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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., C.T. RAVIKUMAR; J.
Civil Appeal No(s). 6301 of 2013; May 12, 2023
Dr. V.R. Sanal Kumar *versus* **Union of India & Ors.**

Constitution of India, 1905; Article 311 (2) (c) Second Proviso - Inquiry proceedings of persons employed in civil capacities under the Union Government or the State Government can be done away with if the President or the Governor is satisfied that in the interest of security of the State it is not expedient to hold such an inquiry. Once it is obvious that circumstances based on materials capable of arriving at a satisfaction that it is not expedient to hold an inquiry "in the interest of the security of the State" are available, the decision in holding that it is inexpedient "in the interest of the security of the State" to hold an inquiry warrants no further scrutiny. The Court cannot, in such circumstances, judge on the expedience or inexpediency to dispense with the inquiry as it was arrived at based on the subjective satisfaction of the President based on materials. *(Para 24)*

For Appellant(s) Ms. Malini Poduval, AOR Ms. Babita Sant, Adv. Mr. Savya Sachi Narayanan, Adv. Ms. Shifali, Adv.

For Respondent(s) Mr. K.M.Natraj, A.S.G. Shailesh Madiyal, Adv. Vinayaka S. Pandit, Adv. Mr. Sharath Nambiar, Adv. Mohd Akhil, Adv. Indira Bhakar, Adv. T.S.Sabarish, Adv. Annirudh Sharma-(II), Adv. Vatsal Joshi, Adv. Vinayak Sharma, Adv. Anuj S. Udupa, Adv. Nakul Chengappa, Adv. Chithransh Sharma, Adv. Mr. Amrish Kumar, AOR Mr. Krishan Pal Mavi, AOR Ms. Binu Tamta, AOR

J U D G M E N T

C.T. RAVIKUMAR, J.

1. The petitioner in W.P. (C) No.33421 of 2008, who is unsuccessful in his challenge against the order of his dismissal from service without inquiry in the interest of the security of the State, filed this appeal by Special Leave against the judgment dated 16.01.2012 passed thereon, by the High Court of Kerala. As per the impugned judgment the High Court dismissed the challenge against the order dated 30.09.2008 of the Central Administrative Tribunal, Ernakulam Bench in O.A. No. 653 of 2007.

2. Compendiously stated, the case that culminated in the impugned judgment is as follows:

The appellant was initially appointed as Scientist/Engineer 'SC' in Group-A in Vikram Sarabhai Space Centre ('VSSC' for brevity), Thiruvananthapuram of the Indian Space Research Organisation ('ISRO' for brevity), on 15.01.1992. On 01.07.1999, he was promoted as Scientist/Engineer 'SD'. While so, on 28.08.2002, the appellant was invited by Prof. H.D. Kim, Head of School of Mechanical Engineering, Andong National University, South Korea, to join as a postdoctoral trainee and to assist him for one year, recognizing the appellant as a well-known expert on the starting and transient flows in the Solid Rocket Motors. On 18.07.2003, the appellant applied for sabbatical leave for one year. The competent Authority decided not to recommend the leave in the exigency of service and in public interest. The appellant applied for 9 days Earned Leave from 21.08.2003 to 29.08.2003 on personal grounds and soon went to South Korea. Through e-mail dated 01.09.2003, he intimated his Divisional Head in VSSC that due to the delay in processing his request for leave, he reached South Korea to carry out his post-doctoral research at Andong National University in South Korea. The appellant sent another leave application,

through e-mail, for 89 days from 01.09.2003 to 28.11.2003. As per e-mail dated 05.09.2003, the appellant was informed that his leave was not sanctioned and he was required to report for duty not later than 11.09.2003. Meanwhile, the respondent organization came to know that the appellant had published a technical paper as first author with a foreigner as one of the co-authors in the 39th American Institute of Aeronautics and Astronautics (AIAA) Joint Propulsion Conference, USA held during July, 2003, without obtaining specific approval of the Competent Authority. Thereupon, disciplinary action was initiated against the appellant and he was charge-sheeted on 19.12.2003 for unauthorized absence and publication of papers without following due procedure or obtaining approval of the Competent Authority.

3. The appellant re-joined duty on 23.01.2004 and again left for South Korea in March, 2004 without any information to the Organization or its permission. Though he attended the preliminary hearing in the departmental inquiry, he had chosen not to take part in further proceedings. Ergo, the inquiry was conducted *ex-parte* and the copy of the Inquiry Report holding the charges as proved submitted by the Inquiry Officer, was sent to him.

