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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
J.K. MAHESHWARI; J., ATUL S. CHANDURKAR; J.
CIVIL APPEAL NO. 13860 OF 2024; March 12, 2026
MANOHAR LAL *versus* **COMMISSIONER OF POLICE & ORS.**

Constitution of India – Article 311(2)(b) – Dismissal from service without departmental inquiry – Scope of "Reasonably Practicable" – Requirement of Objective Satisfaction – The Supreme Court set aside the dismissal of a Delhi Police Constable, holding that the power to dispense with a regular departmental inquiry under Article 311(2)(b) cannot be exercised based on mere "assumptions and conjectures" - Supreme Court noted that the disciplinary authority must record satisfaction based on independent material showing that holding an inquiry is not "reasonably practicable" - Key Observations held – i. Judicial Review and Satisfaction - The finality given to the disciplinary authority's decision under Article 311(3) is not binding on the Courts - The scope of judicial review is open to strike down orders dispensing with an inquiry if the reasons are irrelevant, arbitrary, or lack a factual basis – Held that court must consider whether a "reasonable man acting in a reasonable way" would have reached the same conclusion in the prevailing situation; ii. Absence of Material Evidence: In the present case, the Preliminary Inquiry (PE) report failed to record any specific instances of the appellant who was in custody at the time—threatening or intimidating witnesses - The Deputy Commissioner of Police (DCP) relied on the ACP's "presumption" of potential witness tampering without any supporting material, which the Court deemed a failure of application of mind; iii. Custody as a Factor: It was incumbent upon the authority to demonstrate how the appellant, while in jail, posed a threat that made an inquiry "not reasonably practicable"; iv. Adherence to Circulars: noted that the Delhi Police's own circulars (dated 31.12.1998 and 11.09.2007) mandate that Article 311(2)(b) should not be used as a "short cut" and requires "cogent and legally tenable reasons". *[Relied on Union of India v. Tulsiram Patel (1985) 3 SCC 398; Jaswant Singh v. State of Punjab (1991) 1 SCC 36; Paras 23-40]*

For Appellant(s): Ms. V. Mohana, Sr. Adv. Mr. Sandeep Choudhary, AOR Mr. Ram Niwas Buri, Adv. Mr. Basudeb Biswas, Adv. Mr. Naresh Sharma, Adv. Ms. Sreepriya K, Adv. Mr. Praveen Jain, Adv.

For Respondent(s): Mr. Brijender Chahar, A.S.G. Mr. Mukesh Kumar Maroria, AOR Mr. Sanjay Kumar Tyagi, Adv. Mr. Mili Baxi, Adv. Mr. Rajat Nair, Adv. Mr. Vibhu Shanker Mishra, Adv. Mr. Aaditya Vikram, Adv.

J U D G M E N T

J.K. MAHESHWARI, J.

1) The instant appeal is directed against the order dated 02.02.2023 passed by the Division Bench of the High Court of Delhi (hereinafter **'High Court'**) disposing of the writ petition filed by the appellant questioning the order of dismissal from service dated 18.07.2017 passed by Deputy Commissioner of Police (hereinafter **'DCP'**), New Delhi, the Order of Appellate Authority dated 30.07.2018 and the Order dated 29.11.2022 passed by Central Administrative Tribunal, Principal Bench at New Delhi (hereinafter **'CAT'**) in OA No. 744 of 2020.

2) The appellant was dismissed from service by the DCP, Delhi *vide* order dated 18.07.2017, in exercise of the power under clause (b) of second proviso to Article 311(2) of the Constitution of India without conducting departmental inquiry. The reason assigned for not resorting to the normal procedure prescribed under Delhi Police (Punishment and

Appeal) Rules, 1980 (hereinafter **'1980 Rules'**), was that Shri Govind Sharma, Assistant Commissioner of Police (hereinafter '**ACP**') in the preliminary enquiry found that it would not be 'reasonably practicable' to conduct a regular departmental enquiry on account of reasonable belief of threat, intimidation and inducement to the victim and thereby creating the possibility of tampering of the vital evidence.

3) The appeal against the said order was dismissed by the Special Commissioner of Police, Delhi *vide* order dated 30.07.2018 accepting the reasons as indicated in the order of dismissal.

4) Being dissatisfied, the appellant filed OA No. 744 of 2020 before CAT seeking quashment of his dismissal order and the order of the appellate authority. The CAT referred to the stand as taken in the counter affidavit of the State, relied upon some judgments and declined to interfere, dismissing the Original Application filed by the appellant *vide* order dated 29.11.2022. Writ Petition (Civil) No. 1309 of 2023 filed before the High Court of Delhi by the appellant was dismissed, accepting the same reasoning as taken by the DCP.

5) Ms. V. Mohana, learned senior counsel, appearing on behalf of the appellant, referring to Section 21 of the Delhi Police Act, 1978 (hereinafter **'1978 Act'**) contends that the power of punishment conferred upon the competent authority is not absolute; it is subject to the provisions of Article 311 of the Constitution of India and the 1980 Rules referred above. Referring to Rule 6, she contended that punishment mentioned at Serial Nos. (i) to (vii) of Rule 5 therein are deemed to be 'major penalties' and the competent authority can award the same after regular departmental inquiry. It is contended that as per Rule 14(2), a punishment of major penalty ought to be awarded by the appointing authority only after the regular departmental inquiry. Article 311(2) of the Constitution of India contemplates that if a person is a member of a civil service of the Union or all India Service or a Civil Service of a State or holds a civil post under the Union or a State, he shall not be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and has been afforded reasonable opportunity of being heard. The first proviso contemplates that in case the penalty is required to be imposed on the basis of evidence adduced during the inquiry, it would not be necessary to afford an opportunity of making representation on the proposed penalty. Clause (b) of second proviso states that where the authority empowered to remove a person is satisfied for some reason to be recorded in writing, to the effect that holding an inquiry is not 'reasonably practicable', the orders can be passed without adhering to the general principle contemplated by Article 311(2).

