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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2573 of 2015

Order reserved on: 19-8-2021

Order delivered on: 15-9-2021

Smt. Preeti Devi Tiwari, Wd/o Late Deep Kumar Tiwari, Aged about 30 years, R/o Village Narauna, Post Office Kakori, Police Station Durga Ganj, District Lucknow (U.P.)

---- Petitioner

Versus

1. Union of India, Through its Secretary, Ministry of Home Affairs, New Delhi
2. Director General, Central Reserve Police Force, New Delhi
3. Inspector General, Central Reserve Police Force, Southern Sector, Road No.10-C, Jugli Hill, Near New M.L.A./M.P.S. Colony, Gayatri Hill, Hyderabad (A.P.) (now Telangana)
4. Deputy Inspector General of Police, Group Center C.R.P.F., Southern Range Reddy, Post Office Hakimpet, District Ranga Reddy, Secunderabad (A.P.) (now Telangana)
5. Commandant – 111 Battalion, C.R.P.F., D.R.P., Line Dantewada, Chhattisgarh.

---- Respondents

For Petitioner:	Mr. K.A. Ansari, Senior Advocate with Mrs. Meera Ansari and Mr. Aman Ansari, Advocates.
For Respondents:	Mr. Rajkumar Gupta, Standing Counsel for Union of India.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner calls in question legality, validity and correctness of the order dated 6-1-2014 passed by the revisional authority by which the petitioner's revision petition has been dismissed as not maintainable affirming the order dated 3-8-2013 by which the

appeal preferred by the petitioner's husband namely (Late) Deep Kumar Tiwari, has been dismissed, whereby the appellate authority has affirmed the order of the disciplinary authority dated 6-3-2013 dismissing the petitioner's husband from service by order dated 6-3-2013.

2. The aforesaid challenge has been made on the following factual backdrop: -
3. Husband of the petitioner namely Deep Kumar Tiwari was in service of respondent No.1 and at the relevant point of time, he was posted with respondent No.5 at Arampur, District Dantewada, a Naxalite affected area of the State of Chhattisgarh. It is the case of respondent No.5 that in the night of 25-12-2012, the petitioner was involved in the act of killing of 4 CRPF Jawans and causing gun fire injuries to one of the Constables of his barrack for which he was arrested for offence under Section 302/307 of the IPC by the State police and was placed under suspension on the same day with effect from 25-12-2012 by order dated 28-12-2012. Thereafter, as per Standing Order No.8/2001, issued on 24-4-2001, Court of Inquiry was constituted and the Court of Inquiry by its finding / opinion and recommendation, on 8-2-2013, held that the petitioner's husband Deep Kumar Tiwari is solely responsible for the act of fratricide and acting upon the findings of the Court of Inquiry, services of the petitioner's husband were dismissed by order dated 6-3-2013 holding that in the Court of Inquiry, the offence has been proved against the petitioner's husband beyond any reasonable doubt and since accused CT/GD Deep Kumar Tiwari is lodged in

District Jail, it will not be practically feasible to record his statement and conduct cross-examination of witnesses and accordingly, in accordance with the provisions contained in proviso (b) appended to clause (2) of Article 311 of the Constitution of India read with Rule 27(cc)(ii) of the Central Reserve Police Force Rules, 1955 (for short, 'the CRPF Rules') and Rule 19(ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, 'the Rules, 1965'), the punishment of dismissal from service with effect from 6-3-2013 was inflicted upon the petitioner's husband and other benefits were also forfeited against the petitioner's husband against which he preferred appeal before the Deputy Inspector General of Police, Hyderabad Range, CRPF, Hyderabad (respondent No.4) and the appellate authority by its order dated 3-8-2013, dismissed the appeal affirming the findings of the disciplinary authority. In the meanwhile, the petitioner's husband died in jail on 24-4-2013 and thereafter, the petitioner being wife of the deceased CRPF servant, preferred a revision before the revisional authority under Rule 29 of the Rules, 1965 which was dismissed by the revisional authority on the ground that there is no provision for revision petition by the wife of the deceased CRPF servant and accordingly, it was dismissed. As such, the order of the disciplinary authority affirmed by the appellate authority and further reaffirmed by the revisional authority have been called in question by way of this writ petition.

