CGHC010119492018 2026:CGHC:46362

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Order Reserved on 26.09.2026.

Order Passed on 03.11.2026.

WPS No. 3017 of 2018

1 – Gajadhar Kumar Nag, S/o Rajendra Kumar Nag, aged about 30 years, Sainik No. 325, Chhattisgarh, Home Guards, R/o village Kodabhat, PS & Tahsil Kanker, Dist. Kanker (C.G.)

... Petitioner

Versus

1 - State of Chhattisgarh Through- The Secretary, Department of Home, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya RAIPUR, District Raipur (C.G.).

2. Director General (Home Guards), Chhattisgarh, Raipur (C.G.).

RAVVA UTTEJ KUMAR RAJU Digitally signed by RAVVA UTTEJ KUMAR RAJU Date: 2026.11.03 18:12:36 +0530

3. Divisional Commandant, Home Guards, Bastar Division, Jagdalpur (C.G.)]

4. District Commandant, Home Guards, Uttar Bastar, Kanker (C.G.)

... Respondents

(Cause title is downloaded from CIS Periphery.)

For Petitioner	:	Ms. A. Sandhya Rao, counsel on behalf of Mr. Varunendra Mishra, Advocate.
For State	:	Mr. Shobhit Mishra, Dy. G.A.

Hon’ble Mr. Justice Amitendra Kishore Prasad

C.A.V. Order

1. The petitioner has filed the present petition challenging the order dated 24.11.2016 passed by the respondent No. 3/Divisional

Commandant, Home Guards, Bastar Division, Jagdalpur (C.G.), whereby he was removed from service on the ground of alleged indiscipline. The impugned order was passed on the allegation that the petitioner had remained absent from duty during the visit of the Hon'ble Prime Minister of India to attend the Rajyotsav समारोह, 2016, celebrated on the occasion of the Statehood Day of Chhattisgarh. The order of removal was passed by invoking Section 13 of the Home Guards Act, 1947, read with Rule 12(1)(6) of the Rules framed thereunder.

2. The petitioner in the said writ petition has prayed for the following reliefs :-

> "10.1 That, this Hon'ble Court may kindly be pleased to quash/set aside the impugned order dated 24/11/2016 (Annexure-P/1) bearing No. 1966/ Pra. Shi /2016 passed by the respondent No. 3.
>
> 10.2 That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to reinstate the petitioner in service and also grant him all consequential benefits.
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> 10.3 Cost of the petition may also be granted to the petitioner.
>
> 10.4 Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioner, in the interest of justice."

3. Brief facts of the case as adumbrated by the petitioner is that the petitioner was serving as a Home Guard and his name appeared at Serial No. 13 in the list of Home guard directed to be deployed for security duty during the visit of the Hon’ble Prime Minister of India to Raipur from 28.10.2016 to 01.11.2016, pursuant to the communication dated 27.10.2016 issued by respondent No. 4. The petitioner contends that, during the relevant period, he fell ill and underwent treatment at Government Komal Deo District Hospital, Kanker, from 26.10.2016 to 02.11.2016, as evidenced by the medical documents placed on record. In the meantime, vide letter dated 05.11.2016, the Divisional Commandant, Home Guards, Raipur, informed respondent No. 3 about the absence of the petitioner and four other Home guard from the aforesaid security duty. According to the petitioner, upon recovering from his illness, he joined duty at Raipur on 02.11.2016 and continued to discharge his duties until 22.12.2016. However, respondent No. 3, vide order dated 24.11.2016, removed him from service on the ground of indiscipline arising out of his alleged absence from the security duty assigned during the visit of the Hon’ble Prime Minister of India. Subsequently, the District Commandant, Home Guards, Raipur, also passed an order dated 21.12.2016. Aggrieved by the aforesaid action, the petitioner has challenged the impugned orders on the ground that the order of removal was passed without issuance of any show-cause notice or charge-sheet and without affording him an opportunity of hearing to

explain the circumstances of his absence, despite his illness being supported by medical documents. It is further contended that the impugned action is arbitrary, illegal and violative of the principles of natural justice, as well as the provisions of Section 12 of the Home guard Act, 1947, and the Rules framed thereunder. Hence, the present petition.

4. Ms. A. Sandhya Rao, learned counsel on behalf of Mr. Varunendra Mishra, Advocate for the petitioner submits that the impugned order dated 24.11.2016 has been passed behind the back of the petitioner, without conducting any departmental enquiry or affording him an opportunity of hearing, and that he has been removed from service in an arbitrary and unlawful manner. She further submits that, during the relevant period, the petitioner was suffering from malaria and typhoid and was admitted to Government Komal Deo District Hospital, Kanker, District Kanker (C.G.), on 26.10.2016 at 9:20 a.m. and discharged on 27.10.2016 at 5:30 p.m. She contends that the petitioner was medically advised to remain on leave and that his fitness certificate was issued only on 02.11.2016. Thus, the petitioner had a genuine and reasonable cause for his absence from duty, which was not duly considered by the competent authority. Learned counsel further submits that the order of removal has been passed without following the prescribed procedure and in violation of the principles of natural justice. On these grounds, she prays that the

impugned order dated 24.11.2016 be quashed and set aside and that the petitioner be reinstated in service.

