IN THE HIGH COURT OF JUDICATURE AT PATNA

Anand Kumar Singh
vs.
The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 4860 of 2023

13 December 2024

(Hon'ble Mr. Justice Purnendu Singh)

Issue for Consideration

Whether the petitioner's dismissal from service without conducting a regular departmental enquiry, solely based on the ground that it was "not reasonably practicable" to do so under Article 311(2)(b) of the Constitution of India, is legally sustainable.

Headnotes

Service Law – Article 311(2)(b) of the Constitution – Dismissal without enquiry – Invocation without objective assessment – Quashed –

Held, invocation of Article 311(2)(b) of the Constitution for dismissing a police officer (petitioner) without departmental enquiry is not sustainable where there is no material or satisfaction recorded by the disciplinary authority that it was not reasonably practicable to hold an enquiry. Mere reference to a vigilance FIR or suspension order does not justify dispensing with inquiry.

[Paras 13, 21, 26, 27]

Disciplinary Proceedings – Bihar CCA Rules, 2005 – Rule 20(ii) – Non-application of mind – Non-compliance vitiates order –

Held, the authority failed to follow the mandate of Rule 20(ii) of the Bihar CCA Rules, 2005. There is no independent or objective recording of satisfaction by the disciplinary authority (DIG) and no evidence that holding an enquiry was impracticable.

[Paras 20, 21, 24]

Criminal Law – Final form submitted – No prima facie case – Departmental action collapses –

Held, final form submitted in Sahar P.S. Case No. 123/2021 exonerating the petitioner and accepted by the trial court forms a valid ground to reconsider the disciplinary action, especially when no departmental enquiry was held.

[Para 25]

Constitution of India – Natural Justice – Article 14 – Dismissal without opportunity – Violation –

Held, dismissal of a government servant without enquiry and without affording opportunity of defence violates principles of natural justice and Article 14 of the Constitution.

[Para 22]

Case Law Cited

Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178 – [Para 13]; *Avtar Singh v. Union of India*, (2016) 8 SCC 471 – [Para 14]; *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398 – [Paras 15–17];*Ved Mitter Gill v. Union Territory Administration, Chandigarh*, (2015) 8 SCC 86 – [Para 19]; ***Tarsem Singh v. State of Punjab*, (2006) 13 SCC 581 – [Para 22]**

List of Acts

Constitution of India; Bihar Government Servants (Classification, Control and Appeal) Rules, 2005

List of Keywords

Dismissal without enquiry; Article 311(2)(b); Rule 20(ii) Bihar CCA Rules; Natural justice; Final form; Vigilance case; Quashing of dismissal order; Departmental proceeding dispensed with; DIG; Absence of satisfaction

Case Arising From

Order of dismissal dated 08.07.2021 passed by DIG, Shahabad Range, Ara, without conducting departmental enquiry, affirmed by appellate order dated 02.11.2022 in relation to alleged misconduct in Sahar P.S. Case No. 123/2021.

Appearances for Parties

For the Petitioner: Mr. Bindhyachal Singh, Sr. Advocate; Mr. Vipin Kumar Singh, Advocate; Ms. Smriti Singh, Advocate; Ms. Nikita Mittal, Advocate

For the Respondents: Mr. P.K. Verma, AAG-3

Headnote Prepared by Reporter:- Ms. Akanksha Malviya, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4860 of 2023

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Anand Kumar Singh Son of Late Kameshwari Prasad Singh, Resident of Village- Sahari, Police Station- Barh, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Police) Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police (Budget, Appeal and Welfare), Bihar, Patna.
4. The Additional Director General of Police (Law and Order), Bihar, Patna.
5. The Deputy Inspector General of Police, Shahabad Region, Dehri- on- Sone.
6. The Superintendent of Police, Bhojpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Vipin Kumar Singh, Advocate
Ms. Smriti Singh, Advocate
Ms. Nikita Mittal, Advocate
For the Respondent/s : Mr. P.K. Verma, (AAG 3)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 13-12-2024

Heard Mr. Bindhyachal Singh, learned Senior Counsel, along with Mr. Vipin Kumar Singh, Ms. Smriti Singh and Ms. Nikita Mittal, learned counsels appearing on behalf of the petitioner and Mr. P.K. Verma, learned AAG 3 appearing on behalf of the State.