6) In reference to above, learned senior counsel submits that after registration of FIR No. 390 of 2017 on 28.06.2017, the appellant was taken into custody on 29.06.2017 and released on bail on 14.10.2017. In the meanwhile, the competent authority, *vide* order dated 18.07.2017, in exercise of power under clause (b) of second proviso of Article 311 (2), indicating that possibility of traumatizing the witnesses may not be ruled out, dismissed him from service. It is forcefully contended that while the appellant was in custody, reason as assigned of intimidating or traumatizing the witnesses are flimsy. In absence of any convincing material, exercise of such extra-ordinary power ignoring the procedure prescribed under the 1980 Rules is not permissible otherwise it would amount to misuse of the power by the competent authority. In support of these contentions, learned senior counsel has placed reliance on the judgments of this Court in ***Union of India and Anr.*** **v.**

Tulsiram Patel and Others[1]***, Jaswant Singh* v. *State of Punjab and Ors.***[2]***, Ex. Const. Chhote Lal* v. *Union of India & Ors.***[3]***, Sudesh Kumar* v. *State of Haryana and Ors.***[4]***, Tarsem Singh* v. *State of Punjab***[5]***, State of Punjab* v. *Harbhajan Singh***[6]***, Reena Rani* v. *State of Haryana***[7]**, and *Risal Singh* v. *State of Haryana***[8]*.*

7) It is urged that the dismissal order passed by the competent authority and confirmed by the appellate authority is not legally sustainable and the CAT as well as the High Court have committed grave error in refusing to entertain the Original Application and the Writ Petition challenging the same. Therefore, the order of dismissal is liable to be quashed and set-aside.

8) *Per contra*, learned Additional Solicitor General Mr. Brijender Chahar, representing the State, i*nter alia*, relied upon the preliminary inquiry of the ACP and the documents collected, DD entries of information and proceedings and other relevant material in support of his contentions. As per him, these documents reflect that the complainant and witnesses could have been traumatized by the egregious act of appellant and his associates who are in the police department. Possibility of their association with criminals and to approach the complainant or witnesses to intimidate or to induce them for withdrawing from the case or to turn them hostile during trial cannot be ruled out. In light of such apprehension, power exercised by the competent authority for not proceeding with the normal procedure of departmental inquiry is within the scope of its authority. It is contended that the stand as taken by the Department has been accepted by the CAT and the High Court; therefore, interference is not warranted.

9) After hearing learned counsel for the parties, we find that since the power of punishment of the competent authority has been conferred upon it *vide* Section 21 and the procedure as prescribed under Section 22 of the 1978 Act, they are relevant, hence, reproduced as under:

"***21. Powers of punishment.—*** *(1) Subject to the provisions of article 311 of the Constitution and the rules, the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School or any other officer of equivalent rank, may award to any police officer of subordinate rank any of the following punishments, namely:—*

(a) *dismissal;*

(b) *removal from service;*

(c) *reduction in rank;*

(d) *forfeiture of approved service;*

(e) *reduction in pay;*

(f) *withholding of increment; and*

(g) *fine not exceeding one month's pay.*

(2) *Subject to the rules—*

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[1] *(1985) 3 SCC 398*
[2] *(1991) 1 SCC 362*
[3] *(2000) 10 SCC 196*
[4] *(2005) 11 SCC 525*
[5] *(2006) 13 SCC 581*
[6] *(2007) 15 SCC 217*
[7] *(2012) 10 SCC 215*
[8] *(2014) 13 SCC 244*

(a) any police officer specified in sub-section (1) may award the punishment of censure to any police officer of subordinate rank;

(b) the Assistant Commissioner of Police may award the punishment of censure to police officers of, or below, the rank of Sub-Inspectors of Police;

(c) any police officer of, and above, the rank of Inspector may award punishment drill not exceeding fifteen days or fatigue duty or any other punitive duty to constables.

(3) Nothing in sub-section (1) or sub-section (2) shall affect any police officer's liability for prosecution and punishment for any offence committed by him.

(4) The Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School, Assistant Commissioner of Police, or any other police officer of equivalent rank may suspend any police officer of subordinate rank who is reasonably suspected to be guilty of misconduct, pending an investigation or enquiry into such misconduct.

(5) An Inspector of Police may suspend any police officer below the rank of Sub-Inspector of Police, who is reasonably suspected to be guilty of misconduct, pending an investigation or enquiry into such misconduct.

22. Procedure for awarding punishments.—*When any officer passes an order of awarding a punishment of dismissal, removal from service, reduction in rank, forfeiture of service, reduction in pay, withholding of increments or fine, he shall record such order or cause the same to be recorded together with the reasons therefor, in accordance with the rules.*"

From perusal of above provisions, it is clear that subject to Article 311 of Constitution of India, Section 21 confers power upon the authorities prescribed therein to impose various types of punishments as specified in clauses (a) to (g) of sub-section (1) upon a police officer of subordinate rank.

10) Further, Section 22 governs the procedure for awarding the punishment of dismissal, removal and reduction of rank and casts obligation upon the officer passing an order of punishment to record the reasons for such order in accordance with the rules.

11) In this context, Rules 5 and 6 of 1980 Rules governing the procedure as applicable to punishment orders, are reproduced as thus:–

"***5. Authorised punishments*** *- The Delhi Police Act, 1978 prescribed the following penalties :*

(i) Dismissal, (ii) Removal from service, (iii) Reduction in rank [for a specified period], (iv) Forfeiture of approved service, (v) Reduction in pay, (vi) Withholding of increments, (vii) Fine not exceeding one month's pay, (viii) Censure, (ix) Punishment drill not exceeding 15 days or fatigue duty or any other punishment duty to Constable only.

