Satyavir Singh and Others

Vs

Union of India and Others

D. P. Vohra

Vs

Union of India and Others

Civil Appeals Nos. 242 and 576 of 1982

(V. D. Tulzapurkar, R. S. Pathak, D. P. Madon JJ)

12.09.1985

JUDGMENT

MADON, J. -

1. The appellants who were employed in the Research and Analysis Wing, Cabinet Secretariat, Government of India were dismissed from service in the exercise of the power conferred by clause (b) of the second proviso to Article 311(2) of the Constitution of India read with Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, without serving any charge-sheet upon them and without holding any inquiry. The appellants thereupon filled in the Delhi High Court a writ petition under Article 226 of the Constitution challenging the said orders of dismissal. The said writ petition was dismissed by a Division Bench of the Delhi High Court by its judgment and order dated September 25, 1981. It is against the said judgment and order of the Delhi High Court that the present two appeals have been filed by special leave granted by this Court.

Article 311 of the Constitution

2. Prior to the amendment of the second clause of Article 311 of the Constitution by the Constitution (Forty-second Amendment) Act, 1976, with effect from January 3, 1977, the second proviso to the said clause was the only proviso to the said clause (2). Article 311 as amended by the Constitution (Fifteenth Amendment) Act, 1963, and the Constitution (Forty-second Amendment) Act, 1976, reads as follows :

> 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 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 charge :

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
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> (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.
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> (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.

Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

3. The Central Civil Services (Classification, Control and Appeal) Rules, 1965, have been made by the President in exercise of the power conferred by the proviso to Article 309 of the Constitution. Rule 19 of the said Rules is in substance the same as the second proviso to Article 311(2) and provides as follows :

> 19. Special procedure in certain cases. - Notwithstanding anything contained in Rule 14 to Rule 18 -
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> (i) where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge, or
>
> (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rues, 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".

The Decision in Tulsiram Patel Case

4. It was not disputed at the hearing of these two appeals that they fall to be decided in the light of what was held in Union of India v. Tulsiram Patel (1985) 3 SCC 398 : 1985 SCC (L&S) 672) and other connected matters. By the decision in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) a large number of writ petitions either filed in this Court or in various High Courts and transferred to this Court and several appeals by special leave, all involving the interpretation of Articles 309, 310 and 311 of the Constitution and in particular of the second proviso to Article 311(2), were disposed of by a five-Judge Constitution Bench of this Court, with one learned Judge dissenting except as regards the interpretation to be placed upon clause (c) of the second proviso to Article 311(2).

5. A large number of points fell for decision in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672). It will, therefore, be convenient first to summarize topic-wise the conclusions reached by the majority in that case and then to emphasize the important right conferred by the majority judgment upon persons who are members of a civil service of the Union of India or an all-India service or a civil service of a State or hold a civil post under the Union of India or a State, in other words, upon civil servants, and thereafter to deal with the facts of the present appeals and the contentions raised at the hearing thereof.

6. The conclusions reached by the majority in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) were :

I. THE PLEASURE DOCTRINE IN THE UNITED KINGDOM

(1) The pleasure doctrine relates to the tenure of a government servant, that is, his right to continue to hold office. Under it all public officers and servants of the Crown in the United Kingdom hold their appointments at the pleasure of the Crown and their services can be terminated at will without assigning any cause.

(2) The pleasure doctrine is not based upon any special pre-rogative of the Crown but is based on public policy and is in public interest and for public good. The basis of the pleasure doctrine is that the public is vitally interested in the efficiency and integrity of civil services and, therefore, public policy requires, public interest needs and public good demands that civil servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service.

(3) In the United Kingdom, Parliament is sovereign and can make any law whatever and the courts have no power to declare it void. In the United Kingdom, therefore, the pleasure doctrine is subject to what may be expressly provided otherwise by legislation.

II. THE PLEASURE DOCTRINE IN INDIA

(4) In India the pleasure doctrine has receive constitutional sanction by being enacted in Article 310(1) of the Constitution of India. Under Article 310(1), except as expressly provided in the Constitution, every person who is a member of a defence service or of a civil service of the Union of India or of an all-India service or holds any post connected with defence or any civil post under the Union of India holds office during the pleasure of the President, and every person who is a member of a

civil service of a State or holds any civil post under a State holds office during the pleasure of Governor of the State.

(5) Thus, unlike in the United Kingdom, in India the pleasure doctrine is not subject to any law made by Parliament or a State Legislature but is subject to only what is expressly provided in the Constitution. In India, therefore, the exceptions to the pleasure doctrine can only be those which are expressly provided in the Constitution.

(6) There are several exceptions to the pleasure doctrine expressly provided in the Constitution.

(7) Article 311, being an express provision of the Constitution, is an exception to the pleasure doctrine contained in Article 310(1) of the Constitution. Clauses (1) and (2) of Article 311 restrict the operation of the pleasure doctrine so far as civil servants are concerned by conferring upon civil servants the safeguards provided in those clauses.

(8) Under clause (1) of Article 311 no civil servant can be dismissed or removed from service by an authority subordinate to that by which he was appointed.

(9) Under clause (2) of Article 311 no civil servant can be dismissed or removed from service 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 such charges. By reason of the amendment made by the Constitution (Forty-second Amendment) Act, 1976, in clause (2) of Article 311 it is now not necessary to give to a civil servant an opportunity of making a representation with respect to the penalty proposed to be imposed upon him.

(10) An order of compulsory retirement from service imposed upon a civil servant by way of penalty amounts to 'removal' from service and attracts the provisions of Article 311.

(11) Restrictions on the operation of the pleasure doctrine contained in legislation made by Parliament in the United Kingdom and in clauses (1) and (2) of Article 311 in India are also based on public policy and are in public interest and for public good in as much as they give to civil servants a feeling of security of tenure.

(12) The safeguard provided to civil servants by clause (2) of Article 311 is taken away when any of three clauses of the second proviso (originally the only proviso) to Article 311(2) becomes applicable.

(13) It is incorrect to say that the pleasure doctrine is a pre-rogative of the British Crown which has been inherited by India and transposed into its Constitution, adapted to suit the constitutional set-up of the Republic of India. Authoritative judicial dicta both in England and in India, for instance, Shenton v. Smith (LR 1895 AC 229 PC), Dunn v. The Queen (LR 1896 QBD 116, 119-120; s.c. (1895-96) 73 LTR 695 and sub nomine Dunn v. Regem in 1895-1899 All ER Rep 907), State of U. P. v. Babu Ram Upadhya ((1961) 2 SCR 679, 696 : AIR 1961 SC 751 : (1970) 1 LLJ 670), Moti Ram Deka v. General Manager, N. E. F. Railways, Maligaon, Pandu ((1964) 5 SCR 683, 734-5 : AIR 1964 SC 600 : (1964) 2 LLJ 467) and Roshan Lal

Tandon v. Union of India ((1968) 1 SCR 185, 195 : AIR 1967 SC 1889 : (1968) 1 LLJ 576), have laid down that the pleasure doctrine and the protection afforded to civil servants by legislation in the United Kingdom and by clauses (1) and (2) of Article 311 in India are based on public policy and are in public interest and for public good. Similarly, the withdrawal of the safeguard contained in clause (2) of Article 311 by the second proviso to that clause is also based on public policy and is in public interest and for public good.

