

ASVS

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the ~~Monday~~ ^{6th} day of November Two Thousand And Seventeen

PRESENT:

THE HON'BLE MR. K. ELANGO, MEMBER (J)

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

1. A. Anusa Basha,
S/o. Abdul Sathar,
No. 13, 3rd Cross Street,
Venkata Nagar,
Pondicherry- 605 011.

.....Applicant in O.A. No.11/2016

(Advocate: M/s. J. Rajmohan)

Vs.

1. Union of India
Rep. by the Government of India,
Through the Inspector General of Police,
Puducherry;
2. The Superintendent of Police,
Headquarters, Puducherry.

....Respondents in O.A. No.11/2016

2. T. Sundar,
S/o. Thirumal,
Aged about 56 years,
Residing at
No.234, Mission Street,
Puducherry- 605 001
(Employed as Inspector of Police, (SIGMA Security)
under Suspension, Police Department, Puducherry)

.....Applicant in O.A. No.266/2015

(Advocate: Mr. Sivaprakasam)

Vs

1. Union of India represented by
The Chief Secretary to Government,
Chief Secretariat,
Puducherry;

2. The Inspector General of Police,
Police Department,
Puducherry.

.....Respondents in O.A. No.266/2015

(Advocate: Mr. R. Syed Mustafa)

3. B. Kumaravel,
S/o. N. Balasubramani,
Hindu, aged 54 years, last employed as
Constable No.1421 at Traffic Police Station,
Villainur, Puducherry,
Residing at No. 13, J.J. Street, Thamarai Nagar,
Vanarapet,
Puducherry.

Applicants in O.A. 1182/2015

4. G. Sankar,
S/o. N. Govindaraj,
Hindu, aged 43 years, lastly employed as
Police Constable No.2145 at Grand Bazaar Police Station,
Puducherry,
Residing at No.34, 2nd Cross, Boopalan Nagar,
Puducherry.

Applicant in O.A. 1183/2015

5. M. Selvakumar,
S/o. Malayalathar,
Hindu, aged 41 years, lastly employed as
Police Constable No.2209 at O/o. the Supdt. Of Police (North),
Puducherry,
Residing at No. 76, Edaiyanchavady Road, Karuvadikuppam,
Lawspet, Puducherry- 605 008.

Applicant in O.A. 1184/2015

6. V. Yuvaraj,
S/o. Velayutham,
Hindu, aged . years, lastly employed as
Inspector of Police, Food Cell Police Station,
Karaikal,
Residing at No.9, Vannara Street,
Nainarmandapam, Mudaliarpot,
Puducherry- 605 004

Applicant in O.A. 1185/2015

7. G. Pandarinathan,
S/o. Gopalakrishnan,
Hindu, aged 54 years, lastly employed as
Head Constable, CBCID, Pondicherry
Residing at No.96, Ayyanar Koil Street,
Thilaspeth,
Puducherry- 605 009

Applicant in O.A. 1214/2015

8. R. Balakrishnan,
S/o. Ranganathan,
Hindu, aged 52 years, lastly employed as
Sub-Inspector of Police at PAP 'A' Coy, Gorimedu,
Puducherry,
Residing at No.7, Avvai Street, Priyadharshini Nagar,
Puducherry- 605 006.

Applicant in O.A. 1215/2015

(Advocate: Mr. M. Gnanasekar)

Vs.

1. Union of India Rep. by the Rep. by the
Government of Puducherry,
through the Inspector General of Police,
Puducherry;
2. The Superintendent of Police,
Headquarters, Puducherry.

.....Respondents in O.A. Nos. 1182, 1183, 1184,
1185, 1214, 1215/2015.

(Advocate: R. Syed Mustafa)

Reserved on 13.10.2017

ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

As the facts are similar and the questions of law in these O.As are the same, these O.A.s are disposed of by this common order.

2. According to the applicants, they were permanent employees in the rank of Police Constables to Inspector of Police under the respondents listed in the respective OAs, who had been dismissed from service on different dates. Their grievance is that the order of dismissal had been passed without holding an inquiry and establishing the charges against them. The order had been passed under Rule 19(ii) of the CCS (CCA) Rules 1965 read with Clause (b) of Second Proviso under Article 311(2) of the Constitution of India. The order was passed on the ground that the applicants' were absconding for the purpose of evading arrest in a criminal cases filed against them and the disciplinary authority simply concluded that it was not reasonably practicable to hold an inquiry as contemplated under Article 311(2) of the Constitution of India by following the procedures laid down under Rule 14(2) of CCS (CCA) Rules 1965. The impugned orders were passed on 18.2.2015 by the Inspector General of Police, Puducherry. As the applicants had been dismissed from service without giving them an opportunity, they are before this Tribunal seeking quashment of the impugned orders of dismissal.

