HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 12714/2020

Ajeet Moga Son Of Shri Durgaram Moga, Aged About 37 Years, Resident Of Village And Post-Meharadasi, District- Jhunjhunu

----Petitioner

Versus

1. The State Of Rajasthan, Through The Principal Secretary, Department Of Home, Government Secretariat, Jaipur.
2. The Director General Of Police, Police Headquarter, Lal Kothi, Jaipur.
3. Inspector General Of Police, Kota Range, Kota.
4. The Superintendent Of Police, Office Of Superintendent Of Police, District Kota (Rajasthan).

----Respondents

For Petitioner(s)	:	Mr. Dharmendra Jain Mr. Mukesh Kumar Meena
For Respondent(s)	:	Mr. Somitra Chaturvedi, Dy. GC with Mr. Shubham Sharma

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HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Arguments concluded on	**:::**	**November 21, 2025**
Reserved on	**:::**	**November 21, 2025**
Pronounced on	**:::**	**January 13, 2026**

1. The instant writ petition has been filed by the petitioner invoking Article 226 of the Constitution of India so as to assail the order dated 29.01.2020 (Annex.7) issued under the signatures of the Dy. Inspector General of Police, Kota Range, Kota, whereby the petitioner has been punished with the penalty of reversion from the post of Assistant Sub

Inspector Police to the post of Head Constable after dispensing with the regular disciplinary inquiry invoking the powers given under Rule 19(ii) of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short 'the Rules of 1958'). The petitioner has also challenged the order dated 28.08.2020 (Annex.10) passed by the Director General of Police, Rajasthan, Jaipur, whereby the appeal filed by the petitioner (appellant therein) under Rule 23 of the Rules of 1958 against the order of punishment, was dismissed.

2. The basic issue raised by the counsel appearing for the petitioner is that the action of the respondents invoking the powers given under Rule 19(ii) of the Rules of 1958 to dispense with the regular disciplinary inquiry so as to make the inquiry into the allegations against the petitioner was wholly arbitrary, unjustified, unconstitutional and violative of principles of natural justice. It is also submitted by the counsel for the petitioner that the allegations / charges against the petitioner are frivolous and without any basis and genesis and there is no evidence whatsoever available on record to prove the charges against the petitioner. Counsel also submitted that the respondents have relied upon the photographs so as to link the petitioner with the criminals, is also not justified as same are without there being any authentic report from any Forensic Science Laboratory (for short 'the FSL') as regards the genuineness of the

photographs which were published in the newspapers. Counsel further submitted that in the present era of generating fake photographs with the artificial intelligence believing any photograph for connecting the petitioner with the criminals, is not justified until and unless the report is sought from the FSL Department as regards the genuineness of such photographs. Counsel further submitted that the long tenure of the services of the petitioner remained unblemished and the petitioner has been honoured with various awards at various levels.

Counsel appearing for the petitioner also submitted that like the petitioner same allegation was levelled against one Jodha Ram- Police Inspector, who is also seen within the same photographs along-with the criminals, was also punished with the penalty of dismissal from service. However, in the appeal against the punishment order, the penalty imposed upon said Jodha Ram, Police Inspector, was set aside vide order dated 29.12.2020. The attitude of the Appellate Authority is discriminatory as in similar set of allegations and same evidence, the respondents have exonerated the Police Inspector Jodha Ram but the respondents dismissed the appeal filed by the petitioner (appellant therein).

3. Counsel appearing for the respondents submitted that the decision of the respondents in dispensing with the disciplinary inquiry by invoking the powers given under Rule

19(ii) of the Rules of 1958 is justified in the facts and circumstances of the present case because there is sufficient material available on the record so as to prove the charges against the petitioner as regards the involvement of the petitioner with the criminals. In the reply to the writ petition it has also been stated that the petitioner went on Goa trip from 22.08.2017 to 26.08.2017 along-with criminals without sanction of leave for that period from the Competent Authority. It is also submitted that due to involvement with the criminals, publication of photographs in the newspapers with the criminals, the image of the Police Department has been tarnished by the petitioner, due to which the D.G.P. Disk awarded to the petitioner has also been seized. The respondents in the reply has also relied on call details which took place in between the petitioner and the criminals so as to dispense with the inquiry.

4. The brief facts which require consideration for adjudication of the issue raised in the present petition are that the petitioner was initially appointed on the post of Constable and was posted under the Police Department at District Rural where he joined his services on 06.11.2001. As per the facts on record the petitioner was also recommended for promotion on the post of Head Constable in view of his excellent service and merit as is evident from the order dated 22.11.2007 (Annex.1) and after due process the petitioner

was promoted on the post of Head Constable vide order dated 31.05.2008. The petitioner thereafter was recommended for promotion to the post of Assistant Sub Inspector on the basis of his merit and excellent services. It has come on record that the promotion of the petitioner on the post of Assistant Sub Inspector was not a regular promotion but it was on account of his outstanding performance and dedication towards the duties. This fact is evident from the order of promotion dated 24.06.2014 (Annex.2). It has been pleaded on behalf of the petitioner that the services of the petitioner for consecutive 14 years remained outstanding and he has also been honoured various awards including 21 Cash Awards.

5. Vide order dated 13.01.2020 issued under the signatures of the Dy. Inspector General of Police, Kota Range, Kota, the petitioner was placed under suspension. The Dy. Inspector General of Police, Kota Range, Kota in view of a photograph published in the daily newspaper 'Rajasthan Patrika' on 13.01.2020 directed the Addl. Superintendent of Police, Crime & Vigilance, Kota Range, Kota to make a detailed inquiry in regard to connection of the Police Officers with the criminals. The petitioner was placed under suspension vide order dated 13.01.2020 (Annex.6) issued under the signatures of Dy. Inspector General of Police, Kota

Range, Kota, in exercise of powers under Rule 13 of the Rules of 1958 in contemplation and pending of inquiry.

6. Without holding a regular disciplinary inquiry as required under the Rules of 1958, the respondents vide order dated 29.01.2020 (Annex.7) imposed a penalty upon the petitioner of reversion from the post of Assistant Sub Inspector Police to the post of Head Constable. The respondents have dispensed with the regular disciplinary inquiry in exercise of powers given under Rule 19(ii) of the Rules of 1958. The reasons as shown in the order of punishment for dispensing with the inquiry are that the publication of the photographs of the petitioner along-with the criminals in the newspapers has tarnished the image of the Police Department which has lower down the reliability of the Police Officers in the public. It has also been mentioned in the impugned order of punishment that since the petitioner is having connection with the criminals, no evidence would come against him and therefore, so as to maintain the trust of the public in the Police Department, no regular disciplinary inquiry is required.