(14) Neither Article 309 nor Article 310 nor Article 311 sets out the grounds for dismissal, removal or reduction in rank or for imposition of any other penalty upon a civil servant. These articles also do not specify what the other penalties are. These matters are left to be dealt with by rules made under the proviso to Article 309 or by Acts referable to that article or rules made under such Acts.

(15) The pleasure of the President or the Governor is not to be exercised by him personally. It is to be exercised by the appropriate authority specified in rules made under the proviso to Article 309 or by Acts referable to that article or rules made under such Acts. Where, however, the President or the Governor, as the case may be, exercises his pleasure under Article 310(1), it is not required that such act of exercise of the pleasure under Article 310(1) must be an act of the President or the Governor himself but it must be an act of the President or the Governor in the constitutional sense, that is, with the aid and on the advice of the Council of Ministers.

III. THE INQUIRY UNDER ARTICLE 311(2)

(16) Clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice and the audi alteram partem rule by providing that a civil servant 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.

(17) The nature of this inquiry has been elaborately set out by this Court in Khem Chand v. Union of India (1958 SCR 1080, 1095-97 : AIR 1958 SC 300 : (1959) 1 LLJ 167) and even after the Constitution (Forty-second Amendment) Act, 1976, the inquiry required by clause (2) of Article 311 would be the same except that it would not be necessary to give to a civil servant an opportunity to make a representation with respect to the penalty proposed to be imposed upon him.

(18) As held in Suresh Koshy George v. University of Kerala ((1969) 1 SCR 317, 326-7 : AIR 1969 SC 198) and Associated Cement Companies Ltd. v. T. C. Srivastava ((1984) 3 SCR 361, 369 : 1984 Supp SCC 87 : 1985 SCC (L&S) 488), apart from Article 311 prior to its amendment by the Constitution (Forty-Second Amendment) Act, 1976, it is not necessary either under the ordinary law of the land or under industrial law to give a second opportunity to show cause against the penalty proposed to be imposed upon an employee.

(19) If an inquiry held against a civil servant under Article 311(2) is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, the principles of natural justice would be violated; but

in such a case the order of dismissal, removal or reduction in rank would be bad as contravening the express provisions of Article 311(2) and there is no scope for having recourse to Article 14 for the purpose of invalidating it.

## IV. THE SECOND PROVISO TO ARTICLE 311(2)

(20) The language of the second proviso to Article 311(2) is plain and unambiguous. The keywords in the second proviso are "this clause shall not apply". There is no ambiguity in these words. Where, therefore, a situation envisaged in any of the three clauses of the second proviso arises, the safeguard provided to a civil servant by clause (2) of Article 311 is taken away.

(21) The second proviso to Article 311(2) becomes applicable in the three cases mentioned in clauses (a) to (c) of that proviso, namely,

(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 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.

(22) The governing words of the second proviso to clause (2) of Article 311, namely, "this clause shall not apply", are mandatory and not directory and are in the nature of a constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Article 311(2) or from giving any kind of opportunity to the concerned civil servant in a case where one of the three clauses of the second proviso becomes applicable. There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity to show cause by a process of inference or implication. The maxim expressum facit cessare tacitum ("when there is express mention of certain things, then anything not mentioned is excluded") applies to the case. This well-known maxim is a principle of logic and common sense and not merely a technical rule of construction as pointed out in B. Shankara Rao Badami v. State of Mysore ((1969) 3 SCR 1, 12 : (1969) 1 SCC 1).

(23) The second proviso to Article 311(2) has been in the Constitution of India since the time the Constitution was originally enacted. It was not blindly or slavishly copied from Section 240(3) of the Government of India Act, 1935. There was a considerable debate on this proviso in the Constituent Assembly as shown by the Official Report of the Constituent Assembly Debates, Vol. IX, pages 1099 to 1116. The majority of the members of the Constituent Assembly had fought for freedom and had suffered imprisonment in the cause of liberty and were, therefore, not likely to introduce into our Constitution any provision from the earlier Government of India Acts which had been enacted purely for the benefit of a foreign imperialistic power. They retained the second proviso as a matter of public policy and as being in the public interest and for public good. They further inserted clause (c) in the second

proviso dispensing with the inquiry under Article 311(2) in a case where the President or 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 as also added a new clause, namely, clause (3), in Article 311 giving finality to the decision of the disciplinary authority that it is not reasonably practicable to hold the inquiry under Article 311(2). Section 240 of the Government of India Act, 1935, did not contain any provision similar to clause (c) of the second proviso to Article 311(2) or clause (3) of Article 311.

V. ARTICLE 14 AND THE SECOND PROVISO

(24) The principles of natural justice are not the creation of Article 14 of the Constitution. Article 14 is not the begetter of the principles of natural justice but is their constitutional guardian.

(25) The principles of natural justice consist primarily of two main rules, namely, nemo judex in cause sua ("no man shall be a judge in his own cause") and audi alteram partem ("hear the other side"). The corollary deduced from the above two rules and particularly the audi alteram partem rule was qui aliquid statuerit, parte inaudita altera aequum licet dixerit, haud aequum fecerit ("he who shall decide anything without the other side having been heard, although he may have said what is right will not have done what is right" or as is now expressed "justice should not only be done but should manifestly be seen to be done"). These two rules and their corollary are neither new nor were they the discovery of English judges but were recognized in many civilizations and over many centuries.

(26) Article 14 applies not only to discriminatory class legislation but also to arbitrary or discriminatory State action. Violation of a rule of natural justice results in arbitrariness which is the same as discrimination, and where discrimination is the result of a State action, it is a violation of Article 14. Therefore, a violation of a principle of natural justice by a State action is a violation of Article 14.

(27) The principles of natural justice apply both to quasi-judicial as well as administrative inquiries entailing civil consequences.

(28) It is well established both in England and in India that the principles of natural justice yield to and change with the exigencies of different situations and do not apply in the same manner to situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible and can be adapted, modified or excluded by statute and statutory rules as also by the constitution of the tribunal which has to decide a particular matter and the rules by which such tribunal is governed. Instances of cases in which it has been so held are Norwest Holst Ltd. v. Secretary of State of Trade (LR (1978) 1 Ch 201, 227 : (1978) 3 All ER 280 : (1978) 3 WLR 73), Suresh Koshy George v. University of Kerala ((1969) 1 SCR 317, 322 : AIR 1969 SC 198), A. K. Kraipak v. Union of India ((1970) 1 SCR 457, 469 : (1969) 2 SCC 262 : AIR 1970 SC 150), Union of India v. Col. J. N. Sinha ((1971) 1 SCR 791, 694-5 : (1970) 2 SCC 458 : (1970) 2 Lab LJ 284), Swadeshi Cotton Mills v. Union of India ((1981) 2 SCR 533, 591 : (1981) 1 SCC 664), J. Mohapatra & Co. v. State of Orissa ((1985) 1 SCR 322, 334-5 : (1984)

4 SCC 103), and Maneka Gandhi v. Union of India ((1978) 2 SCR 621, 681 : (1978) 1 SCC 248).

(29) If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution such as the second proviso to Article 311(2).

(30) The audi alteram partem rule having been excluded by a constitutional provision, namely, the second proviso to Article 311(2), 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.