6. Classification of punishments and authorities competent to award them - *(i) Punishments mentioned at Serial Nos. (i) to (vii) above shall be deemed 'major punishment' and may be awarded by an officer not below the rank of the appointing authority or above after a regular departmental enquiry.*

(ii) Punishment mentioned at Serial No. (viii) shall be called 'minor punishment' and may be awarded by the authorities specified in sub-section (i) of Section 21 of the Delhi Police Act, 1978 after serving a show cause notice giving reasonable time to the defaulter and considering his written reply as well as oral deposition, if any for which opportunity shall be afforded on request.

Authority competent to award	***Rank to whom it can be awarded***

(i) Deputy Commissioner of Police and above	*Inspector and below*
(ii) Assistant Commissioner of Police	*Constable to Sub-Inspector*

(iii) The punishment mentioned at Serial No. (ix) above may be called Orderly Room punishment and shall be awarded after the defaulter has been marched and heard in Orderly Room by the Officer of and above the rank of Inspector as laid down in Section 21 (3) (c) of the Delhi Police Act, 1978."

The present case relates to the punishment of dismissal. Therefore, as per classification contained in Rule 6, it is a major penalty, which can be inflicted after a regular departmental inquiry by a competent authority as specified therein. The manner and procedure for awarding the punishment is prescribed in Rule 14 and procedure for such regular departmental inquiry that has to be observed for awarding said punishment is contained in Rule 16. As such, in absence of the applicability of clause (b) of second proviso to Article 311(2), the procedure contemplates that Sections 21 and 22 and the rules aforementioned ought to be followed for dismissal of an employee.

12) In the case at hand, since the order of dismissal of the appellant has been passed in exercise of the power under clause (b) of second proviso to Article 311(2) of Constitution of India, the said provision is relevant to understand its ambit and scope, hence, reproduced as under:

"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 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."

13) Upon perusal of the above, it is clear that as per Article 311(2) a member of the civil service of the Union or a State may be dismissed or removed or reduced in rank by the appointing authority after a regular inquiry on charges which have been informed to him, affording him a reasonable opportunity. As per first proviso thereto, in case an inquiry is conducted for the purpose of imposing penalty, it is not necessary to afford an opportunity to the appellant at the stage of penalty.

14) Clause (b) of the second proviso to Article 311(2) restricts the applicability of Article 311(2) in a specific situation: (i) if the appointing authority is satisfied that there should be deviation from mandate of Article 311(2) because adherence to the same is not 'reasonably practicable'; and (ii) such reasons are to be recorded in writing. Similarly, when such power is to be exercised under clause (c) of the second proviso by the President or the Governor, they may, in the interest of security of the State or if it is not expedient to hold such inquiry, deviate from the applicable procedure.

15) Be that as it may, the present case relates to clause (b) of the second proviso to Article 311(2), therefore, we need to discuss in detail the applicability of the said provision in the facts of this case.

16) It is trite law that the decision of the appointing authority on the issue of recording reasons in writing on its satisfaction as to why holding an inquiry is not reasonably practicable may be subject to judicial review under Article 226 by High Court or under Article 32 by the Supreme Court. This Court in the Constitution Bench judgment rendered in the case of ***Tulsiram Patel*** (Supra) reiterated the legal positions and explained the same. The High Court in the impugned judgment has relied upon paragraph 101 of the said judgment. Learned senior counsel for the appellant contended before us that subsequent paragraphs, in particular, paragraphs 130, 133 and 138, which enunciates the law while interpreting Article 311(2) of the Constitution of India, have not been considered. Therefore, for ready reference, we reproduce all the aforesaid paragraphs as thus:

"***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. v. State of Orissa [(1984) 4 SCC 103 : (1985) 1 SCR 322, 3345] . 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 case [(1978) 1 SCC 248 : (1978) 2 SCR 621, 676] at p. 681. 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, 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 keywords "this clause shall not apply". As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to Article*

14. This is, however, the only scope which Article 14 can have in relation to the second proviso, but to hold that once the second proviso is properly applied and clause (2) of Article 311 excluded. Article 14 will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution-makers who inserted it in Article 311(2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.

***130.** The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India [(1984) 2 SCC 578 : 1984 SCC (L&S) 290 : (1984) 3 SCR 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.

***138**. Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. 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. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation 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, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), 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 way would have done. The matter will have to be judged 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.*"

17) Upon perusal of the judgment of the Constitution Bench in the case of ***Tulsiram Patel*** (Supra), it is luculent that the constitutional provision has a far greater and all-pervading sanctity than a statutory provision, therefore, second proviso restricts application of Article 311(2) only in the circumstances as contemplated under Clauses (a), (b) and (c) of the second proviso. This clause uses the word "this clause shall not apply", therefore, Article 311(2) shall not apply in the contingencies in clauses (a), (b) and (c) of the second proviso. The intention thereof has been expressed indicating that there is no scope for reintroduction of principles contained in Article 311(2) by a side door which the constitutional provision has expressly excluded. It is further clarified in the said judgement that if the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action of so applying would be mala fide and therefore void. This Court indicated that in such cases the invalidating factor may be referrable to the Article 14 distinguishing between a situation where the proviso has been properly applied and one where it has been improperly applied. Otherwise, if Article 14 is applied in a manner to take the place of clause (2) that would mean to nullify the effect of opening words of the second proviso and frustrate the intention of makers of the Constitution. It is said that the second proviso is based on public policy and is in public interest and for public good.