7. Being aggrieved by the punishment order dated 29.01.2020 (Annex.7), the petitioner (appellant therein) preferred an appeal before the Director General of Police, Rajasthan, Jaipur, under Rule 23 of the Rules of 1958. The Appellate Authority without giving any reasoning on the

grounds raised in the memo of appeal, dismissed the appeal of the petitioner (appellant therein) vide order dated 28.08.2020 (Annex.10) observing that in view of the connection of the petitioner with the criminals, there is no possibility of coming of evidence against the petitioner during the regular disciplinary proceedings. Therefore, the proceedings under Rule 16 or 17 of the Rules of 1958 are not reasonably practicable.

8. Considered the submissions made by the counsel for the petitioner as well as learned Dy. Government Counsel appearing for the respondents and also scanned the material made available on the record.

9. One of the submission made by the counsel appearing for the petitioner is that the attitude of the Appellate Authority is discriminatory for the reason that same allegations were levelled against the petitioner and one Jodha Ram, Police Inspector. The Disciplinary Authority vide order dated 29.01.2020 after dispensing with the regular disciplinary inquiry of petitioner imposed a punishment of reversion from service and by a separate order dated 29.01.2020, Jodha Ram, Police Inspector was also punished with the penalty of dismissal from service. The petitioner and Police Inspector Jodha ram filed separate appeals against their orders of punishment.

10. The appeal of the appellant (present petitioner) was dismissed vide order dated 28.08.2020 without assigning detailed reasons regarding the grounds raised in the appeal. The appeal of the Police Inspector Jodha Ram was allowed vide order dated 29.01.2020 by the Appellate Authority with the observations as under:-

> *"अपीलार्थी द्वारा प्रस्तुत अपील अभ्यावेदन के संदर्भ में श्री जोधाराम गुर्जर भूतपूर्व पुलिस निरीक्षक को दिनांक 11.12.2020 को व्यक्तिगत रूप से सुना गया।*
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> *अपीलार्थी द्वारा प्रस्तुत अभ्यावेदन, विभागीय तथ्यात्मक रिपोर्ट, व्यक्तिगत सुनवाई के समय प्रस्तुत तथ्यों एवं तर्क तथा अभिलेख पत्रावली के अवलोकन, परीक्षण एवं विश्लेषण से स्थिति निम्नानुसार स्पष्ट होती हैः—*
> *अनुशासनिक अधिकारी, महानिदेशक पुलिस द्वारा इस प्रकरण में अपीलार्थी श्री जोधाराम गुर्जर पुलिस निरीक्षक (हाल बर्खास्त) को राज्य सेवा से बर्खास्त (**Dismissed from Service**) करने का दण्ड पारित करने का मुख्य आधार राजस्थान पत्रिका समाचार पत्र के दिनांक 13.01. 2020 एवं दिनांक 14.01.2020 के संस्करण में प्रकाशित समाचार "दागदार खाकीः— साईबर एक्सपर्ट अजीत मोगा और सी.आई. जोधाराम गुर्जर की अपराधियों के साथ आयी तस्वीरें, गैंगेस्टर रणवीर चौधरी के सिर पर था पुलिस अफसरों का हाथ" के शीर्षक से प्रकाशित समाचार एवं इस संबंध में करायी गयी प्राथमिक जांच रहा है।*
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> *इस प्रकरण के संबंध में यह स्पष्ट किया जाना सर्वथा उचित होगा कि अपीलार्थी श्री जोधाराम गुर्जर पुलिस निरीक्षक (हाल बर्खास्त) को उपरोक्त वर्णित प्रकाशित समाचार एवं इस संबंध में करायी गयी प्राथमिक जांच में किसी भी स्तर पर सुनवाई करने या स्वयं का पक्ष रखने का कोई अवसर प्रदान नहीं किया गया है, जो नैसर्गिक न्याय (**Natural Justice**) के सिद्धान्त के सर्वथा विपरीत है। इस प्रकरण के संबंध में की गयी कार्यवाही पूर्णतः एकतरफा एवं एकपक्षीय रही है जो न्याय के सामान्य सिद्धान्त के सर्वथा विपरीत है। नैसर्गिक न्याय का यह सुस्थापित सिद्धान्त है कि किसी*

भी व्यक्ति चाहे वह कितना ही बड़ा अपराधी क्यों ना हो को बिना सुनवाई का अवसर दिये दण्डित नहीं किया जा सकता। इस सिद्धान्त को माननीय सर्वोच्च न्यायालय सहित सभी न्यायालयों द्वारा एक बार नहीं अनेकों बार विभिन्न निर्णयों में रेखांकित किया गया है, मुखरित एवं पुनः स्थापित किया गया है।

अपीलार्थी को सम्पूर्ण प्रकरण में अपना पक्ष रखने का कोई अवसर उपलब्ध नहीं कराया गया है। अवसर प्रदान करने के संबंध में प्राथमिक जांचकर्ता द्वारा मात्र यह उल्लेख किया गया है कि श्री जोधाराम पुलिस निरीक्षक हाल निलंबित मुख्यालय झूंझूनू को बयान देने हेतु दिनांक 23.01.2020 को तलब किया गया जो तबियत खराब होने से उपस्थित नहीं हुआ। ऐसी स्थिति में अपीलार्थी को स्वयं का पक्ष रखने हेतु आईंदा अवसर दिया जाना अपेक्षित था जिसका प्रस्तुत प्रकरण में नितांत अभाव रहा है।

अपीलार्थी द्वारा अपील में उठायी गयी आपत्ति का यह बिन्दु भी सारवान है कि प्राथमिक जांच के दौरान प्राथमिक जांचकर्ता अधिकारी, अतिरिक्त पुलिस अधीक्षक अपराध एवं सतर्कता कोटा रेंज कोटा द्वारा यह जानने का प्रयास नहीं किया गया कि समाचार पत्र में छपा फोटो दिनांक 25.08.2017 को जो लगभग 3 वर्ष पुराना है जिसका मूल फोटो कहीं भी उपलब्ध नहीं है। यह फोटो समाचार पत्र के पास कहां से आया और इसका मूल फोटो कहां है या है भी या नहीं, इसकी सत्यता के बारे में कोई जांच नहीं की गयी। समाचार पत्र में प्रकाशित चित्र तथा समाचार पूर्णतः भ्रामक है इनकी सत्यता के तथा प्रमाणिकता के बारे में कोई जांच नहीं की गयी और ना ही इस संबंध में उन्हें अपना पक्ष रखने का कोई अवसर प्रदान किया गया।

