IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WP(C) No. 591 of 2017

Shri Laishram Sushil Singh, aged about 35 years, S/O L. Birendrakumar Singh of Nagamapal Singjubung Leirak, P.O. & P.S. Imphal West, District Imphal West, Manipur.

……. *Petitioner/s*

– Versus –

1. The State of Manipur represented by the Addl. Chief Secretary (Home) Government of Manipur.
2. The Director General of Police, Government of Manipur.
3. The Superintendent of Police/CID (SB), Manipur.

…. *Respondent/s*

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner/s	:	Mr. M. Devananda, Advocate
		Mr. Ph. Sanajaoba, Advocate
For the Respondent/s	:	Mr. H. Samarjit, GA
Date of hearing	:	17.12.2019
Date of Judgment & Order	**:**	**27.01.2020**

JUDGMENT & ORDER
(CAV)

[1] Challenging the impugned order of dismissal dated 13.7.2017 issued by the Under Secretary (Home), Government of Manipur and to reinstate him into service with monetary benefits, the petitioner has filed the present writ petition.

[2] The case of the petitioner is that he had joined service in the Manipur Police Department as Sub Inspector in the year 2007 and after completion of probation, he was posted at CID (SB) Manipur. While the petitioner was serving in CID (Technical), the Superintendent of Police/CID (Technical), Imphal, issued suspension order dated 24.1.2015 stating that he was arrested by the CDO, Imphal West and a case in FIR No.21(1)2015 under Section 38(1) UA(P) Act and Section 5(b) of Official Secret Act was registered and investigated into.

[3] Further case of the petitioner is that in the year 2016, departmental enquiry was initiated against him and Enquiry Officer was appointed. The petitioner also engaged Defence Assistant and has also submitted written statement of defence stating that the article of charges were vague and not specific.

Though the request for defence assistance was granted and name of the Defence Assistant was submitted to the authorities, he was not allowed to assist the petitioner in the departmental proceedings.

[4] It is averred that the departmental proceedings against the petitioner had hit a dead end with the submission of written brief of the inquiry proceeding by the Presenting Officer and the representation submitted by the petitioner's wife was also not considered and the petitioner was waiting for further proceedings. While things stood thus, the petitioner was issued with the impugned order thereby dismissing him from service by invoking sub-clause (c) of Article 311(2) of the Constitution of India, which is challenged in the present petition.

[5] Resisting the writ petition, the respondents filed counter stating that on 23.12.2015, the Police Department submitted a proposal to the Home Department for dismissal of the petitioner under Article 311(2)(c) of the Constitution of India for the involvement in subversive activities and his association with the unlawful organisation and terrorist organisation namely Peoples' Liberation Army/Revolutionary Peoples' Front (PLA/RPF) despite

being a member of the disciplined police force in the interest of the security of the State. It is stated that as per the secret report, the petitioner was arrested by the Officer-in-Charge, Commando, Imphal West on 22.1.2015 for his involvement in unlawful activities. On the basis of the report submitted by the Officer-in-Charge, Commando, Imphal West, the Officer-in-Charge, Imphal Police Station registered a case in FIR No.21(1)2015 under Section 38(1) UP (P) Act and 5(b) of Official Secret Act. It is also stated that the petitioner had close link with one Sagolsem Bobby @ Ahingcha of Kakwa Nameirakpam Leikal, the Commander of Auxiliary Battalion of PLA/RPF. The petitioner also provided secret and vital official information to Ahingcha, which is detrimental to the security of the State and sovereignty of the country.

[6] It is further stated in the counter that the petitioner was earlier arrested in connection with FIR No.318(9)2009 IPS under Section 25(1-A) of Arms Act and detained under NSA at Sajiwa jail. The petitioner also disclosed about VIP/VVIP's movement to the proscribed organisation. Therefore, the State Government having no other alternative in the peculiar facts and circumstances of the case has been compelled to act on the

secret report given by the police department by invoking the provisions of Article 311(2)(c) of the Constitution of India in the interest of the security of the State and it is not expedient to hold an inquiry in the facts and circumstances of the case.

