HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 6008/2022

Mukesh Kumar Sharma Son Of Shri Jai Prakash Sharma, Aged About 36 Years, Resident Of Village Naradpura, Post Dhanau Kalan, Tehsil Bassi, District Jaipur (Rajasthan) (At The Time Of Termination, Petitioner Was Posted At Police Line, Tonk On The Post Of Constable Belt No. 992)

----Petitioner

Versus

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

----Respondents

For Petitioner(s)	:	Mr. Dinesh Yadav
For Respondent(s)	:	Mr. Pradeep Kalwania, GC

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Reserved on	**:::**	**May 31, 2024**
Pronounced on	**:::**	**July 01, 2024**

Reportable

1. This writ petition has been filed by the petitioner with a challenge to the order dated 08.04.2022 issued by the

Superintendent of Police, Tonk whereby he was dismissed from service with immediate effect.

2. The facts in brief of the matter are that the petitioner while working as a Constable under the Superintendent of Police, District Tonk was placed under suspension vide order dated 24.10.2021 in exercise of the powers given under Rule 13(1(a) of the Rajasthan Civil Services (classification, Control & Appeal) Rules, 1958 (for short 'the Rules of 1958') in view of contemplation of inquiry against him.

Vide order dated 17.02.2022 the petitioner was reinstated in service keeping inquiry proceedings pending against him.

3. A preliminary enquiry was ordered against the petitioner vide order dated 01.12.2021 which was handed over to the Circle Officer, Circle Malpura in view of the allegations of objectionable language used by him.

During the pendency of the preliminary enquiry the Superintendent of Police, District Tonk issued an order dated 08.04.2022 and imposed major penalty of dismissal from service. While passing the order dated 08.04.2022 the special powers given under rule 19(ii) of the Rules of 1958 were exercised so as to dispense with the inquiry proceedings observing that the Disciplinary Authority is satisfied for the reasons recorded in the file that it is not reasonably

practicable to follow the procedure as prescribed in the rules in regard to inquiry against him.

4. The main thrust of the averments made in the writ petition and the oral submission made by the counsel appearing or the petitioner is that the respondents have illegally and arbitrarily exercised the special powers given under rule 19(ii) of the Rules of 1958 so as to dispense with the inquiry proceedings against the petitioner before passing the order of penalty. Counsel for the petitioner has submitted that the allegation against the petitioner is that he has used objectionable language in conversation on Cell Phone with the higher authority of the department. Counsel further submitted that whether it was the petitioner who used objectionable language in conversation on Cell Phone with the higher authority or someone, can only be ascertained only after making a proper inquiry including taking the voice sample of the petitioner and send the same to the Forensic Laboratory for its test. Counsel also submitted that the respondents could have proceeded with the inquiry proceedings in a manner of procedure given under the Rules of 1958 and the powers given under Rule 19(ii) of the Rules of 1958 are the special powers to be exercised in rarest of rare cases where the inquiry proceeding is impracticable but the respondents misused the powers without there being any cogent reason to do so. Counsel submitted that the order

passed by the respondents is in gross violation of principle of natural justice. Therefore, the same deserves to be quashed and set aside.

5. The respondents have filed a detailed reply to the writ petition and counsel appearing for the respondents in oral submissions stated that the order impugned has been passed in accordance with law. Counsel also submitted that the respondents have rightly exercised the special powers given under Rule 19(ii) of the Rules of 1958 against the petitioner in view of the allegations of using objectionable language by him during conversation on Cell Phone with the higher authority. Counsel further submitted that in the conversation the petitioner himself has disclosed his identity. It was also submitted by the counsel for the respondents that the reasons for invoking the powers under Rule 19(ii) of the Rules of 1958 have been recorded in writing on the office file. Counsel for the State submitted that taking into consideration the allegations leveled against the petitioner, the order of dismissal from service of the petitioner is just and proper and does not call for any interference of this Court.

6. Considered the submissions advanced by both the counsels appearing for the respective parties.

7. The main crux of the matter is that whether invoking the powers under rule 19(ii) of the Rules of 1958 in the present case is just and proper and whether the

impugned order of dismissal of service of the petitioner is violative of principle of natural justice?