(31) A right of making a representation after an action is taken against a person has been held by this Court in Maneka Gandhi case ((1978) 2 SCR 621, 681 : (1978) 1 SCC 248) and in Liberty Oil Mills v. Union of India ((1984) 3 SCC 465) to be a sufficient compliance with the requirements of natural justice. In the case of a civil servant to whom the provisions of the second proviso to Article 311(2) have been applied, he has the right of a departmental appeal in which he can show that the charges made against him are not true, and an appeal is a wider and more effective remedy than a right of making a representation.

(32) The majority view in A. K. Gopalan v. State of Madras (1950 SCR 88 : AIR 1950 SC 27 : 1950 SCJ 175), namely, that particular articles governing certain Fundamental Rights operate exclusively without having any inter-relation with any other article in the Chapter on Fundamental Rights was disapproved and held to be not correct in Rustom Cavasjee Cooper v. Union of India ((1970) 3 SCR 530 : (1970) 1 SCC 248). The position that the majority view in Gopalan case (1950 SCR 88 : AIR 1950 SC 27 : 1950 SCJ 175) was overruled in R. C. Cooper case ((1970) 3 SCR 530 : (1970) 1 SCC 248) was reiterated in Sambhu Nath Sarkar v. State of W. B. ((1974) 1 SCR 1 : (1973) 1 SCC 856 : 1973 SCC (Cri) 618), Haradhan Saha v. State of W. B. ((1975) 1 SCR 778 : (1975) 3 SCC 198 : 1974 SCC (Cri) 816), Khudiram Das v. State of W. B. ((1975) 2 SCR 832 : (1975) 2 SCC 81 : 1975 SCC (Cri) 435) and Maneka Gandhi case ((1978) 2 SCR 621, 681 : (1978) 1 SCC 248); and it is to be hoped that the ghost of that majority view does not at some future time rise from its grave and stand, clanking its chains, seeking to block the onward march of our country to progress, prosperity and the establishment of a Welfare State.

(33) The decisions in R. C. Cooper case ((1970) 3 SCR 530 : (1970) 1 SCC 248) and the other cases which followed it do not, however, apply where a Fundamental Right, including the audi alteram partem rule comprehended within the guarantee of Article 14, is excluded by the Constitution itself. Instances of such express exclusionary provisions contained in the Constitution are Article 31-A(1), Article 31-B, Article 31-C, Article 22(5), and the second proviso to Article 311(2) as regards the audi alteram partem rule, namely, affording an opportunity of a hearing to a civil servant before imposing the penalty of dismissal, removal or reduction in rank upon him.

(34) The principles of natural justice must be confined within their proper limits and not allowed to run wild. The concept of natural justice is a magnificent thoroughbred on which this nation gallops forward towards its proclaimed and destined goal of

"JUSTICE, social, economic and political". This thoroughbred must not be allowed to turn into a wild and unruly horse, careering off where it lists, unsaddling its rider, and bursting into fields where the sign no pasaran is put up.

VI. SERVICE RULES AND ACTS

(35) Article 309 is expressly made subject to the provisions of the Constitution. Rules made under the proviso to Article 309, Acts referable to that article, and rules made under such Acts are, therefore, subject both to Article 310(1) as also to Article 311. If any such rule or Act impinges upon or restricts the operation of the pleasure doctrine embodied in Article 310(1) except as expressly provided in the Constitution or restricts or takes away the safeguards provided to civil servants by clauses (1) and (2) of Article 311, it would be void and unconstitutional as contravening the provisions of Article 310(1) or clause (1) or clause (2) of Article 311, as the case may be. Any such Act or rule which provides for dismissal, removal or reduction in rank of a civil servant without holding an inquiry as contemplated by clause (2) of Article 311 except in the three cases specified in the second proviso to that clause would, therefore, be unconstitutional and void as contravening Article 311(2).

(36) In the same way, for an Act or a rule to provide that in a case where the second proviso to Article 311(2) applies, any of the safeguards excluded by that proviso will be available to a civil servant would be void and unconstitutional as impinging upon the pleasure of the President or the Governor, as the case may be.

(37) A well-settled rule of construction of statutes is that where two interpretations are possible, one of which would preserve and save the constitutionality of the particular statutory provision while the other would render it unconstitutional and void, the one which saves and preserves its constitutionality should be adopted and the other rejected.

(38) Where an Act or a rule provides that in a case in which the second proviso to Article 311(2) applies any of the safeguards excluded by that proviso will be available to a civil servant, the constitutionality of such provision would be preserved by interpreting it as being directory and not mandatory. The breach of such directory provision would not, however, furnish any cause of action or ground of challenge to a civil servant because at the threshold such cause of action or ground of challenge would be barred by the second proviso to Article 311(2).

(39) Service rules may reproduce the provisions of the second proviso to Article 311(2) and authorize the disciplinary authority to dispense with the inquiry as contemplated by clause (2) of Article 311 in the three cases mentioned in the second proviso to that clause or any one or more of them. Such a provision, however, is not valid and constitutional without reference to the second proviso to Article 311(2) and cannot be read apart from it. Thus, while the source of authority of a particular officer to act as a disciplinary authority and dispense with the inquiry is derived from the service rules, the source of his power to dispense with the inquiry is derived from the second proviso to Article 311(2) and not from any service rule.

(40) The omission to mention in an order of dismissal, removal or reduction in rank

the relevant clause of the second proviso or the relevant service rule will not have the effect of invalidating the order imposing such penalty, and the order must be read as having been made under the applicable clause of the second proviso to Article 311(2) read with the relevant service rule.

(41) Rule 37 of the Central Industrial Security Force Rules, 1969, is clumsily worded and makes little sense. To provide that a member of the Central Industrial Security Force who has been convicted to rigorous imprisonment on a criminal charge "shall be dismissed from service" and at the same time to provide that "only a notice shall be given to the party charged proposing the penalty of dismissal for his having been convicted to rigorous imprisonment and asking him to explain as to why the proposed penalty of dismissal should not be imposed" is a contradiction in terms. To read these provisions as mandatory would be to render them unconstitutional and void. These provisions must, therefore, be read as directory in order to preserve their constitutionality.

(42) Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is Identical with Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, and the interpretation of the said Rule 19 would be the same as that of the said Rule 14.

VII. CHALLAN CASE

(43) The three-Judge Bench of this Court in Divisional Personnel Officer, Southern Railway v. T. R. Challappan ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) was in error in interpreting Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, by itself and not in conjunction with the second proviso to Article 311(2).

(44) The Court in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) also erred in holding that the addition of words "the disciplinary authority may consider the circumstances of the case and make such order thereon as it deems fit" in the said Rule 14 warranted an interpretation of the said rule different from that to be placed upon the second proviso to Article 311(2).

(45) The Court in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) also erred in the interpretation placed by it upon the word 'consider' occurring in the above phrase in the said Rule 14. The view taken by the Court in that case that a consideration of the circumstances of the case cannot be unilateral but must be after hearing the delinquent civil servant would render this part of the said Rule 14 unconstitutional as restricting the full exclusionary operation of the second proviso to Article 311(2).

(46) The word 'consider' in its ordinary and natural sense is not capable of the meaning assigned to it in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398).

(47) The consideration of the circumstances under the said Rule 14 must, therefore, be ex parte, and without affording to the concerned civil servant an opportunity of

being heard.