3. The undisputed facts of the case are that on 03.04.2014, two minor girls were allegedly sexually abused by certain police officials and an FIR came to be registered by the parents of the girls in the jurisdictional police station on 11.4.2014 against unnamed accused. It appears that



the issue became a very emotional and sensational matter in the Union Territory of Puducherry and was, therefore, taken up at the highest level. An Investigation team was constituted and pursuant thereto, the applicants herein were suspected of being the perpetrators of the crime. The applicants were placed under suspension pending enquiry by an order dated 03.09.2014. The Criminal cases registered against the applicants in Crime No. 89 of 2014 are pending before the Criminal Court under various provisions of The Protection of Children from Sexual Offences Act, 2014 and ITP(Prevention) Act, 1956 apart from IPC Offences.

4. It is submitted that a charge memo dated 23.1.2015 was issued against the applicants by the disciplinary authority namely, Superintendent of Police (PAP), Puducherry. However, as the applicants were absconding hearing the arrest, it could not be served on them. As the offences with which the applicants were charged was one of sexual abuse of minor children and they were identified in a test identification parade conducted pursuant to the orders of the Hon'ble Madras High Court, the competent authority arrived at the conclusion that it was not reasonably practicable to hold an inquiry as contemplated under law and passed the impugned orders dismissing them from service.

5. Applicants have assailed the action of the respondents in passing the impugned orders mainly on legal grounds. First of all, it is contended that the applicants were governed by the provisions of the Puducherry Police Sub-ordinate Services (Disciplinary and Appeal) Rules 1968, hereinafter referred to as 'PPSS (D&A) Rules which lay down the procedure for taking disciplinary action against police officials. Rule 3 of




the CCS (CCA) Rules excludes the application of the rules to any person who is governed by other special rules. Accordingly, since the applicants were governed by PPSS (D&A) Rules, the CCS (CCA) Rules were not applicable to them. The initiation of action under Rule 19(ii) of the CCS(CCA) Rules 1965 against the applicants was, therefore, without jurisdiction and the order of dismissal dated 18.2.2015 was void in law, it is contended.

6. It is further submitted that Rule 3 of the PPSS (D&A) Rules deals with persons involved in criminal cases and provides for an elaborate procedure of inquiry except where action is proposed to be taken on facts which had led to conviction in a criminal court. As the applicants have not yet been convicted, it was not possible for the respondents to dispense with the inquiry. It is contended that the applicability of the CCS (CCA) Rules in a case involving the police personnel of Puducherry Government had come up for consideration in the Hon'ble Madras High Court in W.P. 13449/2017 in '**V. Shanmugam Vs. The Senior Superintendent of Police (C&I) Puducherry**'. In the order dated 19.06.2017 it was held that invoking Rule 19(ii) of the CCS (CCA) Rules was without jurisdiction. The said decision would squarely be applicable to the case of the applicants, it is submitted. The ratio of the Hon'ble Apex Court judgment in '**Risal Singh v. State of Haryanan (Civil Appeal No. 2839 of 2011 dated 13.05.2014**' as also '**Reena Rani v. State of Haryana (2012) 10 SCC 215**' would also mandate due procedure to be followed in such cases, it is contended.



7. The respondents, however, seek to justify their action by drawing attention to the fact that the applicants were accused of sexually abusing minor girls. In Criminal O.P. No. 29396/2014, the Hon'ble Madras High Court passed an order dated 5.12.2014 by which the Chief Judicial Magistrate of Puducherry was directed to conduct a test identification parade and the same was held on 18.12.2014 through a video conference. In the parade, the two victim minor children identified all the applicants herein and the Identification report was received on 23.12.2014. The applicants absconded immediately thereafter. A charge memo dated 23.1.2015 was issued against the applicants by the disciplinary authority and the same was sent with instructions to be returned with acknowledgement copies to the Superintendent of Police, HQ. It was, however, informed that after having made efforts to serve the delinquent officers, the same were returned unserved since their whereabouts were not known. Despite efforts made by the Investigating authorities to arrest the applicants, they could not be apprehended and they were still absconding as on 09.2.2015. Other efforts to serve the charge memo on the officers also failed, though affixture as contemplated by rules had been complied with. The Inspector General of Police, as the Disciplinary Authority came to the conclusion that it was not reasonably practicable to hold the inquiry as contemplated by law and, accordingly, by the impugned proceedings dated 18.2.2015, exercised his powers to dispense with the domestic inquiry under the second proviso to Article 311(2) of the Constitution of India and dismissed the applicants from service.