8. The respondents in the reply to the writ petition has also raised a preliminary objection that the writ petition under Article 226 of the Constitution of India is not maintainable as the petitioner is having statutory alternative remedy of appeal before the Appellate Authority under the Rules of 1958.

9. From the pleadings it is borne out that the allegation against the petitioner is that during conversation with the higher authority of the department he has used indecent and objectionable language and has also disclosed his identity which is being taken by the respondents to be indecent behavior towards women and other persons.

On the aforesaid allegations the respondents ordered for preliminary enquiry vide order dated 01.12.2021 and prior to that vide order dated 24.10.2021 the petitioner was placed under suspension in contemplation of the inquiry. Vide order dated 17.02.2022 the petitioner was reinstated back in service keeping the inquiry proceedings pending.

Along-with the rejoinder the petitioner has also placed on record the letter dated 08.04.2022 issued by the Superintendent of Police, District Tonk and also a letter dated 25.08.2022 issued by the Dy. Superintendent of Police, Circle Malpura District Tonk. By the letter dated 08.04.2022 the

District Superintendent of Police, Tonk has instructed the Dy.S.P., Circle, Malpura, District Tonk to conclude the preliminary enquiry in regard to the allegations against the petitioner and the Dy.S.P., Circle Malpura, District Tonk vide letter dated 25.08.2022 asked the petitioner to appear in the preliminary enquiry before him on 26.08.2022.

The aforesaid facts clearly speak that even the preliminary enquiry in regard to the allegations against the petitioner was undergoing while the impugned order of dismissal from service was issued by the Superintendent of Police, Tonk. In the impugned order it has been mentioned that it is not reasonably practicable to hold the inquiry into the allegations against the petitioner as per the procedure given under the Rules.

10. This Court in absence of any cogent material fails to form any opinion that this is a case where it is unreasonable and impracticable to follow the procedure given under the Rules to complete the proceedings in regard to the allegations leveled against the petitioner. The allegation against the petitioner is of using indecent and objectionable language in conversation with the higher authority of the Department and the identify was also disclosed by the petitioner during the conversation. Now whether it was only the petitioner who had the conversation with the higher authority using indecent and objectionable language or someone else. It could also be

possible that someone else malafidely disclosing the identify in the name of the petitioner has used such language. Whether it was the petitioner or someone else that could only be ascertained by a full-fledged inquiry including the verification of the voice of the petitioner by the Forensic Laboratory but the respondents did not adhere to that procedure but passed an order of dismissal from service without assigning and disclosing the material which lead to the satisfaction of the Disciplinary Authority that the ordinary procedure of inquiry given under the rules cannot be adhered in the present case.

11. Rule 19(ii) of the Rules of 1958 has been incorporated in the Rules of 1958 which is quoted as under:-

> *"19. Special procedure in certain cases: Notwithstanding anything contained in rules 16, 17 and 18;*
>
> *(i) " "*
> *(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"*

Rule 19(ii) of the Rules of 1958 has been incorporated in the rules in view of the provisions of proviso (b) of Article 311(2) of the Constitution of India, which reads as under:-

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

(1) " " "

(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."

12. The language of Article 311(2) of the Constitution of India and Rule 19(ii) of the Rules of 1958 are to meet out

the situation where the Disciplinary Authority is satisfied that it is not reasonably practicable to follow the procedure prescribed in the said rules. Meaning-thereby, when it becomes impracticable or in a sense that it is impossible to hold an inquiry then only the Disciplinary Authority can exercise the power given under Rule 19(ii) of the Rules of 1958 so as to pass the order of penalty against the concerned government servant. The respondents in the reply to the reply has not disclosed any reason which led to the satisfaction of the Disciplinary Authority that why it is unreasonably practicable for him to hold and conclude the inquiry in regard to the allegations against the petitioner.