4. Meanwhile, the appellant unsuccessfully preferred two Original Applications before the Central Administrative Tribunal viz., O.A. Nos. 150/2004 and 529/2004. Later, he came back to India and re-joined duty on 18.05.2004. Again, the appellant went back to South Korea on 28.05.2004 without obtaining permission from the authorities. Consequently, as per Order dated 13.07.2004 he was suspended from service pending disciplinary action. Ultimately, as per Order dated 11.08.2007, the appellant was dismissed from service with effect from 01.09.2003 under clause (iii) of Rule 16 of Department of Space Employees' (Classification, Control and Appeal) Rules, 1976, hereinafter referred for short 'the CCA Rules'. Vide Order dated 13.08.2007, the appellant was asked to refund the subsistence allowance drawn after 01.09.2003, as he was dismissed w.e.f. 01.09.2003. The appellant filed O.A. No. 653 of 2007 seeking quashment of the order of dismissal from service and also order directing refund of subsistence allowance drawn after 01.09.2003 besides seeking order for re-instating him in service. As per Order dated 30.09.2008, the Tribunal partly allowed the O.A. Though the order of dismissal of the appellant was sustained, the Tribunal annulled the grant of retrospectivity to it from 01.09.2003. In other words, its effect was ordered to take only from the date of the order viz., 11.08.2007. As a necessary sequel to the annulment of retrospectivity, it was ordered that there should be no recovery of subsistence allowance and hence, the order dated 13.08.2007 for recovery of subsistence allowance was quashed. Naturally, the prayer or reinstatement in service was rejected.

5. Both the appellant and the respondent Organization assailed the order of the Tribunal in O.A. No. 653 of 2007 before the High Court. The respondent Organization filed W.P. (C) No. 4918/2008, essentially challenging the order in O.A. No.653 of 2007 to the extent of effacing the retrospective effect of the order of dismissal of the appellant herein from 01.09.2003 and restricting its effect only from the date of the order viz., 11.08.2007 and restraining recovery of subsistence allowance. The appellant herein filed W.P. (C) No.33421 of 2008 aggrieved by the disinclination to quash the order of dismissal and to order for his reinstatement in service. The High Court dismissed W.P. (C) No.33421 of 2008 as per the impugned judgment and hence, this appeal by special leave. It is required to be noted that subsequently, as per judgment dated 16.02.2009 the High Court dismissed W.P. (C) No.4918 of 2008 filed by the respondent Organisation and consequently, the order dated 31.05.2010 was issued giving effect to the order of the Tribunal in O.A. No.653 of 2007 and modifying the date of effect of the order of dismissal from the very date of the same.

6. Heard, Shri Gopal Sankaranarayanan, learned Senior Advocate appearing for the appellant and Shri Shailesh Madiyal, learned counsel for respondent Nos.1 to 4.

7. Indisputably, the appellant was dismissed form service without any inquiry in the manner provided in 'the CCA Rules' invoking the power under clause (iii) of Rule 16 of CCA Rules, which reads thus: -

"16. Special Procedure in certain cases

Notwithstanding anything contained in Rules 11 to 15 –

(i) *where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge; or*

(ii) *where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules; or*

(iii) *where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these Rules, the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit: Provided that the employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under Clause (i):*

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

8. A bare perusal of the afore-quoted provision and the second proviso to Article 311 (2) of the Constitution of India would undoubtedly go to show that the former is virtually a service rule reproducing the second proviso almost in whole though the language used is not identical. It is to be noted that even according to the appellant, Rule 16 (iii) of the CCA Rules is in *pari materia* to clause (c) of the second proviso to Article 311 (2) of the Constitution of India. As noticed hereinbefore, the dismissal of the appellant from service invoking the aforesaid power was upheld by the Central Administrative Tribunal and it also got the seal of approval from the High Court. Therefore, the question is whether it requires a further judicial review at the hands of this Court in exercise of power under Article 136 of the Constitution of India based on the various contentions raised by the appellant. The position with respect to the non-requirement of adherence to the principles of natural justice by complying with the mandate under Article 311(2) viz., holding an inquiry in which a person holding a civil post as referred to in Article 311(1) is informed of the charges against him and given an opportunity of being heard in respect of those charges when the second proviso to Article 311 (2) of the Constitution of India comes into play in the matter of dismissal, removal or reduction in rank and other facets in such eventuality have been considered by a Constitution Bench of this Court in ***Union of India and Anr. v. Tulsiram Patel and Ors.***[1]. The exposition of laws on such aspects thereunder have been reiterated many a times thereafter by this Court. The decision in ***Tulsiram Patel's*** case (supra) would reveal the position that compliance with the mandate under Article 311 (2) and in that regard, issuance of charge sheet and hearing on the charges to be given to a Government servant, with respect to any of the aforesaid three major penalties proposed to be imposed upon him, would not arise when clause (c) of the second proviso to Article 311 (2) comes into play and the same would be the position in the case of service rules reproducing the second proviso in whole or in part and whether the language used is identical with that used in the second proviso or not.