प्राथमिक जांच में जोधाराम गुर्जर अपीलार्थी एवं एस.एच. रणवीर चौधरी तथा अपराधी अश्विनी शर्मा उर्फ गोल्डी के जिन मोबाईल नम्बरों पर वार्तालाप होना या एस.एम.एस. किया जाना उल्लेखित किया गया है उन मोबाईल नम्बर के संबंध में संबंधित सर्विस प्रदाता कम्पनी से यह जानकारी लेने तक का प्रयास नहीं किया गया कि वास्तविकता में मोबाईल नम्बर 8949351124 एवं मोबाईल नम्बर 9799461344 श्री जोधाराम गुर्जर अपीलार्थी के नाम से जारी हुए या किसी अन्य के नाम से इसी प्रकार

मोबाईल नम्बर 9829878117 तथा मोबाईल नम्बर 7665177777 क्रमशः श्री रणवीर चौधरी व अपराधी अश्विनी शर्मा उर्फ गोल्डी के नाम से जारी किये गये हैं या किसी अन्य के नाम से। इसी प्रकार यह भी साक्ष्य जुटाने का प्रयास नहीं किया गया है कि इन मोबाईल नम्बरों का वास्तविक उपभोगकर्ता कौन रहा है ? यह तथ्य इसलिए भी महत्वपूर्ण है क्योंकि अपील पर सुनवाई के दौरान अपीलार्थी श्री जोधाराम द्वारा यह तथ्य प्रस्तुत किये गये हैं कि मोबाईल नम्बर 9799461344 श्री हनुमान पुत्र हरजी के नाम है एवं इसका पता 47 मोहल्ला गुजरान रूपाहेली मालपुरा टोंक राजस्थान है। इसी प्रकार मोबाईल नम्बर 8949351124 श्री बालमुकुन्द शर्मा पुत्र श्री कन्हैया लाल शर्मा के नाम है तथा इसका पता राजपुरा टोंक है। प्राथमिक जांच में श्री जोधाराम पुलिस निरीक्षक के सम्बन्ध में निलम्बन आदेश व मोबाईल नम्बर की सूचना पुलिस अधीक्षक चित्तौडगढ से चाही जाने व अभी तक प्राप्त नहीं होने का उल्लेख है। इस प्रकार इन मोबाईल नम्बरों का अपीलार्थी श्री जोधाराम का होना बताया जाना संदिग्ध हो जाता है एवं अपीलार्थी द्वारा उठायी गयी आपत्ति का तथ्यान्वेषण निहायत ही आवश्यक हो जाता है।

अपील पर व्यक्तिगत सुनवाई के दौरान अपीलार्थी द्वारा प्राथमिक जांच में अपीलार्थी प्रवृत्ति के जिन व्यक्तियों के विरूद्ध दर्ज किये गये मुकदमों का उल्लेख किया गया है, उनके संबंध में भी साक्ष्य प्रस्तुत की गयी है।

श्री राधेश्याम उर्फ श्याम मीणा के संबंध में प्रस्तुत किये गये आपराधिक रिकार्ड में वर्णित मुकदमा नम्बर 119/12 एवं 73/02 न्यायालय से निर्णित हो चुके हैं। लेकिन इनको बदनीयती पूर्वक आंकडा बढाने के क्रम में प्रस्तुत किया गया है। अपीलार्थी द्वारा प्रस्तुत किये गये निर्णय दिनांक 25.02.2020 न्यायालय न्यायाधिकारी ग्राम न्यायालय झालरापाटन के अनुसार प्रकरण 119/12 सन्देह का लाभ देकर आरोपियों को दोषमुक्त किया जा चुका है। इसी प्रकार प्रकरण संख्या 73/02 को न्यायालय न्यायिक मजिस्ट्रेट (प्र0 व0) खानपुर के निर्णय दिनांक 04.08.2008 द्वारा सन्देह का लाभ दिया जाकर दोषमुक्त किया जा चुका है।

इसी प्रकार श्री भारत शर्मा उर्फ कपिल पुत्र श्री शिवदत्त के विरूद्ध दर्ज मुकदमा 148/18 न्यायालय अतिरिक्त मुख्य न्यायिक मजिस्ट्रेट रामगंज

मण्डी जिला कोटा के निर्णय दिनांक 15.09.2017 द्वारा अपराध धारा 324 विकल्प में 324/34 के आरोप से सन्देह का लाभ देकर तथा धारा 141 एवं 323 आईपीसी के अन्तर्गत भरे हुए राजीनामा दोषमुक्त कर दिया है।

श्री अश्विनी शर्मा उर्फ गोल्डी पुत्र श्री रामप्रकाश के विरूद्ध लम्बित दर्शाये गये प्रकरण संख्या 98/14.02.2019 में दिनांक 28.11.2019 को एफ.आर. आदेश नाकाबिल दस्तनदाजी में प्राप्त कर एफ.आर. नम्बर 140/2019 कता की जाकर न्यायालय ए.सी.जे.एम. संख्या 1 में पेश की जा चुकी है।

उपरोक्त वर्णित न्यायालय के निर्णयों से यह भली भांति स्पष्ट हो जाता है कि प्राथमिक जांच के दौरान प्राथमिक जांचकर्ता अधिकारी द्वारा जो आपराधिक प्रकरणों की सूची तैयार की गयी है उनमें सही वस्तु स्थिति की गहनता से जांच नहीं की गयी और सरसरी तौर पर ही आंकडे इकट्ठे कर प्रस्तुत किये गये हैं जिससे की अपीलार्थी के विरूद्ध साक्ष्य को बढा चढा कर प्रस्तुत किये जा सके। श्री रणवीर सिंह पुत्र श्री हीरालाल जाट के विरूद्ध कुल 16 प्रकरण दर्ज होना बताया गया है जिनमें से 11 प्रकरणों में बरी/दोषमुक्त करने का उल्लेख है। इसी प्रकार श्री अमित जैन के विरूद्ध दर्शाये गये 21 प्रकरणों में 14 प्रकरणों में बरी/दोषमुक्त किया जा चुका है।

पत्रावली पर उपलब्ध तथ्यों से यह स्पष्ट होता है कि अपीलार्थी श्री जोधाराम गुर्जर श्री भारत शर्मा उर्फ कपिल एवं विकास दाधीच व अजीत मोघा सहायक उपनिरीक्षक के साथ दिनांक 22.08.2017 को गोवा घूमने गये तथा 26.08.2017 को वापस आये लेकिन ये लोग रणवीर चौधरी तथा अश्विनी शर्मा उर्फ गोल्डी के साथ कार्यक्रम बना कर गये हों यह साबित नहीं होता है। प्राथमिक जांच के दौरान लिये गये श्री अश्विनी शर्मा, श्री अजीत मोघा, श्री भारत शर्मा तथा श्री विकास दाधीच के बयानों से यह भली भांति स्पष्ट होता है कि इनको श्री रणवीर चौधरी व अश्विनी शर्मा गोवा पहॅचने पर एयरपोर्ट पर मिले थे और चूंकि उनका कार्यक्रम भी दिनांक 26.08.2017 को लौटने का था इसलिए एयरपोर्ट पर मिलना स्वाभाविक था।