[7] It is stated in the counter that after due consideration of the reports and dossiers submitted by the Home Department, the Committee of Advisors recommended dismissal of the petitioner under Article 311(2)(c) of the Constitution of India as it was not expedient to hold a departmental enquiry in the interest of the security of the State as the prejudicial activities of the petitioner were affecting the integrity and sovereignty of the State. The Governor of Manipur being satisfied with the recommendation of the Committee of Advisors and the proposal of the Hon'ble Chief Minister, Manipur, approved the recommendation of the Committee on 24.4.2017. As such the Under Secretary (Home), Government of Manipur issued the impugned order dismissing the petitioner in the interest of the State. Hence, prayed for dismissal of the writ petition.

[8] The first and foremost submission of the learned counsel for the petitioner is that provisions of Article 311(2)(c) of

the Constitution of India has been invoked against the petitioner by the respondents without proper application of mind to the facts and issues involved and the power has been misused by the respondent authorities. He would submit that it is true that FIR No.21(1)2015 has been registered against the petitioner and investigation is going on, however, till date, no charge sheet was filed.

[9] The learned counsel for the petitioner further submitted that it was not clear as to how the official respondents came to the conclusion that the petitioner is involved and associated with subversive activities and that in the interest of the security of the State. From the statements of the prosecution witnesses and documents relied upon by the official respondents, the respondents cannot draw the conclusion that the petitioner is involved in activities prejudicial to the security and interest of the State. He would submit that proper enquiry is required, but the respondents illegally and arbitrarily dismissed the petitioner from service by invoking Article 311(2)(c) of the Constitution of India. In fact, the respondent authorities have violated the principles of natural justice.

[10] Per contra, the learned counsel for the respondent State submitted that the petitioner had close link with the Commander of Auxiliary Battalion of PLA/RFA and he had also provided secret and vital official information to the said Commander. He would submit that being a member of the disciplined police force, the petitioner would not indulge such activities which are prejudicial to the security and sovereignty of the country and in such circumstances, it is not expedient to hold an enquiry in the interest of the security of the State.

[11] The learned counsel further submitted that after due consideration of the report of the Committee of Advisors and the Governor having satisfied with the recommendation of the Committee of Advisors and also the proposal of the Hon'ble Chief Minister, approved the recommendation of the Committee of Advisors and as such the Under Secretary (Home), Government of Manipur issued the impugned order of dismissal of the petitioner in the interest of the State. Therefore, the alleged arbitrariness pleaded by the petitioner is not correct and in fact there is no arbitrary and illegality in issuing the impugned order. Arguing so, the learned counsel prayed for dismissal of the writ petition.

[12] I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[13] The respondent State issued the impugned dismissal order mainly on the ground that the petitioner being a member of the disciplined police force in the interest of the security of the State has in close association with the unlawful organisation and terrorist organisation namely PLA/RPF. In the counter, the respondents specifically stated that the petitioner has close link with one Sagolsem Bobby @ Ahingcha of Kakwa Nameirakpam Leikai, the Commander of Auxiliary Battalion of PLA/RPF and after receipt of the secret report and upon placing the same before the Committee of Advisors and also after getting recommendation from the Governor of Manipur, the impugned order of dismissal came to be passed by the Under Secretary (Home), Government of Manipur. *Prima facie*, nothing on record to show the alleged close association of the petitioner with one Sagolsem Bobby @ Ahingcha of Kakwa Nameirakpam Leikai. Further nothing also on record to show that the petitioner has provided secret and vital official information to the said Sagolsem Bobby @ Ahingcha. When the respondent authorities levelling

serious allegations against the petitioner, it is their bounden duty to establish the same by way of documentary proof. In the instant case, as stated supra, admittedly, no piece of paper has been produced before this Court to link the petitioner with the alleged close associate viz., Sagolsem Bobby @ Ahingcha of Kakwa Nameirakpam Leikai by the respondents.

[14] The petitioner, who is a Sub Inspector of Police, posted at CID (Technical), Manipur, was issued with suspension order on 24.1.2015 stating that he was arrested by the CDO, Imphal West and a case in FIR No.21(1)2015 under Section 38(1) UA (P) Act and Section 5 (b) of the Official Secret Act was registered against him and the investigation is stated to be on. However, it is admitted by the respondent State that till date no charge sheet has been filed.

