HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 6399/2019

Balram Singh, Aged About 38 Years, (CISF No. 034850136, Ex-Inspector/executive) Son Of Sh. Ramdhan Meena, Residence Of Village Ulupura, Post- Kamalpura, Tehsil - Bhusawar, District - Bharatpur (Rajasthan).

----Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Home Affairs, Govt. Of India, New Delhi.
2. The Director General, CISF, CGO Complex, Lodhi Road, New Delhi-110003.
3. The Inspector General, Central Industrial Security Force CISF, Western Sector, Headquarters, Navi Mumbai-410210.
4. The Dy. Inspector General, Central Industrial Security Force, CISF Western Zone Headquarters, Sector 35, Navi Mumbai-410210.
5. The Commandant, CISF Unit ONGC, Mahima, Mumbai, Pin-400016.

----Respondents

For Petitioner(s)	:	Dr. Saugath Roy
For Respondent(s)	:	Mr. Ashish Kumar, with Mr. Digvijay Singh

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HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Arguments concluded on	**:::**	**November 27, 2025**
Reserved on	**:::**	**November 27, 2025**
Pronounced on	**:::**	**January 13, 2026**

1. By filing instant writ petition the petitioner has made a challenge to the order dated 26.06.2017 passed by

the Dy. Inspector General, Office of Western Region, CISF (Ministry of Home Affairs), whereby imposed penalty of dismissal from service which shall ordinarily be a disqualification for future employment under the government. The petitioner has also challenged the order dated 30.10.2017 passed by the Inspector General, Office of Western Region, CISF (Ministry of Home Affairs) whereby the appeal filed by the petitioner against the order of punishment was dismissed. The petitioner has further challenged the order dated 23.07.2018 passed by the Director General, CISF (Ministry of Home Affairs), whereby the revision petition filed against the order dated 30.10.2017 passed by the Appellate Authority came to be dismissed. The petitioner has also challenged the order dated 12.02.2019 passed by the Directorate General, CISF (Ministry of Home Affairs), whereby the review petition filed him has been dismissed.

2. The brief facts of this case are that the petitioner was enrolled in CISF as an Inspector /Executive on 08.11.2003. While the petitioner was posted in CISF, ONGC, Mumbai, a movement order was issued for conducting the inquiry and for collection of information and documents in relation to the compassionate appointment of deceased Constable Sanjeev Thapa, resident of Village & Post Raipur District Deharadun, Uttarakhand. The petitioner is said to have reached at Deharadun for conducting an inquiry on

19.06.2017 and on an oral request made by the brother-in-law of the deceased Constable Sanjeev Thapa, he agreed to stay at their home. In the midnight of 22.06.2017 the brother-in-law of deceased Constable Sanjeev Thapa made a call to the Unit Commandant informing that an FIR No.22/2017 for the offences punishable under sections 352 and 504 IPC has been lodged against the petitioner. On the basis of the said call the Competent Authority i.e. the Commandant, CISF, Mahim, Mumbai placed the petitioner under suspension.

The petitioner was awarded punishment of dismissal from service vide order dated 26.06.2017. The Disciplinary Authority observed that "he is of the opinion that initiation of proceeding under Rule 36 of the Central Industrial Force Rules, 2001 (for short 'the Rules of 2001') and holding of regular departmental enquiry is not reasonably practicable in this case". The petitioner thereafter preferred an appeal before the Appellate Authority against the order of dismissal from service, which was rejected vide order dated 30.10.2017. The petitioner against the order dated 30.10.2017 passed by the Appellate Authority filed a revision petition which was also dismissed vide order dated 23.07.2018. The petitioner then filed a writ petition bearing SBCW P.No. 21629/2018 assailing the suspension order dated 22.06.2016, dismissal order dated 26.06.2017 and the order

dated 30.10.2017 passed by the Appellate Authority and so also the order dated 23.07.2008 passed by the Revisional Authority. However, the said writ petition was dismissed as withdrawn vide order dated 12.12.2018 with a direction to the petitioner to file a review petition before the Director General, CISF. In view of the directions of the Court, the petitioner filed a review petition before the Director General, CISF, CGO Office, New Delhi, which was also dismissed vide order dated 12.02.2019 and now the petitioner being aggrieved by the order of dismissal, order of the Appellate Authority, order of the Revisional Authority and so also the order of the Reviewing Authority, has preferred instant writ petition.