पत्रावली पर उपलब्ध साक्ष्य जिसमें राजस्थान पत्रिका के दिनांक 13.01.2020 में प्रकाशित समाचार व एक अन्य ग्रुप फोटो जो ज्वैलरी स्टोर के सामने लिया जाना गवाहान द्वारा बताया गया है से यह कतई प्रमाणित नहीं होता है कि अपीलार्थी का श्री रणवीर चौधरी व अश्विनी शर्मा से सांठ गांठ एवं मेल जोल रही है या इनके द्वारा उक्त श्री रणवीर सिंह व अश्विनी शर्मा को कोई अनुचित लाभ प्रदान किया गया हो।

श्री अजीत मोघा सहायक उप निरीक्षक के बयानों से यह स्पष्ट होता है कि रणवीर चौधरी उनका मुखविर रहा है जिसे वे 2006 से जानते हैं। रणवीर चौधरी की मुखविरी से 7–8 इनामी बदमाशों को सूचना देकर पकडवाने में रणवीर चौधरी का सहयोग रहा था।

अनुशासनिक अधिकारी द्वारा पारित दण्डादेश में यह उल्लेख भी किया गया है कि पूर्व में भी श्री जोधाराम गुर्जर के विरूद्ध थाना मोडक में पदस्थापन के दौरान हाईवे रोड पर ढाबे/शराब ठेकेदार/सट्टे की खाईवालों से बंदी लेने आदि आरोपों के संबंध में परिवाद प्राप्त हुआ था। परन्तु इसके भय एवं प्रभाव के कारण गवाहों द्वारा समुचित साक्ष्य नहीं देने के कारण आरोप प्रमाणित नहीं हो पाये। यह तथ्य सही नहीं पाया जाता क्योंकि जिन परिवादों का उल्लेख दण्डादेश में किया गया है इनके संबंध में पुलिस अधीक्षक जिला कोटा, ग्रामीण द्वारा महानिरीक्षक पुलिस कोटा रेंज कोटा को पत्र क्रमांक 6315 दिनांक 21.12.2014 से रिपोर्ट प्रेषित की गयी है। इस रिपोर्ट में जिन प्रकरणों का अनुसंधान व परिवादों की जांच श्री जोधाराम उप निरीक्षक अपीलार्थी द्वारा की गयी थी उनसे संबंधित परिवादी व अपरिवादियों के नाम संकलित किये जाकर कुल 15 व्यक्तियों के बयान लेखबद्ध किये गये थे। इनमें से केवल मुकदमा नम्बर 137/14 धारा 365, 342, 323, 34 आईपीसी में गिरफ्तार कर न्यायालय में चार्जशीट प्रस्तुत किये जाने वाले अभियुक्त मोहम्मद शौकत उर्फ शौकत अली, मोहम्मद इमरान उर्फ राजा द्वारा ही अपीलार्थी के विरूद्ध बयान दिया गया था अन्य किसी परिवादी या अपरिवादी द्वारा रिश्वत लेने या मांगने की शिकायत बयानों में दर्ज नहीं करायी गयी। इस प्रकार पत्रावली पर उपलब्ध पत्र क्रमांक 6315 दिनांक 21.12.2014 से दण्डादेश में किया गया उल्लेख सही नहीं पाया जाता।

दण्डादेश में किया गया यह उल्लेख कि पूर्व में भ्रष्टाचार निरोधक ब्यूरो चौकी कोटा द्वारा प्रकरण संख्या 293/2014 धारा 7, 8, 13(1) डी, 12(2) पीसी एक्ट 1988 तथा 389, 120बी भा.दं.सं. में पंजीबद्ध होकर चार्जशीट पेश न्यायालय की जा चुकी है तथा इस ए.सी.डी. प्रकरण में जोधाराम गुर्जर उप निरीक्षक हाल पुलिस निरीक्षक दिनांक 20.06.2014 से दिनांक 15.01.2020 तक निलम्बित रहे हैं सही तथ्य है। इसी प्रकार दिनांक 22.08. 2017 से दिनांक 26.08.2017 तक गोवा घूमने जाने के लिए निलंबन काल में मुख्यालय छोडने के संबंध में संबंधित उच्चाधिकारियों से अनुमति प्राप्त नहीं करने का तथ्य भी सही है। उपरोक्त वर्णित भ्रष्टाचार अधिनियम से संबंधित प्रकरण वर्तमान में न्यायालय में विचाराधीन है।

उपरोक्त वर्णित विश्लेषण एवं परीक्षण से यह पाया जाता है कि प्रकरण में केवल मात्र राजस्थान पत्रिका समाचार पत्र में प्रकाशित खबरें एवं एक ग्रुप फोटो एवं कुछ व्यक्तियों के विरूद्ध दर्ज मुकदमों की सूचना संकलित कर अपीलार्थी को सेवा से बर्खास्त करने की कार्यवाही की गयी है जो नियमानुकूल नहीं है।

पत्रावली पर उपलब्ध तथ्यों एवं पत्रादि से अपीलकर्ता श्री जोधाराम की श्री रणवीर चौधरी या अश्विनी शर्मा से जो कि आपराधिक पृष्ठ भूमि के लोग थे से सम्पर्क, घनिष्ठता या मित्रता रही हो यह प्रमाणित नहीं होता है। अपीलार्थी द्वारा इन लोगों को कोई अनुचित लाभ पहुंचाया गया हो इसका भी कोई प्रमाण उपलब्ध नहीं है। अपीलार्थी द्वारा अपने वरिष्ठ अधिकारियों को गुमराह किया गया हो ऐसी भी कोई प्रमाण पत्रावली पर उपलब्ध नहीं है।

उपरोक्त वर्णित परिस्थितियों में अपीलार्थी श्री जोधाराम गुर्जर पुलिस निरीक्षक (हाल बर्खास्त) द्वारा प्रस्तुत अपील में अंकित किये गये तथ्य स्वीकर किये जाने योग्य पाये जाते हैं।

*अतः अपील अपीलार्थी स्वीकार की जाकर अनुशासनिक अधिकारी द्वारा पारित दण्डादेश दिनांक 29.01.2020 जिसके द्वारा अपीलार्थी को राज्य सेवा से बर्खास्त (**Dismissed from Service**) का दण्ड दिया गया है को अपास्त किया जाता है। अपीलार्थी को सेवा से बर्खास्त करने की*

दिनांक से वापस कार्य ग्रहण करने तक की अवधि को अकार्य अवधि ***(Dies-non)*** *माना जावेगा एवं इस अवधि के लिए कोई कार्य नहीं तो वेतन नहीं के सिद्धान्त पर वेतन देय नहीं होगा। यह अवधि पेंशन प्रयोजनार्थ सेवाकाल मानी जावेगी।*