[15] It appears that the petitioner was departmentally proceeded by issuing article of charge and the article of charge dated 22.2.2016 issued by the Superintendent of Police/CID(SB), Manipur, Imphal, reads thus:

> *"I, Shri S. Gautam Singh, Supdt. of Police/CID(SB), Manipur do hereby charge you, SI L. Sushil Singh that you have committed a grave misconduct and dereliction of duty that on 22.1.2015 at 12.30 pm. you were arrested*

by CDO, Imphal West district for having nexus with an U.G. Organization and for passing vital security information to the U.G. organisation. A case under FIR No.21(1)2015, u/s 38(1) UA(P) Act & 5(b) Official Secrets Act was registered against you at Imphal Police Station. Thus, you have committed'a grave misconduct and dereliction of duty and behaved in a manner unbecoming a member of the Police force."

[16] The petitioner was suspended on 24.1.2015, however, the departmental proceeding was started only during February 2016 and there was no explanation for the delay in initiating the departmental proceedings belatedly when the allegation levelled against the petitioner is serious in nature according to the respondents. In fact, no particulars and manner of nexus had been furnished in the charge memo issued to the petitioner. However, the departmental proceedings started by appointing Enquiry Officer to inquire into the charge against the petitioner and the petitioner had also submitted requisition to engage Shri K. Ningthem Singh, MPS (Retd.) Additional Superintendent of Police, Manipur as a Defence Assistant. According to the petitioner, no order was passed in the said requisition and the departmental enquiry proceeded against the petitioner without the help of the Defence Assistant. The initiation of departmental proceedings against the petitioner cannot be gone into in this

petition and this Court also does not want to delve into the said issue in this order.

[17] As far as lodging of criminal complaint in connection with the alleged manner of nexus with the unlawful organisation by the petitioner and its proceedings are concerned, it is stated by the petitioner that till date no charge sheet was filed. The said submission of the petitioner has not been denied by the respondents. Thus, it is clear that after a prolonged period of nearly two and half years, the impugned order came to be passed by the respondent State when already two parallel proceedings viz., departmental and criminal prosecution are pending against the petitioner. It would be appropriate to extract the impugned order dated 13.7.2017, which reads thus:

> *"GOVERNMENT OF MANIPUR*
> *HOME DEPARTMENT*
> *ORDERS BY THE GOVERNOR MANIPUR*
> *Imphal, the 13th July, 2017*
>
> *No.6/1(6)/16-H(PLA/RPF): Whereas, the Governor of Manipur is satisfied under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution that in the interest of the security of the State it is not expedient to hold an inquiry in the case of involvement and association with subversive activities of Shri L. Sushil Singh, Sub Inspector, (CID/SB), Manipur;*
> *2. And whereas, the Governor of Manipur is satisfied that, on the basis of the information available, the activities of Shri L. Sushil Singh are such as to warrant his dismissal from service;*

3. Accordingly, the Governor of Manipur hereby dismisses Shri L. Sushil Singh, Sub-Inspector, (CID/SB), Manipur from service with immediate effect.

By orders & in the name of Governor
$d/-xxx
(Pautinlam Gangte)
Under Secretary (Home)
Government of Manipur ”

[18] No material has been placed before this Court qua the satisfaction stated in the impugned dismissal order. Nothing on record before this Court to show that the petitioner is closely associated with the Commander of Auxiliary Battalion of PLA/RPF viz., Sagolsem Bobby @ Ahingcha and also he had provided secret and vital official information to the said Ahingcha. The alleged expert report stated in the counter has not been placed before this Court. Moreover, the allegations levelled against the petitioner requires thorough enquiry by way of oral and documentary proof.

[19] Article 311 of the Constitution reads thus:

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

(1) No person who is a member of a civil service of the Union or an aII-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

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

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

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

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

[20] An ordinary reading of clause (c) of Article 311(2) of the Constitution of India would go to show that holding of an inquiry vis-a-vis the opportunity of being heard to be given to the

incumbent can be dispensed with if the President or Governor, as the case may be, is satisfied that in the interest of security of the State, it is not expedient to hold such inquiry. In other words, holding of any inquiry as prescribed under clause (2) above mentioned can only be dispensed with if the President or Governor, as the case may be, satisfied that in the interest of security of the State such holding of inquiry is not necessary. Even the doctrine of natural justice for giving any opportunity of hearing to the incumbent in such case is also not attracted. At this stage, it is to be noted that when already two parallel proceedings are pending against the petitioner and the same have not been concluded to the effect that the petitioner was found guilty of the charge/offence, how the respondent authorities can proceed further by placing the matter before the Committee for recommendation and approval before the Governor for dismissal of the petitioner from service has not been explained by the respondent authorities.