18) The wording as used in clause (b) of the second proviso indicates the satisfaction of the Disciplinary Authority by using the word *"it is not reasonably practicable* to *hold"* the inquiry contemplated by clause 2 of Article 311. The Court emphasised the meaning of "not reasonably practicable" as juxtaposed against not "impracticable". It is intended that the requirement to hold an inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The Court contemplated certain situations therein and said that a common man must bear in mind that numbers may

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 holding the post and it is he who must visualize what is happening at the ground-zero. The Court clarified that the disciplinary authority is not expected to dispense with a departmental 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. In this connection, referring Article 311(3), it is held that the finality given to the decision of the disciplinary authority is not binding upon the Courts and the scope of judicial review is open to strike down the order dispensing with the inquiry as also the order imposing penalty.

19) Further, the Court emphasised the words used in clause (b) of second proviso that the disciplinary authority should record its reasons in writing for its satisfaction that holding an inquiry is not reasonably practicable. In case such reason is not recorded in writing or not valid and justifiable, the order dispensing with the inquiry and the order of penalty flowing therefrom would be void and unconstitutional. Emphasising the scope of judicial review, it is said that in the matters where administrative discretion is exercised, it is open to assail either under Article 226 before High Court or under Article 32 before this Court. Referring clause 3 of Article 311 and reiterating that the decision of disciplinary authority indicating why it is not reasonably practicable to hold an inquiry is not binding on Court and the scope of judicial review is open. In the said contingency, the Court will examine the charges of *mala fides* if any made in the Writ Petition. It is emphasised that the Court, while exercising judicial review, would not sit as an appellate court but it shall consider the situation due to which, according to the disciplinary authority, it was not reasonably practicable to hold an inquiry. While examining the relevance of the reasoning, the Court ought to place itself as a disciplinary authority and consider whether in the prevailing situation, a reasonable man acting in a reasonable way, would have taken the same decision as taken by the disciplinary authority. If the Court finds that the reasons are irrelevant, then satisfaction of the disciplinary authority may be held to be an abuse of power. In that situation, it would be open to the Court to take the case out of purview of that clause and the order of penalty would stand invalidated.

20) In view of the foregoing conclusions of the Constitution bench in ***Tulsiram Patel*** (Supra), it can be safely observed that despite the use of the words "*this clause shall not apply*" in the second proviso, it shall not make power of Article 311(2) inapplicable. In fact, second proviso to Article 311 is an exception for dispensing with the inquiry on satisfaction by recording the reasons in writing by such authority.

21) In view of the analysis of the judgment of the Constitution Bench in ***Tulsiram Patel*** (Supra), we have examined the impugned judgement passed by the High Court wherein in paragraph 19, while referring to the judgment of ***Sudesh Kumar vs. State of Haryana and Ors.*** **(2005) 11 SCC 525** in respect of the principle of *audi alteram partem* and also referring to paragraph 101 of ***Tulsiram Patel*** (Supra), it has been observed by the High Court that the appellate authority had heard the appellant before affirming the decision of the disciplinary authority, it appears that the judgment of ***Sudesh Kumar*** (Supra) has not been appreciated in its true spirit by the High Court.

22) In our view, the reasoning as given by the High Court is completely misplaced, in particular, when the Court is examining the scope and applicability of clause (b) to the second proviso of Article 311(2), the reasoning assigned by the disciplinary authority ought to be relevant for dispensing with an inquiry which is the issue involved in the present case. Merely indicating that the reasons provided in writing have already been held

justified by the CAT would not be sufficient in the context of law laid down by the judgment of ***Tulsiram Patel*** (Supra) merely observing that opportunity of hearing has been afforded by the appellate authority.

23) This case was heard on 04.02.2026. At the time of hearing, learned ASG appearing on behalf of the State vociferously contended that the reasoning to dispense with the inquiry finds its place in the preliminary inquiry report of the ACP whereby it was found that the complainant/witnesses have been traumatised, threatened or intimidated by the action of the criminals specially the police personnel involved therein and due to the close association of the police personnel with the hard-core criminals, there was every possibility that the appellant may approach the complainant/witnesses through his associates to threaten and intimidate them.

24) In this context, the argument advanced by the learned counsel for the appellant is that after lodging the FIR on 28.06.2017, the appellant was sent to custody on 29.6.2017 and was released on bail on 14.10.2017. In the meanwhile, the dismissal order dated 18.07.2017 was passed. Therefore, we deemed it appropriate to call for the said preliminary inquiry report which had not been placed before us for consideration.

25) On production of the said preliminary inquiry report, we have examined the contents thereof. In the said report, the ACP has collected the information/documents in respect of the investigation of Constable Manohar Lal, No. 362/Special Cell, PIS No. 28070974 (the appellant herein). He has also recorded the statement of the complainant, SI Hardeep Singh and other relevant persons. The details of the appointments and posting were collected from all concerned offices. Thereafter the details of the incidence were recorded. During preliminary inquiry, the ACP collected documents viz DD entries of information and proceedings of FIR No. 390/2017, arrest memo, personal search memo, disclosure memo, pointing out memo, seizure memos of mobile phone, recovery memos, PC remand, TIP Proceedings and other miscellaneous facts and documents. In the report, the ACP has recorded the statements of complainant Maniram, IO Hardeep Singh, HC Kuldeep Singh and Ct. Devender, viz. reproduced as under:

"*a) Complainant Maniram s/o Late Ram Prasad r/o Vill. Sisahi, PS Rasoolabad, Distt Kanpur, UP, Aged 62 years – In his statement, he corroborated the facts as mentioned in the FIR and his joining investigation, participating of TIP and identification of Ct. Manohar Lal No. 362/Spl. Cell as one of the accused who had come to his godown on 27/06/17, at about 6.00 PM and made enquiry about the owner and details of goods/articles stored in godown. He also came back at around 8.30 – 9.00 PM to godown with a tempo and car. He also participated in forcibly breaking open the room where logs of sandalwood were kept and loading approx. 1355 Kg of sandalwood in tempo. He also took away SIM of his mobile phone with the help of other accused persons.*

b) Statement of IO, SI Hardeep Singh D-5776, PIS No. 16150006, PS Bhalswa Dairy, mobile number-8510901900- In his statement he stated that on receipt of complaint of Mr. Maniram s/o Late Ram Prasad r/o Vill. Sisahi, PS Rasoolabad, Distt Kanpur, UP above case corroborated the facts as mentioned in the FIR NO. 390/17 dated 28/06/17 u/s 419/457/380/392/412/34 IPC PS was registered in PS Bhalswa Dairy. He also stated that during investigation he served notice u/s 160 of Cr.P.C. to Ct Manohar Lal 362/Spl. Cell and on 30/06/2017, on the basis of sufficient evidences, he was arrested in this case. He prepared arrest memo and personal search. He had also recorded the disclosure memo, prepared pointing out memos and recovered case property on the instance of Ct. Manohar Lal No. 362/Spl. Cell. He also stated that Ct. Manohar Lal No. 362/Spl. Cell refused to participate in TIP proceedings and during further investigation, the complainant identified Ct. Manohar Lal No. 362/Spl. Cell as one of the accused persons.

c) Statement of HC Kuldeep Singh No. 254/NW, PIS No 28981354, P.S-Bhalswa Dairy, New Delhi. In his statement, he has stated that on 30/06/2014, he alongwith Constable Devender

joined investigation of his case. On 30/06/2017, Constable Manohar Lal No. 362/Spl Cell joined investigation and on the basis of sufficient evidences, SI Hardeep Singh arrested him and prepared arrest memo, personal search memo, disclosure statement, pointing out memo and recovery memo of 14 jute bags containing 680.35 kgs of Sandalwood and he has signed on relevant documents as true.

d) Statement of Ct Devender no 1227/NW, PIS No 29101653, P.S- Bhalswa Dairy, New Delhi. In his statement, he has stated that on 30/06/2017, he alongwith Head Constable Kuldeep Singh joined investigation of this case. On 30/06/2014, Constable Manohar Lal No. 362/Spl Cell joined investigation and on the basis of sufficient evidences, SI Hardeep Singh arrested him and prepared arrest memo, personal search memo, bags containing 680.35 kgs of Sandalwood and he has signed on relevant documents as true."

26) While concluding in the preliminary inquiry, ACP observed as thus:

"*From the above noted facts, information, documents and statements, it is clearly established that Ct. Manohar Lal No. 362/Spl. Cell, PIS No. 28070974 while posted in Special Cell and on Earned Leaves, along with other police personnel and public persons is found involved in robbery case has shown grave misconduct, high handedness and had brought bad name to the entire force of Delhi Police by having acted in a manner highly unbecoming of a police personnel.*

From the preliminary enquiry conducted, it is revealed that the complainant/witnesses of the case has been traumatized by the egregious act of Ct. Manohar Lal No. 362/Spl. Cell and his associates. It appears that Ct. Manohar Lal No. 362/Spl. Cell, still has close association with criminals and there is every possibility that he may approach the complainant through his associates to threaten, intimate or induce him to withdraw from the case or turn hostile during the trial."

27) On perusal of conclusion of the preliminary report, it reveals that the complainant/witnesses had been traumatized by the egregious acts of the appellant and his associates. It has been recorded that the appellant had close association with criminals and there was every possibility that he might approach the complainant through his associates to threaten, intimidate or induce him to withdraw from the case or turn hostile during the trial.

28) After perusal of the statements of the complainant-Mani ram, SI Hardeep Singh, HC Kuldeep Singh and Constable Devender Singh reproduced above in the preliminary report, it can be seen that no instance of traumatising the complainant or witnesses have been stated by any witness in their statements. Whether the act as alleged in the FIR is egregious in nature, would be a subject matter of trial. No material showing connection of the appellant and his associates with criminals which may reasonably demonstrate that there is a possibility of the complainant or witnesses being approached through his associates with an intent to threaten, intimidate or induce them to withdraw from the case or turn hostile is on record. In absence of any material, in our view, it is merely a presumption of the ACP who conducted the preliminary enquiry and it cannot form the basis of a reasonable apprehension which may be sufficient to dispense with the regular disciplinary inquiry.

29) The DCP while passing the order of dismissal on 18.07.2017 recorded the following reasons:

"*Ordinarily a departmental enquiry should be conducted before imposing major punishment including dismissal against the defaulter but the facts and circumstances of the present case and the preliminary enquiry report of Sh. Govind Sharma, ACP/SR are such that it would not be reasonably practicable to conduct a regular departmental enquiry against the defaulter as there is a reasonable belief of threat, intimidation and inducement to the victim and thereby creating the possibility of tempering of the vital evidence. Therefore, holding the regular departmental enquiry*

in this case shall create fear in the mind of the complainant, witness/es and discourage him/them from deposing against the defaulter during the enquiry. Further, an extended enquiry would only cause more trauma to the complainant/victim. It is under these given set of compelling circumstances that action under Article 311(2)(b) of The Constitution of India has been invoked against Ct. Manohar lal, No.362/Spl.Cell in this case.