5. *Ex adverso*, learned counsel for the State vehemently opposes the submissions made by learned counsel for the petitioner and submits that the present petition is not maintainable in view of the availability of an efficacious statutory alternative remedy of appeal under Rule 13 of the Home guard Rules, 1947, as the impugned order is appealable under the said provision. He contends that, without availing the aforesaid statutory remedy, the petitioner has directly approached this Court by invoking its writ jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petition deserves to be dismissed at the threshold on the ground of availability of an alternative remedy. He next contends that the Home guard constitute a voluntary auxiliary force established to assist the Police in maintaining law and order, controlling civil disturbances and discharging various duties in the interest of public safety and administration. The Home guard assist the Police in maintaining internal security and are also entrusted with responsibilities relating to emergency response and disaster management, including assistance during air raids, fires, cyclones, earthquakes and epidemics. Their functions further extend to maintaining essential services, promoting communal harmony, assisting the administration in protecting weaker sections of society, participating in socio-economic and welfare activities, and discharging duties relating to Civil Defence and

other allied functions. Thus, the Home guard play a significant auxiliary role in supporting the Police and civil administration, particularly during emergencies and other situations requiring coordinated public service.

6. Having heard learned counsel for the parties and upon minute appreciation of the material available on record, this Court finds from the medical documents of the petitioner that has been annexed in this petition in support of his contention that his absence from the assigned duty was occasioned by illness. The medical records, including the relevant hospital documents and the fitness certificate dated 02.11.2016, lend support to the petitioner's explanation for his absence. It is quite apparent from the record that the petitioner was terminated from service vide order dated 24.11.2016 on the ground of indiscipline arising out of his alleged absence from the security duty assigned during the visit of the Hon'ble Prime Minister of India, without affording him an opportunity to explain the circumstances leading to his absence. The impugned order, which visits the petitioner with the serious civil consequence of removal from service on the ground of alleged misconduct, could not have been passed without following the procedure prescribed under the applicable statutory rules and the principles of natural justice. In this regard, the relevant provisions of Rule 12 of the Home Guards Rules, 1947, governing the procedure for disciplinary action, require consideration. In the absence of compliance with the prescribed

procedure and without affording the petitioner a reasonable opportunity to defend himself, the impugned order dated 24.11.2016 passed by respondent No. 3 cannot be sustained in the eyes of law.

7. Section 13 of the Home Guards Act, 1947, is reproduced hereinbelow for ready reference:-

> "**13**. **Penalty.** (1) Every Home Guard who is guilty of any violation of duty or wilful breach or neglect of any provisions of this Act, or of any rule or lawful order made by competent authority, or who withdraws from the duties of his office with permission or who on being required to undergo training under Section 7 or being called our under Section 10 without sufficient cause neglects or refuses to obey the requirement or the order calling him out, or who is guilty of cowardice or offers any unwarrantable personal violence to any person in his custody, or who fails within ten days to surrender his certificate under clause (b) of sub-section (2) of Section 6, shall be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both.
>
> (2) An offence punishable under sub-section (1) shall be cognizable.

(3) The Commandant-General, the District Magistrate, or, subject to the control of the Commandant-General, Commandant or an officer not below such rank as may be prescribed, may, for any act of commission or omission punishable under sub-section (1), without formal trial, award to any Home Guard below the rank of Commandant, who is subject to his authority, any of the following punishments, namely,-

(a) imprisonment in the Quarter Guard of a police line or such other place as may be considered suitable, for a term which may extend to twenty-eight days when the order is passed by the Comman-dant-General or the District Magistrate, or to seven days when it is passed by any other officer. Such imprisonment shall involve the forfeiture of pay, honorarium and allowances, if any, for the period of imprisonment;

(b) punishment drill, extra guard, fatigue or other duty, not exceeding twenty-eight days induration, with or without confinement to the lines as may be appropriate.]

8. Rule 12 (1) (5) of the Home Guards Rules, 1947 reads as thus:-

> “If the Senani (Commandant) considers that any of the aforesaid punishments is not sufficient to meet the ends of justice or the interests of discipline in any particular case, he may in addition to any such punishment recommend the prosecution of the accused under Section 13 of the Act.”