3. Notices were issued to the respondents and the respondents have filed reply to the writ petition and thereafter the petitioner has also filed a rejoinder.

4. The respondents in their reply to the writ petition have raised a preliminary objection that this Court has no territorial jurisdiction to entertain the present writ petition as no cause of action arose within the territorial jurisdiction of this Court.

Counsel appearing for the respondents has relied upon the judgment delivered by the Coordinate Bench of this Court in the case of ***Norat Rana v. Union of India & Ors. (S.B. Civil Writ Petition No.13031/2017) decided on***

26.04.2023 *and so also the judgment delivered by the High Court of Kerala in the case of* ***Registrar, Indian Maritime University v. K.G. Vishwanathan & Anr., reported in 2014 Supreme (Ker) 615.***

5. Counsel appearing for the petitioner submitted that since the part cause of action arose in Rajasthan as the impugned orders of the Appellate Authority as well as the Reviewing Authority have been served upon the petitioner at his native place i.e. within the territorial jurisdiction of this Court, the Court is having jurisdiction to entertain this writ petition. To support the contentions, the counsel appearing for the petitioner has relied upon the judgment delivered by the Hon'ble Apex Court in the case of ***Nawal Kishore Sharma v. Union of India & Ors., reported in (2014) 9 SCC 329***.

6. In the case of ***Norat Rama (supra)*** cited by the counsel appearing for the respondents, a challenge was made to the order dated 15.11.2016 which was passed and served upon the petitioner therein at Thakurli (Maharashtra). There are no pleadings or facts available on record in that case whether any order was served upon the petitioner therein at a place within the jurisdiction of this Court and in that situation the Coordinate Bench dismissed the writ petition being devoid of territorial jurisdiction.

7. The High Court of Kerala in the case of ***Registrar, Indian Maritime University (supra)*****,** has also taken into consideration the judgment of Hon'ble Apex Court delivered in the case of Nawal Kishore Sharma (supra) observing that the judgment delivered in the case of Nawal Kishore Sharma (supra) was rendered in peculiar facts noticed by the Hon'ble Apex Court. Meaning-thereby, the High Court of Kerala has also accepted the observations of the Hon'ble Apex Court in peculiar facts and circumstances of that case.

8. In the case of ***Nawal Kishore Sharma (supra)***, the Hon'ble Apex Court in paras 17 and 19 has observed as under:-

> *"17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar*

to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.

19. Considering the entire facts of the case narrated hereinbefore including the interim order passed by the High Court, in our considered opinion, the writ petition ought not to have been dismissed for want of territorial jurisdiction. As noticed above, at the time when the writ petition was heard for the purpose of grant of interim relief, the respondents instead of raising any objection

with regard to territorial jurisdiction opposed the prayer on the ground that the appellant-writ petitioner appellant was offered an amount of Rs.2.75 lakhs, but he refused to accept the same and challenged the order granting severance compensation by filing the writ petition. The impugned order, therefore, cannot be sustained in the peculiar facts and circumstances of this case."

The Hon'ble Apex Court in the aforesaid judgment has finally held that in the facts and circumstances of that case the writ petition ought not to have been dismissed for want of territorial jurisdiction.

9. In the present case, may be the order of dismissal of petitioner from service has been passed and served at Mumbai. After dismissal from service, the petitioner came back to his native place and then preferred an appeal before the Appellate Authority and the order of the Appellate Authority was served upon the petitioner at his native place i.e. Village Ullupura, Post Kamalpura, Tehsil Bhusawar, District Bharatpur, Rajasthan. The petitioner against the order dated 30.10.2017 passed by the Appellate Authority filed a revision petition which was dismissed vide order dated 23.07.2018 and served at his native place in Rajasthan. After dismissal of the appeal and the revision petition, the petitioner preferred S.B. Civil Writ Petition No.21629/2018 before this Court only challenging the order of suspension, order of dismissal as well

as the order passed by the Appellate Authority and Revisional Authority. The said writ petition was dismissed as withdrawn with liberty to the petitioner to raise all his submissions before the Director General, CISF, CGO Complex, New Delhi by filing a review petition. The earlier petition was not dismissed on count of territorial jurisdiction. Under the liberty granted by the Court, the petitioner preferred a review petition before the Director General, CISF from his native place in Rajasthan. The Director General, CISF, dismissed the review petition vide order dated 12.02.2019 and the same was served upon the petitioner at his native place in District Bharatpur (Rajasthan).