[21] It is established principle that an inquiry under Article 311(2) of the Constitution of India is a rule and dispensing with the inquiry is an exception. The authority dispensing with the

inquiry must satisfy for reasons to be recorded that it is not reasonable practicable to hold an inquiry.

[22] On a challenge made to the order passed under Article 311(2)(c) of the Constitution of India, the question that it was not expedient to hold enquiry in the interest of security of the State would be open to judicial review on the same principles which are available for challenging the satisfaction of the President or the Governor under other provisions of the Constitution and on which any other order can be challenged.

[23] In the case of *Jaswant Singh v. State of Punjab, reported in AIR 1991 SC 385*, the Hon'ble Supreme Court held that the decision to dispense with the departmental inquiry 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.

[24] The Hon'ble Supreme Court in the case of *A.K.Kaul and another v. Union of India and another, reported in (1995) 4*

SCC 73 had an occasion to consider the order of dismissal of an officer in the Indian Intelligence Bureau in the Ministry of Home Affairs of the Government of India, passed under clause (c) held that there is nothing in the provision of clause (c) of the second proviso to Article 311 of the Constitution of India which compels a departure from the principles laid down in *S.R. Bommai v. Union of India, reported in (1994) 3 SCC 1* governing justiciability of the satisfaction of the President in the matter of exercise of power under Article 356 of the Constitution of India.

[25] It is well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived by the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity. Even in the counter filed by the respondent State, no reasons have been shown, nor there is any statement of fact that any such reasons have been recorded separately or found place on the record. It is also settled that recording of reasons, thus, provides adequate protection and safeguard to the employee concerned. The only averment in the counter is that the facts and circumstances of the instant case unambiguously establish that holding enquiry in the instant case was not reasonably practicable, neither it was

expedient to hold such an inquiry in the interest of security of the State.

[26] If the impugned order is accepted to have been passed by invoking Article 311(2)(c) of the Constitution of India, then it is important to note that there is no whisper on the face of the order itself that such order was passed to the satisfaction of the Governor as required under the above provisions of law. For dismissing or removing an employee/delinquent in exercise of power under Article 311(2)(c) of the Constitution of India, it is constitutional mandate that the same must be passed on satisfaction of the President or Governor, as the case may be, and that too, the satisfaction needs to be in the interest of security of the State.

[27] No such things i.e., whether the impugned order was passed to the satisfaction of the Governor and whether it was in the interest of security of the State have been clarified by the respondent State. Only fact that was recorded in the impugned order is that the Governor of Manipur was satisfied under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution of India and the petitioner was dismissed from

service. It is really shocking to believe that after nearly two and half years of the alleged commission of offence and also when two parallel proceedings are pending, the impugned order has been passed by invoking Article 311(2)(c) of the Constitution of India, which on the face of it, has no legs to stand due to non-compliance of the provisions of law.

[28] The learned counsel for the respondent has produced several judgments for when order of dismissal under Article 311(2)(c) of the Constitution of India was challenged, the Court has not interfered with the same and therefore, in the interest of security of the State, the impugned order came to be passed, which warrants no interference. In particularly, in batch of cases in WP(C) No. 706 of 2009, etc… dated 06.06.2016 passed by the Hon'ble Division Judge, it has been mentioned as follows:-

> *"[6] In WA No.2 of 2013, the appeal has been preferred against the judgment and order dated 03.09.2012 passed by the learned Single Judge in WP(C) No. 811 of 2009 by which the Learned Single Judge dismissed the writ petition filed by the appellant/petitioner, Md. Warish Khan challenging the dismissal order issued on 31.10.2009 by invoking the provisions of Article 311(2) second proviso clause (c) of the Constitution of India. The Learned Single Judge after discussing the facts and related law held that there was no infirmity in the dismissal order and accordingly dismissed the writ petition.*