4. The principal ground raised in the writ petition is non-compliance of Rule 27(cc)(ii) of the CRPF Rules which provides that where the

authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules, has not been complied and reasons have not been recorded and on the basis of finding recorded by the Court of Inquiry, the services of the petitioner's husband could not have been terminated without holding any departmental enquiry and without recording any reasons as per Rule 27(cc)(ii) of the CRPF Rules and thus, the impugned orders are liable to be set aside and the petitioner is entitled for full back-wages from the date of suspension till the date of his completion of the age of superannuation.

5. Return has been filed on behalf of the respondents supporting the action stating inter alia that since the petitioner's husband has killed four CRPF Jawans and injured one police personnel, he was arrested by the State police for committing the offence under Sections 302 & 307 of the IPC and Court of Inquiry was ordered by the Deputy Inspector General of Police, Dantewada vide order dated 25-12-2012 in which detailed enquiry has been conducted and the statement of husband of the petitioner has also been recorded and he was found guilty. The findings of the Court of Inquiry are Annexure R-3 in which it has been clearly recorded that the petitioner's husband Deep Kumar Tiwari is solely responsible for this fratricide. As such, there is no provision for revision by the deceased CRPF servant and therefore the revision has rightly been dismissed.

6. Mr. K.A. Ansari, learned Senior Counsel appearing for the

petitioner, would submit that the order passed by the disciplinary authority dismissing the petitioner's husband from service is ex facie arbitrary, illegal and manifestly unjust, as no departmental enquiry was conducted against the petitioner's husband and no reasons have been recorded in writing that it is not practically possible to hold enquiry in the manner provided in the rules except holding that the petitioner's husband, at the relevant point of time, was lodged in jail and therefore it will not be practically feasible to record his statement and conduct cross-examination of witnesses, and as such, on that ground, the order of the disciplinary authority is liable to be set aside. He would further submit that the finding recorded by the disciplinary authority for terminating the services of the petitioner's husband on the basis of Court of Inquiry conducted against him in terms of Standing Order No.8/2001 dated 24-4-2001 in which it has been held that the petitioner's husband was found guilty and as such conducting departmental enquiry is not required as the gravity of offence has clearly been proved against him beyond any reasonable doubt, is also illegal and bad in law, as that finding recorded by the Court of Inquiry pursuant to the said Standing Order is only recommendatory in nature and that cannot substitute a departmental enquiry to be conducted as per the CRPF Rules nor it could be a reason to dispense with the enquiry as required under Rule 27(cc)(ii) of the CrPC and therefore it is liable to be set aside.

7. Mr. Rajkumar Gupta, learned Standing Counsel for Union of India/ respondents, would oppose the writ petition and support the

impugned orders and submit that the petitioner's husband was involved in killing of four persons and injuring one person and consequent thereto, Court of Inquiry was conducted against him in accordance with Standing Order No.8/2001 dated 24-4-2001 in which he was found guilty and on that basis, it has been held that the gravity of offence has been proved against him beyond reasonable doubt. Even otherwise, since the petitioner's husband was lodged in jail, at the relevant point of time, it was not practically feasible to record his statement and conduct cross-examination of witnesses and therefore the writ petition deserves to be dismissed.