10. The facts in the case of ***Nawal Kishore Sharma (supra)*** are quite similar to the facts of the present case as the impugned orders passed by the Appellate and Revisioinal Authorities have been served upon the petitioner within the territorial jurisdiction of this Court and thus a part of cause of action is said to have been arose in the territorial jurisdiction of this Court.

Some of the impugned orders have been served the petitioner within the territorial jurisdiction of this Court. The respondents have their Standing/Penal counsels at this Court who regularly attends the Court proceedings. One of the requirement of provision of natural justice is that one should get proper opportunity of hearing which includes that

he could avail the legal remedy under law easily. A person who has been dismissed from service may not have sufficient funds and source of income to go at a far away place to avail the legal remedy. The respondents in this case have not been able to point out how their case is prejudiced if entertained by this Court. When no prejudice is caused to the respondents, then in the light of the facts of this case it would be appropriate for this Court to entertain this petition.

11. Having followed the observations of the Hon'ble Apex Court in the case of ***Nawal Kishore Sharma (supra)*** and considering the facts of the present case in the light of the facts of the case of ***Nawal Kishore Sharma (supra)***, this Court can safely held that a part of cause of action has arose within the territorial jurisdiction of this Court. Hence, the preliminary objection raised from the respondents' side as regards the territorial jurisdiction of this Court to entertain the writ petition is not sustainable.

12. One of the basic issue raised by the counsel appearing for the petitioner is that the act of the respondents in dispensing with the regular disciplinary inquiry before issuing the punishment order in exercise of powers under Rule 39 read with Rule 34 of the Rules of 2001 is wholly illegal, arbitrary and unjustified and the punishment order is in gross violation of principles of natural justice as there is no impediment in holding the regular inquiry into the allegations.

13. Counsel appearing for the respondents has submitted that invoking the powers under Rule 39 of the Rules of 2001 for dispensing with the disciplinary inquiry is just and proper in view of the facts of this case and so also the allegations leveled against the petitioner. He also submitted that it was not reasonably practicable to hold the regular inquiry as for a regular inquiry the material witness i.e. the daughter of the deceased Constable was to be called as a witness which certainly has an adverse impact of her dignity and her family members might have become target of the acts of violence.

14. In the case of ***Hanuman Ram (deceased) v. State of Raj. (S.B. Civil Writ Petition No. 5574/2010) decided on 03.10.2023,*** the Coordinate Bench of this Court in para 24 has observed as under:-

> *"**24.** Without holding any enquiry and procedure contained under Rule 16, 17 and 18 of the Rules of 1958, the petitioner has been removed from service by the respondent in exercise of its powers contained under Rule 19 (ii) of the Rules of 1958. The disputed question of fact that whether the audio clip was containing voice of the petitioner or not, could have been proved or disproved after conducting enquiry against him and the respondent should have conducted enquiry against the petitioner to find out the truth."*

The Rule 14(ii) of the CCA Rules 1958 are similar to Rule 39 of the Rules of 2001. In the present case also, the truthfulness of allegations made against the petitioner could be ascertained by recording the version of complainant and other witnesses and allowing opportunity to petitioner to cross examine them.

15. In the Rules of 2001, the procedure for imposing major penalties has been given under Rule 36. Rule 36 of the Rules of 2001 is quoted as under:-

> ***"36. Procedure for imposing major penalties -*** *(1) Without prejudice to the provisions of the Public Servants 1 (Inquires) Act, 1850 (37 of 1850), no order imposing on an enrolled member of the Force any of the penalties as specified in clauses (i) to (v) of rule 34 shall be made except after inquiries held, as far as may be, in the manner hereinafter provided.*
>
> *(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an enrolled member of the Force, it may itself inquire into, or appoint an authority to inquire into the truth thereof.*
>
> *Explanation - Where the disciplinary authority itself holds the inquiry, any reference in subrule (7) to (18) of this rule shall be construed as a reference to the disciplinary authority.*
>
> *(2A) Where there is a complaint of sexual harassment within the meaning of Rule 3C) of the Central Civil Services (Conduct) Rules, 1964, the*

Complaints Committee established in Central Industrial Security Force for inquiries into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaint Committee shall hold, if separate procedure has not been prescribed for the Complaint Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

(3) Where it is proposed to hold an inquiry against an enrolled member of the Force under this rule, the disciplinary authority shall draw up or cause to be drawn up -

(i) the substance of the imputation of misconduct or misbehavior into definite and distinct articles of charge;

(ii) a statement of the imputation of misconduct or misbehavior 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 enrolled member of the Force;

(b) a list of documents by which, and a list of 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 enrolled member of the Force a copy of the articles of charge, the statement of 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 enrolled member of the Force 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 itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority not below the rank of Inspector for the purpose, and where all the articles of the charge have been admitted by the enrolled member of the Force in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall pass an order in the manner laid down in sub-rule (20) to (22).