RELIEF

2. The petitioner in paragraph no.1 of the present writ petition have, *inter alia,* sought following refief(s), which is reproduced hereinafter:

i)For issuance of writ in the nature of certiorari or any other appropriate writ, order or direction for quashing letter no. 4460 dated 25.06.2021 issued by office of Superintendent of Police whereby the recommendation has been given for dismissal of petitioner under Article 311(2) of the Constitution of India without holding regular departmental proceeding as prescribed under the Civil (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as CCA Rules, 2005).

ii) For issuance of writ in the nature of certiorari or any other appropriate writ, order or direction for quashing order passed by the Deputy Inspector General, Shahabad Region, Dehri-on-Sone contained in memo no.1708 dated 08.07.2021 whereby the order has been passed by the disciplinary authority dismissing the petitioner from service with effect from 08.07.2021 under Article 311(2) of the Constitution of India by giving a reason that it is impracticable to hold regular departmental proceeding bydeclaring the petitioner as an absconder without any justifiable basis for reaching such an erroneous conclusion.

iii) For issuance of writ in the nature of certiorari or any other appropriate writ, order or direction for quashing the consequential order issued under the Bhojpur District Order no. 2140 dated 10.07.2021 issued by office of Superintendent of Police, Bhojpur.

iv) For issuance of writ in the nature of Certiorari or any other appropriate writ, order or direction for quashing order dated 02.11.2022 issued by Appellate Authority whereby departmental appeal preferred by the Petitioner has been rejected without any reason assigned in the said Appellate order and by merely relying on the order passed by the Disciplinary authority.

v) For holding under the Respondent Authorities have reached to an erroneous conclusion that it is impracticable to hold regular departmental proceeding in the case of petitioner and by merely resorting to Article 311(2) of the Constitution of India by holding that the petitioner hasbeen an absconder without appreciating that petitioner is continuously present and ready and willing to participate in proceeding, if any.

vi) For holding that the order of

dismissal passed against the petitioner under Article 311(2) of the Constitution of India is merely an eye wash in utter violation of concerned statutory provisions including CCA Rules, 2005 as well as Bihar Police Manual as the petitioner has never been absconding.

vii) For issuance of any other appropriate writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

BRIEF FACTS

3. The brief facts of the case are that the petitioner was posted as Officer-in-Charge of Sahar Police Station and while, he was posted during this period, a written complaint was filed on 05.06.2021 by one Sanjay Yadav alleging that money was collected from sand loaded truck at night by one Ashok Singh, who was extorting money from truck driver for the petitioner and on such allegation, an FIR was registered being Sahar P.S. Case no.- 123/2021 dated 06.06.2021 against the petitioner and one Ashok Singh under Sections 341, 323, 384, 385, 420, 388, 504, 506 and 34 of the Indian Penal Code. On the basis of criminal case lodged against the petitioner, he was put under suspension vide order dated 06.06.2021 and thereafter, a recommendation was made vide letter no. 4460 dated 25.06.2021 issued by Superintendent of Police, Bhojpur, whereby petitioner was recommended for dismissal from

service without holding any regular departmental enquiry prescribed under Article 311 (2) of the Constitution of India and Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Bihar CCA Rules, 2005'). It was also mentioned in the recommendation letter that the petitioner was absconding and in light of the same it is reasonably impracticable to hold regular departmental proceeding as per the procedure prescribed under Article 311 (2). Thereafter, following the recommendation made by Superintendent of Police, an order was passed by the Deputy Inspector General (hereinafter referred to as the DIG for short), Shahabad Region, Dehri-in-Sone vide Memo no.- 1708 dated 08.07.2021, whereby the order has been passed dismissing the petitioner from service with effect from 08.07.2021 stating reason that it is impracticable to hold regular departmental proceeding by declaring the petitioner as an absconder. Pursuant to the order passed by the DIG, a consequential Bhojpur District order no.- 2140 dated 10.07.2021 was issued from the office of Superintendent of Police, Bhojpur. Being aggrieved by the order of dismissal, the petitioner preferred an appeal on 30.09.2021 requesting that he is entitled for a regular departmental proceeding so as to file his reply on the allegation/charges

levelled against him that leads to his dismissal from service. The Appellate Authority rejected the appeal filed by the petitioner vide order dated 02.11.2022. Aggrieved by the dismissal order and the appellate order, the petitioner has preferred the present writ petition.

4. In compliance of order dated 12.12.2024 passed in the present writ petition, the Superintendent of Police, (Bhojpur), Mr. Raj, is present in person along with the original records related to the disciplinary proceeding initiated against the petitioner.

ARGUMENT OF PARTIES

5. Learned counsel appearing on behalf of the petitioner submitted that petitioner was posted as Officer-in-Charge of Sahar Police Station and while he was posted during the said period, a written complaint was filed on 05.06.2021 by one Sanjay Yadav and FIR was registered being Sahar P.S. Case no.- 123/2021 dated 06.06.2021 against the petitioner and one Ashok Singh on allegation of extorting money from truck drivers. The petitioner faced unnecessary criminal prosecution and the departmental proceeding was initiated against the petitioner and he was dismissed from service without any cogent reason assigned by the Disciplinary Authority. The

Disciplinary Proceeding was initiated behind the back of the petitioner and resorting to the provisions of Rule 20 of the Bihar CCA Rules, 2005, he was dismissed from the service on the alleged ground that the petitioner was absconding and it was not practical to hold regular departmental proceeding.