(48) The decision in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) never held the field for the judgment in that case was delivered on September 15, 1975, it was reported in (1976) 1 SCR at page 783 ff., and hardly was that case reported, then in the next group of appeals in which the same question was raised the matter was referred to a larger Bench by an order made on November 18, 1976, in view of the earlier decision of another three-Judge Bench in M. Gopala Krishna Naidu v. State of M. P. ((1968) 1 SCR 355 : AIR 1968 SC 240 : (1968) 2 LLJ 125 : 1968 Lab IC 216). The correctness of Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) was, therefore, doubted from the very beginning.

# VIII. EXECUTIVE INSTRUCTIONS##

(49) Executive Instructions stand on a lower footing than a statutory rule. Executive instructions which provide that in a case where the second proviso to Article 311(2) applies, any safeguard excluded by that proviso would be available to a civil servant would only be directory and not mandatory.

IX. THE SCOPE OF THE SECOND PROVISO

(50) The three clauses of the second proviso to Article 311 are not intended to be applied in normal and ordinary situations. The second proviso is an exception to the normal rule and before any of three clauses of that proviso is applied to the case of a civil servant, the conditions laid down in that clause must be satisfied.

(51) Where a situation envisaged in one of the clauses of the second proviso to Article 311(2) exists, it is not mandatory that the punishment of dismissal, removal or deduction in rank should be imposed upon a civil servant. The disciplinary authority will first have to decide what punishment is warranted by the facts and circumstances of the case. Such consideration would, however, be ex parte and without hearing the concerned civil servant. If the disciplinary authority comes to the conclusion that the punishment which is called for is that of dismissal, removal or reduction in rank, it must dispense with the inquiry and then decide for itself which of the aforesaid three penalties should be imposed.

X. CLAUSE (a) OF THE SECOND PROVISO

(52) In a case where clause (a) of the second proviso to Article 311(2) applies the disciplinary authority is to take the conviction of the concerned civil servant as sufficient proof of misconduct on his part. It has thereafter to decide whether the conduct which had led to the civil servant's conviction on a criminal charge was such as to warrant the imposition of a penalty and, if so, what that penalty should be. For this purpose it must peruse the judgment of the criminal court and take into consideration all the facts and circumstances of the case and the various factors set out in Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398), such as, the entire conduct of the civil servant, the gravity of the offence committed by him, the impact which his misconduct is likely to have on the

administration, whether the offence for which he was convicted was of a technical or trivial nature, and the extenuating circumstances, if any, present in the case. This, however, has to be done by the disciplinary authority ex parte and without hearing the concerned civil servant.

(53) The penalty imposed upon the civil servant should not be arbitrary or grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

(54) Where a civil servant goes to the office of his superior officer whom he believes to be responsible for stopping his increment and hits him on the head with an iron rod, so that the superior officer falls down with a bleeding head, and the delinquent civil servant is tried and convicted under Section 332 of Indian Penal Code but the Magistrate, instead of sentencing him to imprisonment, applies to him the provisions of Section 4 of the Probation of Offenders Act, 1958, and after such conviction the disciplinary authority, taking the above facts into consideration, by way of punishment compulsorily retires the delinquent civil servant under clause (i) of Section 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, it cannot be said that the punishment inflicted upon the civil servant was excessive or arbitrary.

XI. CLAUSE (b) OF THE SECOND PROVISO

(55) There are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311(2) can be applied. These conditions are :

(i) there must exist a situation which makes the holding of an inquiry contemplated by Article 311(2) not reasonably practicable, and

(ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry.

(56) 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.

(57) It is not a total or absolute impracticability which is required by clause (b) of the second proviso. 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.

(58) The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

(59) It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be -

(a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or

(b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether concerned civil servant is or is not a party to bringing about such a situation.

In all these case, it must be remembered that numbers coerce and terrify while an individual may not.

(60) The 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 civil servant is weak and must fail.

(61) The word 'inquiry' in clause (b) of the second proviso includes a part of an inquiry. It is, therefore, not necessary that the situation which makes the holding of an inquiry not reasonably practicable should exist before the inquiry is instituted against the civil servant. Such a situation can also come into existence subsequently during the course of the inquiry, for instance, after the service of a charge-sheet upon the civil servant or after he has filed his written statement thereto or even after evidence has been led in part.

(62) It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it, the civil servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority.

(63) The recording of the reason for dispensing with the inquiry is a condition precedent to the application of clause (b) of the second proviso. This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. It is, however, not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated.

(64) The reason for dispensing with the inquiry need not contain detailed particulars but it cannot be vague or just a repetition of the language of clause (b) of the second proviso.

(65) It is also not necessary to communicate the reason for dispensing with the inquiry to the concerned civil servant but it would be better to do so in order to eliminate the possibility of an allegation being made that the reason was subsequently

fabricated.

(66) The obligation to record the reason in writing is provided in clause (b) of the second proviso so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc.

(67) It is, however, better for the disciplinary authority to communicate to the concerned civil servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reason had been subsequently fabricated. It would also enable the civil servant to approach the High Court under Article 226 or, in a fit case, the Supreme Court under Article 32.

(68) The submission that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry cannot be accepted. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that administrative work carried out by senior officers should be paralysed just because a delinquent civil servant either by himself or along with or through others makes the holding of an inquiry by the designated disciplinary authority or inquiry officer not reasonably practicable.

(69) In a case falling under clause (b) of the second proviso it is not necessary that the civil servant should be placed under suspension until such time as the situation improves and it becomes possible to hold the inquiry because in such cases neither public interest nor public good requires that salary or subsistence allowance should be continued to be paid out of the public exchequer to the concerned civil servant. It would also be difficult to foresee how long the situation would last and when normalcy would return or be restored. In certain cases, the exigencies of a situation would require that prompt action should be taken and suspending a civil servant would not serve the purpose and sometimes not taking prompt action might result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers as a sign of weakness on the part of the authorities and thus encourage them to step up their activities or agitation. Where such prompt action is taken in order to prevent this happening, there is an element of deterrence in it but this is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities.

(70) The contention that where an inquiry into the charges against a civil servant is not reasonably practicable, nonetheless before dispensing with the inquiry there should be a preliminary inquiry into the question whether the disciplinary inquiry should be dispensed with or not is illogical and is a contradiction in terms. If an inquiry into the charges against a civil servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable.

(71) Where a large group of members of the Central Industrial Security Force Unit posted at the plant of the Bokaro Steel Ltd. indulged in acts of insubordination, indiscipline, dereliction of duty, abstention from physical training and parade, taking out processions, shouting inflammatory slogans, participating in the 'gherao' of supervisory officers, going on hunger strike and 'dharna' near the Quarter Guard and Administrative Building of the Unit, indulging in threats of violence, bodily harm and other acts of intimidation to supervisory officers and loyal members of the said Unit, and thus created a situation whereby the normal functioning of the said Unit of Central Industrial Security Force was made difficult and impossible, the disciplinary authority was justified in applying clause (b) of the second proviso to those who were considered responsible for such acts. Clause (b) of the second proviso to Article 311(2) was also properly applied in the cases of those members of the Central Industrial Security Force who were considered responsible for creating a similar situation at Hoshangabad.

(72) In cases such as the above, it is not possible to state in the order of dismissal the particular acts done by each of the members of the concerned group as such cases are very much like a case under Section 149 of the Indian Penal Code.

(73) In situations such as the one where a large group was acting collectively with the common object of coercing those in charge of the administration of the Central Industrial Security Force and the Government to compel them to grant recognition to their Association and to concede their demands, it is not possible to particularize in the order of dismissal the acts of each individual member who participated in the commission of these acts. The participation of each individual might be of a greater or lesser degree but the acts of each individual contributed to the creation of a situation in which a security force itself became a security risk.