[1] (1985) 3 SCC 398

9. It was also held in ***Tulsiram Patel's*** case (supra) that clause (c) of second proviso to Article 311 (2) is based on public policy and is in public interest and for the public good and the Constitution makers who inserted 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. Furthermore, it was held therein that the law laid down in the decision in ***Divisional Personnel Officer, Southern Rly. & Anr. v. T.R. Chellappan***[2] that having regard to the meaning of the word used in the context of the phrase "the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit" under Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, that an objective consideration is possible "only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority" is not acceptable. With reference to the phrase "this clause shall not apply" in second proviso to Article 311 (2) was held to be containing the key words in the second proviso and they would govern each and every clause thereof and ultimately held that this phrase would leave no scope for any kind of opportunity to be given to a Government servant. It was also held that it would take away both the rights to have an inquiry held in which the Government servant would be entitled to a charge sheet and also the right to make a representation on the proposed penalty. In ***Tulsiram Patel and Ors.*** (supra), this Court further held that "interest of security of the State" might be affected by actual acts or even the likelihood of such acts taking place. The satisfaction of the President or Governor, as the case may be, must be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State and an inquiry in which such an act would lead to disclosure of sensitive information and also the use of information and hence such an inquiry into the acts would be prejudicial to the interest of the security of the State as much as those acts would, it was held.

10. The relevant recitals where the Constitution Bench observed and laid down the aforementioned positions of law in ***Tulsiram Patel's*** case (supra) are as hereunder: -

*"**59**. The position, therefore, is that the pleasure of the President or the Governor is not required to be exercised by either of them personally, and that is indeed obvious from the language of Article 311. Under clause (1) of that article a government servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed. The question of an authority equal or superior in rank to the appointing authority cannot arise if the power to dismiss or remove is to be exercised by the President or the Governor personally. Clause (b) of the second proviso to Article 311 equally makes this clear when the power to dispense with an inquiry is conferred by it upon the authority empowered to dismiss, remove or reduce in rank a government servant in a case where such authority is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, because if it was the personal satisfaction of the President or the Governor, the question of the satisfaction of any authority empowered to dismiss or remove or reduce in rank a government servant would not arise. Thus, though under Article 310 (1) the tenure of a government servant is at the pleasure of the President or the Governor, the exercise of such pleasure can be either by the President or the Governor acting with the aid and on the advice of the Council of Ministers or by the authority specified in Acts made under Article 309 or in rules made under such Acts or made under the proviso of Article 309; and in the case of clause (c) of the second proviso to Article 311 (2), the inquiry is to be dispensed with not on the personal satisfaction of the President or the Governor but on his satisfaction arrived at with the aid and on the advice of the Council of Ministers."*

*"**101...** 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*

[2] 1976 3 SCC 190

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…"

***"114.** So far as Challappan case is concerned, it is not possible to find any fault either with the view that neither clause (a) of the second proviso to Article 311 (2) nor clause (i) of Rule 14 of the Railway Servants Rules is mandatory or with the considerations which have been set out in the judgment as being the considerations to be taken into account by the disciplinary authority before imposing a penalty upon a delinquent government servant. Where a situation envisaged in one of the three clauses of the second proviso to Article 311 (2) or of an analogous service rule arises, it is not mandatory that the major penalty of dismissal, removal or reduction in rank should be imposed upon the concerned government servant. The penalty which can be imposed may be some other major penalty or even a minor penalty depending upon the facts and circumstances of the case. In order to arrive at a decision as to which penalty should be imposed, the disciplinary authority will have to take into consideration the various factors set out in Challappan case. It is, however, not possible to agree with the approach adopted in Challappan case in considering Rule 14 of the Railway Servants Rules in isolation and apart from the second proviso to Article 311 (2), nor with the interpretation placed by it upon the word 'consider' in the last part of Rule 14. Neither Rule 14 of the Railway Servant Rules nor a similar rule in other service rules can be looked at apart from the second proviso to Article 311 (2). The authority of a particular officer to act as a disciplinary authority and to impose a penalty upon a government servant is derived from rules made under the proviso to Article 309 or under an Act referable to that article. As pointed out earlier, these rules cannot impinge upon the pleasure of the President or the Governor of a State, as the case may be, because they are subject to Article 310(1). Equally, they cannot restrict the safeguards provided by clauses (1) and (2) of Article 311 as such a restriction would be in violation of the provisions of those clauses. In the same way, they cannot restrict the exclusionary impact of the second proviso to Article 311 (2) because that would be to impose a restriction upon the exercise of pleasure under Article 310 (1) which has become free of the restrictions placed upon it by clause (2) of Article 311 by reason of the operation of the second proviso to that clause. The only cases in which a government servant can be dismissed, removed or reduced in rank by way of punishment without holding an inquiry contemplated by clause (2) of Article 311 are the three cases mentioned in the second proviso to that clause…"*