6. Learned counsel further submitted that in connection with Sahar P.S. Case no.- 123/2021, the Investigating officer, on the basis of material collected in course of investigation, submitted final form having found the petitioner to be innocent and, accordingly, learned Special Judge Vigilance, Patna vide order dated 03.10.2024/04.10.2024 passed in Special Case No. 22(A) of 2021 (arising out of Sahar (Bhojpur) P.S. Case No. 123 of 2021) was pleased to close the proceeding. The Petitioner in this regard has brought on record the final form submitted and has given specific information in paragraph no. 5 of the supplementary affidavit. Learned counsel submitted that since the petitioner has been found innocent in the criminal case and the learned Dis Judge has closed the proceeding, the disciplinary action taken against the petitioner is required to be interfered with in accordance with law.

7. Mr. P.K. Verma, learned Senior Counsel and Additional Advocate General-3 (AAG-3), appearing on behalf

of the State, in the background of the admitted facts as stated hereinabove, referring to the Constitutional provision and its mandate contained in Article 311(2)(b) submitted that in the case of the petitioner, the petitioner was accused of Sahar P.S. Case No. 123 of 2021, which was lodged against him while he was caught red handed taking illegal gratification from sand mining mafias and such grievous charge against the petitioner, who was in discipline service, required for taking immediate action against him and accordingly resorting to Rule 20 of Bihar CCA Rules, 2005, the petitioner was put under suspension and order of dismissal was imposed. Learned counsel submitted that procedure as prescribed under Rule 20 of Bihar CCA rules, 2005 and after having found that there was sufficient material, the Disciplinary Authority had passed the impugned order of dismissal contained in Memo No. 1708 dated 08.07.2021 on the basis of recommendation of the Superintendent of Police, Bhojpur, Contained in letter no. 4460 dated 25.06.2021. The Special procedure as prescribed under Rule 20 of Bihar CCA Rules,2005 was applied in the case of the petitioner in the special circumstances, which was required in government interest and also it was not practical to hold enquiry as the petitioner remained absconding throughout the entire

proceeding. In these background, learned counsel submitted that the Impugned Order contained in Memo No. 1708 dated 08.07.2021 and the Appellate Order dated 02.11.2022, were passed in accordance with law and no interference of this Court in exercise of extraordinary jurisdiction is required and submitted that the present writ petition is fit to be dismissed.

ANALYSIS & CONCLUSION

8. Heard the parties.

9. The issue involved in the present writ petition is, as to whether, in want of the satisfaction recorded by the Disciplinary Authority to the extent that it was reasonably not practical to hold and enquiry in the interest of State after considering the circumstances of the case before imposing penalty against the petitioner is in accordance with the provision contained in Article 311(2)(b) of the Constitution of India and Rule 20 of the Bihar CCA Rules, 2005?

10. Before I proceed to analyze, Article 311(2)(b) of the Constitution of India and Rule 20 of the Bihar CCA Rules, 2005 provides for special procedure in cases where it is reasonably not practicle to hold an enquiry as per the procedure prescribed in Article 311(2)(b) of the Constitution of India and Rules 17 and 19 of the Bihar CCA Rules, 2005. I find it apt to

reproduce the mandate of Constitution contained in Article 311 (2) (b):

> *"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-*
>
> *(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—*
>
> *(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"*

11. The above clause makes it clear that the onus is on the Disciplinary Authority to record its satisfaction in writing of the reason, as to why, it would not reasonably be practicable to hold such inquiry where the authority is empowered to dismiss a person. The provision makes it mandatory in case it is non-negotiable must record reason in writing for dispensing with a disciplinary inquiry which would have an indelible impact on the person who is removed, dismissed from service or reduced in rank without an inquiry. The reason recorded must reflect the attending circumstances which would make it reasonably impracticable for the authority to hold the inquiry before imposing the penalty.

12. I also find it proper to take notice of the provision contained in Rules 16,17 and specially Rule 20, which is reproduced hereinafter:

16. Authority to institute proceedings.

(1) The Government or appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government may-
(a)institute disciplinary proceedings against any Government Servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government Servant on whom that disciplinary authority is competent to impose any of the penalties specified in Rule 14 under these Rules.

(2) A disciplinary authority, competent under these Rules to impose any of the penalties specified in clauses (i) to (v) of Rule 14, may institute disciplinary proceedings against any government servant for the imposition of any of the penalties specified in clauses [(vi) to (xi)] [Substituted by Notification No. 3/M-166/2006-Ka-2797, dated 20.8.2007] of Rule 14 notwithstanding that such disciplinary authority is not competent under these Rules to impose any of the penalties under clauses [(vi) to (xi)] [Substituted by Notification No. 3/M-166/2006-Ka-2797, dated 20.8.2007] of Rule 14.