[6.3] Mr. Th. Khagemba submits that it is on record that the petitioner who was earlier serving as rifleman was arrested in connection with an FIR No. 217(12)07 Thoubal PS U/S 342/365/506 I.P.C., 25(I-C) A. Act ad 20 U.A(P) Act on the basis of a complaint filed by one Md. Salatur Rahaman. Thereafter, the petitioner was also detained under NSA vide order dated 17.12.2007. However, later on, the petitioner was released from the preventive detention on the recommendation of the Advisory Board vide order dated 03.02.2008 as there was no material to support his detention under the NSA. Mr. Th. Khagemba also states that it is also on record that the said FIR case was closed vide order dated 31.07.2008 passed by the learned CJM, Thoubal by accepting the final report submitted by the I.O. of the case on the ground of insufficiency of evidence. Mr. Kh. Khagemba submits that it is clearly mentioned in the said closure order dated 31.07.2008 that the complainant/informant, Mr. Salatur Rahman appeared before the Court on 28.07.2008 and his statement was recorded who had expressed that he had no objection to the final report submitted by the I.O. of the case. In other words, the informant declined to pursue with the complaint and the investigation also revealed insufficiency of evidences. This clearly indicates that the allegations against the petitioner were without any basis. Thus, the petitioner was discharged from the criminal liability and the criminal proceeding against the petitioner was closed. The appellant contends that apart from that, the departmental enquiry which was initiated against the petitioner/appellant on the same set of allegations was also closed by the department vide order dated 21.11.2008. While closing the said departmental enquiry, it has been recorded by the disciplinary authority that the final report had been submitted under FIR No. 217(12)07 Thoubal PS U/S 342/365/506 IPC, 25(I-C) A. Act ad 20 U.A.(P) Act and the criminal proceeding against the petitioner was closed by the Court of CJM, Thoubal indicating that the charge against the petitioner was not proved. Accordingly, the competent

authority closed the departmental enquiry by revoking the suspension order and reinstated the petitioner in service. It has been therefore, contended that thus, not only the petitioner was cleared of the charges based on the complaint filed by the informant, Md. Salatur Rahaman, but also released from the detention under NSA as there were insufficient materials and departmental enquiry initiated against the petitioner was also closed. It has been submitted that all these actions initiated against the petitioner were based on the complaint filed by Md. Salatur Rahaman which had been found to be without any basis. However, the petitioner even after being cleared of all the charges as mentioned above, was dismissed from service by invoking the provision of Article 311(2) second proviso, clause (c) of the Constitution.

[7.7] He also submits that the detail procedures have been laid down in the Office Memorandum dated 18.08.2008 for invoking provision of Article 311(2) second proviso clause (c) of the Constitution of India. He submits that since it is an extreme provision, the authorities have to scrupulously follow the procedures laid down in the said Office Memorandum. He submits that the Govt. of Manipur had framed the said Office Memorandum on 16.08.2008 based on a similar Office Memorandum issued by the Govt. of India on 29.07.1980 which lays down guidelines and procedures to be adopted before invoking the provision of Article 311(2)(c) of Constitution of India. He submits that as per the aforesaid Office Memorandum, after necessary materials are collected against an employee, the Head of the Department has to furnish the relevant materials to the Administrative Department which after necessary examination, is to forward it to the Department of Personnel who in turn has to forward it to the Committee of Advisors. He submits that the Committee of Advisors, consists of high officials viz., Chief Secretary (Chairman), Principal Secretary (Home), DGP and Secretary of DP, Law Secretary, Secretary of the concerned Department, Deputy

Director (SIB) and members of the Committee of Advisors. The Committee of Advisors which has to decide whether the employee concerned has to be informed of the charges against him and be given an opportunity to furnish his explanation or deny any such hearing in the interest of the security of the State. If the Committee of Advisors forms the opinion that if it is not advisable to inform the person concerned of the materials and charges against him before proceeding further, they have to record such an opinion and put up the matter to the Home Minister who in turn would place it before the Chief Minister for his approval.

Contentions of the State Government

[8] Mr. Raghumani, learned Government Advocate strongly opposed the contentions raised by the petitioners/appellants. He has also produced the relevant records and submitted that perusal of these records would clearly indicate that there was sufficient materials before the competent authority to arrive at the subjective satisfaction that it was not expedient to hold an enquiry against any of these petitioners/appellants in the interest of the security of the State. Mr. Raghumani, learned GA has submitted that it is not correct that the allegations made against the petitioners in WP(C) No. 706 of 2009, WP(C) No. 707 of 2009 and W.A. No.2 of 2013 and W.A. No.3 of 2013 are based only on the statement made by Mr. M.I. Khan but there are other materials also which form the basis for taking the decision and issuing the impugned dismissal orders.