(b) If no written statement of defence is submitted by the enrolled member of the Force, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose.

(c) Where the Disciplinary Authority 2 (itself inquires) into any article of charge or appoints an Inquiring Authority for holding any enquiry into such charge, it may, by an order, appoint a member of the Force to be known as the Presenting Officer to present on its behalf the case in support of the articles of charge.

(6)The disciplinary authority shall, where it is not the inquiring authority, forward 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 enrolled member of the Force;

(iii) a copy of the statement of witnesses, if any, referred to in sub-rule (3);

(iv) evidence proving the delivery of the documents referred to in sub-rule(3) to the enrolled member of the Force.

(v) a copy of the order appointing the Presenting Officer.

(7) The enrolled member of the Force shall appear in person before the inquiring authority on such day and at such time and place, within ten working days from the date of receipt by him of the article of charge and the statement of imputation of misconduct or misbehaviour as the inquiring authority may, by notice in writing, specify in this behalf or within such further time, not exceeding ten days as the inquiring authority may allow.

(8)(a) The enrolled member of the Force so charged may be permitted by the inquiring authority to present his case with the assistance of any other Member of the Force posted at the place of inquiry. He will give three choices for his defence assistance and the controlling officer will depute any one of the three indicated by him;

(b) The member of the Force can not have more than three cases in hand in which he is rendering defence assistance. However, the controlling authority of such persons who is sought to be

engaged may refuse permission for his working as defence assistant if the public interest so demands.

(9) If the enrolled member of the Force who has not admitted any of the article 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 any defence to make and if he pleads guilty to any of the articles of charge, the enquiring authority shall record the plea, sign the record and obtain the signature of the enrolled member of the Force thereon.

(10) (a) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the enrolled member of the Force pleads guilty;

(b) The inquiring authority shall, if the enrolled member of the Force 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 enrolled member of the Force 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 referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf; (iii) give a notice within ten days of the order or within such further time not exceeding ten days 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 referred to in sub-rule (3);

(11) 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 documents by such date as may be specified in such requisition:

Provided that the Inquiring Authority may, for the 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.

(12) On receipt of the requisition referred to in sub-rule (11), 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 would be against the public interest or security of the state, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the enrolled member of the Force and withdraw the requisition made by it for the production or discovery of documents.

(13) xxx

(14) xxx

(15) 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 enrolled member of the Force. 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 if it thinks fit.

(16) If it shall appear necessary for the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the enrolled member of the Force or may itself call for new evidence or recall and re-examine any witness and in such case the enrolled member of the Force 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 enquiry for three clear days before the production of such new evidence, exclusive of the days of adjournments and the day to which the enquiry is adjourned. The Inquiring Authority shall give the enrolled member of the Force an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the enrolled member of the Force to produce new evidence, if it is of the

opinion that the production of such evidence is necessary, in the interests of justice

Note: New evidence shall not be permitted or called for or any Witness shall not be recalled to fill up any gape in the Evidence. Such evidence may be called for only when There is an inherent lacuna of defect in the evidence which has been produced originally.

(17) When the case for the Disciplinary Authority 3 (is closed), the enrolled member of the Force shall 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 enrolled member of the Force 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.

(18)(a) The evidence on behalf of the enrolled member of the Force shall then be produced. The enrolled member of the Force may examine himself in his own behalf if he so prefers. The witnesses produced by the enrolled member of the Force shall then be examined and shall be liable to cross examination, (re-examination and) examination by the Inquiring Authority according to the provisions applicable to the witnesses for the disciplinary authority.

(b) The Inquiring Authority may after the enrolled member of the Force closes, his case, and shall, if the enrolled member of the Force has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the enrolled

member of the Force to explain any circumstances appearing in the evidence against him.