"…It is thus obvious that the word 'consider' in its ordinary and natural sense is not capable of the meaning assigned to it in Challappan case. The consideration under Rule 14 of what penalty should be imposed upon a delinquent railway servant must, therefore, be ex parte and where the disciplinary authority comes to the conclusion that the penalty which the facts and circumstances of the case warrant is either of dismissal or removal of reduction in rank, no opportunity of showing cause against such penalty proposed to be imposed upon him can be afforded to the delinquent government servant. Undoubtedly, the disciplinary authority must have regard to all the facts and circumstances of the case as set out in Challappan case. As pointed out earlier, considerations of fair play and justice requiring a hearing to be given to a government servant with respect to the penalty proposed to be imposed upon him do not enter into the picture when the second proviso to Article 311 (2) comes into play and the same would be the position in the case of a service rule reproducing the second proviso in whole or in part and whether the language used is identical with that used in the second proviso or not. There are a number of orders which are of necessity passed without hearing the party who may be affected by them. For instance, courts of law can and often do pass ex parte ad interim orders on the application of a plaintiff, petitioner or appellant without issuing any notice to the other side or hearing him. Can it, therefore, be contended that

the judge or judges, as the case may be, did not apply his or their mind while passing such an order?

***"115.** The decision in Challappan case is, therefore, not correct with respect to the interpretation placed by it upon Rule 14 of the Railway Servants Rules and particularly upon the word 'consider' occurring in the last part of that rule and in interpreting Rule 14 by itself and not in conjunction with the second proviso to Article 311 (2). Before parting with Challappan case, we may, also point out that case never held the field. The judgment in that case was delivered on September, 15, 1975, and it was reported in (1976) 1 SCR at pages 783 ff*. Hardly was that case reported then in the next group of appeals in which the same question was raised, namely, the three civil appeals mentioned earlier, an order of reference to a larger Bench was made on November 18, 1976. The correctness of Challappan case was, therefore, doubted from the very beginning."*

***"126.** As pointed out earlier, the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules while the source of his power to dispense with the disciplinary inquiry is derived from the second proviso to Article 311 (2). There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. The Court's attention in Challappan case was not drawn to this settled position in law and hence the error committed by it in considering Rule 14 of the Railway Servants Rules by itself and without taking into account the second proviso to Article 311 (2). It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists. (See Dr. Ram Manohar Lohia v. State of Bihar and Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal) The omission to mention in the impugned orders the relevant clause of the second proviso or the relevant service rule will not, therefore, have the effect of invalidating the orders and the orders 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."*

11. In paragraph 144 therein it was held as under: -

***"144.** It was further submitted that what is required by clause (c) is that the holding of the inquiry should not be expedient in the interest of the security of the State and not the actual conduct of a government servant which would be the subject-matter of the inquiry. This submission is correct so far as it goes but what it overlooks is that 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 government servant in. such acts, would be disclosed and thus in cases such as these an inquiry into acts prejudicial to the interest of the security of the State would prejudice the interest of the security of the State as much as those acts would."*

12. In the decision in ***Union of India v. Balbir Singh***[3], this Court referred to the earlier decision in ***A.K. Kaul* v. *Union of India***[4], in paragraph 7 as under: -

***"7.** In the case of A.K. Kaul v. Union of India [(1995) 4 SCC 73 : 1995 SCC (L&S) 922 : (1995) 30 ATC 174] this Court has examined the extent of judicial review permissible in respect of an order of dismissal passed under second proviso clause (c) of Article 311(2) of the Constitution. This Court has held that the satisfaction of the President can be examined within the limits laid down*

[3] (1998) 5 SCC 216
[4] (1995) 4 SCC 73

in S.R. Bommai v. Union of India [(1994) 3 SCC 1]. The order of the President can be examined to ascertain whether it is vitiated either by mala fides or is based on wholly extraneous and/or irrelevant grounds. The court, however, cannot sit in appeal over the order, or substitute its own satisfaction for the satisfaction of the President. So long as there is material before the President which is relevant for arriving at his satisfaction as to action being taken under clause (c) to the second proviso to Article 311(2), the court would be bound by the order so passed. This Court has enumerated the scope of judicial review of the President's satisfaction for passing an order under clause (c) of the second proviso to Article 311(2). The Court has said, (1) that the order would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant grounds; (2) even if some of the material on which the action is taken is found to be irrelevant the court would still not interfere so long as there is some relevant material sustaining the action; (3) the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President; (4) the ground of mala fides takes in, inter alia, situations where the proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power; (5) the court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Council of Ministers are the best judge of the situation and that they are also in possession of information and material and the Constitution has trusted their judgment in the matter; (6) this does not mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive. (cf. also Union Territory, Chandigarh v. Mohinder Singh [(1997) 3 SCC 68: 1997 SCC (L&S) 633].)"