17. Procedure for imposing major penalties.

(1) No order imposing any of the penalties specified in clauses [(vi) to (xi)] [Substituted by Notification No. 3/M-166/2006-Ka-2797, dated 20.8.2007] of Rule 14 shall be made without holding an inquiry, as far as may be, in the manner provided in these Rules.

(2) Wherever the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.Explanation. - Where the disciplinary authority himself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule to the inquiring authority shall be construed as a

reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(I) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 18.

(b) If no written statement of defence is submitted by the Government Servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the "Presenting officer' to

present on his behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-(i)a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;(ii)a copy of the written statement of defence, if any, submitted by the government servant: (iii)a copy of the statement of witnesses, if any, specified in sub-rule (3) of this Rule.(iv)evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and(v)a copy of the order appointing the "Presenting officer".

(7) The Government Servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding ten days, as may be specified by the inquiring authority.

(8) (a) The Government Servant may take the assistance of other Government Servant posted in any office, either at his headquarter or at the place where the inquiry is to be held, to present the case on his behalf:Provided that he may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits:Provided also that the Government Servant may take the assistance of any other Government Servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits:Provided further that the Government Servant shall not take the assistance of any such other Government Servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government Servant may take the assistance of a retired government servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order in this behalf.

(9) If the Government Servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of

defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has to say anything for his defence and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government Servant pleads guilty.

(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence,-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;Note:-If the Government Servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this Rule:Provided that the Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition specified in sub-rule

(12) of this Rule, every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:Provided that if the authority, having the custody or possession of the requisitioned documents, is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents will be against public interest or security of the State, he shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice:Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to supplement the evidence. Such evidence may be called for if there is any inherent lacuna or defect in the evidence, produced originally.

(16) When the case for the disciplinary authority is

closed, the Government Servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government Servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and they shall be liable to examination, cross-examination and, re-examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government Servant closes his case, and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government Servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government Servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this Rule, the inquiring authority may hold the inquiry ex-parte.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (v) of Rule 14 [but not competent to impose any of the penalties specified in clauses [(vi) to (xi)] [Substituted by Notification No. 3/M-166/2006-Ka-2797, dated 20.8.2007.] of Rule 14], has himself inquired into or caused to be inquired into the article of any charge and that authority having regard to his own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses [(vi) to (xi)] [Substituted by Notification No. 3/M-166/2006-Ka-2797, dated 20.8.2007.] of Rule 14 should be imposed on the government servant, that authority shall forward the

records of the inquiry to such disciplinary authority as is competent to impose the penalties mentioned in clause [(vi) to (xi)] [Substituted by Notification No. 3/M-166/2006-Ka-2797, dated 20.8.2007.] of Rule 14.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the records or may, if he is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government Servant such penalties as it may deem fit in accordance with these Rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such jurisdiction the inquiring authority so succeeding may act on the basis of evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and reexamine any such witnesses as hereinbefore provided.

(23) (I) After the conclusion of the inquiry, a record shall be prepared and it shall contain:-

(a) the articles of charge and the statement of the imputations of misconduct or misbehavior;

(b) the defence of the Government Servant in respect of each article of charge.

(c) an assessment of the evidence in respect of each article of charge,

(d) the findings on each article of charge and the reasons thereof.

Explanation. - If in the opinion of the inquiring authority the proceedings of the inquiry may establish any article of charge different from the original articles of the charge, he may record his findings on such article of charge:Provided that the findings on such article of charge shall not be recorded unless the Government Servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of

charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-

(a) the report prepared by it under clause (i) of this sub rule;

(b) the written statement of defence, if any, submitted by the Government Servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government Servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

20. Special procedure in certain cases.

- Notwithstanding anything contained in Rules 17 to 19-

(i) where any penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by him in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules, or

(iii) where the Government is satisfied that in the interest of the State, it is not expedient to hold any inquiry in the manner provided in these Rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:Provided that the Government Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this Rule.

13. In the fact of the case, I find that it is not denied that the disciplinary authority has not found unreasonable to proceed with regular departmental enquiry which required the evidence produced to substantiate his claim by not holding that

the unauthorized absence was willful and after considering the eventuality before it summarized that enquiry was impractical on the basis of recommendation dated 25.06.2021 contained in Letter No. 4460 of Superintendent of Police, Bhojpur. The Disciplinary Authority in case of the petitioner is DIG and from the records, which has been perused by the learned Senior Counsel in presence of the Superintendent of Police in the Court only reflects that the Superintendent of Police, who is not the Disciplinary Authority has only recorded that no application or prior permission for leave was submitted by the petitioner and he willfully remained absent. The Disciplinary Authority, the DIG noting would reflect that he has not considered on his own to discuss the compelling circumstances under which it was not possible for the petitioner to report or perform duty was willful and will amount to misconduct. In the similar circumstances, the Apex Court in case of ***Krushnakant B. Parmar vs Union of India and another*** reported in ***(2012) 3 SCC 178*** in para nos.-17, 18 and 19, the Apex Court observed as under:-

> *"17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty*

of failure of devotion to duty or behaviour unbecoming of a government servant.