Considering the allegations and the facts of the case, the respondents could have asked the petitioner to have given his voice sample so that it could be tested whether the conversation made with the higher authority of the Department using objectionable language was only by the petitioner. The petitioner has also made a prayer in this writ petition that the respondents be directed to take his voice sample and send the same for FSL test which goes to show that the petitioner has not denied to give his voice sample and the respondents have also not come out that the petitioner denied for voice sample.

*1*3. The Hon’ble Apex Court in the case of ***Union of India & Anr. Vs. Tulsiram Patel, reported in (1985) 3***

SCC 398 & Other connected matters has dealt in detail with the powers of the disciplinary authority given under Rule 19(ii) of the Rules of 1958 read with Article 311(2) of the Constitution of India. The relevant paras No.27, 29, 60, 101, 110, 116, 121, 130, 134, 140, 141 and 147 of the Judgment delivered by the Hon'ble Apex Court in the case of Tulsiram Patel (supra) are as under:-

"27. 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.

29. 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.

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 a 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.

110. Rule 14 of the Railway Servants Rules provides as follows :

"14. Special procedure in certain cases. Notwithstanding anything contained in rules 9 to 13:

(i) where any penalty is imposed on a railway 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 an 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."

Clause (b) of Rule 2 of the Railway Servants Rules defines the word "Commission" as meaning the "Union Public Service Commission."

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 sub-rule 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".

121. Rule 37 of the CIS Rules is as follows :

"37. Special Procedure in certain cases- Notwithstanding anything contained in rule 34, rule 35 or rule 36, where a penalty is imposed on a member of the force-

(a) on the ground of conduct which had led to his conviction on a criminal charge; or

(b) 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 :

the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

A member of the force who has been convicted to rigorous imprisonment on a criminal charge shall be dismissed from service. In such cases, no evidence need be given to proved the charge. Only a notice shall be given to the party charged proposing the punishment of dismissal for his having been convicted to rigorous imprisonment and asking him to explain as to why the proposed punishment of dismissal should not be imposed". Rule 42 provides for a right of appeal in the case of an order imposing any of the penalties specified in Rule 31. Rule 42-A prescribes the period of limitation for filing an appeal. The appellate authority, however, has the power to condone the delay in filing an appeal if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time. Sub- rule(2) of Rule 47 provides as follows :

"47. Consideration of appeals -

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 31, the appellate authority shall consider -

(a) whether the procedure prescribed in these rules has been complied with, and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate; and pass orders;

(i) setting aside, reduction, confirming or enhancing the penalty;

(ii) remitting the case to the authority which imposed the penalty; or to any other authority with such direction as it may deem fit in the circumstances of the case :

Rule 49 provides for suo motu revision. It inter alia enables the revising authority to take further evidence and provides that the provisions of Rule 47 relating to appeals shall apply so far as may be to orders in revision.

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 go 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."

14. This Court in the case of ***Ramesh Chandra Vs. The Tonk Zila Sahakari Bhoomi Vikas Bank Ltd., Tonk & Anr., reported in 2004 WLC (Raj.) UC 733*** after considering the law laid down in the case of ***Tulsiram Patel (supra)*** has observed in paras 12, 13 and 14 as under:-

> *"12. From perusal of the provisions of rule 19 it is apparent that these extra ordinary powers can be exercised in special circumstances when it is no! reasonably practicable to follow the procedure prescribed under rule 1ô of the rules of 1958. In the present case the respondent Bank has resorted to clause 2 of rule 19 by holding that it was not reasonably practicable to hold enquiry against the petitioner. The question before this court is whether the respondent bank was right in resorting the powers under clause 2 of rule 19 of the ruies of 1958 by dispensing with regular procedure for inquiry provided under rule 16 of the rules of 1958. As stated in preceding paras the petitioner immediately after receiving the memorandum under rule 16 of the rules of 1958 submitted an application to the respondent bank making a request to supply him certain informations which were necessary to submit an effective statement of defence which were in opinion of the petitioner required to submit effective defence statement. The petitioner in that application also denied the*

allegations levelled against him in quite unambiguous terms. It was open for the respondents even at that stage to proceed with regular enquiry against the petitioner. The respondent bank Instead of doing so choose to resort the powers under Rule 19(2) of the Rules of 1958. Hon'ble the Supreme Court in the case of Union of India Vs. Tulsiram Patel reported in 1985 SC page 1416, has given guidelines in this regard. I would like to reproduce the relevant portion of the judgment referred above which clearly prescribes the circumstances in which special powers to dispense with the regular proceedings can be exercised:

"(Para 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 "nof 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, done or accomplished: feasible". Further, 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 udged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members 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 inguiry 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 powers 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.