(74) Railway service is a public utility service within the meaning of clause (a) of Section 2 of the Industrial Disputes Act, 1947, and the proper running of the railway service is vital to the country.

(75) Where, therefore, the railway employees went on an illegal all-India strike without complying with the provisions of Section 22 of the Industrial Disputes Act, 1947, and thereby committed an offence punishable with imprisonment and fine under Section 26(1) of the said Act and the situation became such that the railway services were paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, and the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for in order to bring the situation to normal. In these circumstances, it cannot be said that an inquiry was reasonably practicable or that clause (b) of the second proviso was not properly applied. The fact that the railway employees may have gone on strike with the object of forcing the Government to meet their demands is not relevant because their demands were for their private gain and in their private interest and the railway employees were not entitled in seeking to have their demands conceded to cause untold hardship to the public and prejudicially affect public good and public interest and the good and interest of the nation.

(76) The quantum and extent of the penalty to be imposed in cases such as the above

would depend upon the gravity of the situation at a particular centre and the extent to which the acts said to be committed by particular civil servants, even though not serious in themselves, in conjunction with acts committed by others contributed to bringing about the situation. The fact, therefore, that at a particular centre certain civil servants were dismissed from service while at some other centres they were only removed from service does not mean that the penalties were arbitrarily imposed.

XII. CLAUSE (c) OF THE SECOND PROVISO

(77) The expression "security of the State" in clause (c) of the second proviso to Article 311(2) does not mean security of the entire country or a whole State but includes security of a part of a State.

(78) Security of the State cannot be confined to an armed rebellion or revolt for there are various ways in which the security of the State can be affected such as by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to India, or by secret links with terrorists.

(79) The way in which the security of the State is affected may be either open or clandestine.

(80) One of the obvious acts which affect the security of the State would be disaffection in armed forces or paramilitary forces or the police force. The importance of the proper discharge of the duties by members of these forces and the maintenance of discipline among them is emphasized in Article 33 of the Constitution.

(81) Disaffection in any armed force or paramilitary force or police force is likely to spread because dissatisfied and disaffected members of such a force spread 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 or 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 vitally affecting the security of the State.

(82) The interest of the security of the State can be affected by actual acts or even by the likelihood of such acts taking place.

(83) In an inquiry into acts affecting the interest of the security of the State, several matters not fit or proper to be made public, including the source of information involving a civil servant in such acts, would be disclosed and thus in such cases an inquiry into acts prejudicial to the interest of the security of the State would as much prejudice the interest of the security of the State as those acts themselves would.

(84) The condition for the application of clause (c) of the second proviso to Article 311(2) is the satisfaction of the President or the Governor, as the case may be, that it is not expedient in the interest of the security of the State to hold a disciplinary inquiry.

(85) Such satisfaction is not required to be that of the President or the Governor personally but of the President or the Governor, as the case may be, acting in the constitutional sense.

(86) 'Expedient' means "advantageous, fit, proper, suitable or politic". Where, therefore, the President or the Governor, as the case may be, is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c) of the second proviso.

(87) Under clause (c) of the second proviso the satisfaction reached by the President or the Governor, as the case may be, must necessarily be a subjective satisfaction because expediency involves matters of policy.

(88) Satisfaction of the President or the Governor under clause (c) of the second proviso may be arrived at as a result of secret information received by the Government about the brewing danger to the security of the State and like matters. There are other factors which are also required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information and once known the particular source from which the information was received would no more be available to the Government. The reason for the satisfaction reached by the President or the Governor under clause (c) of the second proviso cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can it be made public.

(89) The police are the guardians of law and order. They stand guard at the border between the green valleys of law and order and the rough and hilly terrain of lawlessness and public disorder, and if these guards turn law-breakers and create violent public disorder and incite others to do the same, one can only exclaim with Juvenal, Quis custodiet ipsos ! Custodes ? - "Who is to guard the guards themselves ?" (Satires, VI 347). In such a situation prompt and urgent action becomes necessary and the holding of an inquiry into the conduct of each individual member of the police force would not be expedient in the interest of the security of the State.

(90) When, therefore, a number of members of the Madhya Pradesh District Police Force and the Madhya Pradesh Special Armed Force, in order to obtain the release on bail of two of their colleagues who had been refused bail and remanded into judicial custody because of an incident which took place at the annual Mela held at Gwalior in which one man was burnt alive, indulged in violent demonstrations and rioted at the Mela ground, attacked the police station at the Mela ground, ransacked it and forced the wireless operator to close down the wireless set and the situation became so dangerous that senior district and police officers had to approach the Judicial Magistrate at night to get the two arrested constable released on bail and, after discussion at a Cabinet meeting, a decision was taken and the advice of the Council of Ministers was tendered to the Governor of Madhya Pradesh who accepted it and issued orders of dismissal of these persons by applying clause (c) of the second

proviso to them, it cannot be said that the provisions of the said clause (c) were not properly applied.

(91) Similarly, when after these members of the Madhya Pradesh District Police Force and the Madhya Pradesh Special Armed Force were dismissed, some other members of these Forces began carrying on an active propaganda against the Government, visiting various places in the State of Madhya Pradesh, holding secret meetings, distributing leaflets and inciting the constabulary in these places to rise against the administration as a body in protest against the action taken by the Government and, on such information being received, they were also dismissed by applying clause (c) of the second proviso to them, it cannot be said that the said clause (c) was not properly applied.

XIII. REMEDIES AVAILABLE TO A CIVIL SERVANT

(92) A civil servant who has been dismissed, removed or reduced in rank by applying to his case one of the clauses of the second proviso to Article 311(2) or an analogous service rule has two remedies available to him. These remedies are :

(i) the appropriate departmental remedy provided for in the relevant service rules, and

(ii) if still dissatisfied, invoking the court's power of judicial review.

XIV. DEPARTMENTAL REMEDIES

(93) Service rules generally provide for departmental remedies by way of an appeal, revision and review in the case of disciplinary action taken against a civil servant.

(94) Sub-clause (ii) of clause (c) of the first proviso to Rule 25(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, inter alia provides that where an inquiry has not been held, the revising authority shall itself hold such inquiry or direct such inquiry to be held, subject to the provisions of Rule 14 of the said Rules which is analogous to the second proviso to Article 311(2). Thus, under the said Rules a railway servant has a right to demand in revision an inquiry into the charges against him subject to a situation envisaged in Rule 14 of the said Rules not prevailing at that time.

(95) Although a provision similar to sub-clause (ii) of clause (c) of the first proviso to Rule 25(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, does not exist in the rules relating to appeals in the said Rules, having regard to the factors set out in Rule 22(2) of the said Rules which are to be considered by the appellate authority in deciding an appeal, a provision similar to the said sub-clause (ii) of clause (c) of the first proviso to Rule 25(1) should be read and imported into the provisions relating to appeals in the said Rules.

(96) Where service rules do not contain a provision similar to sub-clause (ii) of clause (c) of the first proviso to Rule 25(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, having regard to the factors to be taken into account by the appellate authority in deciding an appeal, a provision similar to the said sub-clause

(ii) of clause (c) of Rule 25(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, should be read and imported into the provisions relating to appeals and revision contained in such service rules. This would, however, be subject to a situation envisaged by the second proviso to Article 311(2) not existing at the time of the hearing of the appeal or revision.