18.In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was willful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty."

14. The Apex Court analyzing the law laid down in various cases summarized the different situation in holding of departmental enquiry in the case of ***Avtar Singh v. Union of India,*** reported in ***(2016) 8 SCC 471***: wherein, paragraphs no. 34, 35, 36, 37 and 38 of the judgment of is reproduced herein below:

34. *No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.*

35. *Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.*

36. *What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering*

post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. *The "McCarthyism" is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformative theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for canceling candidature or discharging an employee from service.*

38. *We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:*

38.1. *Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.*

38.2. *While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.*

38.3. *The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.*

38.4. *In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:*

38.4.1. *In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.*

38.4.2. *Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.*

38.4.3. *If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.*

38.5. *In a case where the employee has made declaration*

truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. *In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.*

38.7. *In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

38.8. *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

38.9. *In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

38.10. *For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.*

38.11. *Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.*

15. Now, the question to be determined whether in absence of subjective satisfaction of the Disciplinary Authority, the petitioner, against whom the criminal proceeding has been closed on the basis of the final form submitted by the Investigating Officer in connection with Sahar P.S. Case no.-123/2021 dated 06.06.2021, the order of dismissal can be

interfered? I think it proper to discuss the parameter, which empowers the Disciplinary Authority to exercise its jurisdiction in accordance with Rule 20 in case of the petitioner. Similar question was considered by a Constitution Bench of Hon'ble Supreme Court in ***Union of India and another v. Tulsiram Patel***, reported in ***(1985) 3 SCC 398***. The question was decided with reference to the provisions of clause (2) of Article 311, which we have already noticed hereinabove are *pari materia* to the Rules here. It is observed in *Tulsiram Patel (supra)* regarding the validity of Rules providing for exclusion of natural justice in the following terms:

> *"106. It is not possible to accept this submission. The opening words of Article 309 make that article expressly "Subject to the provisions of this Constitution". Rules made under the proviso to Article 309 or under Acts referable to that article must, therefore, be made subject to the provisions of the Constitution if they are to be valid. Article 310(1) which embodies the pleasure doctrine is a provision contained in the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to that article are subject to Article 310(1). By the opening words of Article 310(1) the pleasure doctrine contained therein operates "Except as expressly provided by this Constitution". Article 311 is an express provision of the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to Article 309 would be subject both to Article 310(1) & Article 311. This position was pointed out by Subba Rao, J., as he then was, in his separate but concurring judgment in Moti Ram Deka case [AIR 1964 SC 600 : (1964) 5 SCR 683, 734-5 : (1964) 2 LLJ 467] at p. 734, namely, that rules under Article 309 are subject to the pleasure doctrine and the pleasure doctrine is itself subject to the two limitations imposed thereon by Article 311. Thus, as pointed out in that case, any rule which contravenes clause (1) or clause (2) of Article 311 would be invalid. Where, however, the second proviso applies, the only restriction upon the exercise of the pleasure of the President or the Governor of a State is the one contained in clause (1) of Article 311. For an Act or a rule to provide that in a case where the second proviso applies any of the safeguards excluded by that proviso will be available to a government servant would amount to such Act or rule impinging upon the*

pleasure of the President or Governor, as the case may be, and would be void as being unconstitutional. It is, however, a well-settled rule of construction of statutes that where two interpretations are possible, one of which would preserve and save the constitutionality of the particular statutory provision while the other would render it unconstitutional and void, the one which saves and preserves its constitutionality should be adopted and the other rejected. Such constitutionality can be preserved by interpreting that statutory provision as directory and not mandatory. It is equally well-settled that where a statutory provision is directory, the courts cannot interfere to compel the performance or punish breach of the duty created by such provision and disobedience of such provision would not entail any invalidity -- see Craies on Statute Law, Seventh Edn., at p. 229. In such a case breach of such statutory provision would not furnish any cause of action or ground of challenge to a government servant for at the very threshold, such cause of action or ground of challenge would be barred by the second proviso to Article 311(2)." Article 309 would be subject both to Article 310(1) & Article 311. This position was pointed out by Subba Rao, J., as he then was, in his separate but concurring judgment in Moti Ram Deka case [AIR 1964 SC 600 : (1964) 5 SCR 683, 734-5 : (1964) 2 LLJ 467] at p. 734, namely, that rules under Article 309 are subject to the pleasure doctrine and the pleasure doctrine is itself subject to the two limitations imposed thereon by Article 311. Thus, as pointed out in that case, any rule which contravenes clause (1) or clause (2) of Article 311 would be invalid. Where, however, the second proviso applies, the only restriction upon the exercise of the pleasure of the President or the Governor of a State is the one contained in clause (1) of Article 311. For an Act or a rule to provide that in a case where the second proviso applies any of the safeguards excluded by that proviso will be available to a government servant would amount to such Act or rule impinging upon the pleasure of the President or Governor, as the case may be, and would be void as being unconstitutional. It is, however, a well-settled rule of construction of statutes that where two interpretations are possible, one of which would preserve and save the constitutionality of the particular statutory provision while the other would render it unconstitutional and void, the one which saves and preserves its constitutionality should be adopted and the other rejected. Such constitutionality can be preserved by interpreting that statutory provision as directory and not mandatory. It is equally well-settled that where a statutory provision is directory, the courts cannot interfere to compel the performance or punish breach of the duty created by such provision and disobedience of such provision would not entail any invalidity -- see Craies on Statute Law, Seventh Edn., at p. 229. In such a case breach of such statutory provision would not furnish any cause of action or ground of challenge to a government servant for at the very threshold, such cause of action or ground of challenge would be barred by the second proviso to Article 311(2)."

