concerned. It is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity.

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26. The law laid down by this Court being

clear and explicit, the question which would arise for our consideration is whether in then prevailing situation, what a reasonable man taking a reasonable view would have done.

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30. An order of a disciplinary authority in a case of this nature, as laid down by this Court in *Tulsiram (supra)*, must be judged by a Court exercising power of judicial review by placing himself in his arm chair. 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 materials brought on record, arrived at the said finding.

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34. The High Court, in our opinion, was also not correct in opining that an immediate action, which was taken, was done in haste. It was, in fact, a case where an immediate action was absolutely essential. This Court in *Ajit Kumar Nag v. Indian Oil Corporation Ltd.*, (2005) 7 SCC 764 noticed the dicta laid down in *Tulsiram Patel (supra)*, which reads as under :-

".... Not taking prompt action may also be construed by the trouble-makers as a sign of weakness on the part of the authorities and thus encourage them to step up their activities or agitation. Where such prompt action is taken in order to prevent this happening, there is an element of deterrence in it but this is an unavoidable and necessary concomitance of such

an action resulting from a situation which is not
of the creation of the authorities."

32. In view of our aforesaid discussion, the writ petition is allowed. The order dated 4.3.2016 (Annexure P12), order dated 24.1.2012 (Annexure P9) and order dated 25.3.2013 (Annexure P11) are quashed and set aside. The respondents are directed to reinstate the petitioner in service. However, in view of our aforesaid findings, it would be open to the respondents to initiate departmental proceedings against the petitioner, if they so desire. Payment of arrears of salary shall abide by the result of such inquiry. Such an inquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of receipt of this judgment.

(Rajiv Sharma)
Judge

25.3.2019
vs

(B. S. Walia)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No