(97) Even in a case where at the time of the hearing of the appeal or revision, as the case may be, a situation envisaged by the second proviso to Article 311(2) exists, as the civil servant, if dismissed or removed, is not continuing in service and if reduced in rank, is continuing in service with the reduced rank, the hearing of the appeal or revision, as the case may be, should be postponed for a reasonable length of time to enable the situation to return to normal.

(98) An order imposing penalty passed by the President or the Governor, as the case may be, cannot be challenged in a departmental appeal or revision.

(99) A civil servant who has been dismissed or removed from service or reduced in rank by applying to his case one of the clauses of the second proviso of Article 311(2) or of an analogous service rule has, therefore, the right in a departmental appeal or revision to a full and complete inquiry into the allegations made against him subject to a situation envisaged in the second proviso to Article 311(2) not existing at the time of the hearing of the appeal or revision application. Even in a case where such a situation exists, he has the right to have the hearing of the appeal or revision application postponed for a reasonable length of time for the situation to become normal.

(100) In an appeal, revision or review by a civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (a) of the second proviso or an analogous service rule, it is not open to the civil servant to contend that he was wrongly convicted by the criminal court. He can, however, contend that the penalty imposed upon him is too severe or excessive or was one not warranted by the facts and circumstances of the case. If he is in fact not the civil servant who was actually convicted on a criminal charge, he can contend in appeal, revision or review against such order of penalty that it was a case of mistaken identity.

(101) A civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (b) of the second proviso to Article 311(2) or an analogous service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application. Even in such a case the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to return to normal.

(102) In a case where a civil servant has been dismissed or removed from service or reduced in rank by applying clause (b) of the second proviso or an analogous service rule to him, by reason of clause (3) of Article 311 it is not open to him to contend in appeal, revision or review that the inquiry was wrongly dispensed with.

(103) In a case where a civil servant has been dismissed or removed from service or reduced in rank by applying clause (c) of the second proviso or an analogous service rule to him, no appeal or revision will lie if the order of penalty was passed by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by the disciplinary authority [a position envisaged by clause (iii) of Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, and clause (iii) of Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965], a departmental appeal or revision will lie. In such an appeal or revision, the servant can ask for an inquiry to be held into his alleged conduct unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Article 311(2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. The civil servant, however, cannot contend in such appeal or revision that the inquiry was wrongly dispensed with by the President or the Governor.

XV. JUDICIAL REVIEW

(104) Where a clause of the second proviso to Article 311(2) or an analogous service rule is applied on an extraneous ground or a ground having no relation to the situation envisaged in such clause or rule, the action of the disciplinary authority in applying that clause or rule would be mala fide and, therefore, bad in law and the court in exercise of its power of judicial review would strike down both the order dispensing with the inquiry and the order of penalty following thereupon.

(105) Where a civil servant has been dismissed or removed from service or reduced in rank by applying clause (a) of the second proviso to Article 311(2) or an analogous service rule and he invokes the court's power of judicial review, if the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or was not warranted by the facts and circumstances of the case or the requirements of the particular Government service to which the concerned civil servant belonged, the court will strike down the impugned order. In such a case, it is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case. If, however, the court finds that he was not in fact the civil servant who was convicted, it will strike down the impugned order of penalty and order his reinstatement.

(106) In the case of a civil servant who has been dismissed or removed from service or reduced in rank by applying clause (b) of the second proviso to Article 311(2) or an analogous service rule, the High Court under Article 226 or this Court under Article 32 will interfere on grounds well-established in law for the exercise of its power of judicial review in matters where administrative discretion is exercised.

(107) The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court and the court would consider whether clause (b) of the second proviso or an analogous service rule had been properly applied or not.

(108) In examining the relevency of the reasons given for dispensing with the inquiry, the court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the court will strike them down. In considering the relevency of the reasons given by the disciplinary authority, the court will not, however, sit in judgment over the reasons like a court of first appeal in order to decide whether or not the reasons are germane to clause (b) of the second proviso or an analogous service rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.

(109) Where it is alleged that clause (b) of the second proviso or an analogous service rule was applied mala fide, the court will examine the charge of mala fides. A mere bare allegation of mala fides without any particulars of mala fides will not, however, amount to a plea of mala fides and requires to be ignored.

(110) If the reasons for dispensing with the inquiry are not communicated to the concerned civil servant and the matter comes to court, the court can direct the reasons to be produced and furnished to the civil servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons.

(111) Where a civil servant is dismissed or removed from service or reduced in rank by applying clause (c) of the second proviso or an analogous service rule to his case, the satisfaction of the President or the Governor that it is not expedient in the interest of the security of the State to hold an inquiry being a subjective satisfaction would not be a fit matter for judicial review.

(112) It is not necessary for the court to decide the question whether the satisfaction of the President or the Governor has been reached mala fide or is based on wholly extraneous or irrelevant grounds in a case where all the materials including the advice of the Council of Ministers have been produced and such materials show that the satisfaction of the President or the Governor was neither reached mala fide nor was it based on any extraneous or irrelevant ground.

(113) By reason of the express provision of Article 74(2) and Articles 163(3) of the Constitution the question whether any, and if so what, advice was tendered by the Ministers to the President or the Governor, as the case may be, cannot be inquired into by any court.

(114) Whether the court should order production of the materials upon which the advice of the Council of Ministers to the President or the Governor, as the case may

be, was based in order to determine whether the satisfaction of the President or the Governor was arrived at mala fide or was based on wholly extraneous or irrelevant grounds would depend upon whether the documents fail within the class of privileged documents and whether in respect of them privilege has been properly claimed or not.

7. In Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) where appeals filed by certain dismissed members of the Central Industrial Security Forces had not been disposed of by the appellate authority, the majority judgment directed the appellate authority to dispose of such appeals as expeditiously as possible. In those matters where civil servants had been dismissed or removed from service by applying to their cases clause (b) of the second proviso to Article 311(2) or an analogous service rule, the court gave such civil servants time to file appeals and directed the concerned appellate authority to condone, in the exercise of its power under the relevant service rule, the delay in filing such appeals.

8. It is important to note that the majority judgment in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) is more beneficial to civil servants and confers greater rights upon them than Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190 : 1976 SCC (L&S) 398) did. According to Challappan case ((1976) 1 SCR 783 : (1976) 3 SCC 190; 1976 SCC (L&S) 398), a civil servant to whom a service rule analogous to the second proviso to Article 311(2) is sought to be applied has only the right to be heard with respect to the penalty proposed to be imposed upon him. The majority judgment in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) has, however, conferred upon the civil servants who have been dismissed or removed from service or reduced in rank by applying the second proviso to Articles 311(2) or an analogous service rule the right to a full and complete inquiry in an appeal or revision unless a situation envisaged by the second proviso is prevailing at the time of the hearing of the appeal or revision application. Even in such a case under the majority judgment the hearing of the appeal or revision application is to be postponed for a reasonable length of time for the situation to become normal.

The Facts of the Two Civil Appeals

9. Having seen what was decided in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672), we now turn to the facts of the two civil appeals before us. The facts of both these appeals are common. All the appellants were employees of the Research and Analysis Wing ('RAW', in short), Cabinet Secretariat, Government of India.