Therefore, I, Sanjeev Kumar Yadav, Deputy Commissioner of Police, Special Cell, New Delhi do hereby order to dismiss Ct. Manohar Lal, No.362/Spl.Cell, PIS No. 28070974 from service with immediate effect, under Article 311(2)(b) of The Constitution of India. His suspension period from 30.06.2017 (date of his arrest) till the date of issue of this order is decided as period "Not Spent on Duty" for all intents and purposes and the same will not be regularized in any manner."

30) From the order of dismissal passed by the DCP, it is clear that he has relied upon the preliminary inquiry report of the ACP and recorded its satisfaction that holding an enquiry is not 'reasonably practicable' and therefore, determined that this case is a fit case to apply the exclusion as contained in clause (b) of second proviso to Article 311 (2).

31) After appreciating the reasoning given in the report of the ACP as per the above discussion, in our view, in the statement of witnesses no incident of traumatising the complainant and witnesses have been recorded, therefore, nothing is available on record to accept the plea of threatening, intimidation or inducement to any witness to turn hostile. The disciplinary authority proceeded on the presumption of the ACP who conducted preliminary enquiry without any material and concluded that holding a regular enquiry is not reasonably practicable. Analysing the purport of the proviso and the interpretation made in the judgment of ***Tulsiram Patel*** (Supra) it was the duty of the disciplinary authority to satisfy himself that such reasoning as indicated in the preliminary enquiry report is based on some material, sufficient to dispense with an enquiry. In absence of the same, merely belief or a presumption is not sufficient to record such finding and to deviate from the normal procedure. It is not out of place to mention that the order of dismissal was passed on 18.07.2017. The appellant was taken into custody on 29.06.2017 and he was only be released on bail on 14.10.2017. In such a situation it is clear that while he was in custody the order of dismissal was passed. Therefore, it was incumbent upon the ACP holding the preliminary enquiry to indicate any instances of threat from custody to the complainant or to intimidate witnesses brought during investigation. In the preliminary enquiry report none of the witnesses have indicated about threat or intimidation or possibility of threat to turn those witnesses hostile, therefore, we have no hesitation to say that the order passed by the disciplinary authority dispensing with the enquiry as required is without application of mind and cannot be sustained. In fact, it is the duty of the disciplinary authority to record satisfaction how and in what manner holding an enquiry is not reasonably practicable.In our view, the authority has completely failed to understand the letter and spirit of ***Tulsiram Patel*** (Supra) while passing the order that too without any basis to dispense with normal procedure and directed dismissal which cannot be countenanced.

32) In the similar set of facts, the relevance of the material placed for recording the satisfaction by the Disciplinary Authority has been considered by this Court in the case of ***Jaswant Singh*** (Supra). In the said case, particularly in paragraph 5, the Court referred all the detailed facts and also relied upon the observations in ***Tulsiram Patel*** (Supra). The reasoning as given in the said judgement applies in the facts of this case also, the relevant para 5 is reproduced as thus:

"*5. The impugned order of April 7, 1981 itself contains the reasons for dispensing with the inquiry contemplated by Article 311(2) of the Constitution. Paragraph 3 of the said order, which we have extracted earlier, gives two reasons in support of the satisfaction that it was not reasonably*

practicable to hold a departmental enquiry against the appellant. These are (i) the appellant has thrown threats that he with the help of other police employees will not allow holding of any departmental enquiry against him and (ii) he and his associates will not hesitate to cause physical injury to the witnesses as well as the enquiry officer. Now as stated earlier after the two revision applications were allowed on October 13, 1980, the appellant had rejoined service as Head Constable on March 5, 1981 but he was immediately placed under suspension. Thereafter, two show cause notices dated April 4, 1981 were issued against him calling upon him to reply thereto within 10 days after the receipt thereof. Before the service of these notices the incident of alleged attempt to commit suicide took place on the morning of April 6, 1981 at about 11.00 a.m. In that incident the appellant sustained an injury on his right arm with a knife. He was, therefore, hospitalised and while he was in hospital the two show cause notices were served on him at about 10.00 p.m. on April 6, 1981. Before the appellant could reply to the said show cause notices respondent 3 passed the impugned order on the very next day i.e. April 7, 1981. Now the earlier departmental enquiries were duly conducted against the appellant and there is no allegation that the department had found any difficulty in examining witnesses in the said inquiries. After the revision applications were allowed the show cause notices were issued and 10 days time was given to the appellant to put in his replies thereto. We, therefore, enquired from the learned counsel for the respondents to point out what impelled respondent 3 to take a decision that it was necessary to forthwith terminate the services of the appellant without holding an inquiry as required by Article 311(2). The learned counsel for the respondents could only point out clause (iv)(a) of sub-para 29(A) of the counter which reads as under:

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

This is no more than a mere reproduction of paragraph 3 of the impugned order. Our attention was not drawn to any material existing on the date of the impugned order in support of the allegation contained in paragraph 3 thereof that the appellant had thrown threats that he and his companions will not allow holding of any departmental enquiry against him and that they would not hesitate to cause physical injury to the witnesses as well as the enquiry officer if any such attempt was made. It was incumbent on the respondents to disclose to the court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram case [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp 2 SCR 131] : (SCC p. 504, para 130)

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

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

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

33) It is not out of place to say that the judgment of ***Tulsiram Patel*** (Supra) has been appreciated by the Department and resultantly, the Commissioner of Police has issued a circular dated 31.12.1998. Analysis as made hereinabove, particularly in paragraphs 17, 18 and 19, have been truly introduced in the circular of the department. The relevant portion of the said circular is reproduced for ready reference as thus: -

"*Instances have come to notice where provisions of Article 311(2)(b) of the Constitution were inappropriately invoked. This article provides that no person as mentioned in 311(2)(b) shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charge against him and given a reasonable opportunity of being heard in respect of these charges.*

Provided that where it is proposed after such enquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry 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 where an authority empowered to dismiss or to 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 enquiry.