8. The circumstances which warranted the aforesaid decision by the authority, according to the respondents, were as follows:-

"(i) The offence with which the delinquent officers were charged with is one of the sexual abuse of minor children;

(ii) That they were identified in a Test Identification Parade conducted under orders of the Hon'ble Madras High Court;

(iii) The fact that they were evading arrest by absconding and therefore even the Charge memo could not be served on them;

(iv) That the reputation of the entire Police Department in Puducherry was tarnished."

9. Heard the Learned counsel on both sides. Learned counsel for the applicants would at the outset raise the issue of jurisdiction to invoke the CCS (CCA) Rules against the applicants, contending that as the applicants were admittedly governed by the PPSS (D&A) Rules, they would stand excluded from the scope of CCS(CCA) Rules. He would refer to Rule 3 of the CCS(CCA) Rules as extracted below to argue that the applicants belonged to a category of persons for whom special provisions had been made.

"...3. Application including every civilian Government Servant in the Defence Services, but shall not apply to -

- (a) Any railway servant, as defined in Rule 102 of Volume I of the Indian Railways Establishment Code,
- (b) Any member of the All India Services,
- (c) Any person in casual employment,
- (d) Any person subject to discharge from service on less than one month's notice,



(e) Any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.

(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any Group of Government Servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railways Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within Exception (a) or (e) in sub-rule (1), to whom, but for such transfer, these rules would apply.

(4) If any doubt arises,-

(a) whether these rules or any of them apply to any person, or

(b) whether any person to whom these rules apply belongs a particular service, the matter shall be referred to the President who shall decide the same."

10. The learned counsel for the applicant would accordingly submit that having framed the PPSS (D&A) Rules and made them applicable to the police service of the Union Territory, the respondents could not invoke rule 19(ii) of the CCS(CCA) Rules as the same stood excluded in terms of Rule 3(1)(e) above. Further, PPSS (D&A) Rules do not have provision analogous to Rule 19(ii) of the CCS (CCA) Rules which enables the

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authority concerned to impose the punishment of dismissal without inquiry. Reference was made to para-15 of the order of the Hon'ble High Court in W.P. No.13449 of 2017 in the case of **V. Shanmugam Vs. the Senior Superintendent of Police (C&I), Puducherry**, reproduced below:-

"15. In the present case, for regulating the procedures to be followed in matters relating to Discipline and Appeal proceedings regarding Police personnel in Puducherry, Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 was notified by the Lieutenant Governor of Pondicherry on 09th January 1968. As per Rule 1(3), it applies to all the persons employed in Pondicherry Police Subordinate Services or the Pondicherry Armed Police Subordinate Services. For better appreciation, Rule 1(3) is reproduced hereunder:

"1(3). In these rules unless the context otherwise requires "Service" shall mean the Pondicherry Police Subordinate Service or the Pondicherry Armed Police Subordinate Service as classified below:

- (i) (a). Inspectors of Police, Reserve Inspector of Police, Adjutant and M.D.L.Cs.
- (b). Sub-Inspectors of Police, Reserve Sub-Inspectors of Police and M.D.L.s.
- (c). Assistant Sub-Inspectors of Police and Brigadier Chief.
- (d). Head constables of Police and Brigadiers.
- (e). Constables of Police and AIGs.
- (ii) (a). Subedars of PAP sergeant chief and segent 4th echelon.
- (b). Jamedars of PAP and sergeant 3rd echeon of cipahi company.



(c). Havildar Major of PAP and sergeant 1st and 2nd echelon.

(d). Havildars of PAP caporals 4th echelon and caporal chef 1st and 2nd echelon.

(e). Nalks of PAP and caporals 1st, 2nd and 3rd echelon.