16. It is, therefore, in accordance with the constitutional scheme that service rules excluding natural justice

have to be reflections of clause (b) of the second proviso to Article 311(2) of the Constitution.

17. The parameters, on which the power to dispense with an inquiry under clause (b) of the second proviso to Article 311(2) of the Constitution is exercised, have been elaborately laid down by the Constitution Bench in *Tulsiram Patel (supra)*. In the said judgment, it has been held as follows:

> *"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 theword "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 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 aninquiry 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.

131. It was submitted that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that the administrative work carried out by senior officers should

be paralysed because a delinquent government servant either by himself or along with or through others makes the holding of an inquiry not reasonably practicable.

132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

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

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must 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 reasonwas 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."

18. The aforesaid principles laid down by the Constitution Bench were followed by the Apex Court in case of ***Southern Railway Officers Association v. Union of India and others***, reported in ***(2009) 9 SCC 24***. These principles were further followed and elaborated in a later decision of the Apex Court in ***Ved Mitter Gill v. Union Territory Administration, Chandigarh and Others***, reported in ***(2015) 8 SCC 86***. The facts in Ved Mitter Gill (supra) show that while Gill was posted as the Deputy Superintendent of Police, Model Jail, Burail, Chandigarh in January, 2004, four under-trials, three of whom were facing trial on the charge of assassinating a former Chief Minister of Punjab, Sri Beant Singh and another, escaped from Model Jail, Burail, Chandigarh by digging an underground tunnel. Gill was dismissed from service vide order dated 01.03.2004 by the Administrator, Union Territory of Chandigarh invoking clause (b) of the second proviso to Article 311(2). He challenged the order of dismissal dated 01.03.2004 by preferring departmental appeals to the Administrator of the Union Territory. Those appeals were dismissed as not maintainable vide order dated 11.02.2005. Gill moved the Central

Administrative Tribunal through an Original Application, challenging the orders of his dismissal from service. The Central Administrative Tribunal vide order dated 30.01.2006 dismissed the Original Application. This order was impugned before the High Court in a writ petition, that came to be dismissed by an order dated 01.05.2006. It was against the order of the High Court that Gill appealed by special leave to the Supreme Court. Before the Supreme Court, the appeal preferred by Gill was heard along with transferred cases, that were writ petitions filed in the High Court by the other officers posted in Jail, who had similarly been dismissed and their writ petitions were still pending before the High Court by time Gill moved the Supreme Court by his petition for special leave to appeal.

19. It was in the backdrop of these facts that after noticing the principles laid down in *Tulsiram Patel (supra)*, **Tarsem Singh v. State of Punjab, (2006) 13 SCC 581**, **State of Punjab v. Harbhajan Singh, (2007) 15 SCC 217** and other high authority that their Lordships held:

> *"22. We shall now advert to the impugned order to determine, whether the three parameters laid down for the valid invocation of clause (b) to the second proviso under Article 311(2) of the Constitution of India, were made out.*
>
> *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. We have already extracted hereinabove the order dated 1-3-2004, whereby, the appellant Ved Mitter Gill was dismissed from service, with immediate effect. Its perusal reveals,that the*

punishment was based on reasons (recorded in the impugned order) divided into different compartments. The first is contained in the first paragraph, which deals with the duties and responsibilities vested with Ved Mitter Gill, as Deputy Superintendent, Model Jail, Burail, Chandigarh. The second component deals with the escape of four undertrials from Model Jail, Burail, Chandigarh. Three of the undertrials, who had escaped, were involved in the assassination of Shri Beant Singh, a former Chief Minister of State of Punjab. The instant paragraph also records, the factum that the said three undertrials were having links with Babbar Khalsa International, a terrorist organisation. The fourth undertrial was being tried separately, for the offence of murder. The third component of the impugned order, relates to the material taken into consideration to evaluate the lapses committed by the appellant/petitioners, as would reveal their involvement with reference to the alleged delinquency, justifying the punishment of dismissal from service.