Clause (3) of Article 311 provides that if in respect of such person as aforesaid a question arises whether it is reasonably practicable to hold such enquiry as it referred to in clause (2) the decision thereon of the authority empowered to dismiss or to remove such person or to reduce him in rank shall be final.

From the above it is clear that a civil servant is not be dismissed, removed or reduced in rank similarly under Article 311(2)(b) of the Constitution of India but after holding regular departmental enquiry against him. No doubt the above provisions confers the power of infliction of above penalties on the disciplinary authority but while doing so circumstances will have to be mentioned in order to show as to how it was not reasonably practicable to hold the departmental action. In a number of authorities the Court/Tribunal have evaluated the reasons given by the disciplinary authority to see if really it was impracticable to hold the enquiry and for those reasons are indifferent and vague. Reliance may be placed in the judgment of the Hon'ble Supreme Court of India in the case of Tulsi Ram Patel AIR 1985 SC 1416 which reads as under:

"It would not be reasonably practicable to hold an enquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to present them for doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the enquiry or direct it to be held. It would also not be reasonable practicable to hold the enquiry where an atmosphere of violation or of great indiscipline and insubordination prevails and it is immaterial where the concerned government servant is or is not a party to bringing such an atmosphere.

In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability or 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 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 enquiry 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 enquiry as also the order imposing penalty."

Power under Article 311(2) is not be used a short cut.

The police officers involved in the cases of Rape or Dacoity or any such heinous offence have been dismissed straightway under Article 311(2)(b) despite the fact that criminal cases have been registered. Such dismissal without holding D.Es. are illegal because in such cases D.E. can be conveniently held.

It is once again emphasized that the Disciplinary Authority should not take resort to Article 311(2)(b) lightly but only in those cases where it is not reasonably practicable to hold the enquiry. Whenever the disciplinary authority comes to the conclusion that it is not reasonably practicable to hold an enquiry he must record at length cogent and legally tenable reasons for coming to such conclusion. In the absence of valid reasons, duly reduced in writing, no such order of dismissal etc. with resort to Article 311(2)(b) can be sustained in law.

This circular supersedes the earlier circular No.25551631/29.12.93."

34) The said circular was in supersession of all earlier circulars. A further clarification was issued by the department on 11.09.2007 which was in vogue on the date of passing of the order of dismissal. The relevant portion of the clarificatory circular is also reproduced as thus:

"*As analysis has been done by PHQ in 38 cases pertaining to the period between 1.1.2000 to 31.12.2005 where action under Article 311(2)(b) of the Constitution of India was taken against the defaulters. The analysis shows that out of the 38 cases, the action of the department has been upheld by CAT only in two cases and out of these two cases, in only one case the action was upheld by the Hon'ble High Court of Delhi. Most of these cases have been remanded back to the Department by the Tribunal for initiating department enquiry.*

Though some cases are still pending in the Hon'ble High Court for decision. In a majority of the cases, Disciplinary Authorities have resorted to Article 311(2)(b) on assumptions and conjectures. No speaking orders were passed based on and supported by material/facts on record for dispensing with prior enquiry. Orders for dismissal were passed arbitrarily violating Article 311 and the principles of natural justice.

Henceforth, it has been decided that whenever any Disciplinary Authority intends to invoke Article 311(2)(b) of the Constitution of India, he must keep in mind the judgment in the case of UOI v. Tulsi Ram Patel, AIR 1985 SC 1416. Only in cases where Disciplinary Authority is personally satisfied on the basis of material available on the file that the case is of such a nature that it is not practicable to hold an enquiry in view of threat, inducement, intimidation, affiliation with criminals etc and keeping in view the specific circumstances of the case it is not possible that PWs will depose against the defaulter and disciplinary authority has no option but to resort to Article 311(2)(b) should such an action be taken. Prior to such an order, a PE has to be conducted and it is essential to being on record all such facts. It has also been decided that before passing an order under Article 311(2)(b) of the Constitution, Disciplinary Authority has to take prior concurrence of Spl. CP/Admn.

This has the approval of C.P. Delhi."

35) In the case at hand after registration of the FIR when the appellant was in custody the order of dismissal was passed. He was released only thereafter. As such, without indicating any instance of intimidation, traumatising, threatening or persuading the complainant or the witness to turn hostile from inside the jail, the belief or presumption as

recorded by the disciplinary authority is not sufficient to bring the present case within the exception to Article 311(2) by applying clause (b) of second proviso thereto. Thus, in our view, the reasoning contemplated in the judgment of ***Jaswant Singh*** (Supra) applies in the case at hand.

36) It is relevant to note that applying the judgment of ***Tulsiram Patel*** (Supra), various cases have been decided by this Court indicating what may be a sufficient reason and how and in what circumstances holding a departmental enquiry is not reasonably practicable, and the scope of judicial review in such cases. In the judgement of this Court in ***Ex. Constable Chhote Lal*** (Supra) the Court held as thus:

"*4. Having examined the rival contentions of the parties and bearing in mind the law laid down by this Court indicating the circumstances under which the inquiry under Article 311(2), second proviso, clause (b) of the Constitution can be dispensed with and applying the same to the facts and circumstances and the reasons advanced by the authorities in arriving at the decision, we have no hesitation to come to the conclusion that the order dispensing with the departmental inquiry is not in accordance with law and necessarily the order of dismissal cannot be sustained. We accordingly set aside the order of dismissal passed against the appellant and permit the departmental authority to hold an inquiry if so desired, in accordance with law and come to the conclusion in the said proceeding.*

5. Normally, an order of dismissal on being set aside, the employee can claim back wages, but in this case we are not inclined to grant back wages to the employee concerned, more so, in view of the nature of charges against him."