(f). L/Nalks of PAP and cipahis 1st and 2nd ehelon of Cipahi company.

(g). Constables and Buglers of PAP"

From the conjoint reading of Rule 3(1)(e) of the CCS (CCA) Rules and Rule 1(3) of the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968, it is clear that the post of Police constable would fall under the Subordinate service and only Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 is applicable to the petitioner. Upon perusal of the provisions of Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968, it is also clear that there is no incorporation or reference to make the provisions of the CCS (CCA) Rules applicable to the persons covered under the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968. Therefore, the invocation of Rule 19 of CCS(CCA) Rules by the respondent is without authority."

11. Learned counsel for the applicant would also seek to rely on the following observations made in the judgment of the Hon'ble Apex Court in Union of India and Anr. Vs. Tulsiram Patel (1985) 3 SCC 398 at page 504 para 130 to the following effect:-

"... 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 service is weak and must fail."

He would also point out that this was relied upon by the Hon'ble Apex Court in *Risal Singh V. State of Haryana* (Civil Appeal No. 2893 of 2011) dated 13.5.2014 to set aside the judgments of the Single and the Division Bench of the Hon'ble High Court with a direction to the respondents to reinstate the official concerned with all consequential benefits. He would also draw support from the following observations of the Hon'ble Apex Court in *Reena Rani vs. State of Haryana* (2012) 10 SCC 215 as extracted below to buttress his argument:-

"10. 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 issue 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...."

12. The thrust of the arguments of the learned counsel for the applicants was thus two fold:-

- (a) The CCS(CCA) Rules which permitted imposing a major penalty on an official where an inquiry was not reasonably practicable was not applicable to the applicants;
- (b) Even if they were applicable, the respondents had failed to establish that there was an atmosphere of terror or possibility



of the applicants influencing the witnesses and, therefore, the ratio of the judgments of the Hon'ble Apex Court in the aforesaid cases would dictate that the applicants should be reinstated.

The mere fact that the applicants were absconding at the relevant time was not sufficient to dispense with the inquiry as it was only a matter of time before their bail applications would be decided and they would be in a position to face the inquiry. It was contended that the respondents could have sent the charge memo through registered post to the applicants' addresses which was not done. The procedure was accordingly vitiated by a failure to observe the principles of natural justice besides the procedure contemplated by law.

13. Learned counsel for the respondents, on the other hand, would emphasise the gravity of charges against the applicant in the criminal cases and argue that the fact that the applicants were absconding to evade arrest was sufficient to arrive at the conclusion that it was not reasonably practicable to conduct an inquiry. He would point out that after the impugned orders were passed, the applicants herein either surrendered in court or were apprehended and arrested, on various dates between 28.2.2015 and May 2015. Bail applications filed by them were successively dismissed by the Hon'ble Madras High Court. The various orders passed in the unsuccessful bail applications would also establish the gravity of the matter. The applicants were finally enlarged on bail only some months later. During that period, the individual delinquents were absconding and were not available for conducting an inquiry and,



therefore, it was not reasonably practicable to follow the procedure contemplated under the relevant rules.

14. Defending the action of the respondents, learned counsel would further argue that the majority judgment of the Hon'ble Apex Court in the case of '**Union of India Vs. Tulsiram Patel reported in (1985) 3 SCC 398**' held that natural justice and due process had been expressly excluded by the second proviso to Article 311(2) of the Constitution and there was no scope for reintroducing it by a side door. The Hon'ble Apex court had held in the case of '**Southern Railway Officers' Association vs. UOI reported in (2009) 9 SCC 24**', that if reasons had been recorded by the authority which were cogent and sufficient to arrive at the satisfaction for dispensing with the enquiry, the same could not be interfered with.

15. In the instant case, the offence involved was one of sexual harassment of minor children by police officials entrusted with the responsibility to maintain law and order and such officers having been identified and found to be evading arrest by absconding, the action of the respondents could not be termed as unreasonable. "**In Avinash Nagra Vs. Navodaya reported in (1997) 2 SCC 534**" as well as in a Division bench judgment of the Madras High Court **Chairman, Navodaya v. Dr. Murugesan reported in (2008) 5 MLJ 261**, the heinousness of sexual harassment of minor children had been highlighted particularly with reference to teachers and students. It had to be given even greater emphasis when the alleged perpetrators were the very authority in charge of maintenance of law and order, it was argued.