8. I have heard learned counsel for the parties and given thoughtful consideration to the rival submissions made herein-above and also went through the record with utmost circumspection.
9. It is the case of the respondents that in an incident held on 25-12-2012, the petitioner's husband, who was employed as Sepoy under the Central Reserve Police Force (CRPF) and was posted at Aranpur, District Dantewada, killed his four colleagues and injured one person and thereby committed the offence under Sections 302 & 307 of the IPC. Accordingly, offence was registered against him and he was arrested on 25-12-2012 itself and he was suspended by order dated 28-12-2012 with effect from 25-12-2012 and immediately thereafter, as per Standing Order No.8/2001 dated 24-4-2001, Court of Inquiry was conducted against him in which by report dated 8-2-2013, the Board of Officers of the Court of Inquiry recorded finding that Deep Kumar Tiwari is solely responsible for the alleged fratricide and accordingly, by order dated 6-3-2013, in

exercise of power under the provisions contained in Article 311(2), second proviso clause (b), of the Constitution of India read with Rule 27(cc)(ii) of the CRPF Rules and Rule 19(ii) of the Rules of 1965, the petitioner's husband was dismissed from service for the alleged misconduct. Since the provisions contained in Article 311(2), second proviso clause (b), of the Constitution of India read with Rule 27(cc)(ii) of the CRPF Rules and Rule 19(ii) of the Rules of 1965 were invoked by the disciplinary authority and no enquiry was held against the petitioner's husband, it would be appropriate to notice paragraphs 4 to 9 of the order of the disciplinary authority – Office of the Commandant-111 Bn., C.R.P.F., D.R.P. Line, Dantewada, C.G., dated 6-3-2013, which state as under: -

“1. to 3. xxx xxx xxx

4. As per the recommendation of the Board of Officer of COI Part-II, he should be dismissed from service immediately.

5. As being disciplinary authority and being a head of office I feel conducting the Judicial Trial will not be appropriate as the accused is already under judicial custody in District Jail Dantewada.

6. On the basis of inference drawn from the COI (Part II), I am completely convinced that Conducting a departmental enquiry against the accused, will be a futile exercise, as the accused No.031465442 CT/GD Deep Kumar Tiwari has not been participating in the process of the enquiry. Conducting of departmental enquiry is not required as the gravity of offence has clearly been proved, **“BEYOND ANY REASONABLE DOUBT”** in the COI Part-II. Moreover, he being lodged in District Jail, it will not be practically feasible to record his statement and conduct cross examination of witnesses.

7. This heinous act has attributed to a great deal of resentment amongst the unit personnel against

No.031465442 CT/GD Deep Kumar Tiwari for committing cold blooded murder of his own colleagues. In the circumstances explained above, the Force cannot take the risk of retaining him in the Force given the gravity of the offence and involvement of security of our men.

8. Therefore, under the provisions contained in Article 311 (2) (b) of Constitution of India, read with Rule 27 (cc) (ii) of CRPF Rules 1955 and Rule 19 (ii) of CCS (C.C.A.) Rules 1965, I inflict the punishment of **“DISMISSAL FROM SERVICE”** upon No.031465442 CT/GD Deep Kumar Tiwari of F/111 Bn, CRPF with effect from 06/03/2013 who is under suspension and is in judicial custody for the fratricidal killing of four of his own colleagues and critically injuring one HC/Dvr by misusing other personal's arms and ammunitions which speak volume of his diabolic and nefarious plan. He is also struck off strength of this Unit from the same date (06/03/2013).

9. The suspension period from 25/12/2012 to 06/03/2013 (i.e. date of issue of this order) is treated as such.”

10. The aforesaid order was affirmed by the appellate authority on 3-8-2013 and further affirmed on technical ground by the revisional authority on 6-1-2014 holding that the petitioner, being wife of the deceased CRPF servant, cannot maintain revision petition against the order of the appellate authority.

11. In order to consider the plea raised at the Bar, it would be appropriate to notice the provisions contained in Article 311(2), second proviso clause (b), of the Constitution of India which states as under: -

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

(1) xxx xxx xxx

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in

which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

xxx xxx xxx

Provided further that this clause shall not apply—

(a) xxx xxx xxx

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

12. Likewise, relevant portion of Rule 27(a) and 27 (cc)(ii) & (iii) of the CRPF Rules states as under: -

“27. Procedure for the Award of Punishments.—(a) The punishments shown as items 1 to 11 in column 2 of the Table below may be inflicted on non-gazetted officers and men of the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7.