(c) The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the enrolled member of the Force, or permit them to file written briefs or their respective case, if they so desires.

(d) Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an enquiry 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 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 interests of justice, it may recall, examine, cross examine and re-examine any such witnesses as hereinbefore provided.

(e) If the enrolled member to whom a copy of the articles of the charge has been delivered, does not submit written statement 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 provisions of this rule, the inquiring authority may hold the enquiry ex-parte.

(19) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain -

(a) the article of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the enrolled member in respect of each article of charge;

(c) an assessment of the evidence in respect of ach article of charge;

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

Explanation - If, in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original article of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the enrolled member has either admitted the fact 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 enquiry which shall include –

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any, submitted by the enrolled member;

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

(d) written brief, if any, filed by the enrolled member (or the Presenting Officer) during the course of the inquiry; and

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

(20) (i) where a disciplinary authority competent to impose any of the minor penalties and not competent to impose any of the major penalties specified in rule 34 has itself inquired into or cause to be inquired into the articles of any charge and that authority having regard to his own finding or having regard to his decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the major penalty specified in rule 34 should be imposed upon the enrolled member, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose any of the major penalties.

(ii) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may remit the case to the disciplinary authority from whom the records were forwarded or the inquiring authority, as the case may be, for further inquiry and report on any point.

(21) (i) The disciplinary authority, if it is not itself the inquiring authority, may, consider the records of inquiry and record its findings on each charge. The disciplinary authority may, for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of this rule as far as may be.

(ii) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any

article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

(iii) The disciplinary authority shall forward or cause to be forwarded a copy of the report or the enquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the Inquiring Authority, a copy of the report or the Inquiring Authority together with the reasons for disagreement, if any and record its own findings on any article of charge to the enrolled member of the Force who shall be required to submit, if he so desires, his written representation of submission to the disciplinary authority within fifteen days irrespective of whether the report is favourable or not to the enrolled member of the Force.

(iv) The disciplinary authority shall consider the representation, if any, submitted by the enrolled member of the Force before proceeding further in the manner as provided in sub-rule 22 of Rule 36.

(22)(i) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the minor penalties specified in rule 34 should be imposed on the enrolled member, it shall notwithstanding anything contained in rule 37 make an order imposing such penalty;

(ii) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of evidence adduced during the course of inquiry, is of the opinion that any of the major penalties specified in rule 34 should be imposed on

the enrolled member, it shall make an order imposing such penalties and it shall not be necessary to give the enrolled member any opportunity of making representation on the penalty proposed to be imposed."

16. 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."

17. 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."

18. So as to give effect to Article 311 of the Constitution of India, Rule 39 of the Rules of 2001 has been

incorporated in the Rules. Rule 39 of the Rules of 2001 is quoted as under:-

> *"**39. Special procedure in certain cases**- Not withstanding anything contained in rules 36 to 38–*
> *(i) where any penalty is imposed on an enrolled member of the Force 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 enrolled member of the Force may be given an opportunity of making representation against the penalty proposed to be imposed before any order is made in case under clause (i)."*

19. Sub-clause (ii) of Rule 39 of the Rules of 2001 deals with the provision regarding dispensing with the regular departmental inquiry as provided under Rule 36. The Disciplinary Authority, if satisfied for the reasons to be recorded in in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the Rules, he may

consider the facts of the case and make such orders thereon as it deems fit that may be dispensing with the regular inquiry. The aforesaid Rules clearly mandate that the Disciplinary Authority has to record the reasons for dispensing with the inquiry where the regular inquiry is not reasonably practicable. In the present case, the Disciplinary Authority while dispensing with the regular inquiry and imposing penalty of dismissal from service has observed in the punishment order as under:-

> *"2. And whereas No. 034850136 Insp/Exe Balram Singh of CISF Unit ONGC Mumbal had indulged in an act of serious misconduct and morale turpitude in that he molested Miss Anisha Thapa daughter of the sald deceased Constable at his native place by making calls and sending WhatsApp messages. He abused, manhandled and used filthy language about the relation of the widow of the deceased and her brother and created nuisance under the influence of liquor at the residence of late Constable. In this connection, Shri Samir Kshetri, brother-in-law of late Constable/GD Sanjeev Thapa has lodged FIR No. 22/2017 under section 352 and 504 of IPC at Ralpur Police Station Distt: Dehradun on 22.06.2017.*
>
> *3. And whereas CISF is an Armed Force of Union and discipline is of paramount importance and such act of No. 034850136 Insp/Exe Balram Singh badly tarnish the Image of Force in the eye of local public. It is the prime duty of the Force and Force personnel to maintain prestige and honour*

of the family members especially daughter and wife of late Constable. Hence, it needs to be curbed to check any such incident in future which may have far reaching implication on the image of the organization.