9. The Hon'ble Supreme Court, in the matter of ***Manohar Lal vs. Commissioner of Police & Ors*** delivered in **Civil Appeal No. 13860 of 2024** reported in **2026 OnLine SC 263 has held in paras 13 and 16 which reads as under:-**

> **“13.** Upon perusal of the above, it is clear that as per Article 311(2) a member of the civil service of the Union or a State may be dismissed or removed or reduced in rank by the appointing authority after a regular inquiry on charges which have been informed to him, affording him a reasonable opportunity. As per first proviso thereto, in case an inquiry is conducted for the purpose of imposing penalty, it is not necessary to afford an opportunity to the appellant at the stage of penalty.
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> **16**. It is trite law that the decision of the appointing authority on the issue of recording reasons in writing on its satisfaction as to why holding an inquiry is not reasonably practicable may be subject to judicial review under Article 226 by High Court or under Article

32 by the Supreme Court. This Court in the Constitution Bench judgment rendered in the case of Tulsiram Patel (Supra) reiterated the legal positions and explained the same. The High Court in the impugned judgment has relied upon paragraph 101 of the said judgment. Learned senior counsel for the appellant contended before us that subsequent paragraphs, in particular, paragraphs 130, 133 and 138, which enunciates the law while interpreting Article 311 (2) of the Constitution of India, have not been considered. Therefore, for ready reference, we reproduce all the aforesaid paragraphs as thus:

> "**101**. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J. Mohapatra & Co. v. State of Orissa [(1984) 4 SCC 103 : (1985) 1 SCR 322, 334- 5] . So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is

passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi case [(1978) 1 SCC 248 : (1978) 2 SCR 621, 676] at p. 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all-pervading sanctity than a statutory provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its keywords “this clause shall not apply”. As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a constitutional

provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to Article 14. This is, however, the only scope which Article 14 can have in relation to the second proviso, but to hold that once the second proviso is properly applied and clause (2) of Article 311 excluded. Article 14 will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution-makers who inserted it in Article 311(2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.

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

manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. 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 intimidates 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. The case of Arjun Chaubey v. Union of India [(1984) 2 SCC 578 : 1984 SCC (L&S) 290 : (1984) 3 SCR 302] is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent,

Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the

conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter. **138**. 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 this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The

finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, 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."

10. The principles of law enunciated by the Hon'ble Supreme Court in the aforesaid judgment makes it clear that a regular departmental enquiry cannot be dispensed with as a matter of routine and that any such departure must be justified by circumstances recognised under the applicable statutory or constitutional provisions. The authority concerned cannot resort to such an exceptional course

arbitrarily or merely on the basis of allegations of misconduct. In the present case, admittedly, no departmental enquiry was conducted against the petitioner, nor was any show-cause notice or charge-sheet issued to him. The petitioner was also not afforded any opportunity of hearing to explain the circumstances leading to his alleged absence from duty. On the contrary, the medical documents placed on record indicate that the petitioner was suffering from illness during the relevant period and had undergone treatment at the Government Komal Deo District Hospital, Kanker (C.G.). The allegation of indiscipline arising out of his absence from duty was made the basis for his removal from service without providing him an opportunity to explain his conduct or establish the genuineness of his medical condition. Further, there is nothing on record to indicate that the competent authority had recorded any reason or satisfaction demonstrating that it was not reasonably practicable to conduct a departmental enquiry against the petitioner. In such circumstances, the action of the respondents in removing the petitioner from service without following the prescribed disciplinary procedure and without adhering to the fundamental requirement of "*audi alteram partem"* is in clear violation of the principles of natural justice.

11. As an upshot, the writ petition is **allowed**. The impugned order dated 24.11.2016 passed by respondent No. 3, whereby the petitioner was removed from service, is hereby quashed and set aside. Consequently, the respondent authorities are directed to

reinstate the petitioner in service, subject to the applicable service rules. The petitioner's absence during the relevant period shall be considered in light of the medical documents placed on record and the applicable rules. The question of consequential benefits, including back wages, shall be governed by the applicable rules and the relevant legal principles.

12. So far as the objection regarding the availability of an alternative statutory remedy under Rule 13 of the Home Guards Rules, 1947, is concerned, the same does not warrant dismissal of the present petition at the threshold, as the petitioner has specifically alleged, and the record indicates, a violation of the principles of natural justice and the prescribed disciplinary procedure. In this regard, reliance may be placed on the judgment of the Hon'ble Supreme Court in **Harbanslal Sahnia and Another v. Indian Oil Corporation Ltd. and Others**, reported in **(2003) 2 SCC 107**, wherein it was held that the existence of an alternative remedy does not constitute an absolute bar to the exercise of writ jurisdiction under Article 226 of the Constitution of India.

Sd/-

(Amitendra Kishore Prasad)

Judge

U.K. Raju