13. In paragraph 8 thereof, it was further held thus: -

***"8.** If an order passed under Article 311(2) proviso (c) is assailed before a court of law on the ground that the satisfaction of the President or the Governor is not based on circumstances which have a bearing on the security of the State, the court can examine the circumstances on which the satisfaction of the President or the Governor is based; and if it finds that the said circumstances have no bearing whatsoever on the security of the State, the court can hold that the satisfaction of the President or the Governor which is required for passing such an order has been vitiated by wholly extraneous or irrelevant considerations."*

14. In the decision in ***Union of India v. M.M. Sharma***[5], this Court held that dismissal without an inquiry in the interest of national security under clause (c) of the second proviso to Article 311 (2) of the Constitution did not require recording of reasons for dispensing with the inquiry. At the same time, it was held that there were records to indicate that there are sufficient and cogent reasons for dispensing with the inquiry in the interest of the security of the State. In paragraph 28 thereof, it was held that, the power to be exercised under sub-clauses (*a*), (*b*) and (*c*) being special and extraordinary powers conferred by the Constitution, there was no obligation on the part of the disciplinary authority to communicate the reasons for imposing the penalty of dismissal and not any other penalty.

15. In paragraph 30, it was held thus: -

***"30.** If in terms of the mandate of the Constitution, the communication of the charge and holding of an enquiry could be dispensed with, in view of the interest involving security of the State, there is equally for the same reasons no necessity of communicating the reasons for arriving at the satisfaction as to why the extreme penalty of dismissal is imposed on the delinquent officer. The High Court was, therefore, not justified in passing the impugned order."*

16. After carefully going through the provisions under Clause (iii) of Rule 16 of the CCA Rules, we have already found, as concurrently found by the Central Administrative Tribunal and the High Court, that the said provision is a service rule virtually reproducing clause (c) of the second proviso to Article 311 (2) of the Constitution of India though the

[5] (2011) 11 SCC 293

language used is not identical. We have also noted that the appellant did not dispute that Rule 16 (iii) is in *pari materia* with clause (c) of the second proviso to Article 311 (2). When once it is so found, there cannot be any doubt with respect to the position, as settled in ***Tulsiram Patel and Ors.*** (supra) and reiterated in subsequent decisions, that adherence to principles of natural justice i.e., conducting inquiry after issuing charge sheet and providing hearing to a government servant on those charges, in case of proposal to impose any of the aforesaid three major penalties would not arise when the power under Rule 16 (iii) of the CCA Rules is invoked. Bearing in mind the position of law thus revealed from the aforementioned decisions, we will consider whether judicial review is called for or not in respect of the challenge of the appellant against his removal from service without holding an inquiry in invocation of the power under Clause (iii) of Rule 16 of the CCA Rules, with reference to the factual backdrop of this case.

17. Manifold contentions have been raised by Shri Gopal Sankaranarayanan, learned Senior Advocate appearing for the appellant to contend that both the Tribunal and the High Court had fallen in error in upholding the order of dismissal passed without conducting an inquiry in invocation Clause (iii) of Rule 16 of the CCA Rules. It is the contention of the learned Senior Advocate that indisputably in this case on 19.12.2003, the Under Secretary to the Government of India served a Memorandum along with article of charges and statement of imputation under Article 11 of the CCA Rules to the appellant for the purpose of conducting departmental inquiry, alleging commission of two charges, namely (i) unauthorized absence from 01.09.2003 to leave the country for taking post-doctoral research without permission and (ii) publication of a technical paper during July, 2003 in AIAA Propulsion Conference, USA as first author with a foreigner as one of the co-authors, without prior permission or approval from the competent authority. The contention is that the appellant participated in the preliminary hearing and thereafter, the matter was proceeded *ex-parte* and that the inquiry report was thereafter served on him and a copy of the same was also forwarded to the Union Public Service Commission for its remarks, but the said proceedings had not reached its logical end. In other words, it is submitted that without finalizing the same and if at all necessary to issue a further charge on additional imputation a short cut was adopted abruptly, by invoking the powers under clause (iii) of Rule 16 of the CCA Rules to dismiss the appellant from service without holding inquiry. This, according to the appellant, is impermissible in law and, therefore, the noninterference with the order of dismissal by the Tribunal and then by the High Court could not be sustained. It is also the contention that there is no justification in holding that it is not expedient to conduct an inquiry in terms of Rule 16 (iii) of CCA Rules after deciding to conduct an inquiry and in fact, actually conducting an inquiry. It is also the contention that the order of dismissal dated 11.08.2007 on the face of it did not reflect the satisfaction of the President that in the interest of the security of the State, it is not expedient to hold an inquiry. It is the further contention that though the records of the cases were placed before the Tribunal, it had not exercised its jurisdiction to conduct a judicial review of the substantive satisfaction required to pass an order under Rule 16 (iii) of the CCA Rules. It is submitted that the High Court too, had failed in examining that aspect, though the said point was argued before the High Court.