4. And whereas considering the seriousness of the heinous act on the part of No. 034850136 Insp/Exe Balram Singh of CISF Unit ONGC Mumbai, it is important to keep the morale of the members of the Force high by taking stern decision in the matter immediately and by not prolonging the case for indefinite period because the gravity of offence committed by the enrolled member of the Force is of such a nature that his retention in the Force is undesirable. Hence, I am in an opinion that Initiation of proceeding under rule 36 of CISF Rules, 2001 and holding of regular departmental enquiry is not reasonably practicable in this case."

20. The Disciplinary Authority while passing the impugned order of punishment has simply considered the gravity of the allegations and has made an opinion that the retention of the petitioner in service may have far implication in the image of the Organisation. It has also been observed that `it is important to keep the morale of the members of the Force high by taking stern decision in the matter immediately and by not prolonging the case for indefinite period because the gravity of offence committed by enrolled member of the Force of such a nature that his retention in the Force is

undesirable'. On reading of the impugned order of punishment, the Court finds that no reasons have been recorded by the Disciplinary Authority how and why the regular departmental inquiry is not reasonably practicable in the case. The allegations may be serious and grave nature but whether an enrolled member of Force has really committed such an act or not has to be ascertained. The findings regarding the allegations against the petitioner could only be given by a Competent Court after facing due trial or by the Competent Authority after holding a regular departmental inquiry. It is settled principle of law that the disciplinary inquiry can only be dispensed with where any such regular departmental inquiry is not reasonably practicable. The reasons which have been argued by the counsel appearing for the respondents for dispensing the regular inquiry does not seem to be justified in the light of the provisions of law. It has also come on record that an FIR No.22/2017 came to be registered against the petitioner for the alleged act which are said to be punishable under sections 352 and 504 IPC.

The respondents have not cared to find out the result of the investigation or any further action in that criminal case.

21. On the issue of dispensing with the regular departmental inquiry, the Hon'ble Apex Court has passed a

detailed judgment 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, 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.

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."

22. 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."

23. 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."*

24. 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."

25. 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."

26. Taking into consideration the allegations levelled against the petitioner, as mentioned in the impugned order of punishment dated 26.06.2017, this Court can safely say that

a regular inquiry was necessitated so as to come to the conclusion whether the allegations made against the petitioner really have some substance. The petitioner has gone for conducting of circumstantial inquiry and collection of information / documents in connection with compassionate appointment of the son deceased Constable. There could be a situation that the petitioner may not be convinced while making a circumstantial inquiry as regards the claim for compassionate appointment and the other party so as to avoid any adverse inquiry report may have leveled such allegations against the petitioner. If at all, there are any such allegations, as stated in the impugned order of punishment, the respondent- authorities or the family members of the deceased Constable could have lodged a criminal case so as to reach to the conclusion as regards the allegations to be given by the Competent Court on the basis of the evidence. In criminal cases relating to POSCO Act, the victims therein, who are minors, or sometimes of age of 9-10 years also come to the trial court as a witness and give their evidence in respect of allegations of sexual assault. In the present case also, the respondents could have hold a regular inquiry. The alleged victim herein could be a witness and her statements could have been recorded safely by adhering to all safety measures. It is not a case where the statements of victim or her family members could not be recorded. It is not the case

that the petitioner is a terrorist and no-one may give evidence against him.

27. It has also come on record that the petitioner has served with the respondents for 14 years and the respondents have not come with any adverse entry during his service period of 14 years. Putting end to 14 years long service without even show cause notice is highly unjustified.

28. Dismissal of an employee from the service without holding the regular departmental inquiry and without affording the proper opportunity of hearing not only adversely affects him financially or socially but it also hampers the coming generation of such an employee and therefore, in such a situation at-least a regular departmental inquiry as provided under the Rules must have been adhered so as to honour the basic principle of natural justice.