16. Learned counsel for the respondents would also rely upon the orders of the Hon'ble Supreme Court in the case of '**Ajit Kumar Vs. State of Jharkhand reported in (2011)3 MLJ 209**' and '**Ved Mittler Gil Vs. UTA, Chandigarh reported in (2015) 8 SCC 86**'. Even the Single Bench order of the Hon'ble Madras High Court in W.P. 13449 of 2017 dated 19.6.2017, relied upon by the applicants made an exception in the case of persons who were absconding and, therefore, the applicants' reliance on the said order was misplaced, it was contended.
17. We have carefully considered the submissions made by the rival sides, keeping in view the background and facts of the case. It is not in dispute that the applicants were accused of sexually abusing minor children and criminal cases had been registered against them in Crime No. 89/2014 pending before the Criminal Court under various provisions of The Protection of Children from Sexual Offences Act, 2014 and ITP (Prevention) Act, 1956 apart from IPC Offences. It is also not in dispute that the applicants were absconding following their identification by the victim minor children in a test identification parade ordered by the Hon'ble High Court, for an extended duration. The impugned orders dated 18.2.2015 are fairly detailed as regards the nature of the charges contained in the charge memo as also the efforts made to serve the charge memo on the applicants. It has been stated that the charge memos were sent to the applicants through Superintendent of Police (PAP), Puducherry with instruction to return with acknowledgement copies to Superintendent of Police (S.P.), Puducherry immediately after service. In turn, the S.P. (PAP) by letter dated 7.2.2015 informed that after

having made efforts to serve the charge memo against the delinquents, they were being returned unserved since their whereabouts were not known. Further Superintendent of Police, (CID), Puducherry by his note dated 09.2.2015 stated that on receipt of the test identification parade report against the charged officials from the Hon'ble Chief Judicial Magistrate of Puducherry on 23.12.2014, efforts were made to arrest the applicants but they were still absconding so as to evade the arrest. It was in these circumstances that the Inspector General of Police , Puducherry had exercised the powers conferred by Rule 19(ii) of the CCS(CCA) Rules read with clause(b) of second proviso of Article 311 (2) of the Constitution of India to dispense with the inquiry and dismissed the applicants from service with immediate effect.

18. In order to consider the validity or otherwise of the action of the respondents in passing the impugned orders, the following questions would need to be answered:-

i) Whether in the absence of an express provision in the PPSS (D&A) Rules analogous to the second proviso to Article 311(2), the respondents would be justified in relying solely on Rule 19(ii) of the CCS(CCA) Rules especially in the light of the observations of the Hon'ble Madras High Court in the case cited supra.

ii) Further, whether in the absence of an atmosphere of terror or a situation where the applicants were in a position to influence the witnesses, it was justified on the part of the



respondents to dispense with the inquiry and summarily dismiss from service without giving them an opportunity.

19. In our considered view, the law on the subject had been clearly laid down in *Union of India & Anr. Vs. Tulsiram Patel* (1985) 3 CC 398 as summarized by the Hon'ble Apex Court in '**Satyavir Singh & Ors. v. Union of India & Ors in order dated 12.09.1985**' relevant portion of which are reproduced below:-

"The conclusions reached by the majority in Tulsiram Patel's Case were:

"(9) Under Clause (2) of Article 311 no civil servant can be dismissed or removed from service or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges. By reason of the amendment made by the Constitution (Forty-second Amendment) Act, 1976, in clause (2) of Article 311 it is now not necessary to give to a civil servant an opportunity of making a representation with respect to the penalty proposed to be imposed upon him.

IV. The Second Proviso to Article 311(2)

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

(21) The second proviso to Article 311 (2) becomes applicable in the three cases mentioned in clauses (a) to (c) of that proviso, namely, (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on



a criminal charge; (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; and (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry. The governing words of the second proviso to clause (2) of Article 311, namely, "this clause shall not apply", **are mandatory and not directory and are in the nature of a Constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Article 311 (2) or from giving any kind of opportunity to the concerned Civil servant in a case where one of the three clauses of the second proviso becomes applicable.** There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity to show cause by a process of inference or implication. The maxim *expressum facit cessare tacitum* (when there is express mention of certain things, then anything not mentioned is excluded") applies to the case. This well-known maxim is a principle of logic and common sense and not merely a technical rule of construction as pointed out in *B. Shankra Rao Badani and other v. State of Mysore* and another [1969] 3 S.C.R. 1, 12.

VI. Service Rules and Acts

(35) Article 309 is expressly made subject to the provisions of the Constitution. Rules made under the proviso to Article 309 Acts referable to that Article, and rules made under such Act are, therefore, subject both to Article 310 (1) as also to Article 311. If any such rule or Act impinges upon or restricts the operation of the pleasure doctrine embodied in Article 310 (1) except as expressly provided in the Constitution or restricts or takes away the safeguards provided to civil servants by clauses (1) and (2) of

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Article 311, it would be void and unconstitutional as contravening the provisions of Article 310 (1) or clause (1) or clause (2) of Article 311, as the case may be. Any such Act or rule which provides for dismissal, removal or reduction in rank of a civil servant without holding an inquiry as contemplated by clause (2) of Article 311 except in the three cases specified in the second proviso to that clause would, therefore, be unconstitutional and void as contravening Article 311 (2).

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

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

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

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



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

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

(Emphasis supplied throughout)

It would be clear from the aforesaid conclusions that the mere fact that PPSS (D&A) Rules do not contain a provision analogous to Rule 19(ii) of CCS (CCA) Rules or the second proviso to Article 311(2) would not make it mandatory for the authorities to hold the inquiry regardless of the situation prevalent at the relevant time. As the second proviso to Article 311(2) would have applicability on all civil servants, it is immaterial whether PPSS (D&A) Rules contain an analogous provision or not. The impugned orders do contain reference to the clause (b) of second proviso of 311(2) of the Constitution of India which is adequate to justify the action of the respondents in a situation where the applicants were absconding and therefore could not be served with the charge memos. As the conclusions of the Hon'ble Apex Court in '**Union of India & Anr. Vs. Tulsiram Patel**' as extracted above cover both the issues, namely, the applicability of PPSS (D&A) Rules to the exclusion of CCS(CCA) Rules as contended by the applicant as also where the fact that the charged official

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had been absconding was sufficient reason to dispense with the inquiry, we need not say more.

20. Having relied on the Tulsiram Patel judgment of the Hon'ble Apex Court as extracted in Satyavir Singh & Ors v. Union of India & Ors cited supra to answer the questions of law raised by the applicant, we would also like to go further and take it to its logical conclusion in the light of a few more observations/directions recorded therein and reproduced below:-

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

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

"In Tulsiram Patel's Case [1985] 3 S.C.C. 398, where appeals filed by certain dismissed members of the Central Industrial Security Force had not been disposed of by the appellate authority, the majority judgment directed the appellate authority to dispose of such appeals as expeditiously as possible. In those matters where civil servants had been dismissed or removed



from service by applying to their cases clause (b) of the second proviso to Article 311 (2) or an analogous service rule, the Court gave such civil servants time to file appeals and directed the concerned appellate authority to condone, in the exercise of its power under the relevant service rule, the delay in filing such appeals."

21. It would appear from the above that while the respondents in the instant cases could not be faulted for resorting to clause (b) of second proviso to Article 311(2) and dismissing the applicants from service in the given facts and circumstances of the case, the applicants are very much entitled to file an appeal before the competent authority seeking a regular enquiry. As a matter of fact, detailed guidelines had been issued to this effect in G.I. Dept. of Per & Trg.O.M. No. 11012/11/85-Estt.(A) dated 11.11.1985 and 4.4.1986.

22. As the disciplinary authority had resorted to an extraordinary provision of dismissal from service without conducting an inquiry for the reason that the applicants were absconding and such a situation no longer exists, in the event of an appeal being filed by the applicants before the competent authority, the same shall be considered and disposed of as expeditiously as possible. As the applicants had approached this Tribunal for a legal remedy, we direct that the appellate authority shall consider the appeal on merits, condoning the time limit if any prescribed for filing an appeal. In the event of regular inquiry being ordered by the appellate authority, it is for the competent authority to also consider whether the applicants should be reinstated into service pending such inquiry and kept under suspension, if necessary pending conclusion of the same and if not,



whether a departmental enquiry is possible against a dismissed government servant who would be an outsider. As the question has not been raised before us, we refrain from answering the same at this stage.

23. The OAs are disposed of in the above terms. There shall be no order as to costs.