18. *Per contra,* Shri Shailesh Madiyal, learned counsel for respondent Nos.1 to 4 would submit that the Central Administrative Tribunal as also the High Court had correctly appreciated the circumstances that led to the invocation of the power under Rule 16 (iii) of the CCA Rules for dismissing the appellant from service without conducting an inquiry. It is submitted that the contentions of the appellant that having initiated disciplinary proceedings under Rule 11 of the CCA Rules vide Memorandum dated 19.12.2003 for the

twin specific charges,(referred hereinbefore) inexpediency to hold an inquiry could not have been and should not have been assigned as a reason to invoke the power under Rule 16 (iii) of the CCA Rules to dismiss him from service as per Order dated 11.08.2007 and that it is a short cut move, are absolutely unsustainable in view of the indisputable facts and circumstances obtained in this case. It is submitted that the proceedings initiated by Memorandum dated 19.12.2003 under Rule 11 of the CCA Rules and the proceedings which culminated in the dismissal of the appellant under Rule 16 (iii) of the CCA Rules are distinct. In the proceedings initiated under Rule 11, inquiry was conducted and the appellant was also afforded with reasonable opportunity, adhering to the principles of natural justice. However, other violations of serious nature came to light subsequently, causing serious doubt about the appellant's integrity, honesty, reliability, dependability and trustworthiness, which are quintessential qualities expected in all Scientists/Engineers of ISRO, which is a strategically important organisation. Going by the counter affidavit filed before this Court on behalf of respondent Nos.1 to 4, *inter alia*, the following relevant facts were taken into account to invoke the power under Rule 16 (iii) of the CCA Rules instead of proceeding to file a supplementary charge sheet under Rule 11 of the CCA Rules, such as:-

(i) the way the Korean authorities had harboured him for almost two years,

(ii) his continued contacts and interactions with them in spite of orders to the contrary,

(iii) the manner in which he managed to leave the country in spite of the Look Out Notices issued by the Immigration Authorities to the Police and International Airport authorities,

(iv) his further exposure to the ISRO'S critical rocket technologies would have serious complications, and

19. It is the further contention that ISRO, being a strategically important organization having sensitivity, especially from the angle of the security of the State, its employees are not allowed to go abroad and to take up assignments/research there, without permission. Being a responsible scientist/engineer of VSSC/ISRO, the appellant was duty bound to abide by the conduct Rules and when the violation is serious and likely to affect the security of the State, it is not only befitting but also inevitably inviting action in terms of the provision under Rule 16 (iii) of the CCA Rules. The appellant had unauthorized association with foreign institution on a subject, which is a strategic research and development subject in the respondent organization and based on which the nation's rocketry and ambitious launch vehicle programs were advancing and a doubtful circumstance of disclosure of vital data to unauthorized foreign agencies is created it is a matter of concern for the security of the State. Taking up all such contentions, it was submitted by the learned counsel appearing for respondent Nos.1 to 4 that the invocation of the power under Rule 16 (iii) of the CCA Rules in dismissing the appellant from service was subjected to judicial review, initially by the Tribunal and then by the High Court and, therefore, no case, whatsoever was made out by the appellant so as to compel invocation of the power under Article 136 of the Constitution of India to conduct a further judicial review. It is therefore, submitted that the appeal is liable to be dismissed.

20. Before delving into the matter further, it is only apposite to refer to the appellant's own estimation about himself. According to the appellant, he is a high-profile scientist with specialisation in rocket propulsion with proven credentials at par with NASA scientist. He would further state that he is second to none in space program and is having all potential to become the Chairman of ISRO and is the best suitable candidate for the post of Chairman ISRO with immediate effect.