29. The Appellate Authority while passing the order dated 30.10.2017 dismissing the appeal preferred by the petitioner, has observed as under:-

> *"Reason for dispensing with enquiry has not been recorded. Mere statements that immediate proceedings were necessary to be taken against the appellant as allegations were serious, is not a sufficient reason to dispense with the enquiry.*
> ➤ *The contention of the appellant is baseless. According to Rule-39 (ii) of CISF Rules, 2001, where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules, he can impose a punishment on a member of the Force without conducting an enquiry. In the instant case, the*

reasons for not conducting departmental enquiry have clearly given in para No. 04 of the final order. The disciplinary authority found that it is not practicable to hold a regular departmental enquiry as there is serious heinous act on the part of the appellant, it is important to keep the morale of the members of the Force high by taking stern decision in the matter immediately and his retention in the Force is undesirable."

30. Merely saying the reasons for not conducting the departmental inquiry, clearly given in para 4 of the final order of the Disciplinary Authority, is not sufficient as the Disciplinary Authority has merely stated that the regular departmental inquiry is not reasonably practicable but no reasons or views have been given why and how the regular departmental inquiry is not reasonably practicable. The order of the Appellate Authority is not a speaking and reasoned order.

31. The Reviewing Authority in its order dated 12.02.2019 as regards the invoking of Rule 39 (ii) of the Rules of 2001 for dispensing with the departmental inquiry has observed that 'it was not expedient as the same might cause acute embarrassment to the daughter of deceased constable and her mother'.

32. In view of the detailed observations of the Hon'ble Apex Court as mentioned in above part, this Court can safely held that the reasons given by the Reviewing Authority for dispensing with the regular departmental inquiry is in no way

justifiable. The words "not reasonably practicable" have already been analyzed by the Hon'ble Apex Court and the reasons given by the Reviewing Authority for dispensing with the inquiry are not covered under the observations of the Hon'ble Apex Court.

33. In view of the discussion made above and the law settled, as referred to above, this Court clearly holds that the exercise of powers given under Rule 39(ii) of the Rules of 2001 in the present case is wholly illegal, arbitrary and unconstitutional for the reasons that ***firstly,*** the facts of the present case are not of such a nature that regular inquiry as provided under the Rules of 2001 is not reasonably practicable and is required to be dispensed with; ***secondly,*** the allegation against the petitioner, as mentioned in the order of punishment, can only held to be proved after holding a full-fledged inquiry allowing the delinquent to defend the same and collecting the evidence so as to prove the charges and ***thirdly,*** the material and the reasons which led to the satisfaction of the disciplinary authority to dispense with the regular inquiry, are not convincing. It is not a case where regular inquiry is not reasonably practicable or there would be any threat to any party, as discussed by the Hon'ble Apex Court in the case of ***Tulsiram Patel (supra).***

34. 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 before passing the impugned order of dismissal dated 26.06.2017 passed by the Dy. Inspector General, Office of Western Region, CISF (Ministry of Home Affairs), the order dated 30.10.2017 passed by the Inspector General, Office of Western Region, CISF (Ministry of Home) whereby the appeal filed by him against the order of punishment was dismissed, the order dated 23.07.2018 passed by the Director General, CISF (Ministry of Home Affairs), whereby the revision petition filed against the order dated 30.10.2017 came to be dismissed so also the order dated 12.02.2019 passed by the Director General, CISF (Ministry of Home Affairs), whereby the review petition filed him has been dismissed, are held to be illegal, arbitrary and unjustified and are in gross violation of principles of natural justice.

35. Accordingly, the writ petition is allowed. The order of dismissal dated 26.06.2017, the order dated 30.10.2017 by which the appeal filed by the petitioner before the Appellate Authority, the order dated 23.07.2018 by which the revision petition of the petitioner has been dismissed and so also the order dated 12.02.2019 by which the review petition filed by the petitioner was dismissed, are quashed and set aside. The petitioner is entitled for reinstatement in service with all consequential benefits.

36. The petitioner at the time of dismissal from service was under suspension. The petitioner would be reinstated back in service in the same position and would be treated to be in suspension during the intervening period and would be entitled for subsistence allowance for the period from his dismissal from service.

37. The respondents shall reconsider the case of the suspension of the petitioner within a period of one month from the date of reinstatement and pass appropriate order.

38. 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.

39. No observations of the Court in this order in any manner shall affect the future proceedings, if initiated against the petitioner.

40. 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 NK/Dy. Registrar