10. In 1904 an Intelligence Bureau had been formed which was recognised in 1948. Originally the Intelligence Bureau was concerned both with domestic and international intelligence. In 1968, a branch of the Intelligence Bureau was set up as a separate department and the Intelligence Bureau since that time was concerned with only domestic affairs while the RAW was concerned with international affairs and undercover activities pertaining to national security. Certain cadres of employees of the RAW formed an Association under the name of "The Cabinet Secretariat (Research and Analysis Wing) Employees Association (Regd.)". The said Association submitted a charter of demands. We are not concerned in these appeals with the reasonableness or otherwise of the said demands.

11. Earlier, the different branches and departments of RAW in New Delhi were scattered in several buildings. Ultimately, a new building was constructed for the RAW at Lodhi Road. In the said building the Counter-Intelligence Section ('CIS', for short) was housed. The other departments were

housed in the South Block and at R. K. Puram. After the CIS was shifted to the building at Lodhi Road, strict security measures were introduced and the employees, when going from one floor to the other, had to show their identity cards. This was resented by the employees and they demanded the withdrawal of this regulation and insisted that the identification check should be made only at the time of entering the building. This demand can only be characterized as wholly unreasonable. The RAW is a security and intelligence section of the Government of India dealing with many sensitive matters affecting national security and relations with other countries including counter-intelligence. The basic rule of intelligence work is that no person engaged in it should know more than what he needs to know. It is for this reason that when an outside agent is employed for espionage, care is taken to see that he does not know who his real employers are but knows only the name of his contact man which name is generally an alias. Employees of an intelligence service cannot, therefore, be the best judges of what security measures should be adopted to prevent secrets from leaking out.

12. To return to our narrative, in the forenoon on November 27, 1980, a number of staff members collected in the galleries leading to the CIS rooms, protesting against the said security regulation and demanding its immediate withdrawal. All attempts to pacify them proved unsuccessful. More and more employees joined them and they turned aggressive, breaking into the various rooms of the CIS unit. Several persons forced their entry into the room of the Director (CIS) and forced him as also the Assistant Director and the Security Field Officer who were in the room to stand in a corner and did not allow them to move from the spot but kept them as hostages in order to have their demand conceded. The employees who had gathered there shouted slogans against the organization and its officers. These slogans were obsence, abusive, threatening, and personal in nature. All attempt made by senior officers to pacify them proved unsuccessful and the employees made it clear that they would not let the said three officers go unless the Director of the Counter-Intelligence Section announced the withdrawals of the said security regulation. Ultimately, the local police were sent for and about 8.30 p.m. the local police entered the premises and went to the galleries in front of the CIS branch. Some of the agitators who were in the gallery escaped. Those inside the said room closed the door to prevent the police party from entering it but the police forced open the door and rescued the said three officers. Thirty-one agitators who were found inside the room were arrested and charged under Sections 342, 506, 353, 186, 332 and 333 of the Indian Penal Code and Section 7 of the Criminal Law Amendment Act, 1952. They were subsequently released on bail by the Judicial Magistrate. These arrested employees were suspended under clause (b) of sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as a criminal case against them was under investigation.

13. The next day, namely, on November 28, 1980, the agitation continued and many employees did not perform their duties. Instead, they collected inside the building and in the premises in groups stopping work in many branches. A large number of them went round shouting slogans and made speeches in the corridors of the office. On November 29, 1980, a letter was issued by the said Association demanding the immediate withdrawal of the criminal cases against the said employees as also of the said security regulation. The letter stated that unless these demands were met, the employees would go on a pen-down strike with immediate effect. Thereupon, orders of suspension were issued against those who were taking a leading, active and aggressive role in the agitation and indulging in these activities. The said suspension orders were issued from December 1, 1980 onwards but the pen-down strike continued and spread to other offices of the RAW in New Delhi as well as in different parts of India including Lucknow and Jammu. Daily the situation worsened. There was complete insubordination and total breakdown of discipline. The atmosphere was charged with tension and there did not seem any hope of the situation becoming normal. Ultimately,

the seven appellants in Civil Appeal 242 of 1982 and the sole appellant in Civil Appeal 576 of 1982 were dismissed by orders dated December 6, 1980, without holding any inquiry by applying to them clause (b) of the second proviso to Articles 311(2) read with Rule 19 of the said Rules. Thereupon a writ petition was filed in the Delhi High Court. At the date of filing of the said writ petition only appellants 1 to 3 in Civil Appeal 242 of 1982 had been served with the orders of dismissal, while the remaining appellants and respondents 4 to 44 in Civil Appeal 242 of 1982 joined in the said writ petition as co-petitioners together with the Cabinet Secretariat (Research and Analysis Wing) Employees Association (Regd.), contending that similar action of dismissal was being apprehended by them. Pending the said writ petition the orders of dismissal were also served upon the remaining appellants. During the course of the hearing of the said writ petition a statement was made to the High Court on behalf of the Union of India that the other petitioners would not dismissed without holding a regular inquiry. The said writ petition, therefore, proceeded only so far as the appellants in these two appeals were concerned. A Division Bench of the said High Court dismissed the writ petition by its judgment and order dated September 25, 1981. It is against this judgment and order of the said High Court, that these two appeals by special leave have been preferred.

The Impugned Orders of Dismissal

14. All the eight impugned orders of dismissal were in identical terms and it will, therefore, be sufficient to reproduce the order of dismissal passed against the first appellant in Civil Appeal 242 of 1982. The said order reads as follows :

> #No. 3/ADMN/80-6486(N)Government of India.Cabinet Secretariat,Room No. 8-B, South Block. New Delhi, December 6, 1980 ORDER##

Whereas a large number of employees of the Cabinet Secretariat (R&AW) located at Delhi have for some time past been indulging in various acts of misconduct, indiscipline, intimidation and insubordination, such as abstaining from work, wilful neglect of the duties assigned to them and disobedience of lawful instructions and orders of the officials superiors;

and whereas the said employees are also regularly holding meetings and demonstrations unauthorisedly and in violation of specific orders, within the office premises and its precincts;

and whereas the said employees have restored to coercion, intimidation and incitement of other fellow employees which has a serious demoralizing effect on the members of the organization, and whereas such conduct of the said employees is unbecoming of a Government servant and is in gross violation of the Central Civil Services (Conduct) Rules, 1964;

and whereas Shri Satyavir Singh, Field Assistant, is one of the said employees actively participating in such activities;

and whereas due to the practice of coercion, intimidation and suchlike threats and postures adopted by the said employees the atmosphere is so tense and abnormal that no witness will cooperate with any proceedings in accordance with the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965;

and whereas I am satisfied that the circumstances are such that it is not reasonably practicable to hold a regular inquiry as contemplated by the Central Civil Services (Classification, Control and Appeal) Rules, 1965;

and whereas a consideration of the facts and circumstances of the case, I am satisfied that the penalty of dismissal from service should be imposed on Shri Satyavir Singh, Field Assistant;

Now, therefore, in exercise of the powers under the proviso ((b) of clause (2) of Article 311 of the Constitution read with Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, I as the appointing authority do hereby dismiss Shri Satyavir Singh from the post of Field Assistant in the R&AW with effect from the forenoon of December 6, 1980.

# Sd. (H. N. Kak) Joint Director December 6, 1980Contentions##

15. Though several contentions were raised in the said writ petition, in view of the judgment in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) the only contention taken at the hearing of these two appeals was that the said orders of dismissal were passed mala fide and the reasons given therein for dispensing with the inquiry were not true and that an inquiry was reasonably practicable. Several points were urged in support of this contention.