21. Thus, it is obvious that the appellant himself knew that he is a high-profile scientist in ISRO, which is a highly sensitive and strategic research and development organisation under the Department of Space, Government of India. We are of the considered view that the Court cannot be an island and feign oblivion of the pivotal role of a scientist/engineer attached to ISRO and also the role of ISRO as the space agency of India. Obviously, it is involved in science, engineering and technology to harvest the benefits of outer space for India. Now, we will cull out the relevant indisputable and undisputed facts, obtained in this case. The appellant is a scientist/engineer in the VSSC, Thiruvananthapuram of ISRO. After applying for sabbatical leave for one year and when the competent authority decided not to recommend the leave in exigency of service, he applied for nine days' earned leave from 21.08.2003 to 29.08.2003 on personal grounds and then went to South Korea. On reaching South Korea, through email dated 01.09.2003, the appellant intimated his Divisional Head in VSSC regarding his arrival in South Korea to carry out his post-doctoral research and to assist Prof. H.D. Kim, Head of School of Mechanical Engineering, Andong National University, South Korea. Though his application dated 18.07.2003 was not sanctioned, through another e-mail, he applied for 89 days' leave from 01.09.2003 to 28.11.2003 and continued to stay in South Korea despite being informed that his leave was not sanctioned and was required to report for duty not later than 11.09.2003. It is also to be noted that before going to South Korea to join the aforesaid University, he had published a technical paper as first author with a foreigner as one of the co-authors in the 39th American Institute of Aeronautics and Astronautics (AIAA) Joint Propulsion Conference, USA, without obtaining approval of the competent authority. Though he rejoined duty on 27.03.2004 with full knowledge that his application for sabbatical leave was not sanctioned he left for South Korea in March, 2004 without giving information to and obtaining permission from the organization. He re-joined duty on 18.05.2004 and then, went back to South Korea on 28.05.2004 without permission from the authorities. The aforesaid factual aspects would reveal that without permission from the competent authority the appellant went to South Korea, joined Andong National University, South Korea and assisted Prof. H.D. Kim, Head of School of Mechanical Engineering and kept on his association with the said foreign institution involved in the research on rocketry, which is a strategic research and development subject in ISRO. In the contextual situation, it is relevant to refer to Annexures P1 and P4. Annexure-P1 letter dated 28.08.2002 from Prof. H.D. Kim to himself, produced by the appellant, would reveal the nature of the research project in the laboratory of Prof. H.D. Kim and Annexure P4 would reveal the repeated advice to the appellant not to have any contact in future with any external agency, such as Andong National University, South Korea, without permission from appropriate authorities in ISRO. The further indisputable facts would reveal his persistent dealings with that University ignoring such instructions. In such circumstances, his continued association with a foreign agency/university, ignoring the fact that he is a responsible scientist in the ISRO, which is a highly sensitive and strategic research and development organization under the Department of Space, Government of India, if viewed suspiciously and thought that his further exposure to ISRO's critical rocket technologies would create serious complications, it cannot be said to be bereft of substance and not a matter of concern in regard to the security of the State. As noticed hereinbefore, taking into account the expertise of the appellant in the particular branch and that he has been working under ISRO since 1992, there cannot be any doubt with respect to the experience which he gathered in the subject from ISRO and in such circumstances leaving to a foreign country without prior permission and continuing there for a considerable long period despite advice and instructions to come back and continuing to associate with such a foreign organisation/university researching on rocketry, the respondent organisation cannot be

said to have committed a flaw or fault in entertaining suspicion on his honesty, integrity, reliability, dependability and trustworthiness and above all to treat such acts as a matter of concern in relation to the security of the State.

22. Rule 16 (iii) of the CCA Rules requires no analytical approach to understand that it contains two limbs. Firstly, to attract it requires the satisfaction of the President that "in the interest of the security of the State" it is not expedient to hold any inquiry in the manner provided in the CCA Rules. The second limb enables the disciplinary authority to consider, having regard to the circumstances of the case to consider and make such orders thereon, as it deems fit. In the case on hand in invocation of the provision of Rule 16 (iii) of the CCA Rules, order dated 11.08.2007 was passed dismissing the appellant from service with effect from 01.09.2003 without conducting inquiry upon the satisfaction of the President that it is not expedient to hold any inquiry in the manner provided in the CCA Rules "in the interest of the security of the State". Therefore, the first question is whether the dispensation with the inquiry based on satisfaction that "in the interest of the security of the State" it is not expedient to hold any inquiry, invites interference. Subject to its answer the question whether the order of dismissal invites interference, has to be looked into.

23. Paragraph 126 of the decision of the Constitution Bench in ***Tulsiram Patel's*** case (supra) would reveal that the Constitution Bench, while considering a provision *pari materia* to Rule 16 (iii) of the CCA Rules viz., Rule 14 of the Railway Servants Rules, found error inasmuch as the issue was considered by confining to Rule 14 itself, without taking into account the second proviso of Article 311 (2) of the Constitution of India. After observing that exercise of power is always referrable to the source of such power and must be considered in conjunction with it and held that the source of power to dispense with an inquiry, in such circumstances, is derived from the second proviso to Article 311 (2). Bearing in mind the said observation and holding we have carefully considered the order passed by the Administrative Tribunal which was subjected to further judicial review by the High Court. We have no hesitation to hold that a bare perusal of the order of the Tribunal would reveal that the tribunal had considered the question not confining its consideration only to Rule 16 (iii) of the CCA Rules but also taking into consideration the source of power derived from the second proviso to Article 311 (ii) of the Constitution of India. Obviously, the question whether it is expedient to hold an inquiry as provided under the CCA Rules has to be considered and the satisfaction as to its expediency or inexpediency has to be reached based on "interest of the security of the State". The meaning and scope of the expression 'security of the State' has been considered by the Constitution Bench in ***Tulsiram Patel's*** case (supra). It was observed that the expressions "Law and Order", "Public Order" and "security of the State" have been used in different Acts. Situations which affect "Public Order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "Public Order". It was therefore, observed and held that of all these situations those which affect "security of the State" are the gravest. The expression "security of the State" does not mean security of the entire country or a whole State and it includes security of the part of the State. Furthermore, it was held that there are various ways in which "security of the State" could 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 our country, or by secret links with terrorists. It was also held that it would be difficult to enumerate the various ways in which the "security of the State" could be affected and the way in which "security of the State" would be affected might be either open or clandestine. In paragraph 142 of ***Tulsiram Patel's*** case (supra) it was further held:

*"**142.** The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State." The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311 (2). The satisfaction of the President or the Governor must, therefore, be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State.*

(emphasis added)

24. We have already taken note of the indisputable and undisputed facts obtained in this case which are relevant for the purpose of consideration of the question with respect to the expediency or inexpediency of holding an inquiry "in the interest of the security of the State." In view of the situations deducible from the materials on record, we find absolutely no reason to hold that the satisfaction that it is not expedient to hold an inquiry "in the interest of security of the State" was arrived at without any material. When once it is obvious that circumstances based on materials capable of arriving at a satisfaction that it is not expedient to hold an inquiry "in the interest of the security of the State" are available the decision in holding that it is inexpedient "in the interest of the security of the State" to hold an inquiry warrants no further scrutiny, rather, it is not fit to be subjected to further judicial review. In other words, the Court cannot, in such circumstances, judge on the expediency or inexpediency to dispense with the inquiry as it was arrived at based on the subjective satisfaction of the President based on materials. In the above circumstances, we do not find any reason to interfere with the disinclination on the part of the Tribunal and then the High Court, on the aforesaid issue.

25. The aforesaid conclusion would take us to the next question as to whether the non-interference with the order of dismissal warrants any interference. In this context, it is required to be noted that the retrospectivity given to the order of dismissal from 01.09.2003 was interfered with, by the Tribunal. It has become final and it was given effect to by the respondent organization by modifying the date of its effect from the date of the order of dismissal. While considering the above question, it is relevant to refer again to the decision of the Constitution Bench in ***Tulsiram Patel's*** case (supra). Though it was held that such an order would be open to challenge on the ground of *mala fides* or being based wholly on extraneous grounds, it is relevant to note that in the case on hand, the order of dismissal is not put to challenge on any of such grounds. Going by the decision in ***Tulsiram Patel's*** case (supra), when once such a power is invoked to dispense with inquiry the consideration as to what penalty should be imposed upon a delinquent employee must be *ex-parte.* In other words, on that question no opportunity of being heard is to be given. Evenafter holding so, in paragraph 114 of ***Tulsiram Patel's*** case (supra), it was held that in order to arrive at a decision as to which penalty should be imposed, the disciplinary authority has to take into consideration the various factors set out in ***T.R. Chellappan's*** case (supra). Then, the question is what are such factors to be taken into account in that regard in terms of ***T.R. Chellappan's*** case (supra). A scanning of the decision in ***T.R. Chellappan's*** case (supra), would go to show that it was held therein that the disciplinary authority while deciding the question as to what penalty should be imposed on the delinquent employee in the facts and circumstances of a particular case would have to take into account the entire conduct of the delinquent employee, a gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present

in the case and so on and so forth. Such aspects were looked into by the Tribunal. We have also referred hereinbefore the acts and omissions on the part of the appellant having regard to his role as a scientist/engineer in ISRO and the role of ISRO as the space agency of India. It is not the mere unauthorized absence of the appellant that actually weighed with the authority and evidently, the organization is perfectly justified in casting suspicion on the honesty, integrity, reliability, dependability and trustworthiness in view of the factual situation obtained in this case, as explained in the counter affidavit, besides entertaining the stand that his unauthorized association with foreign institution, especially in the area of propulsion, which is a strategic research and development subject in the organization and based on which the nation's rocketry and ambitious launch vehicle programs are/were advancing, was a matter of concern for the security of the State. When such acts/conduct occur/occurs from a scientist in a sensitive and strategic organization, the decision to impose dismissal from service cannot be said to be illegal or absolutely unwarranted. In other words, we do not find any reason to hold that the judgment of the High Court, dismissing the challenge against the order of the Tribunal warrants any kind of interference in exercise of the power under Article 136 of the Constitution of India. The appeal, therefore, must fail and accordingly it is dismissed, however, without any cost.