24. We shall now advert to the factual position emerging from the above. A reference was first of all made to the duties and responsibilities assigned to the appellant Ved Mitter Gill. Having detailed the express duties assigned to him in paras 9 to 11 above, we have concluded therefrom, that the responsibility of all the jail inmates (safe custody of all prisoners) rested on his shoulders, and the petitioners herein, who assisted him in the same. The appellant Ved Mitter Gill was required to satisfy himself once in every twenty-four hours, about the safe custody of the prisoners. He was also duty-bound to visit every barrack, ward, cell and compartment every twenty-four hours. He was to be present every morning and evening, when the prisoners were taken out of the sleeping wards or cells or other compartments, and then, restored to the same. He was to make a daily report by daybreak and by night, that all the prisoners were present, and in safe custody. He was also required to report forthwith any unusual occurrence. He was required at least once a week to inspect clothing, beddings, as well as, other articles, by thoroughly checking all places frequented by the prisoners. And to make a report, if he discovered any prohibited article, during the checking. The petitioners were associated with the appellant and assisted him in discharging his aforementioned duties. Had the appellant Ved Mitter Gill, and the petitioners, performed their duties diligently, there could not have been any possibility, of the escape under reference. It cannot be overlooked, that the escape was made good, by digging the escape tunnel, which measured ninety-four feet in length (with diagonal dimensions of 21" × 21"). Six separate reasons have been expressed by the competent authority in arriving at its conclusion. We have extracted the impugned order dated 1-3-2004, in its entirety, hereinabove. It fully establishes the inferences recorded by us.

25. The determination by the competent authority, when viewed dispassionately with reference to the duties assigned to Ved Mitter Gill, leaves no room for any doubt, that the competent authority was justified in concluding, that the four prisoners referred to above could never have escaped, if the appellant Ved Mitter Gill, and the petitioners, had diligently discharged the duties assigned to them. Having so concluded, about the responsibility and blameworthiness of the appellant/petitioners, there can be no doubt that the punishment of dismissal from

service, was fully justified, as their delinquency had resulted in the escape of four dreaded prisoners.

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. On the question whether it was reasonably practicable to hold an inquiry, the competent authority has recorded its conclusion in the paragraphs, preceding the one depicting the involvement of the appellant/petitioners. Amongst the reasons indicated, it has been recorded, that Ved Mitter Gill being a senior, permanent and non-transferable officer of Model Jail, Burail, Chandigarh, his junior jail officers, who alone would have been witnesses in such departmental proceedings, were not likely to come forward to depose against him, for fear of earning his wrath in future. The links of the escaped undertrial prisoners with the Babbar Khalsa International, a known and dreaded terrorist organisation were also clearly expressed in the impugned order, as one of the reasons, for it being impraticable, to hold an inquiry against the appellant/petitioners. It is a matter of common knowledge, and it would be proper to take judicial notice of the fact, that a large number of terrorists came to be acquitted during the period in question, on account of the fact that witnesses did not appear to depose against them on account of fear, or alternatively, the witnesses who appeared before the courts concerned for recording their deposition, turned hostile, for the same reason.

27. The situation presented in the factual narration noticed in the impugned order clearly achieves the benchmark for the satisfaction at the hands of the competent authority that it would not have been reasonably practicable to hold a departmental proceeding against the appellant/petitioners in terms of the mandate contained under Article 311(2) of the Constitution of India.

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. In the present case, there is no serious dispute on this issue because the reasons for the satisfaction have been recorded by the competent authority in the impugned order (dated 1-3-2004) itself.

29. For the reasons recorded above, we are satisfied, that all the parameters laid down by this Court for a valid/legal application of clause (b) to the second proviso under Article 311(2) of the Constitution of India were duly complied with."

20. The other issue that merits consideration is: if the power to invoke Rule 20 of the Rules, dispensing with the normal procedure of holding inquiry, was a valid exercise of

discretion under the said Rule? The Disciplinary Authority derives power to dispense with departmental inquiry under Rule 20, if it is satisfied that it is not reasonably practicable to hold an inquiry in the manner provided under the Rules and records reasons for its satisfaction. As laid down in Tulsiram Patel (supra) that the words '*not reasonably practicable*' do not postulate a '*total or absolute impracticability*', to borrow the words of their Lordships. All that is necessary is that to the understanding of a reasonable man, the holding of an inquiry in the circumstances should appear impracticable. There is remark in Tulsiram Patel (supra), which is of utmost importance on the question what can be regarded as reasonably practicable. Though some illustrations are given there, but it is said that, '*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*'.