TABLE

Sl. No.	Punishment	Subedar (Inspector)	Sub-Inspector	Others except Const & enrolled followers	Consts & enrolled followers	Remarks
1	2	3	4	5	6	7
1.	Dismissal or removal from the Force	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry
	xxx xxx xxx		xxx xxx xxx		xxx xxx xxx	
	xxx xxx xxx		xxx xxx xxx		xxx xxx xxx	
	xxx xxx xxx		xxx xxx xxx		xxx xxx xxx	

(cc) Notwithstanding anything contained in this rule—

(i) xxx xxx xxx

(ii) where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules; or

(iii) where the special Director-General or Additional Director-General heading zone or Director-General is satisfied that in the interest of security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit.”

13. On a careful perusal of the aforesaid constitutional provisions which have been lifted and incorporated in the shape of Rule 27(cc)(ii) of the CRPF Rules, it would appear that the disciplinary authority / appointing authority is invested with power to dispense with inquiry. Where such a power is conferred, on an authority entitled to impose penalty of dismissal or removal or reduction in rank, before it can dispense with the enquiry, it must be satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold such an inquiry. Power to dispense with inquiry is conferred for a purpose and to effectuate the purpose power can be exercised. But power is hedged in with a condition of setting down reasons in writing why power is being exercised. Obviously therefore the reasons which would permit exercise of power must be such as would clearly spell out that the inquiry if held would be counter-productive. The duty to specify by reasons the satisfaction for holding that the inquiry was not reasonably practicable cannot be dispensed with. The reasons must be germane to the issue and would be subject to a limited judicial review. What is obligatory is to specify the reasons for the satisfaction of the authority that it was

not reasonably practicable to hold such an inquiry. Once the reasons are specified and which are certainly subject to limited judicial review as in a writ for certiorari, the constitutional court would examine whether the reasons were germane to the issue or was merely a cloak, device or a pretence to dispense with the inquiry and to impose the penalty. As such, a safeguard has been provided that the concerned authority must specify reasons for its decision why it was not reasonably practicable to hold the inquiry.

(See Workmen of Hindustan Steel Ltd. and another v. Hindustan Steel Ltd. and others¹.)

14. The scope of clause (b) of the second proviso to Article 311(2) of the Constitution of India came up for consideration before the Constitution Bench of the Supreme Court in the matter of Union of India and another v. Tulsiram Patel² and while construing the clause "it is not reasonably practicable to hold such enquiry" used in clause (b) it was held by their Lordships as under: -

"130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not 'impracticable'. According to the *Oxford English Dictionary* 'practicable' means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". *Webster's Third New International Dictionary* defines the word 'practicable' inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". *Webster's Third New International*

1 1984 (Supp) SCC 554

2 (1985) 3 SCC 398

Dictionary defines the word 'reasonably' as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. 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 finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. ...

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 precede 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 particulars, 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.

135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As clause (3) of Article 311 makes the decision of the disciplinary

authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) 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. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons.”

15. Thereafter, the Supreme Court in Tulsiram Patel's case (supra), further, with regard to Article 311(3) of the Constitution, which provides that if 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, it was pointed out by their Lordships that where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or the Supreme Court under Article 32, the court will interfere on grounds well established in law for the exercise of judicial review in matters where administrative

discretion is exercised, it was held as under: -

“138. ... If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

16. As such, their Lordships of the Supreme Court have clearly held that the court will not sit in judgment over the relevancy of the reasons given by the disciplinary authority for invoking clause (b) like a court of first appeal and that even in those cases where two views are possible, the court will decline to interfere. (See Ikramuddin Ahmed Borah v. Superintendent of Police, Darrang and others³.)