37) In the case of ***Tarsem Singh*** (Supra) this Court has observed that the power of dispensing with the constitutional remedy of a delinquent, should not be exercised lightly or arbitrarily, or out of ulterior motive with the intent to avoid holding an enquiry. In the said case in paras 10 and 14, this Court observed as thus:

"*10. It is now a well-settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry. The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under Section 377 IPC. However, it may not be necessary for us to go into the said question.*

xxx xxx xxx

14. In view of the fact that no material had been placed by the respondents herein to satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) appended to Clause (2) of Article 311 of the Constitution of India, we are of the opinion that the impugned orders cannot be sustained and they are set aside accordingly. The appellant is directed to be reinstated in service. However, in view of our aforementioned findings, it would be open to the respondents to initiate a departmental enquiry against the appellant if they so desire. Payment of back wages shall abide by the result of such enquiry. Such an enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of communication of this order."

38) This Court in the case of ***Risal Singh*** (Supra), emphasised that while assigning the reason in writing it is imperative that such reason must be plausible and based on definite material. In the said case, the Court relied upon on para 130 on the judgment of ***Tulsiram Patel*** (Supra) and referring the same concluded in paras 9 and 10 as thus:

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

indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction.

10. Consequently, we allow the appeal and set aside the order passed by the High Court and that of the disciplinary authority. The appellant shall be deemed to be in service till the date of superannuation. As he has attained the age of superannuation in the meantime, he shall be entitled to all consequential benefits. The arrears shall be computed and paid to the appellant within a period of three months hence. Needless to say, the respondents are not precluded from initiating any disciplinary proceedings, if advised in law. As the lis has been pending before the Court, the period that has been spent in Court shall be excluded for the purpose of limitation for initiating the disciplinary proceedings as per rules. However, we may hasten to clarify that our observations herein should not be construed as a mandate to the authorities to initiate the proceeding against the appellant. We may further proceed to add that the State Government shall conduct itself as a model employer and act with the objectivity which is expected from it. There shall be no order as to costs."

39) In the case of ***Reena Rani*** (Supra) this Court has again applied the law laid down in the judgment of ***Tulsiram Patel*** (Supra) ***and Jaswant Singh*** (Supra) and held that the order of dismissal did not disclose the reasons explaining why it was not reasonably practicable to hold a regular departmental enquiry and applicability of the proviso in such a case is not justified. The Court in para 7 in the said judgment observed as under: -

"*7. In the order of dismissal, the Superintendent of Police has not disclosed any reason as to why it was not reasonably practicable to hold regular departmental enquiry. The learned Additional Advocate General fairly stated that the order of dismissal does not contain the reasons as to why it was not reasonably practicable to hold regular departmental enquiry against the appellant. He also admitted that no other record has been made available to him which would have revealed that the Superintendent of Police had recorded reasons for forming an opinion that it was not reasonably practicable to hold regular departmental enquiry for proving the particular charge(s) against the appellant.*"

40) On overall analysis of the intent of Article 311(2), it is vivid that an employee holding a post in Union or State ought not to be dismissed or removed by an authority subordinate to the one by which he was appointed. It is further specified that a person shall be dismissed or removed or reduced in rank after an inquiry supplying the charges if any against him and giving a reasonable opportunity of being heard in respect of those charges. The applicability of the said clause is restricted in a situation wherein his conduct led to his conviction of criminal charges or where the authority empowered who dismissed, removed or reduced in rank records reason in writing upon satisfaction that it is not 'reasonably practicable' to hold an enquiry against him. In addition, where such power has been exercised by the President or the Governor it may be in the interest of security of the State or if not expedient to hold such an enquiry, then exceptional power under clause (c) of second proviso to Article 311 ought to be exercised.

41) In case such a decision invoking the extraordinary power is taken by the competent authority in light of the judgment ***Tulsiram Patel*** (Supra) within the parameter as discussed, the scope of judicial review is available to the Constitutional Courts wherein the reasons as assigned for satisfaction of the authority must be reasonable, valid, justified and in writing. In addition, the satisfaction as recorded must be the objective satisfaction on the basis of material brought on record which ordinarily the disciplinary authority may take as a prudent person. Otherwise, dispensing with the enquiry is not permissible in law. In the present case, Section 21 of the 1978 Act confers power of punishment and Section 22 prescribes the procedure for awarding such punishment. The procedure as contemplated has been elaborated under the 1980 Rules. In the present case, in our view, the power exercised by the authority is completely without application of mind, thus, the

question of recording of satisfaction as affirmed by the appellate authority, the CAT and the High Court does not arise. Therefore, we can hold that the order dispensing with the regular procedure of inquiry is arbitrary and consequently the order of dismissal of the appellant is liable to be quashed and the orders of the CAT and the High Court affirming the said dismissal order stand set aside.

42) In light of the above discussion, the irresistible conclusion is to set aside the order passed by the CAT and the High Court and to quash the order of dismissal passed by the DCP and confirmed by the appellate authority. In consequence, the appellant shall forthwith be reinstated with continuity of service. He shall be entitled for all consequential benefits notionally. Since, the appellant is found involved in a criminal case, therefore, in the facts of the case, back wages from the date of dismissal till reinstatement are restricted to 50%.

43) The setting aside of the order passed under Article 311(2) proviso (b) of the Constitution and direction for reinstatement shall be without prejudice to the right of the respondent to take recourse as permissible by initiating a departmental enquiry in accordance with law. Accordingly, and with the aforesaid directions, the present appeal stands allowed to the extent indicated. Parties to bear their own costs.

44) Pending application(s), if any, shall stand disposed of.