21. In the backdrop of the law laid down in *Tulsiram Patel (Supra),* it is first required to consider the gravity of the charge, which entails the imposition of major penalty like dismissal from service. The charge against the petitioner is about being party to an act facilitating in collecting money illegally from the truck drivers along with one co-accused

Ashok Singh. The total money so collected was found to Rs. 7,64,300/-. The alleged illegal act in connivance with co-accused Ashok Singh implicating the petitioner in a criminal case is based on the confessional statement of Ashok Singh recorded by police in custody on 06.06.2021, without there being any acceptance of the petitioner about his involvement with him. No material in support of the allegation of illegal extraction of money from the truck drivers has been collected to implicate the petitioner to have involve in the criminal act and police upon investigation could only on the conversation of Ashok Singh on the basis of recording of Mobile No. 8709496552, on which basis complaint case was lodged against said Ashok Singh and petitioner, which according to me required proper holding of enquiry. The alleged act committed in connivance with Ashok Singh cannot be proved against the petitioner on the basis of one sided enquiry without establishing the authenticity of the whatsapp message audio clip, without supported by forensic report. In such circumstances, without any subjective satisfaction arrived by Disciplinary Authority, merely on the basis of criminal charges against the petitioner, to hold that it was not practical to hold the enquiry will only amount to assumption based on the conversation of accused

Ashok Singh, who has not been testified by the Disciplinary Authority, before he has recorded in the impugned order for the first time that it was not reasonably practical to hold enquiry.

22. In the judgment in ***Tarsem Singh (supra)***, the Apex Court has categorically held that when the Authority is of the opinion that it is not reasonably practicable to hold inquiry, such finding shall be recorded on the subjective satisfaction by the authority, and same must be based on the objective criteria. In the aforesaid case, it is further held that reasons for dispensing with the inquiry must be supported by material."

23. The Disciplinary Authority by holding a Departmental Proceeding, without appreciating the fact that the case against the petitioner of illegal gratification will continue and therefore, there was no occasion for concluding that in case of holding of Departmental Proceeding would be impracticle. In the present case, the petitioner has already been found to be innocent and the money alleged to be paid as bride/illegal gratification by the informant has been deposited in the account of one Ashok Singh and not a single penny has been deposited in the account of the petitioner and the respondents have not denied the said fact.

24. Even in the confessional statement of Ashok

Singh recorded by the police on 06.06.2021 itself, he has neither took the name of the petitioner and nor accepted his involvement with him. The mobile number -8709496552 on which the whole conversation done and forms the basis of the enquiry/investigation belongs to Ashok Kumar Singh and not the petitioner.

25. The petitioner, in supplementary affidavit filed on behalf of the petitioner, in paragraph no. 5, has specially stated that the he has already been exonerated in criminal case after investigation by filing a final form was submitted by the investigating officer and the same has been accepted by the learned District Court. The impugned order contained in and on this ground also, the impugned order contained in Letter No. 4460 dated 25.06.2021 and subsequent orders cannot be sustained.

26. The underlying presumption in Article 311 is that dismissal, removal or reduction in rank of a person employed in a civil capacity under the Union or State is not to be taken lightly or done without following due process. The threshold to prove dispensation of due process and compliance with the principles of natural justice is high in all matters but particularly heightened in Article 311(2)(b) of the Constitution of India.

Invocation of the power without following the constitutional mandate would render the order of penalty void as held in the case of ***Tulsiram Patel (supra)***. Not a single instance has been cited or relied upon by the Disciplinary Authority to arrive at of "*compelling circumstances*" for invoking Article 311(2)(b), is wholly unsupported by facts or even a credible justification. The Apex Court in such situation held that the order of dismissal to be abrupt, unreasoned and completely contrary to the import of Article 311(2) (b) of the Constitution.

27. In view of the admitted facts and discussion made hereinabove and complying the law laid down by the Apex Court in the case of Tulsiram Patel (Supra) and Ved Mitter Gill (Supra), the impugned communication contained in Letter No. 4460 dated 25.06.2021 of the Superintendent of Police, Bhojpur, the order of dismissal contained in Memo No. 1708 dated 08.07.2021 passed by the Disciplinary Authority, the DIG, the Consequential Order under the Bhojpur District Order No. 2140 dated 10.07.2021 issued by the office of Superintendent of Police, Bhojpur and the Appellate Order dated 02.11.2022 passed by the Appellate Authority, are required to be corrected in view of the discussion made in this order.

28. The petitioner, is at liberty, if so desire/advised,

may file detailed representation before appropriate authorities to consider his case in accordance with law.

29. Accordingly, the present writ petition is disposed of.

30. There shall be no order as to costs.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.12.2024
Transmission Date	NA