17. Thereafter, in the matter of Ajit Kumar v. State of Jharkhand and others⁴, it has been held that dismissal of civil servant must comply with Article 311 of the Constitution of India, and Article 310(1) cannot be invoked independently with object of justifying contravention of Article 311(2). It has been further held that when a

³ 1988 (Supp) SCC 663

⁴ (2011) 11 SCC 458

government servant is dismissed from service or reduced in rank, departmental enquiry is to be conducted to enquire into his misconduct and only thereafter if he is found guilty action contemplated can be taken against him. It was observed in paragraph 11 of the report as under: -

“11. There is an exception provided by way of incorporation of Article 311(2) with sub-clauses (a), (b) and (c). No such enquiry is required to be conducted for the purposes of dismissal, removal or reduction in rank of persons when the same related to dismissal on the ground of conviction or where it is not practicable to hold an enquiry for the reasons to be recorded in writing by that authority empowered to dismiss or remove a person or reduce him in rank or it is not practicable to hold an enquiry for the security of the State. These three exceptions are well recognized for dispensing with an enquiry, which is required to be conducted under Article 311 of the Constitution of India when the authority takes a decision for dismissal or removal or reduction in rank in writing. In other words, although there is a pleasure doctrine, however, the same cannot be said to be absolute and the same is subject to the conditions that when a government servant is to be dismissed or removed from service or he is reduced in rank, a departmental enquiry is required to be conducted to enquire into his misconduct and only after holding such an enquiry and in the course of such enquiry if he is found guilty then only a person can be removed or dismissed from service or reduced in rank.”

18. Thereafter, in the matter of Reena Rani v. State of Haryana and others⁵, the principle of law laid down in Tulsiram Patel's case (supra) was followed with approval and relying upon the matter of Jaswant Singh v. State of Punjab⁶, it has been held as under: -

“10. In *Jaswant Singh v. State of Punjab*, (1991) 1 SCC 362, the two-Judge Bench referred to the ratio of *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398, and

⁵ (2012) 10 SCC 215

⁶ (1991) 1 SCC 362

observed: (Jaswant Singh case, SCC p. 369, para 5)

“5. ... The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the authority concerned. When the satisfaction of the authority concerned 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 officer concerned.” “

19. Thereafter, in the matter of Risal Singh v. State of Haryana and others⁷, the principle of law laid down in Tulsiram Patel's case (supra) and Jaswant Singh (supra) was followed and similar is the principle of law laid down in the matter of Ved Mitter Gill v. Union Territory Administration, Chandigarh and others⁸ in which their Lordships of the Supreme Court have laid down the ingredients for applicability of second proviso (b) to Article 311(2) of the Constitution of India which are as under: -

“23. The *first ingredient*, which is a prerequisite to the sustainable application of the above clause (b) is, that the delinquency alleged should be such as would justify any one of the three punishments, namely, dismissal, removal or reduction in rank. ...

26. The *second ingredient* which needs to be met for a valid exercise of clause (b) to the second proviso under Article 311(2) of the Constitution of India, is the satisfaction of the competent authority, that it was not reasonably practicable to hold a regular departmental enquiry against the employees concerned. ...

28. The *third essential ingredient* for a valid application of clause (b) to the second proviso under Article 311(2) of the Constitution of India is that, the competent authority must record the reasons of the above satisfaction in writing. ...”

⁷ (2014) 13 SCC 244

⁸ (2015) 8 SCC 86

20. Finally and recently, the Supreme Court in the matter of **Hari Niwas Gupta v. State of Bihar and another**⁹ has held that recording of reasons to dispense with the departmental enquiry under second proviso clause (b) to Article 311(2) of the Constitution of India is mandatory. It has been observed in paragraph 10 of the report as under: -