[8.2] He submits that law does not require reasons to be disclosed to the employee concerned and it will be sufficient if adequate reasons are disclosed in or discernible from the records for invoking the provisions of Article 311 (2) second proviso, clause (c) of the Constitution of India, which according to him, are sufficiently recorded. He also submits that while exercising the power of judicial review, this Court ought not go into the correctness or otherwise of

the allegations made against the petitioners/appellants. He submits that whether materials as available in the records are sufficient to arrive at the subjective satisfaction of the authority, or not, is also beyond the scope of judicial review.

Legal position :

[10] As the common thread running through these petitions/appeals originates from the provision of Article 311(2) Second proviso, clause (c) of the Constitution of India, it may be apposite to revisit the law governing the aforesaid provision of the Constitution. As provided under Article 310 of the Constitution, civil employees of the Union or the States hold their posts at the pleasure of the Government and their services are terminable at the will of the President or Governor under the doctrine of pleasure. However, the Constitution also has placed certain limitations when it concerns dismissal, removal or reduction in rank as provided under Article 311 of the Constitution, providing security and safeguards to the civil servants/employees. These limitations are :

i) Such an employee shall not be dismissed or remove by the authority subordinate to that by which he was appointed.

ii) Such an employee cannot be dismissed, removed from service nor his rank reduced without holding an enquiry and giving him a reasonable opportunity of being heard.

However, the second safeguard provided for holding an enquiry before dismissal or removal or reduction in rank and entitlement to audi alteram partem, is not available under three situations, as provided under the clauses (a), (b) and (c) of second proviso to sub-clause (2) of Article 311 of the Constitution as follows.

a) *Under clause (a) of the second proviso, a person can be dismissed or removed or reduced in rank without holding any enquiry, on the ground of misconduct which has led to his* ***conviction on a criminal charge****.*

b) *b) The holding of enquiry also can be dispensed with where the authority, empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for some reason,* ***to be recorded by that authority in writing****, it is not reasonable to hold such an enquiry as provided under clause (b).*

c) *c) It will also not be required to hold an enquiry where the President or the Governor, as the case may be, is satisfied that in the interest of security of the State, it is not expedient to hold such an enquiry, under clause (c).*

Thus, though normally, a person cannot be dismissed or removed from service or reduced in rank except by holding a departmental enquiry and giving him reasonable opportunity of being heard, as provided under clause (2) of Article 311 of the Constitution of India, yet holding of enquiry can be dispensed with under three situations as mentioned above.

[13] In ***Sardari Lal*** *(supra), the Hon'ble Supreme Court held that the satisfaction of the President or the Governor under Article 311 (2) second proviso, clause (c) is his personal satisfaction. Thus, it was held that unless the President or the Governor* ***himself*** *reaches such a satisfaction as to the expediency of not holding enquiry in the interest of the security of the State, any order passed by invoking the said provision of Article 311 will be vitiated. The Hon'ble Supreme Court in that case took the view that, a matter in which the interest of the security of the State had to be considered, should receive the personal attention of the President or the Head of the State and he should be himself satisfied that an inquiry under the substantive part of clause (2) of Article 311 was not expedient for the reasons stated in clause (c) of the proviso in the case of a particular civil servant. It was further held that this function could not be delegated or allocated to anyone else by the President or the Head of the State.*

*[14] This decision in **Sardari Lal** (supra) was, however overruled by the Constitution Bench decision in **Shamsher Singh** (supra). The Hon'ble Supreme Court in **Shamsher Singh** (supra) elaborately discussed the principles of law qua, the role and the power of the President and the Governor keeping into consideration the parliamentary form of governance, where the Cabinet plays a vital role as in Britain, which has been adopted in India, as opposed to the Presidential form of governance as followed in the United States of America, and held that unless the provisions of the Constitution expressly require the President or the Governor to exercise his powers in his discretion, the President or the Governor has to act on the advice of the Council of Ministers. Based on the aforesaid principle, it was held that the satisfaction of the President or the Governor as mentioned in clause (c) of the second proviso to sub-clause (2) of Article 311 is to be arrived at on the advice of the Council of Ministers as provided under Article 163 of the Constitution, and actions have to be taken/ executed in the name of the Governor in terms of the rules of business framed by the Governor as provided under Article 166 of the Constitution of India. In this regard, it may be apposite to reproduce the relevant portions of the judgment in **Shamsher Singh** (supra) as follows:*