13. From minute dissection of the facts of present case it is apparent that there was no circumstance available to respondents to dispense with regular enquiry as provided under Rule 16 of the Rules of 1958 and to exercise the powers under Rule 19(1) of the Rules of 1958.

14. The disciplinary authority resorted to the powers under rule 19(ii) of the Rules of 1958 only to avoid the holding of disciplinary inquiry as prescribed under rule 16 of the rules of 1958. The petitioner by no stretch of imagination can be blamed for creating hurdles in holding of inquiry. The be baseless and without stand taken by the respondents on face appears any reason. in view of it the order impugned Annex.6 deserves to be quashed and set-aside."

15. In view of the discussion made above and the law settled and referred above, this Court can safely held that the

exercise of powers given under Rule 19(ii) of the Rules of 1958 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 can be dispensed, secondly, the allegations against the petitioner can only be proved after holding inquiry and thirdly, the material and reasons which led to the satisfaction of the Disciplinary Authority to dispense with regular inquiry has neither been disclosed to the final order nor the same has been disclosed before this Court. The impugned order of dismissal from service of the petitioner is clearly in gross violation of the principle of natural justice.

16. The respondents have also raised an objection that the writ petition against the order dated 08.04.2022 whereby the penalty of dismissal from service has been imposed upon the petitioner is not maintainable because the petitioner is having statutory remedy of an appeal before the Appellate Authority as provided under the Rules of 1958.

17. It is a well settled that the writ petition under Article 226 of the Constitution of India is not maintainable when the petitioner is having an alternative statutory remedy under any law except in four exceptional circumstances. One of the four exceptional circumstance is that writ petition can be directly entertained under Article 226 of the Constitution

of India when there is a gross violation of principle of natural justice.

In the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors., reported in 1998 (8) SCC 1***, the Hon'ble Apex court carried out the exceptions where a writ Court would be justified in entertaining a writ petition despite the party not having availed the alternative remedy provided by the Statute. The same are as follows:-

"(i) Where writ petition seeks enforcement of any of the fundamental rights; or

(ii) Where there is violation of principle of natural justice; or

(iii) Where the orders or proceedings are wholly without jurisdiction; or

(iv) Where the Vires of the Act is under challenge."

The same principles were reiterated in the case of ***Assistant Commissioner of State Tax & Ors. Vs. Commercial Steel Limited, reported in the case of 2021 SCC Online SC 884***.

18. Since the Hon'ble Apex Court in the cases referred above and in various other cases has held that if the order or action is under challenge which is in gross violation of principle of natural justice, writ under Article 226 of the

Constitution of India can be entertained directly even without exhausting the alternative remedy available under the Statute.

19. This Court has already held that the order dated 08.04.2022 issued by the Superintendent of Police, Tonk imposing penalty of dismissal from service has already been held to be in gross violation of principle of natural justice, and therefore the objection raised by the counsel for the respondents that the writ petition is not sustainable and therefore, the same is over-ruled.

20. Accordingly, the writ petition is allowed. The order dated 08.04.2022 passed by the Superintendent of Police, Tonk in regard to dismissal from service of the petitioner is set aside with all consequential benefits including salary, pay fixation, and other service benefits etc. The respondents are directed to allow the petitioner to join the service and shall extend the consequential benefits to the petitioner within three months from today.

However, the respondents would be at liberty to initiate regular inquiry proceedings as provided under the Rules of 1958 in regard to the allegations leveled against him.

21. In view of the order passed in the main petition, the stay application and pending application(s), if any also stand disposed of.

(GANESH RAM MEENA),J

Sharma NK/Dy. Registrar