“10. Clause (1) states that persons employed in civil services or posts under the Union or the States or members of the all India service shall not be dismissed, removed or reduced in rank by an authority subordinate to that by which he/she was appointed. Clause (2) provides that such a person could be dismissed or removed or reduced in rank only after an inquiry in which he has been informed of the charges against him and after being afforded a reasonable opportunity of being heard in respect of those charges. The second proviso incorporates exceptions when the need for holding an inquiry under clause (2) can be dispensed with. Clause (b) of the second proviso to Article 311(2) can be invoked to impose a punishment of dismissal, removal, or reduction in rank on the satisfaction, to be recorded in writing, that it is not reasonably practicable to conduct an inquiry before imposing the punishment. This Court in *Jaswant Singh v. State of Punjab*, relying on an earlier decision in *Union of India v. Tulsiram Patel*, has affirmatively held that the obligation of the competent authority to record reasons when passing an order under clause (b) to the second proviso to Article 311(2) is mandatory, and it was inter alia observed: (Jaswant Singh case, SCC p. 369, para 5)

“5. ... 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 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 p. 270 of Tulsiram case:
(SCC p. 504, para 130)

‘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.’ ” “

21. Reverting to the facts of the present case in the light of the aforesaid legal proposition of law rendered by their Lordships of the Supreme Court in the above-cited judgments (supra), if the impugned order of dismissal dated 6-3-2013 (Annexure P-1) is scanned it would appear that following reasons have been assigned for not holding departmental enquiry against the petitioner: -

1. That, as per the recommendation of the Board of Officers of the Court of Inquiry, Part-II, the petitioner’s husband should be dismissed from service immediately.
2. That, the petitioner’s husband has not been participating in the process of the Court of Inquiry held against him under Standing Order No.8/2001.
3. That, the conducting of departmental enquiry is not required as the gravity of offence has clearly been proved beyond any reasonable doubt.
4. That, at that particular time, the petitioner’s husband was lodged in District Jail and therefore it will not be practically feasible to record his statement and conduct cross-examination of witnesses.

5. That, heinous act has been attributed to a great deal of resentment amongst the unit personnel against the petitioner's husband for committing cold blooded murder of his own colleagues and therefore the Force cannot take the risk of retaining him in the Force looking to the gravity of offence and involvement of security of other men.

22. Admittedly, on the date of order i.e. 6-3-2013, the petitioner's husband was in jail pursuant to registration of offence against him for offence under Sections 302 & 307 of the IPC and it has been recorded in para 6 of the impugned order of dismissal that he has not been participating in the process of enquiry, whereas the statement of the petitioner's husband has also been recorded 27-12-2002 which has been filed as Annexure R-2, though he has refused to dilate on the issue. As such, non-cooperation, if any in the Court of Inquiry cannot be a valid reason for not holding departmental enquiry against the petitioner's husband as required under second proviso clause (b) to Article 311(2) of the Constitution of India.

23. The second reason assigned by the learned disciplinary authority that the gravity of offence by the petitioner's husband has clearly been proved beyond reasonable doubt, also sans merit. The Court of Inquiry was directed to be constituted to inquire into the said incident pursuant to Standing Order No.8/2001 dated 24-4-2001 which has been issued by the Directorate General, CRPF, CGO Complex, Lodhi Road, New Delhi in which the object of holding a Court of Inquiry has been highlighted in paragraph 2 which states

as under: -

“2. OBJECT

The object of holding a Court of Inquiry is to establish beyond the circumstances under which certain incidents/accidents may have taken place or government stores damaged or lost or personnel may have sustained injuries, etc. clearly indicating responsibility, if any of individuals involved, as per terms of reference of the Court of Inquiry. A Court of Inquiry is required to be held in the following circumstances: -

i) All incidents/accidents relating to the use of arms and ammunition by the member of the Force including the non-members of CRPF while on duty or against such members and non-members while on leave including the incidents/accidents affecting the morale and discipline and functioning of the Force whereby there is loss of life or property or damage.

ii) All incidents/accidents involving the exchange of fire by the member of the Force or any other person(s) against the member of the Force and investigation into the risk or special risk of office in all cases of death or serious injury.

lii) All incidents/accidents as a result of the occurrence of natural calamities whereby there is grievous injury, loss of life or property or damage.

iv) All cases involving embezzlement/misappropriation of Govt. money, cases of fraud, negligence, theft, fire and of death.

v) Any other subject which though not specified yet where conduct of Court of Inquiry is felt essential.”