अनुशासनिक अधिकारी यदि चाहे तो इस प्रकरण में निर्धारित प्रक्रिया का अनुसरण करा कर नये सिरे से तथ्यान्वेषण कर समुचित कार्यवाही करा सकते हैं।"

On perusal of the observations quoted above, it is very much clear that the Appellate Authority while setting aside the punishment order has observed that there is violation of principles of natural justice as Jodha Ram- Police Inspector was not allowed any opportunity of hearing or to submit his explanation and the whole proceeding is ex-parte. The Appellate Authority has also observed that the photograph published in the newspaper which has been made basis of allegations against the petitioner is without authenticity as it is not disclosed that from where the newspaper got that photograph and there is no inquiry as regards the authenticity of that photograph. The Appellate Authority therein has also observed that no inquiry has been made as regards the Cell Phone numbers which were alleged to be in conversation with the criminals. The Appellate Authority also observed that the Officer who conducted the preliminary inquiry has not gone through the real facts of the criminals cases. It has also been observed that the photograph is not an evidence of connection of the Police

Personnels with the criminals. The Appellate Authority in the case of Jodha Ram set-aside the punishment of dismissal from service.

11. Since the allegations leveled against the petitioner and the Police Inspector Jodha Ram are same, the stand of the respondents in dismissing the appeal of the present petitioner and allowing the appeal of Police Inspector Jodha Ram is discriminatory and therefore in view of the observations made in the case of Police Inspector Jodha Ram, the punishment order of the petitioner and the order of the Appellate Authority also deserves to be quashed and set aside.

12. Another material issue raised by the counsel appearing for the petitioner is that the act of the respondents in dispensing with the regular disciplinary proceedings is illegal, arbitrary, unjustified and unconstitutional being violative of principles of natural justice.

13. Article 311 as originally enacted was in the following terms:

> *"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-*
> *(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply-

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

(b) where an 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 give to that person an opportunity of showing cause; or

(c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

The words "or Rajpramukh" in clause (c) of the proviso to Article 311(2) were omitted by the Constitution (Seventh Amendment) Act, 1956."

14. The Constitution (Forty-second Amendment) Act, 1976, made certain amendments in the substituted clause (2) of Article 311 with effect from January 3, 1977. Article 311 as so amended reads as follows :

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a state. -

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

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

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

Provided further that this clause shall not apply-

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

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

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

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss

or remove such person or to reduce him in rank shall be final."

From the original and amended Article 311 set out above it will be noticed that of the original Article 311 only clause (1) remains unaltered, while both the other clauses have become the subject of Constitutional amendments. No submission was founded by either party on the substitution of the present clause (3) for the original by the Constitution (Fifteenth Amendment) Act, 1963, for the obvious reason that such substitution was made only in order to bring clause (3) in conformity with clause (2) as substituted by the said Amendment Act."

15. As regards the disciplinary proceedings against a government servant, Rule 14 of the Rules of 1958 is quoted as under:-

*"**14. Nature of Penalties.-** The following penalties may, for good and sufficient reasons, which shall be recorded, and as hereinafter provided, be imposed on a Government servant, namely:-*

(i) censure;

(ii) withholding of increments or promotion;

(iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of any law, rule or order;

(iv) reduction to a lower service, grade or post, or to a lower time scale or to a lower stage in the time scale or in the case of pension to an amount lower than that due under the rules;

(v) compulsory retirement on proportionate pension;

(vi) removal from service which shall ordinarily not be a disqualification for further employment;

(vii) dismissal from service which shall ordinarily be a disqualification for further employment.

Explanation:-

(1) The following shall not amount to a penalty within the meaning of the rule:-

(i) withholding of increments of a Government servant for failure to pass a departmental examination in accordance with the rules or orders governing the Service or post or the terms of his appointment;

(ii) stoppage of Government servant at the efficiency bar in the time scale on the ground of hid unfitness to cross the bar;

(iii) non-promotion whether in a substantive or officiating capacity of Government servant, after consideration of his case, to a Service, Grade or post for promotion to which he is eligible;

(iv) reversion to a lower service, grade or post of a Government servant officiating in a higher service grade or post on the ground that he is considered after trial, to be unsuitable for such higher Service, grade or post or on administrative grounds unconnected with his conduct;

(v) reversion to his permanent service, grade or post of a Government servant appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation;

(vi) compulsory retirement of Government servant in accordance with the provisions relating to his superannuation or retirement;

(vii) termination of the services-

(a) of a Government servant appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation; or

(b) of a temporary Government servant appointed otherwise then under contract on the expiration of the period of appointment;

(c) of a Government servant under an agreement, in accordance with the terms of such agreement;

(d) of a Government servant in the services of any of the integrating units of Rajasthan, on non-selection or non-absorption for appointment in any of the services of the integrated State of Rajasthan in accordance with the integration rules.

Explanation:-

(2) The discharge of a person appointed on an ad-hoc or provisional basis to any of the posts in the integrated setup of Rajasthan Services otherwise than for reasons of non-selection or non-absorption to any such services or posts in a accordance with the integrated rules, shall amount to removal or dismissal as the case may be.

Note-*The disqualification for further employment on account of dismissal under Rule 14 (vii) can only be waived by the Government if the merits of an individual case so justify."*

16. So as to give effect to Article 311 of the Constitution of India, Rule 19 of the Rules of 1958 has been inserted in the said Rules. Rule 19 of the Rules of 1958 is quoted a under:-

> *"**19. Special procedure in certain cases**.– Notwithstanding anything contained in rules 16, 17 and 18,*
> *(i) where a penalty is imposed on a Government Servant on the ground of conduct which has led to him conviction on a criminal charge; or*
> *(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or*
> *(iii) Where the Governor is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure, the disciplinary Authority may consider the circumstances of the case and pass such orders as it deems fit.*
>
> *Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary.*
>
> ***Note:**–If any question arises whether it is reasonably practicable to give any person a opportunity of showing cause under clause (2) of Article 311 of the Constitution, the decision thereon of the authority empowered to dismiss, or remove such person or to reduce him in rank, as the case may be, shall be subject to only one appeal to the next higher authority."*

17. Though in the present case, vide order dated 13.01.2020 an inquiry was proposed against the petitioner but without assigning any cogent reasons and any exercise for further inquiry/ investigation and without giving any opportunity to the petitioner to show cause and defence, the Disciplinary Authority exercised the powers given under Rule 19(ii) of the Rules of 1958 for dispensing with the regular disciplinary inquiry. Article 311 of the Constitution of India categorically says that no person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges leveled against him and given a reasonable opportunity of being heard in respect of those charges. Sub-clause (b) of Article 311 of the Constitution of India also empowers the Competent Authority to dismiss or to remove or to reduce in rank if he is satisfied for some reasons to be recorded by that Authority in writing that it is not reasonably practicable to hold such an inquiry.

18. In line of the provisions of Article 311 of the Constitution of India, Rule 19(ii) of the Rules of 1958 has been inserted wherein the Disciplinary Authority if satisfied for the reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the Rules for holding the regular disciplinary inquiry, can dispense with the same. In the present case, whether it was

not reasonably practicable to hold a regular disciplinary inquiry as regards the allegations leveled against the petitioner or whether reasons given by the Disciplinary Authority for dispensing with the regular disciplinary inquiry are justified?

19. The allegations leveled against the petitioner are that some photographs were published in the newspapers wherein he and one Police Inspector Jodha Ram were seen with the criminals. The reason for satisfaction of the Disciplinary Authority for dispensing with the disciplinary inquiry as borne out from the impugned order is that it is proved from the photographs that the petitioner is seen in the photographs with the criminals and the petitioner is in regular touch with the hardcore criminals who will not say anything against him and because of these hardcore criminals there is some kind of terror in the Society and therefore, it is not possible that the witnesses may depose against the petitioner. In the order of the Appellate Authority the reasons for dispensing with the regular disciplinary inquiry are assigned that the petitioner since having the connection with the hardcore criminals, there is no possibility of coming out any evidence against the petitioner during the regular disciplinary inquiry.

Now whether the reasons assigned by the Disciplinary Authority and the Appellate Authority for

dispensing with the departmental inquiry in exercise of the powers given under Rule 19(ii) of the Rules of 1958 is sustainable or justified?

20. On the issue of dispensing with the regular departmental inquiry, the Hon'ble Apex Court has passed a detailed judgement in the case of ***Union of India & Anr. v. Tulsi Ram Patel, reported in (1985) 3 SCC 387 & other connected matters***. In the case of ***Tulsi Ram Patel (supra),*** the Hon'ble Apex Court in paras 60, 101, 116, 130, 134, 140, 141 and 147 has observed as under:-

> *"60. Clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice and audi alteram partem rule by providing that a person employed in a civil capacity under the Union or a State shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges. To this extent, the pleasure doctrine enacted in Article 310(1) is abridged because Article 311(2) is an express provision of the Constitution. This safeguard provided for a government servant by clause (2) of Article 311 is, however, taken away when the second proviso to that clause becomes applicable. The safeguard provided by clause(1) of Article 311, however, remains intact and continues to be available to the government servant. The second proviso to Article 311(2) becomes applicable in the three cases mentioned in clauses (a) to (c) of that proviso.*
>
> *These cases are-*

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

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

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

The Construction to be placed upon the second proviso and the scope and effect of that proviso were much debated at the Bar. In Hira Lal Rattan Lal etc. v. State of U.P. & Anr., [1973] 2 S.C.R. 502 this Court observed (at page 512) ;

"In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislature intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so called proviso has substantially altered the main section."

In Commissioner of Income Tax, Madras v. Madurai Mills Co. Ltd., [1973] 3 S.C.R. 662, this Court said (at page 669) :

"A proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect. Further, if the language of the enacting part of the statute is plain and unambiguous and does not contain the provisions which are said to occur in it, one cannot derive those provisions by implication from a proviso."

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. and another v. State of Orissa and another [1985] 1 S.C.R. 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's case at page 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiorari so can a provision or 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 key-words 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.

116. The next service rule which falls for consideration in these matters is Rule 19 of the Civil Services Rules. The Civil Services Rules are also made under the proviso to Article 309. The scheme of these rules so far as disciplinary proceedings are concerned is very similar to that of the Railway Servants Rules. Rule 11 specifies the penalties which can be imposed on a government servant. These penalties are divided into minor penalties and major penalties. Clauses (i) to (iv) of that rule specify what the minor penalties are while clauses (v) to (viii) specify what the major penalties are. The major penalties include compulsory retirement, removal from service which is not to be a disqualification for future employment under the Government and dismissal from service which is ordinarily to be a disqualification for future employment under the Government. Rules 14 and 15 prescribe the procedure to be followed where a major penalty is to be imposed while Rule 16 prescribes the procedure for imposing a minor penalty. Previously, under sub-rule (4) of Rule 15 the government servant was also to be given a notice of the penalty proposed to be imposed upon him and an opportunity of making representation with respect to such proposed penalty. However, by Government of India, Ministry of Home Affairs (Deptt. of Personnel & Admn. Reforms) Notification No. 11012/2/77 - Ests. Dated August 18, 1978, sub-rule (4) was substituted by a new subrule to bring it in conformity with the amendment made in clause (2) of Article 311 by the Constitution (Forty-second Amendment) Act, and the opportunity to show cause against the proposed penalty was done away with. Rule 19 Provides as follows "

19. Special procedure in certain cases.-Notwithstanding anything contained in rule 14 to rule 18-

(i) where any penalty is imposed on 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 it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or,

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

The word "Commission" is defined by clause (d) of Rule 2 as meaning "The Union Public Service Commission".

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 intimidate witnesses who are going to given 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 other threatens, intimidates and terrorizes the officer who is the disciplinary authority or member 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 and others, [1984] 3 S.C.R. 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.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must proceed the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particular, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

140. We now turn to the last clause of the second proviso to Article 311(2) , namely, clause (c). Though its

exclusionary operation on the safeguards provided in Article 311(2) is the same as those of the other two clauses, it is very different in content from them. While under clause (b) the satisfaction is to be of disciplinary authority, under clause (c) it is to be of the President or the Governor of a State, as the case may be. Further, while under clause (b) the satisfaction has to be with respect to whether it is not reasonably practicable to hold the inquiry, under clause (c) it is to be with respect to whether it will not be expedient in the interest of the security of the State to hold the inquiry. Thus, in one case the test is of reasonable practicability of holding the inquiry, in the other case it is of the expediency of holding the inquiry. While clause (b) expressly requires that the reason for dispensing with the inquiry should be recorded in writing, clause (c) does not so require it, either expressly or impliedly.

141. The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of these situations these which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to

other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military Forces. Disaffection in any of these Forces is likely to spread, for disaffected or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a paramilitary force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or para-military Forces. How important the proper discharge of their duties by members of these Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984, Article 33 provided as follows :

"33. Power to Parliament to modify the rights conferred by this Part in their application to Forces.

Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application

to the member of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

By the Constitution (Fiftieth Amendment) Act, 1984, this Article was substituted. By the substituted Article the scope of the Parliament's power to so restrict or abrogate the application of any of the Fundamental Rights is made wider.

The substituted Article 33 reads as follows :

"33. Power to Parliament to modify the rights conferred by this Part in their application to Forces, etc. Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,

(a) the members of the Armed Forces ; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

Thus, the discharge of their duties by the members of these Forces and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred upon Parliament to restrict or abrogate any of the fundamental rights in their application to them.

147. In all matters before us the challenge to the validity of the impugned orders was confined only to legal grounds, the main ground being based upon what was held in Challappan's case and the application of principles of natural justice. The contentions with respect to these grounds have been considered by us in the preceding part of this Judgment and have been negatived. In most of the matters the Writ Petitions contain no detailed facts. Several of the Petitioners have gone in departmental appeal but that fact is not mentioned in the Writ Petitions nor the order of the appellate authority challenged where the appeals have been dismissed. Many government servants have combine together to file one Writ Petition and in the case of such of them whose departmental appeals have been allowed and they reinstated in service, the Petitions have not been amended so as to delete their names and they have continued to remain on the record as Petitioners. Several Petitions are in identical terms, if not, almost exact copies of other Petitions. No attempt has been made in such matters to distinguish the case of one Petitioner from the other. Apart from contesting the legal validity of the impugned orders, hardly any one has even stated in his Petition that he was not involved in the situation which has led to clause (b) or clause (c) of the second proviso to Article 311 being applied in his case. There is no allegation of mala fide against the authority passing the impugned orders except at times a more bare allegation that the order was passed mala fide. No particulars whatever of such alleged mala fides have been given. Such a bare averment cannot amount to a plea of mala fides and requires to be ignored. In this unsatisfactory state of affairs so far as facts are concerned, the only course which this Court can adopt is

to consider whether the relevant clause of the second proviso to Article 311(2) or of an analogous service rule has been properly applied or not. If this Court finds that such provision has not been properly applied, the Appellant or the Petitioner, as the case may be, is entitled to succeed. If, however, we find that it has been properly applied, the Appeal or Petition would be liable to be dismissed, because there are no proper materials before the Court to investigate and ascertain whether any particular government servant was, in fact, guilty of the charges made against him or not. It is also not the function of this Court to do so because it would involve an inquiry into disputed questions of facts and this Court will not, except in a rare case, embark upon such an inquiry. For these reasons and in view of the directions we propose to give while disposing of these matters, we will while dealing with facts refrain from touching any aspect except whether the particular clause of the second proviso to Article 311(2) or an analogous service rule was properly applied or not."

21. The Hon'ble Apex Court in ***Risal Singh v. State of Haryana & Ors., reported in (2014) 13 SCC 244*** has observed in paras 2, 7, 9 and 10 as under:-

> *"**2.** The broad essential facts which need to be adumbrated for the decision of the present appeal are that the appellant, an Assistant Sub-Inspector (Ad hoc Sub-Inspector) serving in the Department of Police in the State of Haryana, as alleged, was involved in a corruption sting operation on a television channel. Because of the said alleged sting operation, the Superintendent of Police, Mewat at*

Nuh, vide order dated 19-6-2008, after referring to the news item in the television channel, proceeded to pass the following order:

"2. The above said act on the part of above official shows his criminal activities. He being a member of a disciplined force is responsible for protecting the life and property of the citizens of this country, but instead of discharging his duty honestly and sincerely he himself has indulged in criminal activities. As such he has not only tarnished the image of Haryana Police but also has rudely shaken the faith of the citizens of Haryana in the entire police force, who is supposed to be their protector. He has acted in a most reprehensible manner which is unexpected from a member of disciplined force and undoubtedly extremely prejudicial to the personal safety and security of citizens.

3. The involvement of said police official in such a shameful criminal activity has eroded the faith of common people and his continuance in the force is likely to cause further irreparable loss to the functioning and credibility of Haryana Police. The defaulter has acted in a manner highly unbecoming of police official. After such act of serious misconduct, if he is allowed to continue in the police force, it would be detrimental to public interest.

4. Keeping in view the overall circumstances of above operation, I, K.K. Rao, IPS, Superintendent of Police, Mewat at Nuh, in exercise of the powers conferred under Article 311(2)(b) of the Constitution of India hereby order the dismissal of SI Rishal

Singh, No. 133/GGN with immediate effect. A copy of this order be delivered to him free of cost."

7. *In Jaswant Singh v. State of Punjab [(1991) 1 SCC 362 : 1991 SCC (L&S) 282 : (1991) 15 ATC 729] the Court, while dealing with the exercise of power as conferred by way of exception under Article 311(2)(b) of the Constitution, opined as follows : (SCC p. 369, para 5)*

"5. … Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at SCR p. 270 of Tulsiram case [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] : (SCC p. 504, para 130)

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

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the authority concerned. When the satisfaction of the authority concerned is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the officer concerned."

After so stating, the two-Judge Bench quashed the order of dismissal and directed the appellant to be reinstated in service forthwith with the monetary benefits. Be it noted, it was also observed therein that it would be open to the employer, if so advised, notwithstanding the lapse of time, to proceed with the disciplinary proceedings.

9. *Tested on the touchstone of the aforesaid authorities, the irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the inquiry is totally unsustainable and is hereby annulled. As the foundation founders, the order of the High Court giving the stamp of approval to the ultimate order without addressing the lis from a proper perspective is also indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction.*

10. *Consequently, we allow the appeal and set aside the order passed by the High Court and that of the disciplinary authority. The appellant shall be deemed to be in service till the date of superannuation. As he has attained the age of superannuation in the meantime, he shall be entitled to all consequential benefits. The arrears shall be computed and paid to the appellant within a period of three months hence. Needless to say, the respondents are not precluded from initiating any disciplinary proceedings, if advised in law. As the lis has been pending before the Court, the period that has been spent in Court shall be excluded for the purpose of limitation for initiating the disciplinary proceedings as per rules. However, we may hasten to clarify that our*

observations herein should not be construed as a mandate to the authorities to initiate the proceeding against the appellant. We may further proceed to add that the State Government shall conduct itself as a model employer and act with the objectivity which is expected from it. There shall be no order as to costs."

22. The Hon'ble Apex Court in ***Reena Rani v. State of Haryana & Ors., reported in (2012) 10 SCC 215*** has observed in paras 2, 6 and 11 as under:-

"2. *The appellant joined service as constable in the Police Department of the Government of Haryana on 26-2-2007. After three years and two months, the Superintendent of Police passed the order dated 23-4-2010 and dismissed her service by invoking clause (b) of the second proviso to Article 311(2) of the Constitution read with Rule 16(2) of the Punjab Police Rules, as applicable to the State of Haryana on the ground that while she remained posted as Prisoner Escort Guard from 24-5-2008 to 18-9-2008, she developed close relations with Mustak alias Mustkin alias Rasid, son of Istak alias Husain Khan of Guraksar despite the fact that he was involved in seven criminal cases registered under Sections 332, 353, 392, 395, 397, 399, 402 and 506 IPC and Sections 25, 54 and 59 of the Arms Act and she used to meet Mustak in Bhondsi Jail on many occasions. In the opinion of the Superintendent of Police, there was sufficient evidence to prove the appellant's nexus with Mustak and, as such, she did not deserve to be retained in the service*

and that it was not practicable to hold a regular departmental enquiry because no independent witness would be available.

6. *We have heard the learned counsel for the parties and perused the record including the document marked Annexure P-1, which has been filed with the counter-affidavit and which contains transcript of the alleged conversation between the appellant and Mustak and are convinced that there was no valid ground, much less justification, for dismissal of the appellant without holding an enquiry consistent with the rules of natural justice. The transcript of the conversation between the appellant and Mustak does show that she was in contact with a person who was accused in many cases and some conversation relates to other persons who were also accused, but there is no indication therein that she was trying to help Mustak or any other accused or was divulging confidential information relating to the pending cases. In the writ petition filed by her, the appellant had given an explanation for her having been in contact with Mustak. If regular departmental enquiry had been held, she could have adduced evidence to prove that she knew Mustak much before joining the service and that her family members wanted to perform her marriage with him. She could have also adduced evidence to show that she had not helped any of the accused persons. However, as no enquiry was held, the appellant did not get an opportunity to defend herself.*

11. *By applying the ratio of the above extracted observations to the facts of this case, we hold that the appellant's dismissal from service was ultra vires the provisions of Article 311 and the learned Single Judge and the Division Bench of the High Court committed*

serious error by upholding the order dated 23-4-2010 passed by the Superintendent of Police."

23. The Hon'ble Apex Court in ***Jaswant Singh v. State of Punjab & Ors., reported in (1991) 1 SCC 362*** has observed in para 5 as under:-

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

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

"The order dated April 7, 1981 was passed as the petitioner's activities were objectionable. He was instigating his fellow police officials to cause indiscipline, show insubordination and exhibit disloyalty, spreading discontentment and hatred, etc. and his retention in service was adjudged harmful."

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

existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram case [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp 2 SCR 131] : (SCC p. 504, para 130)

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

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the counter filed by respondent 3 it is contended that the appellant, instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors. It is also said that he threw threats to beat up the witnesses and the Inquiry Officer if any departmental inquiry was held against him. No particulars are given. Besides it is difficult to understand how he could have given threats, etc. when he was in hospital. It is not shown on what material respondent 3 came to the conclusion that the appellant had thrown threats as alleged in paragraph 3 of the

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

24. The Hon'ble Apex Court in the case of ***Chief Security Officer v. Singasan Rabi Das, reported in 1991 AIR (SC 1043)*** has observed as under:-

"3. The High Court held that the reasons given in the impugned order were sufficient and on those materials the disciplinary authority could have been satisfied that it was not reasonably practicable to follow the normal procedure. However, it was of the view that the respondent was entitled to a show cause notice against the proposed punishment and since an opportunity had not been given to him to show cause against the proposed punishment the order of removal was

bad. In that view the High Court quashed the order of removal. However, it stated that it would be open to the disciplinary authority to pass a fresh order after giving an opportunity to the respondent herein to show cause against the proposed punishment.

4. It was contended by Dr. Anand Prakash, learned Counsel for the appellant before us that in view of the decision of this Court in Union of India and Anr. v. Tulsi Ram Patel, reported at 1985 (3) SCC P. 123 no fresh notice was required to show cause against the proposed punishment before the order of removal was passed and hence the decision of the High Court is liable to be set aside.

5. In our view it is not necessary to go into the submissions made by Dr. Anand Prakash because we find that in this case the reason given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. It is common ground that under Rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must he held on charges supplied to the employees concerned. In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witnesses of the security/other Railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal

humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry. In this view it is not necessary for us to consider whether any fresh opportunity was required to be given before imposing an order of punishment In the result the appeal fails and is dismissed. There will be no order as to costs."

25. On consideration of the allegations levelled against the present petitioner, as mentioned in the impugned order (because no charge-sheet has been issued to him), in the light of the observations of the Hon'ble Supreme court, as observed above, this Court can unhesitatingly hold that the action of the respondents in dispensing with the regular disciplinary inquiry is illegal, arbitrary and unconstitutional being violative of principles of natural justice. The photographs in which the petitioner is said to have been seen with the criminals could be generated photographs. The

respondents have not cared to get the examination of the photographs done from the FSL Department as regards the genuineness of that photographs which were published in the newspapers. The petitioner is serving in the Department since 2001 after his induction in the Police Department on the post of Constable. The petitioner was promoted from the post of Constable to the post of Head Constable on the basis of his excellent and appreciable services. The petitioner was also promoted from the post of Head Constable to the post of Assistant Sub Inspector of Police vide order dated 24.06.2014 on out of turn in view of his excellent and appreciable services. It has also come on record that the petitioner has been awarded near-about 21 Cash Awards for his appreciable services to the Department. Merely because some photographs have been published in the newspapers wherein the petitioner is alleged to have been seen with the criminals, cannot be made basis for reversion without holding a regular disciplinary inquiry under the Rules. The grounds for dispensing with the disciplinary inquiry in the light of the observations of the Judgements cited above, do not seem to be proper.

26. The Appellate Authority has not given any findings on the grounds raised in the appeal filed by the petitioner. The Appellate Authority is under an obligation to pass a

reasoned and speaking order giving out its findings and observations on the grounds raised in the appeal.

It is also pertinent to mention here that the stand of the respondents department as regards the consideration of the appeal is discriminatory because in same set of allegations, the other Police Inspector Jodha Ram who was also punished, the Appellate Authority has set aside the punishment order observing that he has not been afforded the opportunity of hearing. While allowing the appeal of Jodha Ram, Police Inspector, the Appellate Authority has also observed that there is no sufficient material with the respondents to hold him guilty.

27. In view of the discussion made above and the observations of the Hon’ble Apex Court and the High Court in the cases referred, this Court is of the view that the action of the respondents in dispensing with the regular departmental inquiry of the petitioner before passing the impugned order of reversion dated 29.01.2020 (Annex.7) passed by the Dy. Inspector General of Police and so also the order dated 28.08.2020 passed by the Director General of Police, Rajasthan, whereby the appeal filed by the petitioner against the order of punishment was dismissed, are held to be illegal, arbitrary and unjustified and are in gross violation of principles of natural justice.

28. Accordingly, the writ petition is allowed. The impugned orders dated 29.01.2020 (Annex.7) and 28.08.2020 are quashed and set aside.

29. The respondents, if chooses so, would be at liberty to initiate / continue the regular departmental inquiry proceedings under the Rules of 2001 in regard to the allegations leveled against the petitioner.

30. Consequences to follow.

31. In view of the order passed in the main petition, the stay application and pending applications, if any, also stand disposed of.

(GANESH RAM MEENA),J

Sharma N.K./Dy. Registrar