> *"**30**. In all cases in which the President or the governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his council of Ministers he does so by making rules for convenient transaction of the business of the government of India or the government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the governor for the exercise of any power or function by the President or the governor, as the case may be. as for example in Articles 123, 213, 311(2) proviso (c), 317. 352(1), 356 and 360 the satisfaction required by the Constitution is not the personal satisfaction of the President or of the governor*

but is the satisfaction of the President or of the governor in the constitutional sense under the Cabinet system of government. The reasons are these. It is the satisfaction of the council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. Neither Article 77(3) nor Article 166(3) provides for any delegation of power. Both Articles 77(3) and 166(3) provide that the President under Article 77(3) and the governor under Article 166(3) shall make rules for the more convenient transaction of the business of the government and the allocation of business among the Ministers of the said business. The Rules of Business and the allocation among the Ministers of the said business all indicate that the decision of any Minister or officer under the Rules of Business made under these two articles, viz.. Article 77(3) in the case of the President and Article 166(3) in the case of the governor of the State is the decision of the President or the governor respectively.

***31**. Further the Rules of Business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the governor. that the executive power shall be exercised by the President or the governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the governor that there shall be a council of Ministers to aid and advise the President or the governor, as the case may be, are sources of the Rules of Business. These provisions are for the discharge of the executive powers and functions of the government in the name of the President or the governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister (see Halsbury's Laws of England 4th Ed.. Vol. 1. paragraph 748 at p. 170 and Carltona Ltd. v. Works Commissioners[1])*

(emphasis added)"

[16] As to when clause (c) of the second proviso to Article 311(2) can be invoked has been elucidated by the Hon'ble Supreme Court in ***Tulsiram Patel's*** *case (supra) by holding that the prime consideration for invoking the said clause (c) is the expediency or inexpediency of not holding the enquiry which must be related to the interest of the security of the State. Thus, satisfaction of the President or the Governor must, be with respect to the expediency or inexpediency of holding enquiry in the interest of the security of the State. This satisfaction of the Governor, which, however, has to be arrived at with the aid and advice of the Council of Ministers, is on the issue that it would not be advantageous or fit or proper or suitable in the interest of the security of the State to hold an enquiry. Such a satisfaction may be reached because of the secret information received by the Govt. and making known such information may result in the disclosure of the source of information which may be prejudicial to the interest of the security of the State. The Hon'ble Supreme Court went on to observe that the reasons for arriving at such satisfaction by the President or the Governor under clause (c) is not required to be recorded in the order of dismissal, removal or reduction in rank nor can be made public as held in para 141, 142 and 143 of the judgment in* ***Tulsiram Patel's*** *case which read as follows:*

> "***142.*** *The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2). The satisfaction of the President or Governor must, therefore be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State. The Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient; disadvantageous in the circumstances, unadvisable impolitic." The same*

dictionary defines "expedient" as meaning inter alia "advantageous; fit, proper, or suitable to the circumstances of the case." Webster's Third New International Dictionary also defines the term "expedient" as meaning inter alia "characterized by suitability, practicality, and efficiency in achieving a particular end : fit, proper, or advantageous under the circumstances." It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head. Whenever therefore the President or the Governor in the Constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing danzer to the security of the State and like matters. There may be other factors which may be required to be considered weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public."

[16] The scope of judicial review in respect of an order issued under Article 311(2) second proviso, clause (c) came to be examined by the Hon'ble Supreme Court again in ***A.K. Kaul Vs. Union of India AIR 1995 SC 143*** *case*

*(supra) and reiterated the law laid down in **Tulsiram Patel's** case. In **A.K. Kaul** (supra) the Hon'ble Supreme Court keeping in mind the earlier decision in **S.R. Bomai** (supra) as regards justiciability of the satisfaction of the President in the matter of exercise of power under Article 356 of the Constitution of India, took the view that similar parameters would be applicable for examining the validity of action taken under clause (c) of the second proviso of Article 311(2) by observing that such an order would be subject to judicial review and its validity can be examined by the Court on the ground that the satisfaction of the President/Governor is vitiated by malafide or based on wholly extraneous or irrelevant grounds within the limits laid down in **S.R. Bomai** (supra). Thus, it was held in **A.K. Kaul** (supra) that, in a case where the authority passed an order under clause (c) of the second proviso to Article 311(2) which is challenged before the Court or Tribunal, the Court or the Tribunal has to examine whether the satisfaction arrived at by the President/Governor is vitiated by malafides or is based on wholly extraneous or irrelevant grounds and for that purpose, the Governor is obliged to place before the Court or the Tribunal the relevant materials on the basis of which the satisfaction was arrived at, subject to claim of privilege under section 123 and 124 of the Evidence Act to withhold particular documents or records. Even in such cases, where such a privilege is claimed, the Govt. employee is said to have been indulged in as mentioned in para No.31 which are reproduced hereinbelow:*

> *"**31.** In our opinion, therefore, in a case where the validity of an order passed under clause (c) of the second proviso to Article 111(2) is assailed before a Court or a Tribunal it is open to the Court or the Tribunal to examine whether the satisfaction of the President or the Governor is vitiated by malafides or is based on wholly extraneous or irrelevant grounds and for that purpose the Government is obliged to place before the Court or Tribunal the relevant material on the basis of which the satisfaction was arrived at subject to a claim of privilege under Sections 123 and 124 of the Evidence Act to withhold production of a particular document or record. Even in cases where such a privilege is claimed the Government concerned must disclose before the Court or tribunal the nature of the activities in which the Government employee is said to have indulged in."*

In the instant case, as stated supra, nothing has been produced to connect the petitioner with the alleged charge levelled against him. That apart, already two parallel proceedings are pending in connection with the same set of allegation. Therefore, the decisions relied on by the learned counsel for the respondent State are not applicable in the given facts and circumstances of the case.

[29] Though there is no requirement to record any reason while applying sub-clause (c), but the satisfaction of the Governor can be judicially reviewed as there has to be a reason for applying the exceptional rule.

[30] It is reiterated that the Governor has to be satisfied personally that in the interest of the security of the State, it was not expedient to hold the enquiry as contemplated under Article 311(2) second proviso, clause (c) of the Constitution of India and such power cannot be delegated to any other authority. Further the Committee of Advisors made necessary recommendation for taking up action under Article 311(2) (c) of the Constitution of India and the Governor merely approved the recommendation made by the Committee, which in fact not in accordance with the

requirement of law contemplated under Article 311(2) (c) of the Constitution of India. In the counter, it has been stated as under:

> *"……..the Governor of Manipur being satisfied with the recommendation of the Committee of Advisors and the proposal of the Chief Minister, Manipur, approved the recommendation of the Committee of Advisors on 24.04.2017. As such, the Under Secretary (Home), Government of Manipur issued the dismissal of the petitioner vide Government order No.6/1/(6)/16-H(PLA/RPF) dated 13.07.2017 with immediate effect in the interest of the State".*

From the above, it is clear that the Governor had merely approved the recommendation of the Committee of Advisors. If that is so, mere expressing approval to the recommendation of the Committee of Advisors is not in accordance with the law.

[31] In view of the fact that no material had been placed by the respondent State to satisfy the Court that the impugned dismissal order was passed in security interest, this Court is of the opinion that the impugned order cannot be sustained in the eye of law and also on the ground that already departmental proceedings as well as criminal prosecution are stated to be pending against the petitioner. For the foregoing discussion, the impugned order is liable to be set aside.

[32] Accordingly,

a) the writ petition is allowed and the order of dismissal dated 13.07.2017 passed by the first respondent is set aside;

b) the respondent authorities are directed to reinstate the petitioner into service and give posting other than the post which he was holding prior to the order of dismissal;

c) the period from the date of dismissal to the date of reinstatement shall be considered as period rendered in service for the purposes of pensionary benefits, if any.

JUDGE

FR/NFR

-Larson

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.02.03 12:15:21 +05'30'