24. Procedure for holding Court of Inquiry has also been given in paragraph 4 of the Sanding Order, clause (h) of which states that the findings should be written in conclusion and should be in the form of recommendations and not decisions. It states as under: -

“h) The findings should be written in conclusion and should be in the form of recommendations and not

decisions.”

25. A careful perusal of the object of holding of Court of Inquiry would reveal that the object of holding a Court of Inquiry is to establish the circumstances under which certain incidents/accidents may have taken place or government stores damaged or lost or personnel may have sustained injuries, etc. clearly indicating responsibility, and the findings have to be submitted in the form of recommendations. As such, recommendations of the Court of Inquiry submitted and conclusion of the Inquiry conducted cannot take the place of proof of criminal offence which is to be established in a full-fledged trial before the jurisdictional criminal court. Even otherwise, commission of offence under the Indian Penal Code can only be proved against an accused person after full-fledged trial and that too before the jurisdictional criminal court. Court of Inquiry conducted is an internal mechanism for finding out the circumstances under which such incident has taken place and to take the remedial measures to prevent recurrence of such acts in future, but findings / conclusion of the Court of Inquiry cannot certainly take the place of proof of the offence(s) and therefore the finding recorded by the disciplinary authority that the gravity of offences have been proved against the petitioner's husband beyond reasonable doubt in the Court of Inquiry conducted, is per se illegal and without jurisdiction and would not fulfill the reason as required by the second proviso to Article 311(2) of the Constitution of India read with Rule 27(cc)(ii) of the CRPF Rules.

26. The next reason assigned by the disciplinary authority that since

the petitioner's husband was lodged in District Jail, it will not be practically feasible to record his statement and conduct cross-examination of witnesses, is equally fallacious to note. It is the regular practice that if an accused is said to have committed the offence and he is lodged in jail and thereafter, criminal trial is conducted, he is produced from jail before the criminal court during the course of trial and criminal trial can be conducted for proving the offence while the accused is in jail. It is absolutely unacceptable to this Court that departmental enquiry of the delinquent CRPF personnel cannot be conducted in jail. If the delinquent CRPF servant is lodged in jail pending trial before the criminal court, departmental enquiry could have been conducted in the jail itself with the prior permission of the jail authorities in accordance with the rules, but to say and to conclude that departmental enquiry cannot be conducted at all in jail once the delinquent CRPF personnel is in jail, is too broad proposition and it cannot be accepted by any stretch of imagination, as it would amount to failure of justice and delinquent servant will be denied of reasonable opportunity to defend himself which will be violative of his constitutional right, rendering the departmental proceeding vulnerable and liable to be quashed, as the constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or merely in order to avoid the holding of an inquiry. As such, this would give no ground to the disciplinary authority under the rule to dispense with the enquiry and straightway invoke Rule 27(cc)(ii) of the CRPF Rules holding that it is not reasonably

practicable to hold any enquiry in the manner provided in the CRPF Rules.

27. One more ground stated in the order of dismissal for dispensing with formal enquiry is that since the petitioner's husband has committed coldblooded murder of his own (4) colleagues, the CRPF cannot take the risk of retaining him in Force given the gravity of offence and involvement of security of other CRPF personnel. Again, here, the disciplinary authority has prejudged the issue by holding that the petitioner's husband has committed murder of his own colleagues, which was pending consideration on the date of termination and finding of guilty or commission of offences of murder by the petitioner's husband has to be recorded by jurisdictional criminal court and as such, it is nothing but a ground to avoid holding of formal enquiry and this cannot be a valid ground to dispense with formal departmental enquiry. Similarly, the petitioner's husband was in judicial custody on the date of passing the order of termination, therefore, the apprehension of the disciplinary authority that security of other personnel is involved, appears to be not based on the material available on record and goes against the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent until his guilt is proved in a criminal trial before the jurisdictional criminal court.