16. The first point was that the orders of the suspension showed that a disciplinary inquiry was in fact contemplated and, if so, nothing had happened between the date of the orders of suspension and the date of the orders of dismissal to come to the conclusion that the inquiry was not reasonably practicable. Each order of suspension stated that the concerned employee was being suspended in the exercise of the powers conferred by Rule 10(1) of the said Rules because a disciplinary proceeding against him under Rule 14 of the said Rules was contemplated. Clause (a) of Rule 10(1) confers power upon a disciplinary authority to place the Government servant under suspension where a disciplinary proceedings against him is contemplated or is pending. Rule 14 prescribes the procedure for imposing major penalties. One of the major penalties set out in Rule 11 is the penalty of dismissal from service. It is thus clear that at the date of the orders of suspension disciplinary proceedings against the appellants was in contemplation. This, however, does not mean that the situation will continue to be the same and that at no time thereafter will the holding of inquiry become "not reasonably practicable". As pointed out in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672), it is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated, because a situation which renders the holding of an inquiry not reasonably practicable can come into being even during the course of an inquiry. The affidavits filed in the High Court clearly show that the situation had so changed after the orders of suspension were issued against the appellants that it was not reasonably practicable to hold any inquiry against the appellants. The all-India pen-down strike was spreading. More and more centers in India were joining in the said strike. The position was fast deteriorating. Employees were being instigated into further acts of indiscipline and insubordination and loyal employees and senior officers were being intimidated. Meeting and demonstrations were regularly being held within the office premises and their precincts and there was no possibility of any witness coming forward to give evidence against the appellants who were said to have taken a leading part in this agitation. It is also pertinent to note that when the first batch of dismissal orders was served upon some of the appellants on December 9, 1980. In such a situation as was then prevailing, prompt and urgent action was required to bring the situation under control. As pointed out in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672), sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable, and may at times be also construed by the trouble-makers and agitators as a sign of weakness on the part of the authorities and encourage them to step up the tempo of their activities or agitation. The affidavits filed in the High Court clearly show that this is exactly what happened when the suspension orders were issued and that what was required was prompt and urgent action

against those who were considered to be the ringleaders and that once such action was taken the situation improved and started becoming normal.

17. The next point which was urged was that while eight employees were dismissed for their part in the agitation which took place in Delhi, in respect of the agitation which took place in the Lucknow office of the RAW only two employees of that office were dismissed and, therefore, there was no application of mind on the part of the disciplinary authority. It is very difficult to understand this argument. We do not know what precisely the situation at Lucknow was and how many employees were actively engaged in leading the agitation, and the fact that it was thought fit to dismiss only two employees of the Lucknow office cannot lead to the conclusion that the appellants were wrongly dismissed without any application of mind.

18. The next point which was urged was that even on December 6, 1980, a suspension order was issued against one of the employees and that on December 9, 1980, suspension orders were issued against two other employees, and that the issuance of these suspension orders on December 6 and 9 show that the holding of the inquiry was reasonably practicable. As the charge-sheets issued against these three employees show, these employees were working in the R. K. Puram Office and are not alleged to have taken any leading part in the agitation or in bringing about the atmosphere of violence, insubordination and indiscipline.

19. The next point was that it was not alleged by the authorities that anyone was physically injured in the agitation. This is another argument which is difficult to understand. As held in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672), it will not be reasonably practicable to hold an inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails. It is, therefore, not necessary that the disciplinary authority should wait until incidents take place in which physical injury is caused to others before dispensing with the inquiry.

20. It was next submitted that after the suspension orders, the appellants were prohibited from visiting any of the Cabinet Secretariat Offices except or the purpose of collecting their dues and that too with prior permission and that, therefore, they could not have held any meeting or demonstration inside the office premises. There is no substance in this submission. The admitted position is that the appellants were regularly coming to the office building and talking with other employees over the wall and at the gate twice a day at 11.30 a.m. and 3.30 p.m. and were making inflammatory speeches and holding out threats.

21. The point which was next urged in support of the contention that the impugned orders were passed mala fide was that even though co-workers may not have been available as witnesses, there were police-men and police officers posted inside and outside the building and they were available to give evidence and that superior officers were also available to give evidence. The crucial and material evidence against the appellants would be that of their co-workers for these co-workers were directly concerned in and were eyewitnesses to the various incidents. Where the disciplinary authority feels that crucial and material evidence will not be available in an inquiry because the witnesses who could give such evidence are intimidated and would not come forward and the only evidence which would be available, namely, in this case, of policemen, police officers and senior officers, would only be peripheral and cannot relate to all the charges and that, therefore, leading only such evidence may be assailed in a court of law as being a mere farce of an inquiry and deliberate attempt to keep back material witnesses, the disciplinary authority would be justified in coming to the conclusion that an inquiry is not reasonably practicable. The affidavit filed by the Joint Director, Research and Analysis Wing, Cabinet Secretariat, Hari Narain Kak, who had passed

the impugned orders, sets out in detail the various acts of intimidation, violence and incitement committed by each of the appellants. Copies of the written reasons for dispensing with the inquiry in the case of the appellants have also been annexed to the said affidavit. It is clear from a perusal of the said affidavit and its annexures that the police officers, policemen and senior officers could not have possibly given evidence with respect of all these acts. The said affidavit further states that the senior officers were also intimidated and were threatened with dire consequences if they gave evidence. Further, grievances were made against the senior officers of the RAW in the said charter of demands submitted by the said Association and the evidence of senior officers would have been attacked as being biased and partisan. There is thus no substance in this point also.

22. The last point which was urged was that D. P. Vohra, the appellant in Civil Appeal 576 of 1982, was posted at Jammu and could not, therefore, have taken any active part in the agitation which took place in Delhi. This submission is completely belied by the said affidavit of Hari Narain Kak. The said affidavit shows that during the relevant time Vohra had taken leave for personal reasons and had come down to Delhi and had played an active role in the said agitation. He made inflammatory speeches on December 1, 3, 4 and 5, 1980 and had instigated the other employees to continue the agitation and intimidated those who had not joined in the agitation into doing so. In a speech made by him on December 4, 1980, he had tried to make public some of the top secret operations of the RAW claiming to have special knowledge of these operations by virtue of having been posted earlier in a sensitive branch. He was also actively engaged in collecting funds for continuing the agitation.

23. We are, therefore, of the opinion that clause (b) of the second proviso to Article 311(2) and Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, were properly applied to the case of each of the appellants and the impugned orders of dismissal were validly passed against them.

Final Orders

24. In the result, both these appeals fail and are dismissed and the interim orders passed in these appeals are hereby vacated. If any payment has been made to any of the appellants in pursuance of any interim order, such appellant will not be liable to refund such amount or any part thereof. The appellants have a right to file a departmental appeal under the Central Civil Services (Classification, Control and Appeal) Rules, 1965. In case they desire to file such an appeal, we give them time until October 31, 1985, to do so and we direct the appellate authority to condone in the exercise of its power under the proviso to Rule 25 of the said Rules the delay in filing the appeal and to hear and dispose of such appeals expeditiously subject to what has been laid down in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) and summarized in the earlier part of this judgment.

25. There will be no order as to the costs of these appeals.

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