28. In the considered opinion of this Court, all the grounds mentioned in the order of the disciplinary authority are not born out and it cannot be said to be a reason and it can only be said to be an ipse dixit of the authority concerned and the satisfaction recorded by the

disciplinary authority is not based on the objective facts and it is totally arbitrary and not based on record.

29. True it is that the allegations levelled against the petitioner's husband are very serious as it is alleged that he killed four persons of CRPF and injured one person, but only the gravity of offence would not give jurisdiction to the disciplinary authority to invoke Rule 27(cc)(ii) of the CRPF Rules and to dismiss that servant without holding any enquiry as held by the Supreme Court in Jaswant Singh (supra) unless valid reasons are recorded in writing by the disciplinary authority that it is not reasonably practicable to hold such inquiry.

30. The Supreme Court in Tulsiram Patel's case (supra), in paragraph 138, has clearly held that the disciplinary authority while dispensing with the enquiry has to consider whether the enquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. As such, in this matter, the disciplinary authority swayed away with the fact that the petitioner's husband has allegedly committed the murder of four persons based on findings of the Court of Inquiry holding that the gravity of offence has been established beyond reasonable doubt which is totally incorrect proposition and there cannot be two opinions on the question that criminal charges against an accused of offence(s) can be proved and established only during the course of trial after a full-fledged trial before the jurisdictional criminal court and no other authority can record a finding that the person accused of offence has committed the

criminal offence.

31. In the matter of Tarsem Singh v. State of Punjab and others¹⁰, in a case where a preliminary enquiry was conducted against the delinquent servant and relying upon such inquiry, the disciplinary authority dispensed with formal inquiry and passed an order of dismissal, their Lordships of the Supreme Court while setting aside the order of dismissal, held as under: -

“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 insofar as he failed to take into consideration the relevant facts and based his decision on irrelevant factors.”

32. Therefore, the disciplinary authority has failed to place material to

satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) to clause (2) of Article 311 of the Constitution of India read with Rule 27(cc)(ii) of the CRPF Rules. As such, the disciplinary authority has committed grave legal error in invoking Rule 27(cc)(ii) of the CRPF Rules and the reasons assigned by him are not the reasons and are based on whims and fancies of the disciplinary authority, as he swayed with the allegations against the petitioner's husband of committing murder of four CRPF persons and injuring one person. In consequence thereof, the order passed by the disciplinary authority as affirmed by the appellate authority, both, are hereby set aside. The revisional authority has also perpetuated the illegality by not entertaining the revision on merits and holding that revision is not maintainable since the petitioner has lost her husband in jail on 24-4-2013. As such, the impugned order terminating the services of the petitioner's husband and the appellate and revisional orders are set aside.

33. The order terminating the service of the petitioner's husband was passed on 6-3-2013, which he challenged by filing appeal and the appellate authority dismissed the appeal by order dated 3-8-2013. However, during the pendency of appeal, as per memo dated 23-12-2014 (Annexure P-4), it was informed by the Superintendent of Jail, Dantewada to the Station House Officer, Police Station Kakori, District Lucknow (U.P.) that the petitioner's husband died on 24-4-2013 while in jail. Since the petitioner's husband has demised during the pendency of his appeal, no further direction either as to

further enquiry or reinstatement can be given. Since the order of termination of the petitioner's husband has been held to be illegal, the petitioner would be entitled to payment of arrears of salary from the date of termination of his service dated 6-3-2013 up to the date of his death (that is 24-4-2013) on the basis of last pay drawn by him, which will be calculated and paid to the petitioner within two months from today. The petitioner will also be entitled for all service benefits accrued to her husband till his death that is 24-4-2013. However, it is made clear that this Court has not expressed any opinion on the nature of death of the petitioner's husband.

34. The writ petition is allowed to the extent sketched herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge