CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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07/07/2015
SECTION OFFICER (JUDL.)

6.7.2015

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

1. ORIGINAL APPLICATION No : ---166---/ 2009
2. Transfer Application No : --------/2009 in O.A. No.----------
3. Misc. Petition No : --------/2009 in O.A. No.----------
4. Contempt Petition No : ---------/2009 in O.A. No.----------
5. Review Application No : ---------/2009 in O.A. No.----------
6. Execution Petition No : ---------/2009 in O.A. No.----------

Applicant (S) : Santi Jaya Talukdar
Respondent (S) : Union of India & ors.
Advocate for the {Applicant (S)} : Mr. A.R. Sikdar, Mr. J.A. Azad
Advocate for the {Respondent (S)} : CGSC

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed/C. F. for Rs. 50/- deposited vide IPO/D~~D~~ No. 396 416276 Dated 27.6.09 Dy. Registrar 26.8.09 26/8/09	01.09.2009	On the prayer of Mr.J.A.Azad, learned counsel for the Applicant, call this matter on 03.09.2009. (M.K.Chaturvedi) Member (A) (M.R.Mohanty) Vice-Chairman /bb/
26.8.09 6 (Six) Copies of Application with envelops received for issue notices to the Respondents Nos 1 to 6. Copy served. Extra charge for excess Respondent No 6 deposited vide Receipt No 2940 dtd 21.8.2009. 26/8/09 K. Das Issue notice to the Respondents. 4/9/09	03.09.2009	Heard Mr.A.R.Sikdar, learned counsel appearing for the Applicant and Mr.M.U.Ahmed, learned Addl. Standing counsel for the Govt. of India to whom a copy of this O.A. has already been supplied and perused the materials placed on record. issue notice to the Respondents requiring them to file their written statement by 20.10.2009. (M.K.Chaturvedi) Member (A) (M.R.Mohanty) Vice-Chairman /bb/

N
Copies of notices along with order dated 3/11/2009 send to D/Sec. for issuing to the respondents by regd. A/D post.
D.No. - 11842 - 11847
Dt. 15.9.09
15/9/09.

20.10.2009 Mr. M. U. Ahmed, learned Addl. Standing counsel appearing for the Respondents seeks and allowed four weeks time to file their reply.

Case is adjourned to 23.11.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

23.11.2009 Mr.M.U.Ahmed, learned Addl. C.G.S.C. for the Respondents states that reply will be filed during the course of the day with a copy to the Applicant. Rejoinder, will be filed within one week.

List on 01.12.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

01.12.2009 Mr J.A. Azad, learned counsel for applicant seeks and allowed one weeks time to file rejoinder. Since the case pertains to retrial benefits, list on 08.12.2009 for final hearing.

Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

(1) Service report awaited.
19.10.09

20.11.09
No W/S filed.
by
25.11.09
W/S filed by the respondent No. 3 through Mr. M.U.Ahmed, SSC.
25/11/09

No Rejoinder filed.
30.11.09

No rejoinder filed
7.12.09

12.05
Rejoinder has been filed by the Applicant at page No 67 to 73.
Copy served.
7/12.

P.T.O

O.A 166/09

8.12.09 Applicant, wife of Sri Chakreswar Talukdar, Ex SPM Bengtol SO seeks direction to respondents to release pension and retrial benefits. According to applicant her husband is missing since 17.7.2001. Though she has approached the concerned authorities as well as the police but no FIR was lodged on the plea that a criminal case has already registered by department to the effect that he is absconding with Government money to the tune of more than Rs.1 Lakh. Applicant claims that since 7 years have passed from the date of incident, she is entitled to pensionary benefits, in any case.

On the other hand the respondents stand is that vide order dated 10.2.06 (Annexure-10) the penalty of "dismissal" had been inflicted in exercise of power conferred vide Rule 19(ii) of CCS (CCA) Rules 1965. He was placed under "deemed suspension", as he was absconding since 17.7.2001 and due to said penalty inflicted orders applicant is not entitled for any pensionary benefits. Legal question which arise for consideration are :-

(i) when he was placed under "deemed suspension" and, order to that effect should be produced. Whether any subsistence allowance was paid ?

(ii) the order dated 10.2.06 has been passed though exercising the power under Rule 19, but proceeding under Rule 14 of CCS(CCA) Rules 1965 had been initiated. When such charge memorandum was issued and its copy thereof should be placed on record,

(iii) How an opportunity of hearing was given to Shri Chakreswar Talukdar or his family members under Rule 14

8.12.09

proceedings or under the provisions of Rule 19(ii) of CCS (CCA) Rules 1965.

(iv) Further how the authorities came to the conclusion that applicant's husband was absconding and had been declared proclaimed offender particularly when order dated 15.7.09 (Annexure-9) addressed to the applicant clearly noticed that learned Court of CJM Kokrajhar declared him as absconder only on 20.6.06 i.e. after the penalty order was passed and not prior to it.

Recd. copy of the order
Dtd. 8-12-09
9/12/09
ASP (Legal)
CO Ghy.

(v) The manner in which applicant's request for grant of provisional pension was considered and action taken prior to February 2006.

Complete records on above aspects be placed before the court. They would also be at liberty to file additional affidavit highlighting all these aspects. This shall be done within a period of 3 weeks .

List on 11.1.2010.

(Mukesh Kr. Gupta)
Member(J)

① W/S filed by R.No-3.
② Rejoinder filed.
8.1.2010

pg

11.01.2010 On the request of Mr. M.U. Ahmed, learned Addl. CGSC for Respondents, case is adjourned to 12.01.2010.

List the matter on 12.01.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/PB/

12.01.2010 On the request of Mr M.U. Ahmed, learned Addl. C.G.S.C. for respondents, list it on 19.01.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

19.01.2010 Additional affidavit in terms of order dated 08.12.2009 has not been filed by Respondents which will be very essential to determine and adjudicate upon the issue highlighted therein. Learned counsel for Respondents seeks further two weeks time to comply with the said order.

List the matter on 12.02.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/PB/

Rejoinder filed by the applicant.

11-2-2010

Notice duly served on R-No. 6

15/2/2010

12.02.2010 List the matter on 23.02.2010.

(Madan Kumar Chaturvedi)
Member (A)

/lm/

① W/S filed by R-No-3.

② Rejoinder filed by the applicant.

22-2-2010

23.02.2010 Affidavit in terms of order dated 08.12.2009 has not been filed till date. Proxy counsel for Respondents states that Mr.M.U.Ahmed, learned Addl.C.G.S.C. for the Respondents has left the Court because of receiving urgent phone calls.

List on 05.03.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

24.2.2010
Affidavit has been filed by the Respondent with undertaking to serve a copy to the Ld/Adv. for the Applicant
24/2/2010

Notice duly served on R-No. 3

18/3/10

05.03.2010 In compliance of order dated 08.12.2009 respondents have filed affidavit on 24.02.2010. Para 4 thereof indicates total non-application of mind on the part of the official. In the circumstances we adjourn the case to 16.03.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kuma Gupta)
Member (J)

nkm

The case is ready for hearing.

15.4.2010

16.03.2010 **Letter of absene is filed by Mr.M.U.Ahmed,, learned Addl.C.G.S.C. and made a prayer for adjournment. Accordingly, list on 06.04.2010.**

(Madan Kr. Chaturvedi)
Member (A)

/bb/

The case is ready for hearing.

23.4.2010

06.04.2010 Affidavit dated 24.02.2010 though make reference to various documents but none of these have been annexed thereto. Mr M.U. Ahmed, learned Addl. C.G.S.C. for the respondents, seeks time to file the same within a week with copy to the applicant.

List on 26.04.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kuma Gupta)
Member (J)

nkm

23.4.2010
Records filed by the respondents at Page - 80 - 116.

26.04.2010 Learned counsel for applicant seeks some time to file reply to the affidavit filed on 24.02.2010. List on 13.05.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kuma Gupta)
Member (J)

nkm

The case is ready for hearing.

12.5.2010

O.A.166 of 2009

13.5.2010 This is a Division Bench matter. List the matter for hearing on 20.5.2010.

(Madan Kumar Chaturvedi)
Member (A)

Lm

The case is ready for hearing.

19.5.2010

20.05.2010 Respondents have filed an affidavit in compliance of order dated 08.12.2009 wherein it has been stated that Shri Chakreswar Talukdar, applicant's husband was placed under deemed suspension w.e.f. 17.07.2001 vide order dated 09.01.2003. The question arises whether subsistence allowance had been paid to said official or his legal heir; if not, what steps had been taken by the respondents on aforesaid aspects.

Learned counsel for the respondents seeks a weeks time to peruse the rejoinder filed by the applicant. In the circumstances, list on 03.06.2010.

The case is ready for hearing.

2.6.2010

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

03.06.2010 Vide order dated 20.05.2010 respondents were required to inform as to what steps had been taken to pay subsistence allowance to the applicant claiming to be legal heir of Chakreswar Talukdar, SPM. It is not in dispute that he was placed under deemed suspension w.e.f. 17.07.2001 vide order dated 09.01.2003 and was declared absconder by the learned Court of CJM, Kokrajhar on 20.06.2006. Initially charge memo under Rule 14 had been issued on 10.02.2006. However, it had not been pursued and later resort was made to proceedings under Rule 19 of CCS (CCA) Rules, 1965, being a special provision to take action against the delinquent officer.

Respondents to explain, as required by the earlier order: on what basis they are making a claim that said Chakreswar Talukdar is still alive and still absconding and not deemed dead within the provisions of Indian Evidence Act, 1872. Respondents should also point out in specific how the applicant would not be entitled to subsistence allowance for the period of suspension. Learned counsel for the respondents seeks further time to address to these issues.

List on 15.06.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

O.A.No.166/2009

15.06.2010 Learned counsel for the respondents seeks some time to produce the relevant judgment on the issue in question.

List on 29.06.2010.

(Madan Kumar Chaturvedi) Member (A)

(Mukesh Kumar Gupta) Member (J)

nkm

29.06.2010 Heard learned counsel for the parties. Reserved for orders.

(Madan Kumar Chaturvedi) Member (A)

(Mukesh Kumar Gupta) Member (J)

/bb/

08.07.2010 Judgment pronounced in open court, kept in separate sheets. O.A. is allowed in terms of order. No costs.

(Madan Kumar Chaturvedi) Member (A)

(Mukesh Kumar Gupta) Member (J)

/bb/

22.7.2010
Judgment/Final order. Send to the D/S for issuing the Nisle. D 1712 to 1717 dated 28.7.2010

12/8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI:

O.A. No. 166 of 2009

Date of Decision: ..8th.. .07. 2010

Smt. Jaya Talukdar
..... Applicant/s

Ms. J.A.Azad
..... Advocates for the Applicant/s

- Versus -

Union of India & Ors.
..... Respondent/s

Mr.M.U.Ahmed
..... Advocate for the Respondents

CORAM :

HON'BLE MR.MUKESH KUMAR GUPTA, MEMBER (J)
HON'BLE MR.MADAN KUMAR CHATURVEDI, MEMBER (A)

1. Whether reporters of local newspapers may be allowed to see the Judgment ? Yes/No

2. Whether to be referred to the Reporter or not ? Yes/No

3. Whether their Lordships wish to see the fair copy of the Judgment ? Yes/No

Judgment delivered by MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.166 of 2009

Date of Order : This, the 8th Day of July, 2010.

THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)
THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER (A)

Smti Jaya Talukdar
Wife of Late Chakreswar Talukdar,
C/O Shri Paritosh Chakraborty,
B.T.Road (Bye Lane)
P.O. & District-Bongaigaon,
Assam, Pin-783380

By Advocate Mr.J.A.Azad

-Vs-

1. The Chief Post Master General,
Assam Circle, Guwahati, Panbazar,
Guwahati,Pin-781001

2. The Director of Postal Service (HQ)
Assam Circle, Guwahati, Panbazar,
Guwahati,Pin-781001

3. The Superintendent of Post Offices,
Goalpara Division, Dhubri
P.O. & District-Dhubri, Assam
Pin-783301

4. The Deputy Commissioner of Chirang,
BTAD, Kokrajhar, Assam,
Pin:783370

5. The Superintendent of Police,
Kokrajhar, P.O. & District- Kokrajhar,
Assam, PIN-783370 Respondents

By Mr.M.U.Ahmed, Addl.C.G.S.C.

ORDER

MR MADAN KUMAR CHATURVEDI (A)

By this O.A applicant makes a request to allow the claim of past service benefits of the applicant's husband and to set aside the impugned Memo No.F-6-1/2001-02 dated 10.02.2006.

2. Adverting to the facts, we find that Late Chakreswar Talukdar (hereinafter would be referred to as Mr. Talukdar), husband of the applicant was senior most postmaster at Bengatal Sub-Post Office in the district of Chirang. On 17.07.2001, Mr. Talukdar went to the office but he did not return back home. An FIR was lodged alleging, inter alia, that Mr. Talukdar was absent from duty since 17.07.2001 and it was alleged in the FIR that Mr. Talukdar misappropriated govt. money amounting to Rs.103809.42. The matter was investigated by the police and charge sheet was submitted on 31.05.2002 showing Mr.Talukdar as absconder. G.R. Case No.450/2001 was registered. CJM, Kokrajhar examined one Upendra Nath Barman, ASI in connection with execution of NBWA/P&A issued against the accused, husband of the applicant. Investigating police officer initially submitted report dated 18.12.2005 before the CJM, Kokrajhar that no trace of the applicant's husband could be collected and his whereabouts are not known. On that basis, CJM, Kokrajhar passed the order dated 20.06.2006, which reads as under:-

"In the Court of C.J.M.Kokrajhar
G.R.No.450/2001
U/s = 409 I.P.C.

State
-Vs-
ri Chakreswar Talukdar

Order Sheet

Date	Order	Signature
20-6-2006	Accud. Absent. E.O. Present. He is examined and discharged. The P.A. against the and Chakreswar Talukder proceed. Hence the accd is declared as absconder and the case against the accd is filed until further order.	

Sd/-D.C.Chetia Phukan
C.J.M.
Kokrajhar"

3. Applicant was in deep sense of apprehension that her husband might have been kidnapped by the extremist as, the Bengtal area was badly affected by the extremist element at the relevant point of time. Applicant therefore went to the police station to lodge a missing report but the police officer on duty told her that lodging of said report is not necessary as because Postal Department has already filed report. Finding no alternative, she made a request to the D.C., Chirang to make an investigation into the matter. Despite all the best efforts applicant's husband could not be traced out. Applicant's husband left her along with two daughters and one minor son. Applicant has no other source of income. She made a request to the concerned authorities for the financial assistance. Representation was also made before the DC, Bongaigaon for redressal of his grievances. She also approached the Postmaster General, Guwahati for necessary action, but nothing was done in the matter.

4. The Superintendent of Post Offices, Goalpara Division vide letter dated 15.07.2008 rejected the prayer made by the applicant on a plea that her husband had misappropriated Rs.103809.42. Mr.Talukdar had been dismissed from service for violation of departmental rules. As per the prescription of Section 24 of the CCS (Pension) Rules, 1964 past service benefits has been forfeited. On that basis applicant's claim for retiral benefit has been rejected.

5. Mr.J.A.Azad, learned counsel appearing for the applicant contended that departmental action by way of dismissal from service is not appropriate because it was ex-parte and the person against whom the proceeding is taken is still untraced. Said action has been taken without giving adequate opportunity of being heard. As such, it is violative of the principles of natural justice. Unless the charged official is traced out and the allegation/charge of absconding, unauthorized absence and misappropriation of govt. money are proved, it is not correct to take punitive action against Mr.Talukdar. It was further submitted that the CJM vide order dated 20.06.2006 held that the applicant's husband is absconder. This order was rendered as because Mr.Talukdar did not appear before the Court on the appointed day. From this it cannot be concluded that Mr. Talukdar misappropriated govt. money. It is unbelievable that a person who had immaculate service career of 25 years would misappropriate Rs.103809.42 knowing fully well that his retiral benefits from office would be many times more than the so-called misappropriated amount. Mr.Talukdar was a man of integrity. Nothing incriminating was found against him constituting misconduct for which his service was terminated. There stands a strong possibility of his being kidnapped and killed by the extremist. It was stated that applicant is a poor lady. Her

husband's service was the only source of income of the family, who is missing for more than seven years. Applicant is running from pillar to post with her minor children for redressal of her grievance. Nothing has been done so far. It was strongly prayed that justice be done in the matter.

6. Mr.M.U.Ahmed, learned counsel appearing for the respondents submitted that Mr.Talukdar has been dismissed from service w.e.f. 10.02.2006. Court case against him was filed on 20.02.2006 and he was declared as absconder. After that applicant vide her application dated 25.06.2008 asked for service benefits on the plea that since whereabouts of Mr.Talukdar is not known, she should be given retiral benefits. It reveals from the examination of the case that there is no provision under CCS Rules or CCS (Pension) Rules to grant service benefits to wife of dismissed govt. servant. Accordingly, this fact was intimated to her vide letter dated 15.10.2008. Mr.Talukdar misappropriated govt. money while he was working as Sr. Postmaster. Departmental action was taken against him and he was dismissed from service. Since applicant is not an employee under the Union of India, as such, she cannot approach this Tribunal for redressal of her grievances.

Next it was argued that period of limitation is reckoned with reference to the initial final order passed against the employee. The order against Mr.Talukdar was passed on 10.02.2006. O.A. should have been filed by Mr.Talukdar and not by his wife within 09.02.2007 but the O.A. was filed by his wife in 2009, which is not within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985. This Act is applicable only to the employee of the Union of India in connection with service matters. It is not applicable to general citizen for personal matters. Besides,

the applicant could have gone to the police for reporting the missing of her husband, but she did nothing. It was pointed out that Mr.Talukdar showed false liabilities and took excess cash. The correct position was ascertained and confirmed in presence of Executive Magistrate. According to learned standing counsel for the respondents, wife of the employee is entitled to service benefits only after the demise of the employee while in service or after retirement. But in the present case, husband of the applicant is alive and he misappropriated govt. money and remained absent from duty without any information for which he was punished and dismissed from service w.e.f. 10.02.2006. On this factual backdrop, wife or family of the employee are not entitled to service or pensionary benefits. Mr. M.U.Ahmed submitted that without any conclusive proof, it cannot be assumed that Mr.Talukdar was killed by extremist. It was reiterated that under the law, he is absconder and not a missing person. A criminal case under G.R.Case No.450/2001 under Section 409 of IPC is still pending under CJM, Kokrajhar. Commenting on applicability of prescription of Section 108 of the Indian Evidence Act, 1872, it was submitted that Mr.Talukdar cannot be presumed to be a dead person. Such presumption is not relevant in the context of an absconder. Learned standing counsel relied on various precedents to buttress the contention.

7. We have heard the rival submissions so advanced by Mr.J.A.Azad, learned counsel for the applicant and Mr.M.U.Ahmed, learned counsel for the respondents in the light of material placed before us and precedents relied upon.

8. At the outset respondents assailed the jurisdiction of this Tribunal to decide this matter. We do not find any merit in the contention of

the respondents on this aspect. As a matter of fact, wife of the employee, who has not been heard of for seven years, is making this petition for claiming the retiral and pensionary benefits of her husband. This matter fully comes within the ambit and purview of the jurisdiction of this Tribunal.

9. Coming to the merits of the case, we find that the applicant was informed by the Superintendent of Post Offices, Goalpara Division, Dhubri vide letter dated 15.07.2008 that her husband retained excess cash amounting to Rs.1,03,809.42 without any legal justification. As such, he violated the departmental rules. The aforesaid shortage was found on the basis of inventory prepared by the Magistrate in presence of the staff. As per Article-II of memorandum No.F6-1/2001-02 dated 10.02.2006, it was worked out as under:-

"Cash	=Rs.2776.10
Stamp	=Rs.6701.00
Revenue	=Rs.1400.00
Total	Rs.10877.10
Due from BOs	Rs. 7080.09
	Rs.17957.19

S.O. a/c book of the office (current) was then examined and found that said Shri Talukdar had written up S.O. a/c book upto 13-07-2001 and as per S.O. a/c book dtd 13.07.2001 closing balance of Bengtal S.O. was as below.

Cash	=Rs.1,07,540.02
Stamp	=Rs.2753.50
Revenue	=Rs. 140.00
Due from BOs	Rs. 6030.00
	Rs.1,16,463.61

Said Shri Talukdar performed his duties on 14.07.2001 and written up B.O. summary upto 14.07.2001 but did not maintain the S.O. a/c book upto 14.07.2001. As per B.O. summary dated 14.07.2001 a sumo of Rs.7080.09 showed due from its Branch Offices. Shri Talukdar also issued M.O. for Rs.1613, paid M.O. for Rs.2000/- and paid bill for Rs.40/- respectively on 14.07.2001 as per voucher found available. But all the above amount was not brought into a/c on 14.07.2001. Besides stamp worth Rs.5730/- was remitted to Bengtal S.O. on 10-07-2001 by the SPM, Bongaigaon S.O., but the amount found not acknowledged and brought into a/c till 14.07.01. All

the transactions stated above had been taken into account and assessed closing balances as follows.

C.B. dated 13.07.2001	=Rs.1,16,463.61
Stamp remitted to Bengtal but not acknowledged.	=Rs. 5,730.00
M.O. issued but not bring to account	=Rs. 1,613.00
Total receipt side	=Rs.1,23,806,61
Less M.O. paid and bills paid	=Rs. 2,040.00
CB	=Rs.1,21,766.61

But on physical verification the executive Magistrate found Rs.10,877.10 as cash/stamp/Revenue balance in the office. A sum of Rs.7080.09 was due from its B.Os. and hence the total shortage was (Rs.1,21,766.61-17,957.19)= Rs.1,03,809.42 (Rupees one lakh three thousand eight hundred nine & paise forty two) only."

10. Mr.Talukdar was not available for comments. It appears that solely on the basis of aforenoted computation, it was concluded that aforesaid amount was misappropriated by Mr.Talukdar and since he was not found, he was taken as absconder.

11. The prayer of the applicant was not acceded to and no attempt was made to trace out Mr. Talukdar. The suspension order was passed in absentia and he was dismissed accordingly without investigating the truth.

12. It transpires from the perusal of records that no investigation was made to find out the actual state of affairs. There can be various reasons due to which reconciliation in account could not be tallied. One of the reasons might be misappropriation but that can not be attributed as the sole reason. It is not correct to brand a person without establishing the guilt as criminal. It is a basic principle of criminal jurisprudence enunciated in the dictum "ACTUS NON FACIT REUM NISI MENS SIT REA" (in order to constitute a crime mind and body both must concur). The maxim of English

Law as propounded by Justice Holroyd is: "it is better that ten guilty men should escape rather than one innocent should suffer". Merely on the basis of doubt one cannot be branded as criminal. The requirement of adequate opportunity of being heard is sine qua non which cannot be dispensed with. If the person is not available, attempt should be made to find out the truth by exploring all the possible means. From the records, it appears that nothing was done in this regard.

13. It is pertinent to note that in the past Mr.Talukdar maintained immaculate record and his integrity was never doubted. He disappeared under the mysterious circumstance. At the relevant point of time, the area was vulnerable. The fact that he was kidnapped cannot be ruled out. Besides, an official, who served for more than 25 years with integrity and to the satisfaction of the department, cannot be presumed to have misappropriated money when his benefits from the office would come ten times more of the so-called misappropriated amount. He had cordial relationship with his spouse. He had three minor school going children. On this factual backdrop, it is difficult to believe that he would venture to commit such crime. It is the contention of Mr.M.U.Ahmed, learned counsel for the respondents that there can be a situation in which an order passed in violation of natural justice need not be set aside. For this proposition, he relied on decision of Hon'ble Apex Court in **Aligarh Muslim University & Others** v. **Mansoor Ali Khan, (2000) 7 SCC 529.** In this case, no doubt this proposition is laid down but with rider that where no prejudice is caused to the person concerned. In the case of **M.C.Mehta** v. **Union of India, (1999) 6 SCC 237** this view was originally taken. Court referred to the decision in **Ridge** v. **Baldwin, 1964 AC 40** wherein breach of principles of natural justice was in itself treated as prejudice and no other 'de facto' prejudice needed

to be proved, but thereafter this rule was relaxed and in the case of S.L.Kapoor v. Jagmohan, (1980) 4 SCC 379 an exception was laid down, namely, if upon admitted or indisputable facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order, which was passed in violation of natural justice. While expressing this view, court put a caveat that this being an exception, great care must be taken in applying this exception. In the facts of the present case, we find that no attempt was made to find out the truth. The fact in issue is a disputed fact. Therefore other conclusion was possible as such requirement of natural justice was not complied with, ex consequenti, prejudice was caused.

Next precedent relied upon was **Indra Bhanu Gaur** v. **Committee, Management of M.M.Degree College and Others, AIR 2004 SC 248**. In this case, appellant was Principal of a college. He was also acting as Sr. Superintendent of the Examination Centre. He was charged for replacing his son's answer book. Appellant was given reasonable opportunity to present his case before the enquiry committee. But he did not extend his cooperation. On this factual backdrop, Apex Court held that appellant cannot complaint of denial of opportunity of hearing. Facts of this present case are totally different and as such, this decision is not applicable in the facts and circumstances of present case.

In the course of hearing, our attention was also invited to the prescription of Section 108 of the Indian Evidence Act, 1872. This section reads as under:-

> "**Section 108 Burden of proving that person is alive who has not been heard of for seven years. –** [Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it."

Mr.M.U.Ahmed, learned counsel for the respondents submitted that Section 108 is not exhaustive. A suitable presumption requiring death or presumed death can be drawn on the basis of attending circumstances and reliable material on record.

Reliance was placed on the decision of Apex Court rendered in the case of **LIC of India** v. **Anuradha, AIR 2004 SC 2070.** In this case, Hon'ble Court held that:

> "the law as to presumption of death remains the same whether in the common law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act, 1872. In the scheme of the Evidence Act, though Sections 107 and 108 are drafted as two sections, in effect, Section 108 is an exception to the rule enacted in Section 107. The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years, the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be

permitted to be raised on expiry of 6 years and 364 days or at any time short of it."

In the common law, law of onus is based on the maxim, namely, "INCUMBIT PROBATIO QUI DICIT NON QUI NEGAT" (burden of proof lies upon one who alleges the existence of a truth, not upon one who denies it). Section 107 of the Indian Evidence Act, 1872 is based on this rule. However, Section 108 carves out an exception in the shape of proviso to Section 107. It has the effect of shifting the burden of proof back on one who asserts the fact of the person being alive. The presumption raised under Section 108 is confined to presuming factum of death of the person whose life or death is in issue. In the case of **Rubabbuddin Sheikh** v. **State of Gujarat, AIR 2007 SC 1914**, it was held that there is a presumption if the body is not found or the person concerned is not found for a period of seven years, only then said person can be presumed to be dead. In the present case, question is whether Mr. Talukdar is alive or dead? Initially his wife expressed possibility of his death by killing by extremist, but no investigation was conducted in that regard. Now, it is a fact that Mr. Talukdar has not been heard of for seven years by those who would naturally have heard of him if he had been alive. In these circumstances, burden of proving that Mr. Talukdar is alive is shifted on the respondents, who are alleging that he is not dead but absconder. Under the law, after expiry of seven years period, Mr. Talukdar can be presumed as dead person.

14. Another important question, which requires our consideration is apropos the payment of subsistence allowance. Indisputably Mr. Talukdar was placed under deemed suspension w.e.f. 17.07.2001 vide order dated 09.01.2003 as per respondents affidavit dated 20.02.2010. The

consequence of suspension requires the payment of subsistence allowance. This question was specifically put to respondents vide order dated 28.05.2010, albeit case was adjourned for seeking appropriate instruction on this aspect. Nothing has placed before the Bench in this regard. It was orally submitted that no payment on account of subsistence allowance can be made unless the Govt. servant furnishes a certificate that he is not engaged in other employment, business, profession or vocation. In our considered opinion Mr. Talukdar was not available, as such furnishing of such certificate was an impossibility. It is a trite law canonized in the dictum: LEX NON COGIT AD IMPOSSIBILIA (law cannot compel you to do the impossible).

In view of this, provisions of FR 53 have to be construed in a reasonable manner. The contention that there is no pleading on this aspect would amount to negating the rights under the rules. Moreover, the factum of deemed suspension came to the notice when the respondents filed aforesaid affidavit. In our considered opinion, technicality cannot defeat the ends of justice.

15. If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. Adverting to the facts we find that no enquiry was made as to the fact that whether Mr.Talukdar is dead or alive. If he was presumed to be alive at that point of time, why efforts were not made for proper service of the charge-sheet and notices? Punishment was inflicted without following the due procedure of law. No action was taken, on the basis of appeal, preferred

on his behalf by his wife, the present applicant in this case. Nothing was placed before us to show that Mr.Talukdar is alive.

16. Taking into consideration totality of facts and circumstances of the case, we set aside the impugned Memo No.F-6-1/2001-02 dated 10.02.2006 and direct the respondent authority to release the retiral and other pensionary benefits on account of the service of the applicant's husband as per law within three months from the date of receipt of this order.

17. In the result, O.A. stands allowed. No costs.

(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER

(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

/bb/

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNACHAL PRADESH)

WP(C) No. 2221 of 2011

1. The Union of India,
Represented by Ministry of IT & Communication,
Department of Post, New Delhi.

2. Chief Post Master General,
Assam Circle, Panbazar, Guwahati – 781001.

3. Director of Postal Service (HQ),
Assam Circle, Panbazar, Guwahati – 781001.

4. Superintendent of Post Offices,
Goalpara Division, Dhubri,
PO& District. Dhubri, Assam -783301

- Petitioners

- Versus -

Smt Jaya Talukdar
W/of Sri Chakreswar Talukdar,
C/o. Paritish Chakraborty,
B.T. Road (Bye Lane),
PO&District. Bongaigaon,
Assam – 783380.

-Respondents

BEFORE
THE HON'BLE MR. JUSTICE I. A. ANSARI
THE HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH

Advocates present:

For the Petitioners	:	Mr. H Buragohain, Central Govt. Counsel
For the respondent	:	Mr. AR Sikdar, Advocate.
Amicus Curiae	:	Mr. M.K. Choudhury, Sr. Advocate
Date of hearing	:	18th of June, 2013
Date of Judgment	:	25th June, 2013

JUDGMENT AND ORDER

(Ansari, J)

We have heard Mr. H Buragohain, learned Central Government Counsel, appearing on behalf of the petitioners, and Mr. AR Sikdar, learned counsel, for the sole respondent. We have also heard Mr. MK Choudhury, learned Senior counsel, appearing as *Amicus Curiae.*

2. The material facts, leading to this writ petition, may, in brief, be set out as under:

(i) Sri Chakreswar Talukdar, husband of the sole respondent, while functioning as Sub-Post Master (in short, 'SPM') at Bengtol Sub Post Office, in

the district of Chirang, Bodoland Territorial Autonomous Development Council, was reported by the Post Master, Dhubri Head Post Office, vide letter, dated 07-07-2001, as having been found to have retained excess cash with him. Pursuant to the information, so received by the Divisional Post Office, on 10-07-2001, Sub-Divisional Inspector of Post Offices [hereinafter referred to as 'SDI(P)]', Bongaigaon, visited the Bengtol Sub-Post Office, on 18-07-2001, to ascertain the correctness of the allegation of retention of excess cash by Sri C Talukdar, husband of the sole respondent.

(ii) On his visit to Bengtol Sub Post Office, SDI(P) found Bengtol post office closed and the Sub-Post Master, Sri Talukdar, absent from duty. On 19-07-2011, SDI(P) reported to the Superintendent of Post Offices, Goalpara Division, Dhubri, over telephone, that excess cash, if any, retained at Bengtol Sub-Post Office, could not be ascertained due to unauthorized absence of Sri Talukdar since 17-07-2001. On receipt of this report, Divisional Superintendent of Post Office, Goalpara Division, Dhubri, accompanied by other postal officials, visited, on 20-07-2001, Bengtol Sub Post Office and found the office closed. Nobody could tell the team of the Superintendent of Post Office, Goalpara Division, Dhubri, as to where Sri Talukdar was and/or where the keys of the post office were.

(iii) Having failed to trace out Sri Talukdar as well as the keys of the post office, which Sri Talukdar had been holding, information was lodged, on 20.07.2001, with the In-charge, Bengtol Police Outpost, regarding suspension of the work of the said Sub-Post Office (SPO) and unauthorized absence of its SPM, Sri Talukdar. However, the In-Charge, Bengtol Police Outpost, expressed his inability to help the Superintendent of Pose Office, Goalpara Sub-Division, in opening the SPO without assistance/permission of the District Magistrate, Kokrajhar. On the following day, i.e., on 21-07-2001, the Superintendent of Post Office, Goalpara Division, Dhubri, approached the

District Magistrate, Kokrajhar, who, in turn, deputed one Magistrate to open the Post Office on 21-07-2001 itself.

(**iv**) Thus, with the help of the District Magistrate, Kokrajhar, Bengtol SPO was opened, on 21-07-2001, at about 1700 hours, the lock, on the steel almirah, was broken and the Magistrate, on duty, prepared an inventory in presence of witnesses and handed over the articles, including cash, stamps, etc., lying therein, to the Superintendent of Post Office, Goalpara Division. The documents and the books of accounts, so recovered, revealed several anomalies in the books of accounts maintained by Sri Talukdar, when he had attended the SPO on 13-07-2001 and 14-07-2001.

(**v**) As the inventory revealed misappropriation of money by Sri Talukdar, information was lodged, in this regard, in writing, with the Officer-in-Charge, Basugaon Police Station, on 23-07-2001, by the SDI(P), Bongaigaon, and Basugaon Police Station Case No. 71 of 2001, under Section 409 IPC, came to be accordingly registered against the said Sri Chakreswar Talukdar, husband of the sole respondent herein, and the police *investigation* commenced.

(**vi**) Apart from a divisional level *enquiry*, which was conducted, by the Postal Department, the police, on completion of *investigation*, submitted, eventually, on 30-05-2002, a *charge-sheet,* in Basugaon Police Station Case No. 71 of 2001 aforementioned, seeking prosecution of Sri Talukdar, under Section 409 IPC, showing him as an *absconder.*

(**vii**) Thereafter, the present respondent, as wife of Sri Talukdar, filed a representation, on 10-11-2003, before the Deputy Commissioner, Bongaigaon, stating to the effect, *inter alia,* that her husband had been traceless since 17-07-2001 and, in his absence, she, along with her two daughters, had been facing financial hardship and, hence, out of the *provident fund*, *gratuity*, *pension*, etc, some amount may be given to her so as to enable her to meet her critical financial condition. The said representation was forwarded, on 12.11.

2003, by the Deputy Commissioner, Bongaigaion, to the Post Master General, Guwahati. This was followed by a report/certificate, dated 29-08-2005, issued by the Superintendent of Police, Kokrajhar, stating to the effect, *inter alia,* that during *investigation* of the case, accused Sri C. Talukdar was found to have misappropriated Government money, while he had been working as SPM at Bengtol SPO, but he could not be arrested during *investigation*, because he had *absconded*.

(**viii**) Non-Bailable Warrant of Arrest as well as Proclamation & Attachment, issued by the Chief Judicial Magistrate, Kokrajhar, to apprehend the accused, Sri C Talukdar, too, proved futile as his whereabouts could not be found out.

(**ix**) The *Disciplinary Authority* , therefore, decided to keep the petitioner's husband as *suspended*. Though the suspension order was sent to the delinquent official, through registered post, to his last place of duty as SPM, Bengtol SPO, the same was returned unserved with the remark, '*addressee absconded*'.

3. In course of time, charges were framed and as the *charge-sheet* could not be served on the petitioner's husband, an order was made, on 10-02-2006, by the *disciplinary authority* dismissing the petitioner's husband from duty in terms of the provisions of Rule 19(ii) of the Central Civil Services (Classification, Conduct and Appeal) Rules, 1965, (hereinafter referred to as the CCS (CCA) Rules, 1965), read with Article 311 (2)(b) of the Constitution of India, dispensing with the requirement of holding of *enquiry* against Sri Talukdar on the charges, which had been framed against him, the enquiry having been dispensed with on the ground that it was not '*reasonably practicable*' to hold an *enquiry* in terms of Rule 14 of the CCS (CCA) Rules, 1965.

4. Subsequent to the dismissal of her husband from service, the respondent herein filed Original Application (in short, 'OA') under Rule 19 of the

CCS(CCA) Rules, which gave rise to OA No. 66 of 2009, wherein her case, briefly stated, was as under:

Her husband, Sri Chakreswar Talukdar, had not been heard of since 17-07-2001 and, hence, he can be presumed to have not remained alive and that she apprehends that her husband had been kidnapped by the extremists for demanding money as Bengtol area had been affected by extremist elements and though she had lodged a missing report, in this regard, requesting the police to trace out her husband, the police had refused to entertain such a request on the plea that a case had already been registered against her husband. This apart, the Chief Judicial Magistrate came to declare her husband as an *absconder* as late as on 20-06-2006; whereas the *disciplinary authority*, having treated the petitioner's husband as an *absconder*, dismissed him from service, without holding *enquiry*, as early as on 10.02.2006, i.e., about four months before the petitioner's husband was formally declared as *absconder* by the Chief Judicial Magistrate, Kokrajhar.

5. The petitioners herein, who were respondents in the OA, filed their written statement resisting the OA and pointing out that in the facts and attending circumstances of the case, the *disciplinary authority* was wholly justified and acted within the ambit of its powers in not holding the *enquiry* as envisaged by Rule 14 of the CCS (CCA) Rules, 1965, because the said Sri Talukdar had been found *absconding* and it was not *reasonably practicable* to hold *enquiry* and that having found the said Sri Talukdar responsible for misappropriation of Government money, he had to be dismissed and, hence, the order of his dismissal, passed, on 10-02-2006, may not be interfered with.

6. By order, dated 08-07-2010, the learned Tribunal, however, took the view that since the learned Chief Judicial Magistrate, Kokrajhar, had declared the petitioner's husband *absconder* as late as on 20.06.2006, the present respondent's husband, Sri Talukdar, could not have been treated, on 10.02.2006, by the *disciplinary authority*, as *absconder*. This apart, according to

the learned Tribunal, the *disciplinary authority* had not paid subsistence allowance during the period of suspension of Sri Talukdar, the *charge-sheet* had not been served on him and no opportunity of hearing had been accorded to him and, hence, his dismissal from service was wholly illegal and untenable in law.

7. Aggrieved by the order, dated 08-07-2010, aforementioned, this writ petition has been made, under Article 226 of the Constitution of India, by the petitioners herein, who were, as already indicated above, respondents in the OA. With the help of this writ petition, the present petitioners, who were respondents in the OA, have put into challenge the correctness and validity of the order, dated 08-07-2010, aforementioned, passed by the learned Tribunal, and seek issuance of appropriate direction or directions.

8. Presenting the case on behalf of the petitioners, Mr. H Buragohain, learned Central Government Counsel, submits that if the facts and circumstances, as were available before the *disciplinary authority*, on 10-02-2006 (when the order of dismissal of the respondent's husband was made by the *disciplinary authority),* are born in mind, it would be unfair and incorrect to say that the order, dated 10.02.2006, passed by the *disciplinary authority,* does not give sufficient reason as to why the *disciplinary authority* considered that it was not '*reasonably practicable*' to hold an *enquiry* in terms of the requirements of Rule 14 of CCS (CCA) Rules, 1965, and as to why the order of dismissal had to be made without holding *enquiry*. The learned Tribunal, according to Mr. Buragohain, learned Central Government Counsel, fell in serious error in considering the case against the present petitioners not in the light of the facts as were available before the *disciplinary authority* on 10-02-2006, when the impugned order, dispensing with the *enquiry* and dismissing the respondent's husband from service, was made inasmuch as the learned Tribunal has passed the presently impugned order on the basis of the materials as became available, before the learned Tribunal, on the date of the passing of the order; whereas

the correctness and/or legality of the order, dated 10.02.2006, which the *disciplinary authority* had passed, ought to have been considered in the light of the materials, which were available before the *disciplinary authority* on the date of making of the order, dated 10.02.2006, aforementioned.

9. In support of his submission that the petitioners had acted within the ambit of their powers and with full justification in dismissing the petitioner's husband by taking the view that it was not *reasonably practicable* to hold an *enquiry* into the charges, which were framed against the respondent's husband as regards his *unauthorized absence from duty* and also *misappropriation of Government money*, Mr. Buragohain has placed reliance on **Union of India and others –vs- Tulsi Ram Patel,** reported in **(1985) 3 SCC 398**.

10. Controverting the submissions made on behalf of the petitioners, Mr. Sikdar, learned counsel, submits that the learned Tribunal has clearly and correctly noted, in its order, which stands impugned in the present writ petition, that the learned Chief Judicial Magistrate had declared the petitioner's husband as an *absconder* by order, dated 20-06-2006, whereas the *disciplinary authority* had passed an order, dismissing the petitioner's husband, as far back as on 10-02-2006, treating the petitioner's husband as an *absconder*, though until a declaration from the Chief Judicial Magistrate, Kokrajhar, was made to the effect that the respondent's husband had been an *absconder,* he (i.e., the respondent's husband) could not have been, and must not have been, treated and described by the *disciplinary authority* as an *absconder.*

11. Before the declaration was made by the learned Chief Judicial Magistrate as regards the fact that the petitioner's husband was an *absconder*, treating the petitioner's husband, as an *absconder*, by the *disciplinary authority*, was, contends Mr. Sikdar, wholly illegal and untenable in law. Relying upon the decision in **Tulsi Ram Patel** (supra), Mr. Sikdar submits that **Tulsi Ram Patel** (supra) clearly lays down that an order, dispensing with an *enquiry* on the ground that holding of the *enquiry* was not *reasonably practicable*, ought to have

preceded the order of dismissal; but in the case at hand, the order dispensing with the *enquiry* and dismissing the respondent's husband from service, came to be made by a consolidated order, passed on 10-02-2006.

12. As far as the learned *Amicus Curiae* is concerned, he has submitted that dispensing with *enquiry* on the ground that holding of *enquiry* was not *reasonably practicable* can be taken before the *enquiry* is commenced and the decision, dispensing with the *enquiry* on the ground that it is not *reasonably practicable* to hold the *enquiry*, can be taken even after an *enquiry* has commenced. This apart, the reasons, assigned by a *disciplinary authority,* for taking the view that it is not *reasonably practicable* to hold *enquiry* is an act, which is justiciable in nature.

13. Mr. Choudhury, learned *amicus curiae,* also submits that justification and/or legality or validity of an order, dispensing with a disciplinary *enquiry,* has to be adjudged by referring to the facts and circumstances, which were in existence on the day, when the decision, not to hold *enquiry*, was taken on the ground that it was not *reasonably practicable* to hold the *enquiry* and that the correctness or validity of an order, dispensing with the *enquiry*, cannot be considered and determined with reference to a date or situation subsequent to the date, when the decision to dispense with the *enquiry* was taken.

14. Mr. Choudhury, learned *amicus curiae,* further submits that in the case at hand, the petitioners do not appear to have committed any error, in the light of the decision in **Tulsi Ram Patel** (supra), in passing a consolidated order, on 10-02-2006, holding that it was not *reasonably practicable* to hold an *enquiry* and also in dismissing the petitioner's husband from service inasmuch as the *enquiry*, in the absence of the petitioner's husband, was, rightly concluded the *disciplinary authority*, not *reasonably practicable*.

15. While considering the present writ petition, it needs to be noted that dismissal from service is, admittedly, a *major penalty* as specified in Clause (v)

of Rule 11 of the CCS (CCA) Rules, 1965, and this *major penalty* cannot, in the light of the provisions of Rule 14 of CCS (CCA) Rules, 1965, be imposed on a delinquent employee without holding an *enquiry* inasmuch as Rule 14(i) clearly lays down that no order, imposing any of the penalties specified in clauses (v) to (ix) of Rule 11, shall be made except after an *enquiry* is held, as far as may be, in the manner provided in this Rule. Sub-Rule (1) of Rule 14 is reproduced below:

"14. PROCEDURE FOR IMPOSING MAJOR PENALTIES:

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an enquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such enquiry is held under that Act."

(Emphasis is added)

16. However, Rule 19 of the CCS (CCA) Rules, 1965, provides for imposition of *major penalty* without holding any *enquiry*, though *enquiry* is, otherwise, required by Rule 14 inasmuch as Rule 19 of CCS (CCA) Rules, 1965, lays down as follows:

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

(Emphasis is added)

17. A bare reading of Rule 19 clearly shows that whenever the *disciplinary authority* is satisfied, for reasons to be recorded by it in writing, that it is not *reasonably practicable* to hold an *enquiry* in the manner provided in the Rules, the *disciplinary authority* may pass an order indicating such circumstances leading to its conclusion that it is not *reasonably practicable* to hold an *enquiry*.

18. From a conjoint reading of Rule 14 and Rule 19, it becomes abundantly clear that ordinarily, a Government servant cannot be dismissed from service on the ground of *misconduct* without holding an *enquiry*. This general rule is, however, subject to certain exceptions and one of the exceptions, which stands incorporated in Rule 19(ii), is where the *disciplinary authority* is satisfied, for reasons to be recorded by it in writing, that it is not *reasonably practicable* to hold an *enquiry* in the manner provided in the rules.

19. The exception, as provided by Clause (ii) of Rule 19, is broadly in tune with Clause (b) of the Second Proviso to Clause (2) of Article 311 of the Constitution of India. For clarity of the purpose, Article 311 is reproduced below:

"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 enquiry 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 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—

(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 enquiry**; 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 enquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such enquiry 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."

(Emphasis is added)

20. From a cautious reading of Article 311, as a whole, and Clause (b) of the Second Proviso to Clause (2) of Article 311, in particular, it becomes abundantly clear that no member of civil service of the Union or State or who holds a civil post, under the Union or State, can be dismissed or removed except upon holding an *enquiry* in which the Government servant is informed of the charges against him and given reasonable opportunity of being heard in respect of the charges. This general rule, requiring hearing of the Government servant, on the charges, by holding an *enquiry*, is subject to the conditions as contemplated by the Second Proviso to Clause (2) of Article 311. One of such exceptions is incorporated in Clause (b) of the Second proviso to Clause (2) of Article 311 of the Constitution of India.

21. Clause (b) of the Second proviso to Clause (2) of Article 311 of the Constitution of India clearly lays down that 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, that it is not *reasonably practicable* to hold such *enquiry*, the *enquiry* may be dispensed with.

22. What follows from the above discussion is that ordinarily, no Government servant can be dismissed or removed from service until after an *enquiry* is held, wherein he is informed of the charges against him and has been

given reasonable opportunity of being heard in respect of the charges, which are levelled against him. The safeguard, so provided to a Government servant, by Clause (2) of Article 311 is, however, taken away, when the Second proviso to Clause (2) of Article 311 of the Constitution of India becomes applicable. The Constitution Bench, in **Tulsi Ram Patel** (supra), has clearly held, in this regard, as follows:

> *"70. The position which emerges from the above discussion is that the keywords of the second proviso govern each and every clause of that proviso and leave no scope for any kind of opportunity to be given to a government servant. The phrase "this clause shall not apply" is mandatory and not directory. It is in the nature of a constitutional prohibitory injunction restraining the disciplinary authority from holding an enquiry under Article 311(2) or from giving any kind of opportunity to the concerned government servant. There is thus no scope for introducing into the second proviso some kind of enquiry or opportunity 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. As pointed out by this Court in B. Shankara Rao Badami v. State of Mysore, this well-known maxim is a principle of logic and common sense and not merely a technical rule of construction. The second proviso expressly mentions that clause (2) shall not apply where one of the clauses of that proviso becomes applicable. This express mention excludes everything that clause (2) contains and there can be no scope for once again introducing the opportunities provided by clause (2) or any one of them into the second proviso..... Equally, where a public servant by himself or in concert with others has brought about a situation in which it is not reasonably practicable to hold an enquiry and his conduct is such as to justify his dismissal, removal or reduction in rank, both public interest and public good demand that such penalty should forthwith and summarily be imposed upon him; and similarly, where in the interest of the security of the State, it is not expedient to hold an enquiry, it is in the public interest and for public good that where one of the three punishments of dismissal, removal or reduction in rank is called for, it should be summarily imposed upon the concerned government servant..... Much as this may seem harsh and oppressive to a government servant, this Court must not forget that the object underlying the second proviso is public policy, public interest and public good and the Court*

must, therefore, repel the temptation to be carried away by feelings of commiseration and sympathy for those government servants, who have been dismissed, removed or reduced in rank by applying the second proviso. Sympathy and commiseration cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a constitutional prohibition. ..... After all, it is not as if a government servant is without any remedy when the second proviso has been applied to him. There are two remedies open to him, namely, departmental appeal and judicial review."

(Emphasis is added)

23. From the above observations, what emerges is that a Government servant can be dismissed from service without holding *enquiry* if the *disciplinary authority* finds, for reasons to be recorded by it in writing, that it is not *reasonably practicable* to hold an *enquiry* in the manner provided in the Rules. Though this Rule, permitting *enquiry* to be dispensed with, appears to be harsh, the fact remains, as indicated in **Tulsi Ram Patel** (supra), that this Rule has been made, as a matter of *public policy*, in *public interest* and for *public good*. Where a public servant places himself in a situation, wherein it is not *reasonably practicable* to hold an *enquiry* and his conduct, at the same time, is such as would warrant and justify his dismissal from service, there is no impediment in taking recourse to this power by a *disciplinary authority* in *public interest* and *public good* inasmuch as removing a Government servant without holding any *enquiry*, in such a case, would be in *public interest* and *public good*.

24. As observed in **Tulsi Ram Patel** (supra), the condition precedent for the application of clause (b) to the second Proviso to Clause (2) of Article 311 is the satisfaction of the *disciplinary authority* that "*it is not reasonably practicable to hold*" the *enquiry* contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "*not reasonably practicable*" and not "*impracticable*". The Oxford English Dictionary defines "*practicable*" to mean "*Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible*". According to the Webster's Third New International Dictionary,

the word "*practicable*" means, *inter alia*, "*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*".

25. Thus, whether it was practicable to hold *enquiry* or not, in a given case, must be adjudged in the context of facts, which were in existence or available before the *disciplinary authority* at the time, when the decision as regards dismissal or removal of service of a Government servant is required to be taken by the *disciplinary authority*. It is not a total or absolute impracticability, which is required by clause (b). What is requisite is that the holding of the *enquiry* is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

26. A *disciplinary authority* is not expected to dispense with a disciplinary *enquiry* lightly or arbitrarily or out of ulterior motives or merely to avoid holding of an *enquiry* or because the Department's case against the government servant is weak and is likely to fail. Consequently, 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 if the Court happens to find that it was *reasonably practicable* to hold *enquiry*. (See **Union of India and others –vs- Tulsi Ram Patel,** reported in **(1985) 3 SCC 398**).

27. The learned *Amicus Curiae* is correct, therefore, in submitting that a situation, which makes the holding of an *enquiry* not *reasonably practicable*, may even exist before an *enquiry* is initiated or may arise even after the *enquiry* has been initiated, i.e., such a situation can develop before the *enquiry* commences or during the progress of the *enquiry* or subsequent to initiation of the *enquiry*.

The reference, made, in this regard, by the learned *Amicus Curiae* to the observations of the Constitution Bench, appearing at Para 132, in **Tulsi Ram Patel** (supra), are not at all misplaced inasmuch as the relevant observations read as under:

> *"132. It is not necessary that a situation which makes the holding of an enquiry not reasonably practicable should exist before the disciplinary enquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an enquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "enquiry" in that clause includes part of an enquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the enquiry or pending it the government servant absconds and cannot be served or will not participate in the enquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority . Therefore, even where a part of an enquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2)."* (Emphasis is added)

28. There can be no doubt that when the reasons are not recorded by a *disciplinary authority* for reaching the satisfaction that it is not '*reasonably practicable*' to hold *enquiry*, such an order would be bad in law, because it is the obligation of the *disciplinary authority* to record the reasons as to why holding of an *enquiry* was not '*reasonably practicable*'. In the absence of an order recording satisfaction of the *disciplinary authority*, dispensing with *enquiry*, the order of penalty ought to be interfered with.

29. However, contrary to what has been submitted by Mr. Sikdar, learned counsel for the respondent, that an order, dispensing with an *enquiry*, has to be

separately made and such an order has to precede the order of dismissal and that a combined order, dispensing with the *enquiry* as well as removing a Government servant from service, is bad in law, the Constitution Bench, in **Tulsi Ram Patel** (supra), has observed, at para 134, as follows:

> *"134. It is obvious that the recording in writing of the reason for dispensing with the enquiry must precede the order imposing the penalty. The reason for dispensing with the enquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the enquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any enquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the enquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances."*
>
> (Emphasis is added)

30. A microscopic reading of the observations made above, in **Tulsi Ram Patel** (supra), clearly shows that although the Constitution Bench has pointed out that the reason, in writing, for dispensing with an *enquiry*, has to be recorded and such recording of reasons must precede the order imposing penalty and that it is not necessary that the final order, dismissing an employee from service, shall also contain a reason for dispensing with the *enquiry* and that usually, there would be two separate orders — one recording the reason for dispensing with the *enquiry* and the other imposing the penalty, yet the Constitution Bench, having observed this far, has pointed out and made it crystal clear that it would be better to record reason, in the final order itself, so as to avoid possibility of the allegation that the reason, in writing, had not been

recorded before the final order was made, but has been subsequently fabricated. The Supreme Court has also pointed out, in Para 135 of **Tulsi Ram Patel** (supra), that though the reason, dispensing with the *enquiry,* is necessary to be recorded in writing, there is no obligation to communicate the reason to the Government servant. The relevant observations, appearing at para 135 of **Tulsi Ram Patel** (supra), read as under:

> *"135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention too cannot be accepted.* ***The constitutional requirement in clause (b) is that the reason for dispensing with the enquiry should be recorded in writing****. There is no obligation to communicate the reason to the government servant. As clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review.* ***The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc.*** *It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the enquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons."* (Emphasis is added)

31. Though it had also been contended, in **Tulsi Ram Patel** (supra), that holding of an *enquiry* is necessary in order to determine whether disciplinary

enquiry should be dispensed with or not and that in such a preliminary *enquiry*, the Government servant shall be given an opportunity of hearing by giving him a notice to show cause, the Supreme Court has remarked that this argument is illogical.

32. It is immense importance to note that the Supreme Court, in no uncertain words, has pointed out, in **Tulsi Ram Patel** (supra), that though an order, passed by a *disciplinary authority,* recording reasons for dispensing with the *enquiry,* is *justiciable*, the Court must put itself in the place of the *disciplinary authority* and consider what was the then prevailing situation and what a reasonable man, acting in a reasonable way, would have done and that 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 *enquiry* should be dispensed with or not — in cool and detached atmosphere of a court-room, removed in time, from the situation in question. The Supreme Court has also pointed out, in **Tulsi Ram Patel** (supra), that where two views are possible, Court will decline to interfere. The relevant observations, appearing in para 137, read as under:

> *"137. A government servant who has been dismissed, removed or reduced in rank by applying to his case clause (b) or an analogous provision of a service rule is not wholly without a remedy. As pointed out earlier while dealing with the various service rules, he can claim in a departmental appeal or revision that an enquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application.* ***If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an enquiry at the time of the hearing of the appeal or revision. Though in such a case as the government servant if dismissed or removed from service, is not continuing in service and if reduced in rank, is continuing in service with such reduced rank, no prejudice could be caused to the Government or the Department if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time."***
>
> (Emphasis is added)

29

33. In the light of what have been observed and held above, it becomes abundantly clear that while considering the reason, recorded by a *disciplinary authority* dispensing with an *enquiry*, a Court must put itself in the place of a *disciplinary authority* and, then, consider, in the light of the prevailing situation at the relevant point of time, whether a reasonable man, acting in a reasonable way, would have dispensed with the *enquiry* or not. In fact, even when two views are possible on the course of action, which the *disciplinary authority* could have had adopted, the Court would decline to interfere if the reason, assigned by a *disciplinary authority* for choosing to dispense with *enquiry*, is a reasonably possible view.

34. What logically follows from the above discussion is that the learned Tribunal ought to have considered the correctness, legality and/or validity of the impugned order, dated 10-02-2006, passed by the *disciplinary authority*, in the light of the facts and attending circumstances as were obtainable on the date of making of the order, i.e., on 10.02.2006, and not on the day of the making of the order by the learned Tribunal on 08.07.2010.

35. Consequently, the view, expressed by the learned Tribunal, that when the learned Chief Judicial Magistrate has declared the husband of the respondent herein as *absconder* on 02-06-2006, the *disciplinary authority* could not have treated the petitioner's husband as an *absconder* on 02-06-2006, is, in our considered view, a wholly incorrect approach inasmuch as the learned Tribunal misses out the point that it was not at all necessary for the *disciplinary authority* to wait for the Chief Judicial Magistrate, Kokrajhar, to record as to whether the respondent's husband was or was not an *absconder*. It was for the *disciplinary authority* and the *disciplinary authority* alone to decide, on 10.02.2006, whether, in the facts and attending circumstances of the case, as existing on 10-02-2006, the *enquiry*, as contemplated by Rule 19, was or was not *reasonably practicable*.

36. With regard to the above, we may also point out that long before the learned Chief Judicial Magistrate passed its order declaring the petitioner's husband as an *absconder*, several warrants had been issued by the learned Chief Judicial Magistrate against the respondent's husband treating him as an *absconder,* because the *charge sheet,* which the police had submitted, clearly described the respondent's husband as an *absconder.* Whether the respondent's husband had, in fact, absconded or not is not the question; the question is whether, in the facts and attending circumstances of the case, as obtainable on 10-02-2006, the *disciplinary authority*'s satisfaction that the respondent's husband was an *absconder* and, therefore, it was not *reasonably practicable* to hold the *enquiry* is or is not correct. For this purpose, the order, dated 10-02-2006, is reproduced below:

> *"WHEREAS a statement of articles of charges was framed against Chakreswar Talukdar, Ex-SPM Bengtal S.O. under Rule-14 of CCS (CCA) Rules, 1965 but due to prolonged absconding of Shri Talukdar the said memorandum of charges could not be served to the Official. The article of charges and the statement of imputation of misconduct or misbehaviour on the basis of which the charges were framed against the said Shri Chakreswar Talukdar was as below-*
>
> ***ANNEXURE-I***
>
> *Statement of articles of charge framed against Shri Chakreswar Talukdar, the then SPM, Bengtal S.O. (Now under deemed to have been placed under suspension and absconder since 17-07-01).*
>
> ***ARTICLE-I***
>
> *That the said Shri Chakreswar Talukdar while functioning as SPM, Bengtal S.O. during the period from 31-03-2000 onwards remained unauthorised absent from duties w.e.f. 17-07-2001 keeping Bengtal S.O. closed and his movements were not known till this day and his continued absence in duty without proper permission unauthorizedly was subversive of discipline which invites disciplinary action against Shri Talukdar as codified in Rule -62 & 63 of Postal Manual Volume-III. This also attracts the provision of Rule-3(1) (ii) and (iii) of CCS (Conduct) Rules, 1964.*
>
> ***ARTICLE-II***
>
> *That during the aforesaid period and while functioning as such in the aforesaid office the said Shri Chakreswar Talukdar has kept Bengtal S.O. closed and*

absconded himself w.e.f. 17-07-2001 keeping shortage of cash to the tune of Rs. 1,03,809.42 (Rupees One Lakh three thousand eight hundred nine and paise forty two) only in the office. The above shortage of cash was charged as U.C.P. on 21-07-2001. By doing the above acts the said Shri Chakreswar Talukdar violated the provision of Rule-58 of P&T FHB Volume-1, Rule -658 of P & T Manual Volume –VI Part III and also Rules 3(1) (i), (ii), (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Shri Chakreswar Talukdar the then SPM, Bengtal S.O. Now under deemed to have been placed under suspension and absconder since 17-07-01.

ARTICLE-I

That the said Shri Chakreswar Talukdar while functioning as SPM, Bengtal S.O. during the period from 31-03-2000 onwards remained absent unauthorizedly from duties w.e.f. 17-07-2001 keeping in Bengtal S.O. closed without any information. His movement was also not known. On enquiry at Bengtal S.O. on 20-07-2001 it was revealed that Bengtal S.O. remained closed from 17-07-01 and Shri Talukdar is absconding since 17-07-01. Nobody could tell where about of Shri Talukdar as well as the disposal of office keys. Being failed to open the P.O. on 20-07-01 a report was lodged at Bengtal Police out post regarding suspension of P.O. works and authorized absence of Shri Talukdar. Lastly, the Bengtal S.O. was opened on 21-07-01 in presence of Shri A.K.Tribedi, EAC, Kokrajhar (District Magistrate) and others, after observing all formalities. By doing the above acts the said Shri Talukdar Subversive of discipline which invites disciplinary against him as codified in Rule 62 and 63 of Postal Manual Vol-III and by his continued absence from duty the said Shri Talukdar has also displayed lack of devotion to duty and acted in a manner which is unbecoming of a Govt. Servant violating the provision of Rule 3 (1) (ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE – II

That Shri Chakreswar Talukdar while working as SPM Bengtal S.O. during the period from 30-03-2000 onwards absconded himself w.e.f. 17-07-01 keeping the office closed and suspending the P.O. works. The office was then opened with the help of Magistrate after observing necessary formalities on 21-01-2001. As inventory was prepared by the Magistrate himself in presence of the staff and other witnesses and following cash and stamps were found:-

Cash	=	*Rs. 2776.10*
Stamp	=	*Rs. 6701.00*

Revenue	=	Rs. 1400.00
Total		Rs.10877.10

Duo from BOs	=	Rs. 7080.09
Total		Rs.17957.19

S.O. a/c book of the office (current) was then examined and found that said Shri Talukdar had written up S.O. a/c book upto 13-07-2001 and as per S.O. a/c book dtd. 13.07.01 closing balance of Bangtal S.O. was as below:-

Cash	=	Rs. 1,07,540.02
Stamp	=	Rs. 2753.50
Revenue	=	Rs. 140.00
Duo from BOs	=	Rs. 6030.09
		Rs. 1,16,463.61

Said Shri Talukdar was performed his duties on 14.07.01 and written up B.O. summary upto 14.07.01 but did not maintain the S.O. a/c book upto 14.07.01. As per B.O. Summary dated 14.07.01 a sum of Rs. 7080.09 showed ue from its Branch Offices. Shri Talukdar also issued M.O. for Rs. 1613/- paid M.O. for Rs.2000/- and paid bill for Rs. 40/- respectively on 14.07.01 as per voucher found available. But all the above amount was not brought into a/c on 14.07.01. Besides stamp worth Rs.5730/- was remitted to Bengtal S.O. on 10.07.2001 by the SPM, Bongaigaon S.O., but the amount found not acknowledged and brought into a/c till 14.07.01. All the transactions stated above had been taken into account and assessed closing balances as follows.

CB dated 13.07.01	=	Rs. 1,16,463.61
Stamp remitted to Bengtal but not acknowledged	=	Rs. 5,730.00
M.O. issued but not bring to account.	=	Rs. 1613.00
Total receipt side =		Rs. 1,23,806.61
Less M.O. paid and bills paid	=	Rs. 2040.00
CB =		Rs. 1,21,766.61

But on physical verification the executive Magistrate found Rs. 10,877.10 as cash/stamp/Revenue balance in the office. A sum of Rs. 7080.09 was due from its BOs and hence the total shortage was (Rs. 1,21,766.61- 17,957.19) = Rs. 1,03,809.42 (Rs. One lakh three thousand eight hundred and paise forty two only).

The above shortage of amount was charged as UCP in the daily a/c of Bangtal S.O. on 21.07.01.

By doing the above acts the said Shri Chakreswar Talukdar violated the provision of Rule 58 of P & T Financial Hand Book Volume-1, Rule-658 of P & T Manual Volume-VI Part-III and failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming a Govt. Servant violating Rule-III (1) (i) (ii) (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE –III

List of documents by which the articles of charges framed against Shri Talukdar the then SPM, Bengtal, S.O. are proposed to be sustained.

(1) Inventory dtd. 21.07.01 of Bengtal S.O. prepared by Shri A.K. Tribedi, EAC Kokrajhar in presence of Shri B.K. Marak, SPOs, Dhubri and other witnesses.

(2) S.O. a/c book of Bengtal S.O. dtd. 21.07.01 Containing period from 31.03.2000 to 21.07.2001.

(3) S.O. daily account of Bengtal S.O. dtd. 21.07.01 duly accounted by Dhubri H.O. on 26.07.01.

(4) Debit Charge for Rs. 1,03,809.42 dtd.21.07.01 from Dhubri H.O. dated againt UCP.

(5) B.O. Summary of Bengtal S.O. covering period from 18.01.2000 to 23.07.2001.

ANNEXURE – IV

List of witnesses by whom the article of charges framed against Shri Chakreswar Talukdar the then, SPM, Bengtal, S.O. are proposed to be sustained.

1. *Shri A.K. Trebedi, EAC, Kokrajhar*
2. *Shri B. K. Marak, SPOs, Dhubri*
3. *Shri B. U. Ahmed, IPOs (PG)/Dhubri*
4. *Shri J. Karmakar, IPOs Bongaigaon*
5. *Shri S. K. Choudhury, O/S Mail Bongaigaon*
7. *Shri Tamir Uddin Ahmed, PA, Kokrajhar, H.O*

The said Shri Chakreswar Talukdar Govt. money to the tune of Rs. 1,03,809.42 (Rupees one lakh three thousand eight hundred nine and paise forty two) only in his official capacity and absconded keeping Bengtal S.O. closed from 17.07.01. The matter was reported to Police and the Police authority registered the case against the said Shri Chakreswar Talukdar under Basugaon P.S. Case No. 71/2001 under section 409 IPC. The police submitted charge sheet bearing No. 27 dated 30.05.2002 before the Hon'ble Court of CJM. Kokrajhar showing the accused as absconder. The case is now subjudiced in the said Hon'ble Court in case No. GR 450/2001. The Supdt. of Police, Kokrajhar vide his leter No. KJR/Crime/9/2005/5203 dtd 29-08-05 granted a certificate stating that the accused Shri Chakreswar Talukdar is absconding and the Hon'ble CJM, Kokrajhar has also issued order dated 21.11.05 declaring the accused as prolonged absconder.

Since the whereabouts of the said Shri Chakreswar Talukdar is not known and the Police/Court authority have also certified that the said Shri Chakreswar Talukdar is absconding and therefore, it is not reasonably practicable to hold oral enquiry under Rule-14 of CCS (CCA) Rules, 1965 against the said Shri Chakreswar Talukdar.

In view of the above the undersigned, in exercise of powers conferred by Rule 19 (ii) of CCS (CCA) Rules, 1965 decided to finalize the Rule-14 case of Shri Chakreswar Talukdar without conducting oral enquiry.

I have gone through the case very carefully and also examined all the records and relevant facts in the case and observed that the offence committed by Shri Chakreswar Talukdar is of serious nature and due to his misdeeds the department had to sustain huge loss and valued customers of the department had to suffer during the period of unauthorized closing of the office. SO Shri Chakreswar Talukdar is not fit perodn retained in service and he deserves severe punishment. So orders are passed against Shri Chakreswar Talukdar as below.

ORDER

I,. Shri R. Rabha, Supdt. of Post Offices, Goalpara Division, Dhubri hereby order that Shri Chakreswar Talukdar, Ex-SPM, Bengtal S.O. and now under deemed suspension be "dismissed" from service with immediate effect."

37. From a careful reading of the order, dated 10-02-2006, what clearly transpires is that charges were framed against the respondent's husband by the *disciplinary authority* in terms of Rule 14 of the CCS (CCA) Rules, 1965; but the *enquiry* could not be held, because the respondent's husband was found absconding and the memorandum of charges could not be served on him. When a Government employee absconds and the charges cannot be served on him, it cannot be said that without service of charges, the *disciplinary authority* is disempowered from taking a decision dispensing with the holding of the *enquiry*.

38. The article of charges, as reproduced above, clearly reveal that the charges were very grave and serious inasmuch as the charges relate to misappropriation of Government money and these accusations had not been refuted by the respondent's husband, because the *charge-sheet* could not be served on him. On 10-02-2006, the *disciplinary authority* had, before it, the *police report* showing that the respondent's husband was an *absconder*. The *disciplinary authority* also had, before it, the materials showing that there was misappropriation of Government money by the respondent's husband. In such circumstances, when the charges had not been denied and disputed, because of

unauthorized absence of the respondent's husband, the holding of the *enquiry,* as contemplated by Rule 14, was not only unnecessary, but was wholly impracticable inasmuch as without serving notice on the respondent's husband, the *enquiry* could not have been held and when the notice could not be served on respondent's husband, the *disciplinary authority* had no option, but to dispense with the *enquiry*.

39. The *disciplinary authority* was, therefore, not wrong in recording in its order, dated 10-02-2006, that since the whereabouts of the respondent's husband was not known and the police had certified that the respondent's husband had been *absconding*, it was not *reasonably practicable* to hold *enquiry* in terms of Rule 14 of CCS (CCA) Rules, 1965, against the respondent's husband and, therefore, the *disciplinary authority* decided to finalise the disciplinary proceeding by resorting to its power conferred by Rule 19(2) of the CCS (CCA) Rules, 1965, and, having found that the *misconduct*, committed by the respondent's husband, was serious in nature and due to his *misconduct*, the Department concerned had to sustain huge loss and valued customers of the Department had to suffer, during the period, when the post office remained closed, the respondent's husband was not fit to be retained in service and deserved the severe punishment of dismissal from service with immediate effect. We do not find that the order, so made on 10-02-2006, suffers from any infirmity, legal or factual.

40. In the circumstances mentioned above, it is clear, for the reasons, which we have already discussed above, that the learned Tribunal seriously fell in error in allowing the OA.

41. No doubt, the respondent, as wife of the delinquent employee, or her daughter, would suffer from dismissal of Chakreswar Talukdar, the fact remains that the only question, which was required to be decided was whether dispensing with *enquiry* was legally valid in the facts and in the light of the then prevailing situation of the case at hand and when the answer to this question

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was in the affirmative, the act of dispensing with the *enquiry*, on the part of the *disciplinary authority*, cannot but be regarded, as observed in **Tulsi Ram Patel** (supra), an act done in *public interest* and *public good*.

42. In the result and for the reasons discussed above, this writ petition succeeds and the order, dated 08-07-2010, passed by the learned Tribunal, is hereby set aside.

43. Before parting with this writ petition, we place on record our great appreciation for the valuable assistance rendered by the learned *Amicus Curiae*.

44. In terms of the above observations and directions, this writ petition shall stand disposed of.

45. No order as to costs.

Sd/- INDIRA SHAH
JUDGE

Sd/- IA ANSARI
JUDGE

Memo No. HC.XXI. 29756—61 *R.M. Dtd.* 15/7/13

Copy forwarded for information and necessary action to:-

1. The Union of India, represented by the Secretary to the Govt. of India, Ministry of IT & Communication, Department of Post, New Delhi- 1.
2. The Chief Post Master General, Assam Circle, Panbazar, Guwahati- 1.
3. The Director of Postal Service (HQ), Assam Circle, Panbazar, Guwahati- 1.
4. The Superintendent of Post Offices, Goalpara Division, Dhubri, P.O. & Dist.- Dhubri, Assam, Pin- 783301.
5. Smti Jaya Talukdar, W/O. Sri Chakreswar Talukdar, C/O. Paritish Chakraborty, B. T. Road (Bye Lane), P.O. & Dist.- Bongaigaon, Assam, Pin- 783380.
6. The Section Officer (J), Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati- 5. He/she is requested to acknowledge the receipt of the following Case Records. This has a reference to his/her letter No. 16-3/02-JA/588 dtd. 27-07-2011.

Enclo:-

Case Record of O. A. No. 166/2009.
One File— 247 Pages

By order

Deputy Registrar (I.M.)
Gauhati High Court, Guwahati.

15/7/13

bps

Office note

Received Memo No. HC XXI 29756-61 dt. 15.7.13 as at (F/A) from Hon'ble High court of Gauhati communicated the judgment order passed in WPC No. 2221 of 2011 in connection with OA 166/2009 and the order dt. 8.7.2010 passed by this Ld. Tribunal.

Submitted for kind perusal and order please.

Name
18/7/13.

No action to be taken keep in record

SO(J) 18/7/13

Central Administrative Tribunal
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

(An application under section 19 of the Central Administrative Tribunal)

O.A.NO - 166/09

Jaya Talukdar

.... Applicant.

-Vs-

The Union of India & Ors.

.... Respondents.

Synopsis

Petitioner's husband Chakreswar Talukdar had been serving as Sub Post Master (SPM) at Bengal Sub-Post Office in the District of Chirang, BTAD (Erstwhile Bongaigaon). On 17.7.2001 the applicant's husband went to Office but not return home from office till date. An F.I.R. vide Bongaigaon P.S. Case No.71/2001 lodged by one Joydeb Karmakar, i/c of Post Offices, Bongaigaon Sub-Division alleging inter-alia that the applicant's husband Shri Chakraswar Talukdar, SPM Bengtaal is repeatedly absent from duty since 17.7.2001 till date of lodging the F.I.R. and there was a mis-appropriation of Government cash amount Rs.103809.42. The case allegedly detected by the Executive Magistrate on 21.7.2001 and subsequently police submitted chargesheet showing the applicant's husband as abscond. The learned C.J.M., Kokrajhar also passed order dated 20.6.2006 declaring absconder. The applicant's husband not yet return home. The applicant's apprehension is that her husband might have killed by the extremist elements and accordingly her believe her husband has been honest person and can not commit such offence for meagre amount of

Contd....

Rs.1,03809.42 when he is entitled to get more amount of service benefit and that too deserting loving wife and minor children. The applicant also went to lodge F.I.R. to the S.P.,Bongaigaon to ~~x~~ rescue her husband who refused to accept the F.I.R. of the applicant saying that the same is not necessary. The applicant's husband not yet return and his age of superannuation is over. Therefore, the applicant prayed for releasing retirement benefit of her husband by submitting representation. But not considered. Hence this application.

Filed by

21.08.09

(J.A. Azad)
Advocate.

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In the Central Administrative Tribunal : Guwahati Bench

O.A.No. 166/09

Jaya Talukdar

.... Applicant.

-Vs-

The Union of India & Ors.

.... Respondents.

List of Dates

Sl. No.	Date	Particulars	Annexures
1.	17.7.2001	Date of missing Date of lodging F.I.R.	1
2.	30.5.2002	Date of charge sheet	2
3.	18.12.2005	Date of non-execution report of NBWA/P & A	3
4.	20.2.2006	Date of statement of Enquiry Officer	4
5.	20.6.2006	Date of order in G.R. Case No. 450/2001	5
6.	10.11.2003	Date of representation	6
7.	12.11.2003	Date of Forwarding letter	6(A)
8.	27.08.2007	Date of representation	7
9.	23.06.2008	Date of representation	8
10.	15.7.2008	Date of order	9
11.	10.2.2006	Date of dismissal	10
12.	14.10.2008	Date of Appeal	11

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In the Central Administrative Tribunal, Guwahati Bench.

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Jaya Talukdar ....Applicant

-Vs-

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...Respondents.

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Received copy for
Mr. M.U. Ahmed
Ld. Counsel
21/8/09

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

(An application under Section 19 of the Administrative Tribunal Act, 1985)

Jaya Talukdar

OA 166/09

.....Applicant

-VERSUS-

The Union of India and others

.....Respondents

Details of the Applicant:-

1. Name and Address of the Applicant : Jaya Talukdar
Wife of Late Chakreswar Talukdar,
C/o Shri Paritosh Chakraborty,
B.T. Road (bye Lane)
P.O. & District- Bongaigaon,
Assam, Pin-783380.

2. Designation: Wife of Sub Postmaster

3. Particulars of Respondents:

1. The Chief Post Master General,
Assam Circle, Guwahati, Panbazar,
Guwahati, Pin-781001.

2. The Director of Postal Service (HQ)
Assam Circle, Guwahati, Panbazar,
Guwahati, Pin-781001.

3. The Superintendent of Post Offices,
Goalpara Division, Dhubri,
P.O. & District-Dhubri, Assam,
Pin-783301.

4. The Deputy Commissioner of Chirang,
BTAD, Kokrajhar, Assam, Pin-783370.

5. The Superintendent of Police,
Kokrajhar, P.O. & District-Kokrajhar,
Assam, Pin-783370.

Allested By
Jahangir Alom Razd
Advocate.
1.09.09

Filed by Jaya Talukdar through Jahnavi Atom Azad, Advocate 21.08.09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

(An application under section 19 of the central Administrative Tribunal Act, 1985)

O.A. No. 166/09

Jaya Talukdar.

.... Applicant.

-VERSUS-

The Union of India & ors.

.... Respondents.

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Details of the Applicant:-

1. Name and Address of the Applicant: - Jaya Talukdar
W/O- Late Chakreswar Talukdar.
C/O- Sri Paritosh Chakraborty.
B.T. Road (bye Lane)
P.O & Dist- Bongaigaon, Assam. PIN No - 783380.

2. Designation :- Wife of senior post master.

3. Particulars of respondent. :- 1. The Chief post master General Guwahati, Panbazar, Guwahati, PIN- 781001.

2. The Director of Postal Service (HQ) Assam Circle, Panbazar, Guwahati- 781001.

3. The Superintendent of Post offices, Goalpara Division, PIN- 783301.

4. The Deputy Commissioner of Chirang, BTAD, Kajalgaon, Assam. PIN No - 783370.

5. The Superintendent of Police, Kokrajhar, P.O & Dist-Kokrajhar, Assam. PIN No - 783370.

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6. The Superintendent of Police, Bongaigaon, P.O & Dist-Bongaigaon, Assam. PIN NO - 783380.

Jayee Talukdar

PARTICULARS OF ORDER AGAINST THE APPLICATION IS MADE:-

1. Against the order dated 15-7-08 passed by the applicant's representation dated 25-07-08 passed by the respondent rejecting the applicant's representation dated 25-06-08 for assistance to her family due to missing of her husband Chakerswar Talukdar since 17-07-2001. And inaction on the part of the respondent in not disposing of the appeal dated 14-10-08 made before the Director of Postal Service (HQ), Assam Circle praying for providing all the financial benefits left by her husband due to service rendered under the deponent.

2. Jurisdiction of the Tribunal.

The applicant declares that the cause of action has arisen within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:-

The applicant declares that the application is filed before this Hon'ble Tribunal within the time limit prescribed under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case:-

4.1. That the applicant is a citizen of India being the permanent resident of B.T. Road (Bye lane), P.O & Dist- Bongaigaon, Assam and as such he is entitled to he rights, privileges and protection available to a citizen of India guaranteed by the constitution of India and other settled laws of the land.

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Jayanta Talukdar

4.2 That the applicant begs to state that her husband Chakreswar Talukdar had been discharging duty as Senior most Post master (SPM) at Bengtal Sub-post office in the District of Chirang, BTAD. While on 17th July, 2001 the applicant's husband went to discharge his official duties, he did not return back home till date. An FIR vide Bansu gaon P.S. Case No-71/2001 lodged by one Joydeb Karmakar, in-charge of post offices, Bongaigaon Sub-Division alleging inter-alia that the applicant's husband Shri Chakreswar Talukdar , SPM Bengtal is reportedly absent from duty since 17-7-2001 till date of lodging the FIR and there was a misappropriation of Govt. Cash amount Rs. 103809.42. The case was allegedly detected by the Executive Magistrate Shri A.K. Trivedi, Kokrajhar on 21.7.2001.

A copy of FIR is annexed as Annexure-1.

4.3. That it is stated that the Bansu gaon Police Station investigated the matter and after investigation submitted charge sheet No-27 dated 30-5-2002 showing the applicant's husband as absconder.

A copy of the charge sheet No-27 dated 30-5-2002 along with the statement of allegation (translated relevant portion) is annexed as Annexure No-2.

4.4. That applicant most humbly begs to state that a G.R. Case No-450/2001 was registered arising out of the said police case i.e. Bansu gaon P.S. Case No-71/2001 u/s-409 IPC. IN the said case the learned Chief Judicial Magistrate (CJM), Kokrajhar examined one Upendra Nath Barman ASI in connection with execution of NBWA/ P & A issued against the accused husband of the applicant. The said investigating police officer initially submitted report dated 18-12-05 before the Learned Court of CJM, Kokrajhar that no truce of the applicant's husband could be collected and no one could say where

about her husband. And later on the said police officer was examined by the learned court of CJM, Bongaigaon. After examining the enquiry officer the applicant's husband was declared absconder by the learned CJM, Kokrajhar.

A copy of the Non execution Report of NBWA/P&A dated 18-12-05 submitted the learned court of CJM, Bongaigaon is annexed as Annexure No-3.

A copy of the statement of Enquiry officer taken by the learned court of CJM dated 20-2-2006 is annexed as Annexure No-4.

A copy of the order dated 20-6-06 passed in GR case 450/2001 by the Learned CJM, Kokrajhar is annexed as Annexure No-5.

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4.5. That the applicant begs to state she was shocked and surprised with the action taken by the authority of the postal Department in lodging FIR on allegation of committing financial irregularities by her husband and on the alleged willful abstaining of her husband from duty. The applicant was in deep sense of apprehension that her husband may be kidnapped by the extremist person for want of money as because the Bengtal area was badly affected by the extremist elements at the relevant time. She was also of mind that she got her husband most honest person can not abscond for some meager amount of money. That too deserting his beloved wife and Children. She thereafter went to the Bongaigaon police station as well as to the SP, Bongaigaon with a request to lodge a Missing Report or FIR and to rescue her husband. But the police officer of concern police station told her that lodging of such report is not necessary as because there is already a report by the postal department. The petitioner finding no alternative once made a request to the D.C.

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Chirang, BTAD, Kokrajhar, Assam to make an investigation into the pending matter and a favourable police report in connection with missing of her husband. The applicant out of ignorance did not keep the copy of the said prayer petition dated 5-7-2002.

4.6. That the applicant begs to state that she on several dates moved to the office of the Superintendent of Police Bongaigaon as well as to the office of the Deputy Commissioner, Bongaigaon with request to investigate about missing of her husband. But she was only assured that if her husband is not trace out he would be declared killed by the extremist person and in that event she will be able to get all pensionary benefit on account of service of her husband.

4.7. That, the applicant begs to state that at the relevant time her husband left her along with two daughters and one minor son namely Smt. Minakshi Talukdar, Smt. Nabanita Talukdar and Sriman Jitumoni Talukdar and applicant has been living with her children in miserable condition because service of her husband was the only source of income. The applicant has made many representations and visited personally the office of the respondent authority for financial assistance to her family in distress and also for provident fund, money, gratuity, pensionary benefit and etc as entitled under law but the respondents authority have not considered her claim. The applicant also made representation before the Deputy Commissioner, Bongaigaon for redressal of her grievances and it was forwarded vide No. BNC/OC/1/2003/pg.1/225 to the chief Post mater General, Guwahati for necessary action. The applicant has not keep all the representation except the representation dated 10-11-03, 27.08.07 and 23-06-08.

Photo copy of the representation dated 10-11-03 and forwarding letter dated 12-11-03 are annexed as Annexure No-6 & 6(A) respectively.

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Photo copy of the representation dated 27-08-07 is annexed as Annexure No-7.
Photocopy of the representation dated 23-06-08 is annexed as Annexure No-8.

4.8 That the applicant begs to state that superintendent of post offices, Goalpara Division vide Letter No-F6-1/2001 dated 15-07-08 passed an order in reference to applicant's representation dated 25-6-08 rejecting the prayer for the applicants on a plea that her husband has misappropriated Rs. 1,03,809.42/- while he was working as SPM, Bengtal Post Office. By the said communication it is pleaded that concern police has investigated into the matter and submitted charge sheet there of. The CJM Kokrajhar issued order dated 20-06-06 that the charges against said Talukdar is proved and declared him as absconder. It is also pleaded that Sri Talukdar has been dismissed from service for violation of departmental Rules and as per section 24 of C.C.S. (Pension), Rules, 1964 past service benefit of Sri Talukdar has been forfeited, hence the applicant's claim for retirement benefit has been rejected. In the said communication an order dated 10-2-06 of dismissal has also been enclosed.

A photo copy of the order dated 15-7-08 vide No-F6-1/2001 -2002 is annexed as Annexure No-9.
A copy of the dismissal order dated 10-2-06 is annexed as Annexure No-10.

4.9. That after receiving the letter dated 15-7-08 the applicant was shocked and surprised with the stand taken by the respondent postal authority at Goalpara and preferred an appeal before the Director of Postal Service (H.Q), Assam Circle on 14th Oct/08 and contended that the departmental action by way of dismissal of service is not proper because it was ex-perte and the person against whom the proceeding was

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taken is still untraced. Such action has been taken without giving any opportunity of hearing or defence. Unless the charged official is traced out and the allegation/charge of absconding, unauthorized absence and misappropriation of Govt. Money are not proper. It is also pleaded in the appeal that the CJM, Bongaigaon passed order dated 20-6-06 holding the applicant's husband as an absconder and the said order is based only the chargesheet/enquiry report submitted by he I/O and the said order can not attained finality as regards the charge of misappropriation and misconduct.

Jayee Talukdar.

A copy of the appeal dated 14-10-08 is annexed as Annexure-10.

4.10. That, one Joydeb Karmakar, Inspector of Bongaigaon Post office lodged an FIR on 24-07-01 alleging inter-alia that applicant's husband was found absent from his duty since 17-7-01 allegedly misappropriating Govt. cash amount Rs. 1,03,809.42/- and KVP No. 74cc/378461462 of demo Rs. 10,000/- missing in his official capacity. Accordingly a police case was registered vide G.R. No. 450/01. Applicant's house was searched by the police on 20-02-02 and 15-4-02 but found absent. Then police charge sheeted the case before the CJM, Kokrajhar against the applicant's husband on 30-5-02 mentioning him as absconder and finally the Hon'ble CJM, Kokrajhar has declared him as absconder. But the fact is that the applicant's husband's whereabout is still unknown since 17th July/2001.

4.11 That the applicant submits that it is unbelievable that an office staff who has already served his duties without any spot for more than 25 years to the satisfaction of the department would involved with misappropriation of money amounting Rs. 1,03,809.42 whereas his benefit from the office would be ten times more of the so called misappropriation.

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4.12. That at the relevant point of time the whole Bengtal area under BTC area was dominated by the extremist (BLT) and applicant's husband who was in official duty might have been kidnapped and killed by the extremist.

4.13. That the applicant is a poor lady. Her husband's service was the only source of income of their family and he has been found missing for more than 7 (seven) years. the applicant with her minor children run pillar to post for their grievances but without any fruitful result, hence this application seeking your honourable Tribunal's interference into the matter.

5. Grounds For Relief with Legal Provision:-

(I) For that the learned departmental authority has committed grave error of law and facts in passing dismissal order dated 10-2-06 and communication dated 15-7-08 issued by the Superintendent of post offices, Goalpara Division rejecting the claim of retirement benefit and family pension on account of service of the applicant's husband.

(II) For that charge of misconduct, absconding and misappropriation of Govt. fund can not be held proved against the applicant's husband since her husband is still untraced and she with her children are languishing with untold suffering without any source of livelihood and the said charges can not be said to be established unless it is tested by the procedure. The man against whom those charges are brought is being untraced, the same are undefended, it can not be said that charges are proved/established under the provisions of law.

(III) For that sub-Rule- 1 of Rule-14 of the CCS Rules, 1965 provides that no order imposing any of the penalties specified in clauses V to IX of Rule-II shall be made except after an enquiry is held. In the given case allegation of absconding is also made. Therefore, the action can not be

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made only under Rule 19 (II) but not under Rule- 14. Thus there is serious procedural irregularity in imposing penalty. Moreover the authority never taken care to trace him subsequently or to serve notice upon him or his family members. Even did not inform about the dismissal from service and forfeited of retirement benefits.

(IV) For that the respondent departmental appellant authority ought to have review/revise the penalty order in view of the fact that the Delinquent is untraced till now and period since the date of missing i.e. from 17-070-1 is more than seven years now. The place of posting being extremist dominated area, it is fit case of presumption of killing by extremist person. Under that position of fact the appellate authority ought to have reviewed the penalty order at least to the extent of releasing retirement benefit. To consider this prayer, non registering a separate police case should not be bar because of the fact that this applicant went to the concern police station, office of the superintendent of police station to register a case and she approached the Deputy Commissioner vide Annexure- to direct the police to make an enquiry to trace out her husband.

(V) For that it is submitted that under Rule- 29 A of the CCS Rules, 1965 there is a provision that authority may revise any order when any new material or evidence was not available at the time of passing the order and which has the effect of changing the nature of the case, has come, or has been brought to notice. In the given the fact it is established that the applicant's husband (delinquent) did not absconded with an intention to misappropriation of Govt. money. Rather it is to be presumed that he was killed by extremist for want of money. A man of normal behaviour having wife, minor children can not abstain for long seven years for meager amount of Rs. 1,03,809.42 who rendered 25 years service and when his due would be ten times more. And penalty

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imposed upon the dead person under regulation -14 of CCS Rules, 1965 is quite improper and unsustainable in law.

(VI) For that under various provisions of law it is settled that death may be presumed after 7 years of missing. Such death in an extremist dominated area naturally may be a case of extremist killing. Considering this aspect of the matter holding the case proved against a dead person, a person who never returned after missing is absolutely arbitrary and rejection of claim of pensionary benefit of the delinquents' past service by the troubled torned family is absolutely unjustified.

6. Details of Remedies Exhausted:-

The applicant has preferred an appeal before the Director of Postal Service (HQ) Assam Service, Guwahati against the order dated 15-7-08 passed by the superintendent of post officer, Goalpara, Div. vide No- F6-1/2001-2002 which is pending before the authority.

7. Maters not pending before any other court/Tribunal:-

There is no any other case pending before any other Tribunal or court in connection same context.

8. Relief prayed for:-

Under the above facts and circumstances stated above, the humble applicant most respectfully prays for following relief.

(i) To set aside and quash the impugned rejection order dated 15-7-2008 issued under the signature of Superintendent Post Offices Goalpara Division forfeiting the claim of the past service benefit of the applicant's husband,

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(ii) To set aside or review or alternative not to give effect the impugned penal order vide Memo NO- F6-1/2001-02 dated 10-2-2006 (Annexure No-) issued by the Superintendent of Post Office, Golapara Division, Goalpara declaring the service of the applicant's husband has dismissed on the alleged charges or to review the same under the facts and circumstances that the applicant's husband is still untraced

(iii) To dispose of the Appeal dated 14-10-2008 (vide Annexure-).

(iv) To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal in the interest of justice.

9. Interim Relief prayed for:-

In the interim the applicant prays for a direction to the respondent authority to release the financial/retirement benefit on account of the service of the applicant's husband in the interest of justice.

10. Details of postal order:-

Postal order No : 396 416276
Date of Issue : 27.06.09
Issued from : Guwahati
Payable at : Guwahati Post office

11. List of particulars :-

As per Index.

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VERIFICATION

I, Jaya Talukdar, W/O- Late Chakreswar Talukdar, C/O- Sri Paritosh Chakraborty. , aged about 50. years, B.T. Road (bye Lane), P.O & Dist- Bongaigaon, Assam, do hereby verify that the contents in paragraphs ..4:1..to..4:11..... and 4.12.to4.13 are true to my knowledge and paragraphs 5(i) to 5(vi) and are believed to be true as legal advice and I have not suppressed any material fact.

And I sign this verification on this 21st day of Aug, 2009 at Guwahati.

Jaya Talukdar.

Signature

ANNEXURE NO---1

G.R NO-450/2001

Type copy of F.I.R

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Police Station:- Basugaon,
Dist:- Kokrajhar,
Sub-Division:- Kokrajhar,
Case No:- 71/2001
Dated and hour of occurrence:- 21-7-2001
Date and hopur when reported:- 24-7-2991 at 4-45 A.M
Place of occurrence and distance
and direction from police station:-Bengtol post office,31 k.m. North/East
Date of despatch from police station:- 25-7-2001

Complainant

Joydeb Karmakar
Inspector of Posts
Bongaigaon sub-adivisionP.S:- Bongaigaon,
Dist:- Bongaigaon.

Accused

Sri. Chakreswar Talukdar
S.P.M Bengtol Post office

Offence:- U/S 409 I.P.C
Steps:- S.I.B Bongaigaon I/C,BTL O.P to take up the investigation of the case.

Sd/ Eunus Ahmed S.I
Basugaon P.S
Dist;-Kokrajhar.
Dt. 24-7-2001

Received the written ejahar from the complainant and treated as F.I.R. which is enclosed herewith.

Eunus Ahmed S.I
Basugaon P.S
Dist;-Kokrajhar.
Dt. 24-7-2001

To,
The officer commanding (O/C)Basugaon Police Station. P.O. Basugaon, Dist.Kokrajhar
Dated-24-07-2001
No-B2/Bengtol/01

Sub:- F.I.R.

Sir,

I have the honour to inform you that Shri Chakreswar Talukdar S.P.M Bengtol Post office is reported unauthorisedly absence from duty since 17-07-2001 to till date Shri Talukdar while working as S.P.M Bengtol S.O. misappropriated govt. case amounting Rs.103809.42 (Rs one lakh three thousand eight hundred nine and forty two paise) and KVP No-74CC/978461-462 of deno 1000/- missing in his official capacity.

Certified to be true copy
Advocate
21.08.09

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

The case was detected by Executive Magistrate Shri. A.K. Tribedi , Kokrajhar on 21-7-2001 and the misappropriated amount has been changed as UCP in to S.O. daily account dated-23-7-2001.

Kindly take necessary action against the official under appropriate section of law.

Thanking you.

Your's faithfully
Sd/ Joydeb Karmakar.
Inspector of Post.
Bongaigaon Sub-Division.
Bongaigaon ,Assam.

Copy to :-

1. The Supdt. Of Post Office's Dhubri for I/O kind information and taking N/A.
2. The In-charge ,Bengtol Police Out Post for information.

Sd/-
Inspector of Post.
Bongaigaon Sub-Division.
Bongaigaon ,Assam.

Received and registered B gaon PS Case No:-71/2001 U/S 409 IPC.
Sd/-Illegible.
Basugaon P.S
Dist: Kokrajhar
24-7-2008

ANNEXURE — 1

Date of application for the copy.	Date fixed for Notifying the requisite number of stamps & Folios	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
18-9-08	18-9-08	22-9-08	29-9-08	7-11-08

Central Administrative Trib
केन्द्रीय प्रशासनिक न्याय
21 AUG 20
Guwahati Bench
गुवाहाटी न्याय

G.R. No = 450/2001

F.I.R.

police station:- Bagribari Dist:- Kokrajhar.
Sub-Division:- Kokrajhar
Case no = 71/2001 Date and Hour of occurrence:- 21-7-2001.
Date and Hour when reported 24-7-2001 At 4-45 P.M.
Place of occurrence and distance and direction from police station — Bengtol/post office 31 K.M. North/East
Date of despatch from police station — 25-7-2001

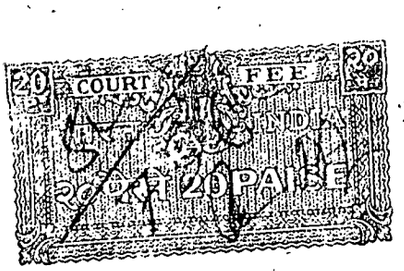
Complainant

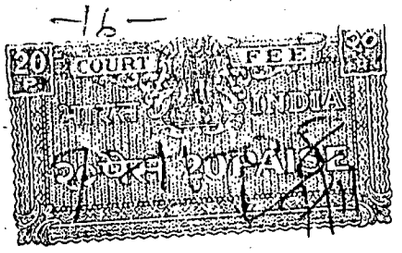
Joydeb Karmakar
Inspector of posts.
Bongaigaon Sub-Div.
PS:- Bongaigaon.
Dist:- Bongaigaon

Accused

① Sri Chakreswar Talukdar
S.P.M. Bengtol/
post office

Certified to be true copy
Advocate
21.08.09





2



Offence :- U/S- 4099 P.C.

Steps :- S.I. B. Borgohain I/C, BTL O.P to take up the investigation of the case.

Sd/ Eunus Ahmed S.I.
Basugaon P.S
Dist: Kokrajhar.
Dt. 24-7-2001

Received the written ejahar from the Compl't. and treated as F.I.R. which is enclosed herewith.

Eunus Ahmed S.I
Basugaon P.S.
Dist: Kokrajhar
Dt. 24-7-2001

To,
The officer commanding (O/C)
Basugaon police station,
P.O. Basugaon, Dt. Kokrajhar.
Dated - 24-07-2001

No- B2/Bengtol/01

Sub :- F.I.R.

Sir, I have the honour to inform you that Shri Chakreswar Talukder S.P.M.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG
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गुवाहाटी न्यायपीठ



- Bergtol post office is reported un authorisedly absence from duty since - 17-7-01 to till date shri Talukder while working as S.P.M. Bergtol S.O. misappr -o-priated govt cash amounting Rs - 103809.42 (Rs- one Lakh three thousan eight hundred, nine forty two and KVP NO-74CC/97846L462 & demo10_00 /- missing in his official capacity.

The case was detected by the executi magistrate shri A.K. Tribedi Kokrajha on 21-7-2001 and the misappropriated amount has been charged as u.c.p in S.O. daily account dated - 23-07-20

Kindly take necessary action again t- the official under appropriate sa -tion & dow.

Thanking you.

Yours faithfully.

Sd/- Joy de Barmakar

Inspector of Posts.

Bongaigaon sub Divn.

Bongaigaon Assam.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
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गुवाहाटी न्यायपीठ

copy to.

1) The supdt. of post office's Dhubri for his kind information and taking N/A.

2) The Incharge, Bilasipara police outpost for information

Sd/-
Inspector of post.
Borgaigaon sub-Divn.
Borgaigaon Assam.

Received and Registered Basugaon PS case no= 74/2008 u/s= 409 IPC

Sd/ illegible
Basugaon PS.
Dist: Kokrajhar
24/7/2008

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
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गुवाहाटी न्यायपीठ

Kishore Kumar Roy.
7/11/08

Compared
7/11/08

Copied by
29-9-08

ANNEXURE NO---2

CHARGE SHEET

Dist Kokrajhar.
Charge sheet No:-27
Dated.-30/5/2002,Police Station:- Basugaon .In first information No-71 Dated:-24/7/2001.

Complainant
Shri. Joydeb Karmakar.
Inspector of Post.
Bongaigaon Sub-Division.
Bongaigaon ,Assam.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
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Accused (Absconder)
Shri Chakreswar Talukder
S/O Lt.Ananta Ram Talukder
(S P M Bengtol Post Office)
Vill -Doleygaon
P.S: Dhuligaon,
Dist: Bongaigaon (Assam).

Permanent add.
Vill- Bhadra
P. S & Dist:-Nalbari(Assam)

In custody
Filed on
20-2-06

Property:- Bengtol O.P .
M.R. No. 7/2001

Witnesses
1.Shri. Joydeb Karmakar.
Inspector of Post.
Bongaigaon Sub-Division.
Bongaigaon.
P O & Dist:-Bongaigaon.
2.Shri. Ram Babu Barman,
Pion Bengtol Post Office.
P.S Basugaon.
3.Md.Tamiruddin Ahmed.
S.P.M.Bengtol Post Office.
P.S- Basugaon
4 Shri.Sany Ulita Sarmah
E.D. Packerman.
Bengtol Post Office.
P. S:- Basugaon
5 Shri. A.K Tribedi A.D.C
Kokrajhar.
6 S.I. Bipin Borgohain
Bengtol O.P
7.S.I SSirajul Hoque
Bengtol O.P
P.S.-Basugaon,
Dist-Kokrajhar (Assam).

Certified to be true copy
Advocate
21.08.09

 ANNEXURE-2

CHARGE-SHEET

Dist:- Kokrajhar. charge-sheet No=27
Dated:- 30/5/2002, police station:- Basugaon
On first information No-71 Dated: 24/7/2001
Complainant

Sri Joydev Kamakar
Inspector of post,
Bongaigaon sub-Division
Bongaigaon.
PS & Dist:- Bongaigaon
(Assam).

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Accused (Absconder)

Sri Chakreswar Talukder
S/o Lt. Lt. Ananta Ram Talukder
(S.P.M. Bengtol post office)
Vill- Doleygaon. PS-Dhaligaon.
Dist: Bongaigaon (Assam).
Permanent add.

On custody

Vill- Bhadra
PS & Dist: Nalbari
(Assam).

Filed: on
20-2-06

Property: Bengtol O.P.
M.R. No 7/2001.

Certified to be true copy
Amar
Advocate
21.08.09

Witnesses

1) Sri Joydev Karmakar
Inspector of post, Borgaigaon.
Sub-Division. Borgaigaon. P.S. Dist. Kokrajhar.

2) Sri Ram Babu Barman.
Peon, Bengtol post office
P.S— Basugaon.

3) Md. Tamiruddin Ahmed.
S.P.M. Bengtol post office.
P.S— Basugaon.

4) Smti Somyudita Sarmah.
E.D. packerman.
Bengtol post office.
P.S— Basugaon.

5) Sri A.K. Tribedi, A.D.C.
Kokrajhar.

6) S.I. Bipin Borgohain
Bishmuri O.P. Bengtol O.P.

7) S.I. Sirajul Hoque
Bengtol O.P.
P.S— Basugaon.
Dist: Kokrajhar. (Assam)

Central Administrative Tribunal
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Contd. Annexure- 2

Translated Copy (Relevant Portion)

Brief Facts:

The brief fact of the complaint is that on 24-7-01 the informant Sri Jaydev Karmakar inspector of post, Bongaigaon Sub-division, P.S. and Dist. Bongaigaon (Assam) by submitting a written FIR informed that Sri Chakreshwar Talukdar remained absent from duty w.e.f. 17-7-01 without permission of the authority and misappropriated Rs. 103809.82 (Rupees One lack and three thousand eight hundred nine and eighty two paise) only and there has been missing of K.U.P. No. 7466/97846/462 of deno 10,000/- from his office. The aforesaid incident was detected by the Executive Magistrate Sri A.K. Tribedi, Kokrajhar on 21-7-01 and accordingly this case has been registered and investigated.

During the period of investigation the place was investigated and was interrogated the neighbouring witnesses and it is also found that the necessary documents were seized by earlier investigating officer. After taking evidence of the witnesses through interrogation and also from seized documents sufficient materials are found against Sri Chakreshwar Talukdar u/s 409 IPC and therefore I.O. submitted the Charge Sheet before the Hon'ble Court with a prayer for trial of the case. The seizer list is submitted alongwith the charge sheet.

It is prayed that warrant of arrest may be issued against the absconded accused. Search warrant is also enclosed with the charge sheet. The incident will be proved by the witnesses mentioned in column no. 6.

Yours faithfully
Sd/ Shirajul Hoque
S.I. Bangtal Police Out Post
Date 30-5-02.

Forwarded to the C.J.M., Kokrajhar through P.S.I.Kokrajhar Court.

Sd- Illegible
Bongaigaon P.S.
Dist. Kokrajhar.

Certified to be true copy
Advocate
21.08.09

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
27 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Central Administrative Tribunal
21 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

REGD. FEE RS. 75 PAISE

বিষয়ঃ,

আবেদনকারীর চাকুরি বিভাগী তরফে মেসার 28/9/2009 ইং তারিখের মোকদ্দমাকারী শ্রী- তমালেন্দু সরকারের, Inspector of post Borgaon- jaleem sub-Division, Ps & Dist- Borgaigaon. (Assam) এখন বিরুদ্ধে মোকদ্দমা রুজু করা হয়, যেখানে post office এ sub-post master হিসাবে তাঁর মোকদ্দমা আবেদনকারীর কার্যকালে বিভাগীয় তদন্তে সাব্যস্ত হয় মোসা 29/9/2009 ইং তারিখের আদেশ বলে মুঃ 20,650.82 টাকা সাব্যস্ত রিকভারি, আদায় না হওয়ায় বিভাগীয় কর্তৃপক্ষ টাকা আদায়ের জন্য case K.U.A No- 7466/97 পাঃ 461-462 of dem 10, 2001- এর তেজপুর সার্টিফিকেট কোর্ট মোকদ্দমা রুজু করেন। তাঁর ফলশ্রুতিতে সার্টিফিকেট মোকদ্দমা হয়। ঐ টাকা, বিভাগীয় মোকদ্দমা মোসা 22/9/2009 তারিখের আদেশ মতে কোর্ট থেকে ফেরত আসে. তাহা জানানো হইল।

তাহা ছাড়াও ঘটনাচক্রে আবেদনকারী বর্তমানে বিনা ছুটি অনুপস্থিত থাকায় বিভাগীয় কর্তৃপক্ষ তাঁর বিরুদ্ধে চার্জ গঠন করে মোসা 29/9/2009 তারিখের আদেশ বলে তাঁকে চাকুরি হইতে বরখাস্ত করেন। তাহা জানানো হইল।

Certified to be true copy
- Samar
Advocate
21-08-09

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
2 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Forwarded to the C.J.M. Morigaon.
Through the P.S. Morigaon Court.

Sd/ Illegible
17-6-02
Basugaon P.S.
Dist: Morigaon.

Attested Copy to be true Copy
Kishore Kumar Roy
Head Asstt.
C.J.M. Office, Nokra/Assr.
Authorised U/S 76 Act 1 1872

Enquired

Copied
29-7-08

ANNEXURE-3

Report of E.O

To,
The Honourable Chief Judicial Magistrate Kokrajhar.

Ref:- G.R No-450/2001 and ptn No. 1458 dt. 25/11/05.
Sub:- Non execution report of N.B. WA/PSA.

Sir,

I have the honour to report that I have attempt to arrest of accud. Shri Chakreswar Talukder , S/O Lt.Ananta Ram Talukder of Doleygaon , P.S:-Dhaligaon, Dist:-Bongaigaon in the strength of N B W.A./P.S.A but found no truce of him. Nobody could say where about person . However one copy of proclamation hanged up at Dolaigaon tiniali and one copy of proclamation hangs in P.S notice board for public notice.

Further, I beg to report that he has no any movable and immovable properties in his locality to be seized.

The original warrant of kept at P.S for further attempt and oblige.

Your's faithfully,
A.S.I Upendra Nath Barman
Dalgaon P.S.
18/12/05.

Certified to be true copy
Advocate
21.08.09

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench
गुवाहाटी न्यायपीठ

-26- ANNEXURE - 3

Report of E.O.

Guwahati Bench
गुवाहाटी न्यायपीठ

To,
The Hon'ble chief Judicial Magistrate
Kokrajhar.

Ref:- G.R. No= 450/2004 and ptn no- 1458
dt. 25/11/05.

Sub:- Non execution report of N.B.W/P.S.

Sir,

I have the honour to report that I have attempt to arrest of accd. Sri Chakreswar Talukder s/o Lt. Ananta Ram Talukder of Dolaigaon, P.S- Dhaligaon, Dist:- Bongaigaon in the strength of C/W:- N.B.W.A./P.S.A. but found no truce of accused him. No body could say where about of the accd. person. However one copy of proclamation dt/DC chief u/phala Dhaligaon P.S. hanged up at Dolaigaon Tiniali and one copy of proclamation hangs in the notice board for public notice.

Further, I beg to report that he has no any movable and immovable properties in his locality to be seized.

The original warrant of arrest kept at P.S. for further attempt and oblige.

Yours faithfully,
Sd/- Upendra Nath Barman
Dhaligaon P.S. 18/12/05

Returned with report, submitted to superintendent Bongaigaon 19/12/05

certified to be true copy
Barman, Advocate 21-08-06

: :

Annexure-4

Translated copy

(Relevant portion)

Statement of E.O

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Age about- 57 years

A.S.I- Upendra Nath Barman
s/p late Dulal Barman
Caste-Hindu
P.S. Dalgaon
Dist. Bongaigaon
Profession- A.S.I of Police.

On Oath:-

On 21.11.2005 while I was serving at Daligaon P.S. the O/C asked me to issue warrant of arrest with P & A against accused Chakreswar Talukdar and accordingly I went to Daligaon in Search of the accused person. I could not trace out the accused by going there. Thereafter I issued proclaonation by fixing notice on trce at tiniali. I also kept a copy of notices in the notice board of of police station. I returened the attachment since there was no property. I submitted report . Ext. 1 is prolamatcer, Ext. 1(1) is report with my signature, Ext. 2 is attachment, Ext2(1) is my report with my signature, Ext. 3 is seperate report , Ext. 3(1) is my signature.

E/O , AC

Sd/-D. C. Chetia Phukan
C.J.M. Kokrajhar
20.2.06

Certified to be true copy
Advocate
21.08.09

ANNEXURE-24

Statement of E.O.

Age about ~~60~~ 57 years.

Sd/- Upendra Nath Barman,
S/o Sd. Debilal Barman,
caste:- Hindu, ps- Dhaligaon,
Dist: Borgaigaon, prof:- Sd/- x police,

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
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Upendra Nath Barman

বয়স,

ইং 21/11/05 তাৰিখে মই নিম্নস্বাক্ষৰকাৰী
মহকুমা ৩/C, ৱ বাহনী চক্ৰেশ্বৰ বৰুৱাৰ
অধীনত থকা P.S.Case নং ৬/A কাণ্ডত জড়িত
হিচাপে বাহনীয়ে বিচাৰি থকা আসামী
তেওঁৰ বাহনীৰ বিচাৰক আৰু সুদ্ধ লোকসকলে
তেওঁক বিচাৰি বাহিৰোৱা সময়ত প্ৰথমে
proclamation কাৰ্য্যত জাৰী কৰা। তাৰপৰে
সম্পত্তি ওপৰত ক্ৰোক আদেশ জাৰী কৰা। Attachment
হোৱাৰ পাছত মই নিম্নস্বাক্ষৰকাৰীয়ে এই
Report দিওঁ। Ext 1 proclamation Ext
1(1) Report নং তাৰিখ হয়। Ext 2 Attach
ment Ext. 2(1) তাৰিখ Report নং হয়।
Ext-3 separate report Ext 3(1)
তাৰিখ হয়।

Ro & PC
Sd/ DC Chetia Phukan
C.J.M. Kokrajhar
20-2-06

Certified to be true copy
Dasgupta
Advocate
21.08.09

ANNEXURE-5

In the Court of C.J.M Kokrajhar

G.R No-450/2001

U/S 409 I.P.C.

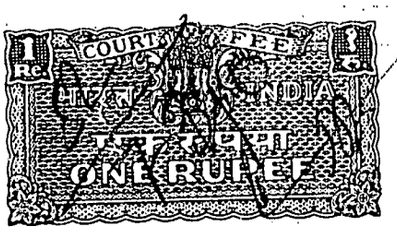
State
-VS-
Smt. Chakreswar Talukder.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Order Sheet

Date	Order	Signature
20.6.06	Accud. Absent E.O. present. He is examined and discharged. The P.A. against the and Chakreswar Talukder proceed .Hence the accd is declared as absconder and the case against the accd is filed until further order .	Sd/D.C. Chetia Phukhan C.J.M Kokrajhar

Certified to be true copy
Advocate
21.08.09







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ANNEXURE—5

In the court of C.J.M. Kokrajhar
G.R No = 450/2001
U/s = 409 I.P.C.

State
-Vs-
Sri Chakreswar Galukder

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
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गुवाहाटी न्यायपीठ

order sheet

Date	order	signature
20-6-06	Accd. absent. E.O. present. He is examined and discharged. The P.P.A. against the accd. Chakreswar Galukder proceed. Hence The accd. is declared as absconder and the case against the accd. is filed until further order.	

Sd/D.C. Chetia
Phulchari

Kishore Kumar Roy C.J.M.
7/11/06 Kokrajhar

Compare. P/Sn
7/11/08

certified to be true copy
Advocate

copied by
29-9-09

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ANNEXURE 6

CA: May take up with pmk
Sd/-
Deputy Commissioner
Bongaigaon.

The Hon'ble Deputy Commissioner
Bongaigaon

Sub : **Request for your kind attention into the matter of my husband Post Master of Bengtal Post Office is traceless wef. 17-7-01to till date.**

Hon'ble Sir,

I am Smt. Jaya Talukdar W/o. Chakraswar Talukdar, Post Master of Bengtal Post Office respectfully appear before you and state that, reportedly it would know that my husband started from Bengtal on dt. 17-7-01 carrying postal money, but how he started, by Bus or bi-cycle or by any means still I am unknown, at anyhow it is a matter of surprise that till date he is traceless. After long awaiting and searching by me and my relatives friend & collegues it is confirm that he have not yet reached Bongaigaon nor his native village Bhadra in the Dist. of Nalbari.

That sir in the mean time above 2 (two) years have already been passed and my husband remain untrached. This is to know your honour that, he has left 2 daughters one 25 years of age another 19 years and one son who is aged 12 years only. It is my opinion that leaving effection of his children he (Talukdar) cannot stay outside of his house till date and as such it is apprehended that, Bengtal area is dominated of extremists, on the way he has been kidnaped by the extremist, then for money he has become victim of extremist and his deadbody has been vanished by the extremist.

That Sir, my present position is that, my husband have'nt got no land and property at Bongaigaon nor in his native village. I do not know his any deposit in the any Bank, or in the Post Office in Bongaigaon or Bengtal. I amliving with my children in a rented house of Arabinda Collony, huge house rent outstanding. Till date I was maintaining myself and my children by begging from my relatives and they have also closed their door for me, to feed my children I have already sold my, household bilongings including my ornaments also.

That Sir, Postal Authorities were requested severals to see my position that my husband has completed 33 years of his service as govt. servant and his provident fund, gratuaty, pension etc. and money on other sources are lying deposit to the concerning Postal Authority and out of which some cash amount may be given to me in order to meet-up my critical position, but the concerning authority also found silent till date.

Under this circumstances finding no alternative except to begg your kind justice, and I hope that you being the highest of authority of our District Bongaigaon and you will do something for me which will help me to survive in the world with my unfortunate children. For the act of your kindness I shall remain grateful to your honour.

Yours faithfully,
Jaya Talukdar 18/11/03
(Jaya Talukdar (Pathak)
W/o. Chakraswar Talukdar
Arabinda Colony, Ward No. 2
T. R. Phukan Road, Bongaigaon

Certified to be true copy
Advocate
21.08.09

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
2009
Guwahati Bench

ANNEXURE 6(A)

89

GOVT. OF ASSAM

OFFICE OF THE DEPUTY COMMISSIONER::::::

-33-

ANNEXURE-7

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

To,

The Hon'ble Supdt. of Post Office,
Dhubri.Assam.

Dated- Bongaigaon the 27th August,2007.

Ref:- About the missing husband Chakreswar Talukdar - Post Master of Bangtol Post Office under your Authority.

Sub:- Appeal to extend all assistance due to missing of my husband since 17.07.2001.

Hon'ble Sir,

With due respect and humble submission, I have the honour to lay the following few lines for your kind perusal and immediate sympethatic action please.

That Sir, It is needless to mention you that my husband Chakreswar Talukdar - the Post Master of Bangtol Post Office while on 17th July,2001 went to discharge his official duties, he was found to be missing inspite of best searches and uptil now his whereabout is unknown to us. Since then the economic condition of us have been going to Jeoperdize beyond description.

That Sir, for his such unfortunate absence, though I have applied for obtaining the benefit of P.F., Gratuity, extra as we entitled, but the same is yet to receive as the statutory period of 7(seven) Years has not been elapsed.

That Sir, due to non-providing of any benefit as mentioned we have to come to the streets for begging alms door to door for our servival.

That Sir, it is my humble request to you to kindly look into our matter and take all necessary steps expeditiously so that we may get all compensatory benefits without any delay immediately after expiry of statutory period of time.

Thanking you,Sir.

Yours faithfully.

Jaya Talukder

(JAYA TALUKDAR)
C/O PARITOSH Chakraborty
B.T.Road(Bye-Lane)
P.O. & Dist.Bongaigaon,Assam.

Certified to be true copy
Advocate
21.08.09

ANNEXURE - 8

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

To,

The Hon'ble Supdt.of Post office,
Dhubri,Assam.

Dated.Bongaigaon the 23rd June/08.

Ref:- About the missing husband chekeswar Talukder- post master of Bengtol post office,under your control,now the Bengtol post office is fall under chirang district.

Sub:- Appeal to extend all assistance due to missing of my husband since 17/7/2001.

Hon'ble sir,

With due respect,I have the honour to lay before you the following few lines for favour of your kind persual and immediate sympethatic action please.

That sir,It is needless to mention here that my husband chakeswar Talukder the post master of Bengtol post office on 17th July/2001 went to discharge his official duties he was found to be missing inspite of best searches and till date his - whereabout is unknown to us.Sinace then the economic condition of us have been going to jeoperdize beyond descreiption.

That sir,for his such unfortunate absence for the last 7(seven)years,though I have applied for obtaining the benefit of GPF Gratuity,pension and other benefit as entilled and he have completed 33 years of Govt.service.And as per Govt.norms the 7 years have going to be completed.

That sir,After [illegible] missing of 7(seven)years we entilled ask the statucory period.

That sir,due to non-providing of any benefit,we have to come to the open street.for begging from door to door for our survival with my 2 growing children(Daughter/& one son).

That sir,Again I would like to bring to your kind notice that my son who will be appear HSLC Examination in the coming year i.e.2009.

That sir,my husband was 7 years missing'Can your deptt. or police trace him' the Court case was going uptill now at - kokrajhar court.

(Conted P/2

Certified to be true copy
Amit
Advocate
21.08.09

(2)

That sir, After completed of 7 years of missing we entilled to get all compensation benefit because he completed his 33 years of Govt. service.

That sir, It is my earnest prayer to before your honour kindly to look into our matter and take all necessary steps expeditiously so that we may get all compensatory benefits without any further loss of time after expiry of statutory period.

Your immediate early action is solicited.

Thanking you,

Yours faithfully,
Jaya Talukder
25-6-2008
(MRS. JAYA TALUKDER)
W/O. Chkeswar Talukder,
C/o. Paritosh Chakraborty,
B.T. Road, By lane, Bongaigaon.
P.O. Bongaigaon (ASSAM)

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

ANNEXURE-9

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

DEPARTMENT OF POSTS ::: INDIA.

From
Supdt. of Post Offices
Goalpara Divn. Dhubri.

To,
Smt. Jaya Talukdar
W/O-Chakreswar Talukdar
C/O- Paritosh Chakraborty
B.T.Road by lane
PO:- Bongaigaon.

No:- F6-1/2001-2002 Dated at Dhubri the 15.07.08.

Sub:- Regarding assistance to the family of Chakreswar Talukdar ,Ex-BPM,Bengtal SO now dismissed.

Ref:- Your application dated 25.06.08.

Madam,

I would like to inform you that your husband Sri Chakreswar Talukdar while working as SPM, Bengtal SO retained excess cash amounting to Rs.1,03.809.42 without any liability . The Sub Divisional Inspector(P), Bongaigaon visited Bengtal SO on 18.07.01 to investigate the irregular retention of cash and found that the office was close and Sri C.Talukdar remained absent from duty. Then the office was opened in presence of Magistrate and detected shortage of cash amounting to Rs.1,03,809.42 (Rupees one lakh three thousand eight hundred nine and paise forty two) only.

The incident was reported to the Police and after investigation the Police charge-sheeted the case to the court of law against the said Sri Talukdar with report Sri Talukdar as "absconder". The Hon'ble CJM, Kokrajhar issued order on 20.06.06 that the charges against Sri Tlukdar is proved and declared him as "absconder".

Sri Chakreswar Talukdar violated departmental Rules while he was in duty and accordingly departmental action was taken against him as per departmental rules and regulations. Finally the official had been dismissed from service with immediate effect vide this office memo. of even no. dated 10.02.06. A copy of the this office order dated 10.02.08 passed against Sri Talukdar is enclosed herewith for your information.

It may be further informed you that as per Rule -24 of CCS (Pension) Rules,1964 dismissal of a Government servant from service entails forfeiture of his past service. Since Sri Chakreswar Talukdar had been dismissed from service for the misdeeds committed by him the entire past service of Sri Talukdar has been forfeited. Hence no benefit is admissible to Sri Chakreswar Talukdar or to his family and accordingly the claim preferred by you vide your application referred to above is hereby rejected.

Enclo:- as stated.

Supdt. of Post Offices
Goalpara Divn. Dhubri.

Certified to be true copy
Advocate
21.08.09

 ANNEXURE - 10

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES
GOALPARA DIVISION :::: DHUBRI – 783 301.

Memo No. F6-1/2001-02

Dated at Dhubri the 10-02-2006

WHEREAS a statement of articles of charges was framed against Shri Chakreswar Talukdar, Ex-SPM Bengtal S.O. under Rule-14 of CCS (CCA) Rules, 1965 but due to prolonged absconding of Shri Talukdar the said memorandum of charges could not be served to the Official. The article of charges and the statement of imputation of misconduct or misbehaviour on the basis of which the charges were framed against the said Shri Chakreswar Talukdar was as below:-

ANNEXURE – I

Statement of articles of charge framed against Shri Chakreswar Talukdar, the then SPM, Bengtal S.O. (Now under deemed to have been placed under suspension and absconder since 17-07-01).

ARTICLE – I

That the said Shri Chakreswar Talukdar while functioning as SPM, Bengtal S.O. during the period from 31-03-2000 onwards remained unauthorized absent from duties w.e.f. 17-07-2001 keeping Bengtal S.O. closed and his movements were not known till this day and his continued absence in duty without proper permission unauthorizedly was subversive of discipline which invites disciplinary action against Shri Talukdar as codified in Rule-62 & 63 of Postal Manual Volume –III . This also attracts the provision of Rule-3(1) (ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE – II

That during the aforesaid period and while functioning as such in the aforesaid office the said Shri Chakreswar Talukdar has kept Bengtal S.O. closed and absconded himself w.e.f. 17-07-2001 keeping shortage of cash to the tune of Rs. 1,03,809.42 (Rupees One Lakh three thousand eight hundred nine and paise forty two) only in the office. The above shortage of cash was charged as U.C.P. on 21-07-2001. By doing the above acts the said Shri Chakreswar Talukdar violated the provision of Rule-58 of P& T FHB Volume-I, Rule-658 of P&T Manual Volume-VI Part-III and also Rules 3(1) (i) , (ii), (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE- II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Shri Chaklreswar Talukdar the then SPM, Bengtal S.O. Now under deemed to have been placed under suspension and absconder since 17-07-01.

ARTICLE – I

That the said Shri Chakreswar Talukdar while functioning as SPM, Bengtal S.O. during the period from 31-03-2000 onwards remained absent unauthorizedly from duties w.e.f. 17-07-2001 keeping Bengtal S.O. closed without any information. His movement was also not known . On enquiry at Bengtal S.O. on 20-07-2001 it was revealed that Bengtal S.O. remained closed from 17-07-2001 and Shri Talukdar is absconding since 17-07-2001 . No body could tell where about of Shri Talukdar as well as the disposal of office keys . Being failed to open the P.O. on 20-07-01 a report was lodged at Bengtal Police out post regarding suspension of P.O. works and unauthorized absence of Shri Talukdar . Lastly, the Bengtal S.O. was opened on 21-07-2001 in presence of Shri A.K. Tribedi, EAC, Kokrajhar (District Magistrate) and others, after observing all formalities. By doing the above acts the said Shri Talukdar was subversive of discipline which invites disciplinary action against him as codified in Rule 62 and 63 of Postal Manual Vol.-III and by his continued absence from duty the said Shri Talukdar has also displayed lack of devotion to duty and acted in a manner which is unbecoming of a Govt. Servant violating the provision of Rule 3 (1) (ii))& (iii) of CCS (Conduct) Rules, 1964.

Contd...2....

Certified to be true copy
Advocate
21.08.09

Central Administrative Tribunal
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21 AUG 2009
Guwahati Bench

ARTICLE – II

That Shri Chakreswar Talukdar while working as SPM Bengtal S.O. during the period from 31-03-2000 onwards absconded himself w.e.f. 17-07-2001 keeping the office closed and suspending the P.O. works . The office was then opened with the help of Magistrate after observing necessary formalities on 21-07-2001 . An inventory was prepared by the Magistrate himself in presence of staff and other witnesses and following cash and stamps were found :-

Cash	= Rs. 2776.10
Stamp	= Rs. 6701.00
Revenue	= Rs. 1400.00
Total	Rs. 10877.10
Due from BOs	Rs. 7080.09
	Rs. 17957.19

S.O. a/c book of the office (current) was then examined and found that said Shri Talukdar had written up S.O. a/c book upto 13-07-2001 and as per S.O. a/c book dtd 13.07.01 closing balance of Bengtal S.O. was as below .

Cash	= Rs.1,07, 540.02
Stamp	= Rs. 2753.50
Revenue	= Rs. 140.00
Due from BOs	=Rs. 6030.09
	Rs. 1,16,463.61

Said Shri Talukdar was performed his duties on 14.07.2001 and written up B.O. summary upto 14.07.2001 but did not maintain the S.O. a/c book upto 14.07.01. As per B.O. Summary dated 14.07.2001 a sum of Rs. 7080.09 showed due from its Branch Offices. Shri Talukdar also issued M.O. for Rs. 1613/-, paid M.O. for Rs.2000/- and paid bill for Rs. 40/- respectively on 14.07-2001 as per voucher found available . But all the above amount was not brought into a/c on 14-07-2001 .Besides stamp worth Rs.5730/- was remitted to Bengtal S.O. on 10-07-2001 by the SPM, Bongaigaon S.O. , but the amount found not acknowledged and brought into a/c till 14.07.01. All the transactions stated above had been taken into account and assessed closing balances as follows .

CB dated 13.07.2001	= Rs. 1,16,463.61
Stamp remitted to Bengtal but not acknowledged.	= Rs. 5,730.00
M.O. issued but not bring to account.	= Rs. 1,613.00
Total receipt side	= Rs. 1,23,806.61
Less M.O. paid and bills paid	= Rs. 2,040.00
CB	Rs. 1,21,766.61

But on physical verification the executive Magistrate found Rs.10,877.10 as cash/stamp/Revenue balance in the office . A sum of Rs. 7080.09 was due from its B.Os . and hence the total shortage was (Rs.1,21,766.61- 17,957.19) = Rs.1,03,809.42 (Rupees one lakh three thousand eight hundred nine & paise forty two)only .

The above shortage of amount was charged as UCP in the daily a/c of Bengtal S.O. on 21.07.2001.

By doing the above acts the said Shri Chakreswar Talukdar violated the provision of Rule-58 of P&T Financial Hand Book Volume –I, Rule-658 of P&T Manual volume-VI Part-III and failed to maintained absolute integrity and devotion to duty and acted in a manner of unbecoming a Govt. Servant violating Rule 3 (1) (i) ,(ii) ,(iii) of CCS (Conduct) Rules.1964.

Contd...3....

Central Administrative Tribunal
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Guwahati Bench
गुवाहाटी न्यायपीठ

ANNEXURE – III

List of documents by which the articles of charges framed against Shri Talukdar the then SPM, Bengtal S.O. are proposed to be sustained .

(1) Inventory dtd 21.07.01 of Bengtal S.O. prepared by Shri A.K. Tribedi , EAC Kokrajhar in presence of Shri B. K. Marak, SPOs, Dhubri and other witnesses.

(2) S.O. a/c book of Bengtal S.O. dtd 21.07.01 Containing period from 31-03-2000 to 21.07.2001.

(3) S.O. daily account of Bengtal S.O. dtd 21.07.2001 duly accounted by Dhubri H.O. on 26-07-2001.

(4) Debit Charge for Rs. 1,03,809.42 dated 21.07.2001 from Dhubri H.O. dated against UCP.

(5) B.O. Summary of Bengtal S.O. covering period from 18-10-00 to 23.07.2001.

ANNEXURE – IV

List of witnesses by whom the article of charges framed against Shri Chakreswar Talukdar the then, SPM Bengtal S.O. are proposed to be sustained .

1. Shri A. K. Trebedi , EAC, Kokrajhar .
2. Shri B. K. Marak, SPOs, Dhubri.
3. Shri B. U. Ahmed, IPOs(PG)/Dhubri .
4. Shri J. Karmakar, IPOs, Bongaigaon.
5. Shri S. K. Choudhury, O/S Mail Bongaigaon .
6. Shri Tamir Uddin Ahmed, PA, Kokrajhar H.O.

The said Shri Talukdar misappropriated Govt. money to the tune of Rs. 1,03,809.42 (Rupees one lakh three thousand eight hundred nine & paise forty two) only in his official capacity and absconded keeping Bengtal S.O. closed from 17-07-01. The matter was reported to Police and the Police authority registered the case against the said Shri Talukdar under Basugaon P.S. case No. 71/2001 under section 409 I. P.C. The Police submitted charge sheet bearing No. 27 dated 30-05-02 before the honourable court of C.J.M. Kokrajhar showing the accused as absconder . The case is now subjudiced in the said honourable court in case No. GR 450/2001. The Supdt. of Police, Kokrajhar vide his letter No. KJR/Crime/9/2005/5203 dtd 29-08-05 granted a certificate stating that the accused Shri Talukdar is absconding and the honourable C.J.M. Kokrajhar has also issued order dated 21-11-2005 declaring the accused as 'prolonged absconder'.

Since the whereabouts of the said Shri Chakreswar Talukdar is not known and the Police/Court authority have also certified that the said Shri Talukdar is absconding and therefore, it is not reasonably practicable to hold oral enquiry under Rule-14 of CCS (CCA) Rules, 1965 against the said Shri Talukdar .

In view of the above the undersigned, in exercise of powers conferred by Rule 19 (ii) of CCS (CCA) Rules, 1965 decided to finalize the Rule-14 case of Shri Chakreswar Talukdar without conducting oral enquiry .

I have gone through the case very carefully and also examined all the records and relevant facts in the case and observed that the offence committed by Shri Talukdar is of serious nature and due to his misdeeds the department had to sustain huge loss and valued customers of the department had to suffer during the period of unauthorized closing of the office. SO Shri Talukdar is not fit person retained in service and he deserves severe punishment .So orders are passed against Shri Talukdar as below .

Contd...4...

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21 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

(::::: 4 :::::)

ORDER

I, Shri R. Rabha, Supdt. of Post Offices, Goalpara Division, Dhubri hereby order that Shri Chakreswar Talukdar, Ex-SPM, Bengtal S.O. and now under deemed suspension be "dismissed" from service with immediate effect.

(R. RABHA)
Supdt. of Post Offices
Goalpara Divn.Dhubri
783 301.

Copy to :-

1. Shri Chakreswar Talukdar, Ex. SPM, Bengtal S.O.
2. The Postmaster, Dhubri H.O. for information and taking necessary action.
3. The Chief Postmaster General, Assam Circle for favour of kind information and necessary action w.r.to C.O's No. INV/GM-3/2001 dtd 13.09.2005
4-5. The Punishment Register.
6. Vigilance section of C.O./Guwahati ..
7. Punishment Register of C.O./Guwahati.
8. Notice Board of Divl. Office, Dhubri.
9. The SPM, Bengtal S.O. who will display the copy in his office Notice Board.
10. P/F of the Official.
11. C.R. file of the Official.
12-13. Office copy & Spare.

(R. RABHA)
Supdt. of Post Offices
Goalpara Divn.Dhubri
783 301

Central Administrative Tribunal
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Guwahati Bench
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 ANNEXURE - 11

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Regd. with A/D
(BY HAND)

Central Administrative Tribunal
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21 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

To,
The Director of Postal Services(HQ)
Assam Circle,
Guwahati.

Dated- Bongaigaon the 14th October'08.

Ref:- Letter issued to me from Supdt. of Post Offices, Goalpara Division, Dhubri vide No.F-8-1/2001-2002 dtd. 15.07.08.

Sub:- APPEAL.

Sir,

In reference to the above, I have the Honour to lodge this appeal before your benign Authority for favour of kind perusal and take immediate necessary sympathetic action.

It is relevant to mention here that though the above-referred letter was in my hand 2(two) months back, but owing to my severe bedridden condition suffered by ailments, I failed to lodge this appeal before your benign Authority in time which may be condoned considering my poor condition.

Brief fact of my case :

Sri Chakreswar Talukdar was/is my husband who was/is one of the Senior most Post Master of your department who was discharging his duty at the relevant period of time at Bengtal Post Office in the District of Chirang,BTAD,Assam. As per FIR lodged by one Joydeb Karmakar, Inspector of Bongaigaon Post Office on 24.7.01 my husband was found absent from his duty since 17.07.2001 allegedly misappropriating Govt. Cash amounts of Rs. 1,03,809.42 and KVP No. 74CC/378461462 of deno Rs. 10,000/- missing in his official capacity. Accordingly a police case was registered vide G.R. No. 450/2001. Our house was searched by the Police on 20.02.02 and 15.4.02 but found absent. Then the Police chargesheeted the case before the Chief Judicial Magistrate, Kokrajhar against my husband on 30.05.2002 mentioning him as 'absconder' and finally the Hon'ble C.J.M. has filed the case noting my husband as ' absconder'. But the fact is that my husband's whereabout is still unknown since 17th July,2001.

Contd....P/2.

Certified to be true copy
Advocate
21.08.09

Central Administrative Tribunal
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At the relevant period of time, my husband left me as his legally married wife as well as 2(two) minor daughters and one minor son whose names are Smt. Minakshi Talukdar, Smt. Nabanita Talukdar and Sriman Jitumoni Talukdar respectively.

Several representations were placed before the Hon'ble Superintendent of Post Office, Goalpara Division,Dhubri to me including personal visit for releasing provident Fund,Gratuity, Pensionary benefit etc. for us so as to maintain the family but of no fruit, Ultimately while on 25.06.2008, once again a petition was filed by me before him against that the Hon'ble S.P.O. sent the above referred letter rejecting my prayer mechanically without giving reasonable opportunities for hearing mere citing the official procedure. Hence this Appeal.

That Sir, my husband never committed any misdeed against the interest of the Department for which neither he nor we can not be suffered from any punishable action as envisaged under Rule 24 of CCS (Pension) Rules 1964.

That Sir, my husband's absentism ~~xxx~~ from his office is a mysterious one. As your benign authority is well aware of the fact that entire Bengtal area was a vulnafable place at that relevant period of time, as such, his so-called 'absconsion' might become a 'Kidnapping' Case. If the Authority would investigate the case properly, other fact must have been come out.

That Sir, it is not unbelievable that an official personnel who was already served his duties without any spot for more than 25(Twenty five)Years to the satisfaction of the Department would involve with misappropriation of money amounting to Rs. 1,03,809.42 (Rupees One Lakh Three Thousand Eight Hundred Nine and Paisa Forty two)only whereas his benefits from the office would come 10(Ten) times more of the so-called misappropriated amount.

That Sir, at the relevant period of so-called absconsion my husband had maintained a very good cordial relationship with me as well as his 3(three) minor School going children. It is hardly possible for a such person not to maintain any relationship with his beloved wife as well as children during this 7(seven) Years gap period who have passing their lives with starvation as well as with uncertainty and waiting for him with deep consternation.

Contd.....P/3.

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That Sir, Hon'ble Chief Judicial Magistrate, Kokrajhar never issued any order on 20.06.2006 that the charges against my husband is proved. Since the investigating officer in his Charge-sheet mentioned my husband as 'absconder' as such, the Court also in his Order mentioned the same. It is nothing but an official formality.

That Sir, it has been already conveyed by me that my presumsion is that during the period of missing of my husband, the whole Bengtal area was dominated by extremists. Dut to money he might have been kidnapped by the extremists and under the crue of extremists his body might have been vanished somewhere in the deep jungle.

That Sir, it is needless to mention that in absence of my husband the entire family have been going to jeopardise beyond description. In this context, if no financial benefits be provided in favour of us as the members of the family of my said husband, in that case we all shall have no alternative other than to die on starvation.

That, this appeal is filed bonafide and for the ends of Justice.

In view of the above, I, therefore vervantly appeal before you to kindly consider our case as an exceptional one reviewing the decision of the Superintendent of Post Office, Goalpara Division, Dhubri and further be pleased to provide all the financial benefits left by my husband due to discharging his service to your department at an early date for the ends of Justice. We are anticipating your speedy action in this regard.

Thanking you, Sir.

Yours faithfully,

Jaya Talukdar
14/10/08

(Jaya Talukdar)
W/O Chakreswar Talukdar
C/O Sri Paritosh Chakraborty
B.T.Road (Bye-Lane)
P.O. & Dist. Bongaigaon, Assam.

ACKNOWLEDGEMENT DUE CARD

ADDRESSED TO : The Director of Postal Services(H.O.), Assam Circle, Panbazar, Guwahati-1.

Date : 8.10.08

Office of the Chief Postmaster General, Assam Circle, Guwahati-781 001. 21 OCT 2008 Signature

Central Administrative Tribunal
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To SENDER'S NAME & ADDRESS

Smt. Jaya Talukdar
W/O Chakreswar Talukdar
C/O Sri Paritosh Chakraborty
B.T.Road,(Bye-Lane)
P.O. & Dist.Bongaigaon,Assam.

Certified to be true copy
Advocate
21.08.09

IN THE CENTRAL ADMINIISTRATIVE TRIBUNAL,
GUWAHATI BENCH

IN THE MATTER OF

Original Application No.166/2009.

Smt Jaya Talukdar

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
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IN THE MATTER OF

Written statement submitted by the Respondents No. 3

WRITTEN STATEMENT

The humble answering respondents submit their written statement as follows :

1(a) That I Sri Tapan Kumar Chowdhury S/o Late Sasanka Mohan Chowdhury and Respondents No. 3 in the above case and I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in the written statement, the contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the statement on behalf of all the respondents.

(b) The application is filed unjust and unsustainable both on facts and in law.

(c) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.

(d) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

2. **Brief history of the case :**

The case in brief is that Sri Chakreswar Talukdar while working as SPM, Bengtal SO had kept excess cash in his office. Accordingly on 10.07.01 the SDI(P), Bongaigaon was directed to remove the surplus cash. The SDI (P), Bongaigaon reported on 19.07.01 that the surplus cash could not be recovered due to unauthorized absence of Sri Talukdar from 17.07.01. Then the office was opened in presence of Executive Megistrate, Kokrajhar on 21.07.01 and found shortage of cash amounting to Rs. 1,03,809.42 and shortage amount was charged as UCP at Bengtal SO on 21.07.01. A sum of Rs. 17,048/- has so far been recovered from subsidiary offender/Security Bond etc. and the residual loss amounting to Rs.86,761.42 could not be recovered from any source.

The official has since been dismissed from service w.e.f. 10.02.06. The court case against prime accused was filed on 20.06.06 by the Judicial Magistrate, Kokrajhar and declared the accused as absconder. Court case No. GR 450/01 in the court of CJM, Kokrajar has been filed issuing arrest warrant at Dhaligaon PS.

After that the wife of Sri Talukdar vide her application dated 25.06.08 to pay service benefit viz. pension etc. to her on the plea that whereabouts of Sri Talukdar is not known. After receipt her prayer the case was examined and revealed that there is no provision in Central Civil Service Rules and Central Civil Service (Pension) Rules to grant service benefit to the wife of a dismissed Govt. servant. Accordingly the fact was informed to her under this office letter No.F6-1/2001-2002 dated 15.07.08. After being aggrieved with the

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decision she moved her case to the Hon'ble CAT Guwahati Bench, Guwahati. The Hon'ble CAT Guwahati admitted the case under No. OA-166/09 and served notice for filing counter statement fixing date of 20.10.09 which was received by this office on 22.10.09.

3. That with regard to the statements made in para 1 of the original application the answering respondents beg to state that the applicant of this OA is not an employee of the department of Posts. The applicant Mrs Jaya Talukdar is the wife of Sri Chakreswar Talukdar who was an employee of the department of Posts, India. The husband of applicant of this OA misappropriated Govt. money to the tune of Rs.1,03,809.42 in his official capacity while he was working as SPM, Bangtal SO in July 2001 keeping the office close from 17.07.01. The official was proceeded departmental action and he was dismissed from service with effect from 10.02.06 observing the departmental rules and regulation. The Administrative Tribunal was established for adjudication of disputes and complaints in connection with recruitment and condition of service of a person/persons appointed to public services and posts in connection with the affairs of the Union. Since Jaya Talukdar is not an employee under the Union of India so she may not make this O.A. before the Hon'ble Tribunal under the Administrative Tribunals Act, 1985.

4. That with regard to the statements made in para 2 of the original application the answering respondents beg to state that the Administrative Tribunal was established for adjudication of disputes and complaints in connection with recruitment and condition of service of a person/persons appointed to public services and posts in connection with the affairs of the Union. Since Jaya Talukdar is not an employee under the Union of India so her declaration to the effect of jurisdiction of the Tribunal is not covered under Section 14 of the Administrative Tribunals Act, 1985. The Hon'ble CAT, Guwahati Bench, Guwahati have no

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jurisdiction over the application filed by Smt Jaya Talukdar as she is not an employee of the Union of India.

5. That with regard to the statements made in para 3 of the original application the answering respondents beg to state that the period of limitation is reckoned with reference to the date of initial final order passed against an employee by his/her employer. The order if any was passed against Shri Chakreswar Talukldar on 10.02.06 and as per section 21 of the Administrative Tribunals Act, 1985 the OA should have filed by Shri Chakreswar Talukdar and not by his wife within 10.02.07. But the OA was filed by one Jaya Talukdar in 2009 which is not within the limitation of time as per section 21 of the Administrative Tribunal Act, 1985.

6. That with regard to the statements made in para 4.1 of the original application the answering respondents beg to state that Smt Jaya Talukdar may be a citizen of India but she is not an employee of the Union of India. The Administrative Tribunals Act 1985 is applicable to the employee of Union Territories in connection with his service matters and the Act is not applicable to a general citizen for his personal matter.

7. That with regard to the statements made in para 4.2 of the original application the answering respondents beg to state that the applicant being the wife of Sri Chakreswar Talukdar should have reported either to police or to the departmental authority regarding non-returning of her husband to her home on 18.07.01, 19.07.01, 20.07.01 or 21.07.01 or so on. But Smt Talukdar did nothing in time regarding absent of her husband from her beyond office hours on 18.07.01, 19.07.01, 20.07.01 or so on.

8. That with regard to the statements made in para 4.3 of the original application the answering respondents beg to offer no comment.

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9. That with regard to the statements made in para 4.4 of the original application the answering respondents beg to state that the police and Hon'ble Court did their duty as per law and hence no comment.

10. That with regard to the statements made in para 4.5 of the original application the answering respondents beg to state that the husband of the applicant was a sub Postmaster, Bengtal SO. The authorized case to be retained at his office has been fixed by his higher authority which was fixed as maximum for Rs.1500/- and minimum for Rs.500/-. He was also authorized to take cash as per his office requirement showing liabilities to his case office. But Sri Chakreswar Talukdar showed false liabilities and took excess cash just from a few days ago of his unauthorized absence. The position was ascertained and confirmed on detailed enquiry in presence of executive magistrate. So the statement made in this para after a long gap by the wife of Sri Talukdar is just for her personal gain which are not based on the fact and all statement made in this para are not true.

11. That with regard to the statements made in para 4.6 of the original application the answering respondents beg to state that the applicant if anything was done at her own and just her pensionary benefit which are not covered by departmental rules. As such specific weightage was not given to her application if any that was made by her.

12. That with regard to the statements made in para 4.7 of the original application the answering respondents beg to state that the service benefits are entitled to the wife of an employee only after death of the employee while in service or after retirement. But the husband of the applicant was not expired and he misappropriated Govt. money while he was in service and kept himself absent from duty without any information for which he was deserved for disciplinary action as per departmental rules. Accordingly the husband of the applicant was

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proceeded with departmental action and dismissed from service w.e.f 10.02.06. In such case the wife or family of the employee are not entitled to any service or pensionary benefit. That is why her application if any was not entertained.

13. That with regard to the statements made in para 4.8 of the original application the answering respondents beg to state that the action was taken as per provision of rule which are enclosed as Annexure-1. The copy of punishment memo was supplied to the applicant (Jaya Talukdar i.e. wife of the employee) for her information and as a supporting documents of the decision taken against her representation.

14. That with regard to the statements made in para 4.9 of the original application the answering respondents beg to state that there is no rule to the effect that the wife of an employee can make appeal to the authority on behalf of her husband. So the appeal dated 14.10.08 made by the applicant (wife of employee) was not entertained.

15. That with regard to the statements made in para 4.10 of the original application the answering respondents beg to state that it is true as the action was taken as per rule.

16. That with regard to the statements made in para 4.11 of the original application the answering respondents beg to state that it not true. Sri Chakreswar Talukdar while working as Sub Postmaster at Dudhnoi SO misappropriated Govt. cash to the tune of Rs.43,094.97 on 25.06.92 and kept himself absent from duty while the Superintendent of Post Offices, Dhubri visited his office on 25.06.92. That time also the case was enquired in presence of police authority and he was placed under suspension. However, his case at that time was settled leniently and reinstated to service considering welfare of his family members and with a view

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that he will rectify himself during rest of his service. But he did not rectify himself and repeated the activities against in 2001 at Bengtal PO.

17. That with regard to the statements made in para 4.12 of the original application the answering respondents beg to state that the husband of the applicant was joined at Bengtal PO on 31.03.2000 and kept himself absent from duty with effect from 17.07.01. Thereafter, so many staff worked at Bengtal SO at that time but no staff was disturbed by the so called extremist as contended by the applicant.

18. That with regard to the statements made in para 4.13 of the original application the answering respondents beg to state that the Administrative Tribunal was established for adjudication of disputes and complaints in connection with recruitment and condition of service of a person/persons appointed to public services and posts in connection with the affairs of the Union. Since Jaya Talukdar is not an employee of Union of India so she may not make this O.A before this Hon'ble Tribunal under the Administrative Tribunals Act 1985. Hence the O.A filed by the wife of an employee be dismissed.

19. That with regard to the statements made in para 5.1 of the original application the answering respondents beg to state that the husband of the applicant was proceed departmental action under Rule 14 of CCS (CCA) Rules, 1965 and finalized the case in exercising the powers as per Rule 19 (ii) of CCS (CCA) Rules 1965 and GIO (9) below Rule 19 of CCS (CCA) Rules 1965. Copy of the rules are enclosed as Annexure-II. Again the representation of the applicant claiming pension was rejected on 15.07.08 as per rule 24 of Central Civil service Rules, 1972. Copy enclosed as Annexure-I.

20. That with regard to the statements made in para 5.II of the original application the answering respondents beg to state that the husband of the

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applicant was proceeded departmental action under Rule 14 of CCS (CCA) Rules, 1965 and finalized the case in exercising the powers as per Rule 19 (ii) of CCS (CCA) Rules 1965 and GIO (9) below Rule 19 of CCS (CCA) Rules 1965. Copy of the rules are enclosed as Annexure-II.

21. That with regard to the statements mad in para 5.III of the original application the answering respondents beg to state that Special procedure in certain case are provided in CCS(CCA) Rules, 1965 and provisions are elaborately discussed in Rule 19 of CCS (CCA) Rules, 1965 GOI (9) below Rules. Copy of the rules are enclosed as Annexure-II. The case of Shri Chakreswar Talukdar the husband of the applicant was special in nature and the case was finalized in exercising the power contained in Rule 19 of CCS (CCA) Rules, 1965. (Anexure-II).

22. That with regard to the statements mad in para 5.IV of the original application the answering respondents beg to state that the reviewing authority found no lacunae in the punishment imposed by the disciplinary authority and that is why the case was not reviewed.

23. That with regard to the statements mad in para 5.V of the original application the answering respondents beg to state that the husband of applicant of this OA misappropriated Govt. money to the tune of Rs.1,03,809.42 in his official capacity and kept himself absent from duty with a view to evade arrest by police for his misdeeds. The police authority also failed to locate the culprit and certified to that effect. Accordingly he was punished as per departmental rules and regulations and dismissed from service. Some contentions of this para like, **"he was killed by extremist for want of money," "penalty upon a dead person"** etc are nothing but expression of opinion without any valid documents. These are not acceptable from the wife of a Govt. servant with huge monetary responsibilities.

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24. That with regard to the statements mad in para 5.VI of the original application the answering respondents beg to state that the husband of the applicant is not missing. He has been absconding from 17.07.01 after committing fraud and the disciplinary case against the absconding official was finalized on 10.02.06 with penalty **"dismissal"** from service. After dismissal his past service automatically forfeited as per provisions of CCS(CCA) Rules, 1965 and pensionary benefit has been ceased as per Central Civil Service (Pension) Rules1972.

25. That with regard to the statements mad in para 6 of the original application the answering respondents beg to state that the applicant is not an employee. An employee can make appeal against any order passed by his employeer. No order was passed against the applicant from this end. Her unjustified claim dated 25.06.08 was examined at this end under the provision of various rules and the position was informed vide this office letter dated 15.07.08 against whom no appeal is lie.

26. That with regard to the statements mad in para 7 of the original application the answering respondents beg to state that is not true. **A criminal case under No. G.R.No.-450/2001 U/S 409 IPC** in the court of C.J.M, Kokrajhar is still pending against the husband of the applicant. The warrant of arrest has been kept in Dhaligaon PS. The case is kept in file in CJM's Court, Kokrajhar declaring the accused as absconder until further order.

27. That with regard to the statements mad in para 8.i of the original application the answering respondents beg to state that the relief as sought for may be dismissed as the applicant is not a Govt servant under Union Territories.

28. That with regard to the statements mad in para 8.ii of the original application the answering respondents beg to state that the wife of an employee

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cannot file O.A before the CAT as per the Administrative Tribunals Act, 1985. This relief as prayed for may be dismissed.

29. That with regard to the statements mad in para 8.iii of the original application the answering respondents beg to state that the applicant is the wife of an employee who are not authorized to make appeal on behalf of accused Govt servant. The appeal dated 14.10.08 of the applicant is not disposable by the department as per provision of rules.

30. That with regard to the statements mad in paragraphs 8.iv & 9 of the original application the answering respondents beg to state that the O.A may be dismissed straightway as there is no any section in the Administrative Tribunals Act, 1985 under which the wife of an employee can file OA before the Hon'ble CAT on behalf of a Govt. servant.

31. That the reply has been made bonafide and for the ends of justice and equity.

It is therefore humbly prayed before this Hon'ble Tribunal that the present application filed by the applicant may be dismissed with costs.

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VERIFICATION

I Shri Tapan Kumar Chowdhury

Son of Late Sasanka Mohan Chowdhury aged about 59

years, resident of Dhubri

working as Superintendent of Post Offices, Dhubri.

Duly authorized and competent officer of the answering respondents to sign this verification, do hereby solemnly affirm and verify that the statements made in paras 1 to 5, 12, 16 to 28 are true to my knowledge, belief and information & those made in para 10, 13 being matter of record are true to my knowledge as per the legal advice and I have not suppressed any material facts and I sign this verification on this 21st day of November, 2008 at Guwahati

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ANNEXURE - I

CENTRAL CIVIL SERVICES

PENSION RULES[1]

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CHAPTER I

Preliminary

1. Short title and commencement

(1) These rules may be called the Central Civil Services (Pension) Rules, 1972.

(2) They shall come into force on the 1st June, 1972.

2. Application

Save as otherwise provided in these rules, these rules shall apply to Government servants including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to—

(*a*) railway servants;

(*b*) persons in casual and daily rated employment;

(*c*) persons paid from contingencies;

(*d*) persons entitled to the benefit of a Contributory Provident Fund;

(*e*) members of the All India Services;

(*f*) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;

(*g*) persons employed on contract except when the contract provides otherwise; and

(*h*) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

GOVERNMENT OF INDIA'S DECISIONS

(1) Employees of Union Territories are also governed by CCS (Pension) Rules, 1972.—Reference UO Note No. 115-Audit/95-83, dated 31-1-1984, from the Office of the Comptroller and Auditor-General of

1. Published, *vide* G.I., M.F., Notification No. 8 (1)-E. V/69, dated the 1st March, 1972.

2. These orders will become effective from 3rd December, 1985. Past cases already decided need not be reopened.

[G.I., Dept. of Per. & Trg., O.M. No. 11012/15/85-Estt. (A), dated the 3rd December, 1985.]

[*For regularization of periods of suspension* see *Fundamental Rules* 54, 54-A, 54-B *and Administrative Instructions thereunder.*]

24. Forfeiture of service on dismissal or removal

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.

GOVERNMENT OF INDIA'S DECISION

Termination of service under Temporary Services rules or under the term of appointment for failure to pass prescribed examination, does not entail forfeiture of past service.—The Government of India in consultation with the Ministry of Home Affairs, have held that the termination of service either under CCS (TS) Rules,1965 or under the terms of appointment for failure to pass a prescribed examination does not amount to dismissal or removal within the meaning of Article 418 (*a*) CSR (Rule 24). A Government servant whose services are terminated for failure to pass prescribed examination and who is appointed to another post without any break, will count his previous service towards leave and pension.

[C.A.G.'s Letter No. 2092-NGEI/73-67, dated the 23rd September, 1967.]

25. Counting of past service on reinstatement

(1) A Government servant who is dismissed, removed or compulsorily retired from service, but is reinstated on appeal or review, is entitled to count his past service as qualifying service.

(2) The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension, if any, shall not count as qualifying service unless regularized as duty or leave by a specific order of the authority which passed the order of reinstatement.

[See *Fundamental Rules* 54 *and* 54-A.]

[1]26. Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment,

1. Substituted by G.I., M.F., Notification No. F. 6 (12)-E. V (A)/72, dated the 7th April, 1977.

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CHAPTER I

[1]Central Civil Services (Classification, Control and Appeal) Rules

PART I

GENERAL

1. Short title and commencement

(1) These Rules may be called the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

(2) They shall come into force on the 1st December, 1965.

2. Interpretation

In the rules, unless the context otherwise requires,—

(a) "*Appointing authority*", in relation to a Government servant, means—

(*i*) the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or

(*ii*) the authority empowered to make appointments to the post which the Government servant for the time being holds, or

(*iii*) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or

(*iv*) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post,

whichever authority is the highest authority;

(*b*) "*Cadre authority*", in relation to a Service, has the same meaning as in the rules regulating that Service;

1. Published, *vide* G.I., M.H.A., Notification No. F. 7/2/63-Ests. (A), dated the 20th November, 1965.

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GOVERNMENT OF INDIA'S INSTRUCTION

(1) Procedure of enquiry when two Government servants accuse each other.—In a recent case, two Government employees working in the same office made complaints against each other. The disciplinary authority initiated departmental proceedings against both the employees under Rule 17 of the CCS (CCA) Rules. The question whether it is legally permissible to enquire into the conduct of the accused and the accuser in one joint proceeding was examined in consultation with the Ministry of Law. Cross complaints arising out of the same or connected incident or transaction are not uncommon, and occur frequently in criminal cases. The Code of Criminal Procedure is silent with regard to the procedure to be adopted in such cases. The general principle as laid down by the Courts is that the accused in cross cases should be tried separately and that both the trials should be held simultaneously or in quick succession so as to avoid conflicting findings and different appraisal of the same evidence. On the analogy of the criminal law practice and procedure, a joint proceeding against the accused and accuser is an irregularity which should be avoided. This should be noted for future guidance.

[G.I., M.H.A., Letter No. 6/98/63-AVD, dated the 13th June, 1963.]

A joint proceeding against Government servants working in the same office who made complaint against each other should be avoided.

[Para. 19, P. & T. Manual, Vol. III.]

19. Special procedure in certain cases

Annex -II

Notwithstanding anything contained in Rule 14 to Rule 18—

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

(*ii*) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these 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:

[1][Provided that the Government servant 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*):

1. Substituted by G.I., Dept. of P. & T., Notification No. 11012/13/86-Est. (A), dated the 11th March, 1987, published in Gazette of India as S.O. No. 830, dated the 28th March, 1987.

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

GOVERNMENT OF INDIA'S INSTRUCTIONS

(1) Conviction of Government servants to be promptly communicated to administrative authorities.—With a view mainly to avoiding unnecessary expenditure by way of continued payment of subsistence allowance, the question of dismissal, etc., of a Government servant should be considered as soon as orders of his conviction are passed by the first trial Court. To enable this instruction being complied with in practice, it is necessary that the administrative authorities should be made aware of orders of conviction of any person employed under their administrative control without any avoidable delay. Actually, however, it is the experience of Government of India that not only are the Heads of Offices concerned not informed in most cases about the orders of conviction of any Government servant employed under them but they fail to get replies reasonably expeditiously even when authorities concerned are specifically requested for information in the matter. The Ministry of Home Affairs have accordingly desired that the State Governments should cause instruction to be issued to Prosecuting Officers under them that in future they would ensure that prompt intimation is sent to the administrative authorities concerned whenever orders convicting any Government servant of criminal offence are passed in cases handled by them.

[G.I., M.H.A., Letter No. 39/72/51-Ests., dated the 23rd October, 1951.]

It has been decided and it is hereby made clear that it shall hereafter be the duty of a Government servant who may be convicted in a criminal court to inform his official superiors of the fact of his conviction and the circumstances connected therewith, as soon as it is possible for him to do so. Failure on the part of any Government servant so to inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the penalty called for on the basis of the offence on which his conviction was based.

[G.I., M.H.A., O.M. No. 25/70/49-Ests., dated the 26th December, 1949.]

(2) Action on conviction.—(*a*) *On a criminal charge.*—The following principles should apply in regard to action to be taken in cases where Government servants are convicted on a criminal charge:—

(*i*) In a case where a Government servant has been convicted in a Court of Law of an offence which is such as to render further retention in public service of a Government servant prima facie undesirable, the disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on the Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an

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misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. This, however, has to be done by the disciplinary authority by itself. Once the disciplinary authority reaches the conclusion that the Government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government servant. This too has to be done by the disciplinary authority by itself. The principle, however, to be kept in mind is that the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

5. After the competent authority passes the requisite orders as indicated in the preceding paragraph, a Government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the person who was in fact, convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies available to him and still wants to pursue the matter, he can seek judicial review. The court (which term will include a Tribunal having the powers of a court) will go into the question whether the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case or the requirements of the particular service to which the Government servant belongs.

Annexure-II

5-A. (*c*) *Cases falling under Rule 19 (ii)*: A question has been raised whether in a case where clause (*b*) of the second proviso to Article 311 (2) of the Constitution is invoked, the disciplinary authority may dispense with the issuing of charge memo. listing the charges. Clause (*b*) is attracted in a case where the disciplinary authority concludes "that it is not reasonably practicable to hold such an inquiry". The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under—

> "It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the disciplinary authority would be entitled to apply clause (*b*) of the second proviso because the word 'inquiry' in that clause includes part of an inquiry."

Article 311 (2) of the Constitution concerns itself with the punishment of dismissal, removal or reduction in rank, which comes in the category of major punishment under the service rules providing the

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procedure for disciplinary action against Government servants. The first step in that procedure is the service of a memorandum of charges or a charge-sheet, as popularly known, on the Government servant, listing the charges against him and calling upon him, by a specified date, to furnish a reply either denying or accepting all or any of the charges. An inquiry hence commences under the service rules with the service of the charge-sheet. Obviously, if the circumstances even before the commencement of an inquiry are such that the disciplinary authority holds that it is not reasonably practicable to hold an inquiry, no action by way of service of charge-sheet would be necessary. On the other hand, if such circumstances develop in the course of inquiry, a charge-sheet would already have been served on the Government servant concerned.

6. There are two conditions precedent which must be satisfied before action under clause (*b*) of second proviso is taken against a Government servant. These conditions are—

(*i*) There must exist a situation which makes the holding of an inquiry contemplated by Art. 311 (2) not reasonably practicable. What is required is that holding of 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 all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be—

(*a*) Where a civil servant, through or together with his associates, terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

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

(*c*) Where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example, referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary

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authority to anticipate such circumstances as those that are likely to arise, possibly later in time, as grounds for holding that it is not reasonably practicable to hold the inquiry and, on that basis, dispense with serving a charge-sheet on the Government servant.

(*ii*) Another important condition precedent to the application of clause (*b*) of the second proviso to Art. 311 (2), or Rule 19 (*ii*) of the CCS (CCA) Rules, 1965, or any other similar rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art. 311 (2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should be recorded separately in the relevant file. In spite of this legal position, it would be of advantage to incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order of penalty. While the reasons so given may be brief, they should not be vague or they should not be just a repetition of the language of the relevant rules.

7. It is true that Art. 311 (3) of the Constitution provides that the decision of the competent authority under clause (*b*) of the second proviso to Art. 311 (2) shall be final. Consequently, the decision of the competent authority cannot be questioned in appeal, revision or review. This finality given to the decision of the competent authority is, however, not binding on a Court (or Tribunal having the powers of a Court) so far as its power of judicial review is concerned, and the court is competent to strike down the order dispensing with the inquiry as also the order imposing penalty, should such a course of action be considered necessary by the court in the circumstances of the case. All disciplinary authorities should keep this factor in mind while forming the opinion that it is not reasonably practicable to hold an inquiry.

8. Another important guideline with regard to this clause which needs to be kept in mind is that 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 Art. 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.

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9. (*d*) *Cases falling under Rule* 19 (*iii*): As regards action under clause (*c*) of the second proviso to Art. 311 (2) of the Constitution, what is required under this clause is the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Art. 311 (2). This satisfaction of the President or the Governor as a constitutional authority is arrived at with the aid and advice of his Council of Ministers. The satisfaction so reached by the President or the Governor is necessarily a subjective satisfaction. The reasons for this satisfaction need not be recorded in the order of dismissal, removal or reduction in rank; nor can it be made public. There is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by disciplinary authority subordinate thereto, a departmental appeal or revision will lie. In such an appeal or revision, the civil servant can ask for an inquiry to be held into his alleged conduct, unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Article 311 (2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review. However, if it is alleged that the satisfaction of the President or Governor, as the case may be, had been reached *mala fide* or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judicial review because, in such a case, there would be no satisfaction, in law, of the President or the Governor at all. The question whether the court may compel the Government to disclose the materials to examine whether the satisfaction was arrived at *mala fide* or based on extraneous or irrelevant grounds, would depend upon the nature of the documents in question, i.e., whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not.

10. (*e*) *Conclusion*: The preceding paragraphs clarify the scope of clauses (*a*), (*b*) and (*c*) of the second proviso to Art. 311 (2) of the Constitution, Rule 19 of CCS (CCA) Rules, 1965 and other service rules similar to it, in the light of the judgments of the Supreme Court delivered on 11-7-1985 and 12-9-1985. It is, therefore, imperative that these clarifications are not lost sight of while invoking the provision of the second proviso to Art. 311 (2) or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is arbitrary or *mala fide*. So far as clauses (*a*) and (*c*) and service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking clause (*b*) of the second proviso to Art. 311 (2) or any similarly worded service rule, absolute care should be exercised and it should always be kept in

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constitute a criminal offence as well as misconduct not amounting to criminal offence, but punishable under the CCS (CCA) Rules, or similar other rules. If the facts or allegations had come to be examined by a Court of competent jurisdiction and the Court has given a finding that the allegations are not true, then it is not permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations. If, on the other hand, the Court has merely expressed a doubt as to the correctness of the allegation, then there may be no objection to hold a departmental enquiry on the same allegations if better proof than what was produced before the Court or was then available is forthcoming. Then again if the Court has held that the allegations are proved but do not constitute the criminal offence with which the Government servant is charged, then also there would be no objection to hold a departmental enquiry on the basis of the said allegations if such proved allegations are considered good and sufficient ground for departmental disciplinary action. So also, it is permissible to hold a departmental enquiry after the acquittal, in respect of a charge which is not identical with or similar to the charge in the criminal case, and is not based on any allegations which have been negatived by the criminal Court. Furthermore, if the allegations had not yet been examined by a Court of law but are considered good and sufficient grounds for departmental disciplinary action, there is no bar to taking such action.

[*See* Proviso under Rule 10 (4) as inserted by Notification, dated the 7th September, 1981.]

3. In cases where neither of the courses mentioned in paragraph 3 is followed, a formal order should be issued setting aside the previous order imposing the penalty (Standard Form for such order is annexed—*Form at the end of this chapter*). In cases where the penalty imposed was dismissal, removal or compulsory retirement from service, full pay and allowances will be paid from the date of acquittal to the date of rejoining duty and the period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal, pay and allowance will be allowed as directed by the competent authority under FR 54 (2) or FR 54 (3) and the period treated as duty or non-duty under FR 54 (4) or FR 54 (5), as the case may be.

4. It has been decided that the Union Public Service Commission should continue to be consulted, wherever such consultation is necessary, in all cases of conviction in a Court of Law, including conviction for an offence involving corruption. Although in such cases, departmental action is taken on the ground of conduct which has led to an officer's conviction on a criminal charge, the quantum of punishment to be imposed on the convicted officer has to be considered in consultation with the Commission on the merits of each case.

[G.I., M.H.A., O.M. No. F. 43/57/64-AVD (III), dated the 29th November, 1966, as amended by G.I., C.S. (Dept. of Per.), O.M. No. 371/3/74-AVD (III), dated the 19th September, 1975.—Extract.]

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Annex-I

(9) **Action against absconding officials.**—The cases of loss and fraud are usually reported to the Police and the officials involved are placed under suspension. A scrutiny of these cases reveals that some of the departmental officials involved in such cases abscond and are not apprehended by the Police. The official continued to be under suspension till they surrender or are apprehended by the Police and prosecuted. This results in two things, firstly, the cases drag on for a long time and secondly, if and when the absconding officials are apprehended and proceeded against they are required to be paid the subsistence allowance if they produce a certificate of non-employment.

2. After careful consideration it has been decided that in such cases the competent disciplinary authorities may take the following actions:—

(*a*) A certificate should be obtained from the local police authorities to the effect that the whereabouts of the officials concerned are not known. This certificate should be placed on record in the concerned file.

(*b*) A brief statement of allegations and charges should be prepared and kept on the file.

(*c*) The disciplinary authority should himself record on the file the fact that the whereabouts of the officials concerned are not known and that the police authorities have also certified to that effect and therefore, it is not reasonably practicable to hold the inquiry contemplated under Rule 14 of the CCS (CCA) Rules, 1965. The disciplinary authority can then take recourse to Rule 19 (*ii*) of CCS (CCA) Rules, 1965, wherein enquiry has to be dispensed with. Reasons for not holding enquiry should then be recorded in writing and the disciplinary authority should issue orders imposing such penalty as it deems fit. The allegations and charges have to be briefly discussed in the punishment order. Normally in such cases the punishment that could be meted out would be either removal or dismissal from service.]

[D.G., P. & T.'s Letter No. 4-22/PT-72/INV, dated the 4th July, 1972.]

(10) Consultation with CVC in cases where action is taken under Rule 19.—The question whether the advice of the Central Vigilance Commission is required to be sought in disciplinary proceedings involving special procedure under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, has been examined by the Government. It is reiterated that the Government of India's Resolution No. 24/7/64-AVD, dated the 11th February, 1964, requires the Disciplinary Authorities to consult the Central Vigilance Commission in cases having a vigilance angle irrespective of the fact whether the procedure laid down in Rule 14 or Rule 19 is followed. Accordingly, the cases falling under Rule 19 (*i*) of the CCS (CCA) Rules, 1965, where a penalty is proposed to be imposed on a Government servant on account of his conviction

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

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IN THE MATTER OF:

O.A. 166/2009

Smt Jaya Talukdar.

... Applicant.

-VERSUS-

The Union of India & Ors. .

... Respondents.

-AND-

IN THE MATTER OF:

Rejoinder filed in OA No. 166/09 on behalf of the applicant.

Received on behalf of Rly. M. U. Ahmed, Addl. Case, Hazarika 7.12.09 Advocate

Filed by Jaya Talukdar through Mohan Ahmed Advocate 7.12.09

REJOINDER:

I , Smti Jaya Talukdar, W/O- Late Chakreswar Talukdar, C/O- Shri Paritosh Chakraborti aged about 50 years, R/O- BT Road (Bye lane), P.O & Dist- Bongaigaon, Assam do hereby solemnly affirm and declare as follows:-

1. That the deponent is the applicant in the above noted case which has been filed challenging the impugned order dated 15-07-08 issued under the signature of superintendent of post offices Goalpara Div. forfeiting the claim of the past service benefit of her husband, to set aside the impugned panel order vide Memo No-F6-1/2001-02 dated 10-02-06 vide Annexure-10 to the application declaring dismissal of service of the applicant's husband on the alleged charges and etc.

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2. That in the said OA No- 166/09 the respondent No-3 has filed a written statement on behalf of all the respondents. A copy of the said written statement has been served upon the deponent through her counsel which she has gone through and understood the contents thereof. All the statement of the written statement are denied to be true unless specially admitted, found correct and consistent to the records subject to strictest proof.

3. That in making a rejoinder the deponent/applicant reiterates, re-affirms and relies upon the statement already made in the OA No. 166/09.

4. That as regards the statements made in paragraph 3 &4 to the written statement, the deponent/applicant begs to state that her husband was an employee under the Union Government. On account of service rendered by her husband the retirement benefit as well as family pension is entitled by her as provided under Rule-53,54 and 55 (A) of the Central Civil Service Pension Rules. When her right under aforesaid provisions of law is tenable, which is pertaining to the service of her husband (a civilian), the plea of having no jurisdiction under section 14 of the Administrative Tribunal Act, 1945 by the respondent for enforcement of such right is unfortunate and totally against the spirit of Constitutional safeguard. A wife or minor children are the beneficiary of an employee of the central Government/State govt. and jurisdiction naturally covers to protect such beneficiaries because wife is the other part of husband or

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wife can be termed as better half of a person which constitute with husband and wife in a family. Therefore, the provision of family pension is incorporated in the pension Rules.

5. That as regards the statements made in paragraph 5,6 and 7 to the written statement filed by the respondent No-3 the deponent begs to state that the impugned order dated 10-02-06 dismissing the service of the petitioners husband was passed in absolute violation of Rule-14 of the CCS (CCA) Rules, 1965. The punishment imposed is a major one and that can not be inflicted without holding an enquiry as provided under the said Rules. There was no enquiry conducted, even the disciplinary authority did not communicated the impugned penal order dated 10-2-06 to the family members or to the original address of the applicant's husband. The said impugned order has been communicated to the applicant only in the year, 2008 enclosed with the letter dated 15-7-08 whereby the applicants application dated 25-6-08 claiming retirement benefit of her husband was rejected. This is also illegal, arbitrary, whimsical and a manifest act to deprive the applicant of the service benefit rendered by her husband. The impugned dismissal order is illegal and unsustainable in law and as such the rejection of retirement benefit as well as family pension on account of service rendered by her husband is illegal and liable to be interfered by this Hon'ble Tribunal. The respondent authority has committed manifest illegality in keeping secret about the dismissal of the service of her husband and thereby

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intended to deprive of all legal claims of the petitioner on account of service rendered by her husband.

6. That the applicant begs to state that her husband who was missing since 17-7-2001. An FIR was lodged on behalf of the respondent authority vide Annexure-1 of the original application. The applicant also approached before the Basugaon Police Station as well as SP Bongaigaon to lodge a missing report/FIR to rescue her husband. But the police of the concern police station told her that lodging of such report is not necessary as because there is already a report by the postal department in this connection. Thereafter the applicant made a request to the DC, Chirang, BTAD, Kokrajhar to make an investigation into the pending matter and a favourable police report. This facts has been disclosed in paragraphs 4,5 to the O.A. No-166/09.

7. That the applicant begs to state that the respondent in paragraph 12 to their written statement contended that her husband was not expired and misappropriated Govt. money. If such is the plea, the burden of proving that her husband is alive is upon the said respondent as provided under section 108 of the Evidence Act, 1872 which reads as follows:-

"108. Burden of proving that person is alive who has not been heard of for seven years.-[Provided that when] the question is whether a man is alive or dead ,and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to]the persons who affirm it"

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8. That the applicant submits that the action of the respondent authority knowing fully well that her husband is missing for a period more than 7 years and in such situation they ought to have clear the pensiosnary benefit on account of service of her husband as prayed for by her when her representation was first forwarded to the Deputy Commissioner Bongaigaon vide Annexure-6(A) immediately after completion of 7 years of missing in the month of August 2008. That being intentionally not done, the respondent authority may be directed to clear all these retirement benefit with interest form the date of superannuation. In this connection the Hon'ble apex courts Judgment reported as 1987 SUPP.SCC 56 and AIR 1998 SC-159 can be relied wherein interest was awarded for delayed payment of pension in the given case ,such claim of interest is more justified as because the service of the petitioners husband was dismissed in absolute violation of settled provisions of law of the land.

9. That the applicant begs to submit that there are so many reported case of Hon'ble apex court whereby it is ruled that defendants of an employee has right to claim for family pension such reported cases may be referred as AIR 1985 SC 1196 or 1985 (3) SCC 345.

10. That the applicant begs to state that her husband was aged about 15 years on the 1st day March, 1961 as per HSLC pass certificate dated 12-9-1961 issued by the Registrar Gauhati University. The said record may be treated as an age proof of the applicant's husband in absence of

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any other authentic and reliable age proof available with the applicant with the respondent authority. In fact the deponent has no other document about age proof of her husband.

A copy of the HSLC pass certificate of applicants husband is annexed as Annexure No-12.

11. That the contention raised by the respondent are baseless, frivolous and vexatious and liable to be rejected with cost.

12. That the statement made in above paragraph 1 to 7 to this rejoinder are true to the best of knowledge and believe and the statement made in paragraph 10 to the rejoinder are information derived from the records and the rest are my humble submission made before this Hon'ble Tribunal which are also verified to be true.

And I signed this rejoinder on this 7th day December, 2009 at Guwahati.

Identified by

Jahangir Hom Azad.
Advocate 7.12.09

Jaygun Rahmedeen.
Deponent.

SHAH SYED SAMADUR RAHMAN
M.A.,B.Ed.,LL.B
NOTARY
Guwahati,Kamrup.
Regd. No:-KAM. 03

NOTARY
S.S.S. Rahman
M.A., B.Ed, LL.B.
Kamrup
Regd. No:- KAM. 03
GOVERNMENT OF ASSAM

7-12-09

-73- -7-

Annexure NO - 12

130

7993

University of Gauhati

1961

MATRICULATION EXAMINATION

I certify that Chakreswar Talukdar

Roll Nad No. 147, aged 15 years 4 months on the

First of March, 1961, duly passed the Matriculation Examination, 1961

of this University, and was placed in the Second Division.

GAUHATI, ASSAM.

The 12th September, 1961.

Registrar.

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Certified to be true copy
Advocate
7.12.09

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

ORIGINAL APPLICATION NO.166 OF 2009

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
24 FEB 2010
Guwahati Bench
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BETWEEN

Smt. Jaya Talukdar

Applicant

-VS-

The Union of India & Others

Respondents

M. U. Ahmed 23/2/10

Thakurdas Saha
Supdt. of Post Office
Coalpara Divn. Dhubri
783301

IN THE MATTER OF

Order dated 08.12.2009 passed in O.A. No. 166 of 2009 by this Hon'ble Tribunal.

AND

IN THE MATTER OF

A compliance report and/or an affidavit in respondent to the order dated 08.12.2009 by the respondents.

I, Shri Thakurdas Saha Son of Late Rashiklal Saha aged about 55 years, presently working as Supdt. of Post Offices Goalpara Dn Dhubri do hereby solemnly affirm and state as follows-

1. That I have perused the aforesaid order and direction dated 08.12.2009 given thereunder, understood the contents thereof. I have been authorized to file this affidavit as directed by this Hon'ble Tribunal.

2. That with regard to the direction given in item (i) of para (2) of the orders dated 08.12.2009 I beg to state that the said Shri Chakreswar Talukdar was placed under deemed suspension w.e.f. 17.07.2001 vide Supdt. Of Post Offices, Dhubri Memo.F6-1/2001-2002 dated 09.01.2003 only after receipt of confirmation report vide Supdt. Of Police, Kokrajhar Memo. No.KJR/Crime/09/2002/10,418 dated 23.10.2002. No

I understand
to forward a copy
of Applicant as and when
available 24/2/10

subsistence allowance was paid during the deemed suspension to the said Sri Talukdar as per decision of Review Committee dated 19.12.2005.

The above documents are marked as below-

D1. Original Memo. F6-1 2001-2002 dated 09.01.03 of the SPOs, Dhubri.

D2. Memo No. KJR/Crime/09/2002/10418 dated 23.10.2002 of the Supdt. Of Police, Kokrajhar.

D3. Review order dated 19.12.2005 signed by J. Charukeshi, DPS/Guwahati, B. Bairagi, SPOs Nalbari & R. Rabha, SPO's Dhubri (in two pages).

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3. That with regard to the direction given in item (ii) of para (2) of the orders dated 08.12.2009 I beg to state that no Memorandum of charges under Rule 14 of CCS(CCA) Rules 1965 was served though prepared to Shri Chakreswar Talukdar as per 'Note' dated 03.01.0 was recorded by the Supdt. Of Post Offices, Dhubri as per report of the Supdt. Of Police, Kokrajhar which received vide their Memorandum by the Supdt. Of Police, Kokrajhar and since it was not practically reasonable to hold oral inquiry against Sri Talukdar hence it was decided to settle disciplinary case against Sri Talukdar as per Rule-19 (ii) of CCS (CCA) Rules 1965 and accordingly the disciplinary cace was settled under the said Rules-19 (ii) vide Supdt. Of Post Offices, Dhubri Memo. No. f6-1/2001-2002 dated 10.02.06. It is pertinent to mention here that the Disciplinary authority after making the assessment of the peculiar circumstances of the case, objecting, concludes that " it was not reasonably practicable to hold any enquiry and/or it follows aforesaid Rule 14 and as such decided the case as per Rule 19(ii) of CCS(CCA) Rules 1965 and in the light of Article 3111(2) of the Constitution and DOPT O.M. No. 111012/11/85-Estt. Dated 11.11.1985. Further, the Hon'ble Competent Criminal Court to the purpose unable to trace him and declared him a absconder and the date of retirement/superannuation the concerned employee is 28.02.2006.

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The documents as mentioned in this para are produced below with the mark as below-

D4. Note dated 03.01.2006 recorded by the Supdt. Of Post Offices, Dhubri.

D5. Memo KJR/Crime/9/2005/5203 dated 29.08.2005 of the SUpdt. Of Police, Kokrajhar.

D6. Memo No. F6-1/2001-2002 dated 10.2.2006 of the Supdt. Of Post Offices, Dhubri.

Supdt. of Post Office
Coalpara Divn. Dhubri

4. That with regard to the direction given in item (iii) of para (2) of the orders dated 08.12.2009 I beg to state that there is no provision in Rule 19(ii) of CCS(CCA) Rules 1965 to afford any opportunity of hearing to the wife of the accused Govt. Official. Hence no opportunity was given to the wife of Shri Talukdar as per non-availability of any provision in Rules. When there is no chance to give any opportunity to the charge official due to his absconding the Rule-19(ii) of CCS(CCA) Rules 1965 are resorted to. Accordingly giving chance to Sri Talukdar or to his wife does not arise. The extract of Rule 1(ii) of CCS(CCA) Rules 1965 is produced as below-

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D7. Extract of Rule 19(ii) of CCS(CCA) Rules 1965.

5. That with regard to the direction given in item (iv) of para (2) of the orders dated 08.12.2009 I beg to produce the following documents on the basis of which the Supdt. ofPost Ofices, Dhubri reached to the conclusion that Sri Talukdar was absconded though the same has been declared legally by the Court of CJM, Kokrajhar only on 20.06.2006 after trailed. The documents are produced as below-

D8. Letter dated 18.04.2002 of In-charge, Bengal Police Out post wherein they reported at para 2 that Sri Talukdar is absconding himself from arrest.

D2. Memo No. KJR/Crime/09/2002/10,418 dated 23.10.2002 of the Supdt. Of Police, Kokrajhar wherein the Supdt. Of Police, Kokrajhar reported that the Police case against Sri Talukdar was charged sheeted on 30.05.2002 showing Sri Talukdar as 'absconder'.

D5. Memo KJR/Crime/9/2005/5203 dated 29.08.2005 of Supdt. Of Police, Kokrajhar wherein the Supdt. Of Police, Kokrajhar confirmed that Sri Talukdar misappropriated Govt. cash as his official capacity but he could not be arrested since he was absconding.

D9. Certified copy of order dated 21.11.2005 alongwith FIR in GR No. 450/2001 of the CJM Office, Kokrajhar.

D 10. Certified copy of FIR·GR No. 450/2001 of the CJM Office, Kokrajhar dated 24.07.2001.

D11.Certified copy of charge·sheet No.27 dated 30.05.2002.

D12. certified copy of E.O.s report of Sri Upendra nath Brahma, ASI, Dhaligaon Police Station.

6. That with regard to the direction given in item (v) of para (2) of the orders dated 08.12.2009 I beg to state that as per Government of India decision No. 10 below Rule 54 of CCS(Pension) Rules 1964 the family pension is entitled when a Government servant is missing under normal circumstances subject to the family must lodged the missing to police and must obtain report that the whereabout of the employee could not be traced out by the Police. No such action was taken by the Applicant. Further, the Applicant did not submit any claim for grant of pension if any within 1 (one) year alongwith police report. As per Government of India's decision No. 10 below Rule 54 of the CCS(pension) Rules 1972, if the Government servant is missing after committing fraud the family pension is to be considered only on the Government servant being acquitted in the court of law or after conclusion of disciplinary action. None of the conditions are fulfilled as stated above. So the pension was not granted as per provision of Rules when applied. In support of the above statements the following Ruling are produce below·

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D 13. GID No. (10) below Rule 54 of CCS (Pension) Rules 1964.

7. This report is filed bonafide and for the ends of justice.

Under the circumstances the O.A deserves to be dismissed with costs and for this act of kindness the Respondents shall ever pray.

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Guwahati Bench

AFFIDAVIT

I Shri Thakurdas Saha aged about 55 years son of Late Rashiklal Saha at present working as Supdt of Post Offices Coalpara Dn Dhubri who is one of the respondents in the present Original Application and hence competent to sign this Affidavit do hereby solemnly affirm and state that the statements made in Paragraphs 1, 3, 4, 5 & 6 are true to my knowledge and belied, those made in paragraph 2, 7 & 8 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this affidavit on this 20th day of Feb, 2010 at Gtk.

Thakurdas Saha
Supdt. of Post Office
Coalpara Divn. Dhubri
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DEPARTMENT OF POSTS :::INDIA.

From
Supdt. Of Post Offices
Goalpara Divn. Dhubri

To,
Sri M.U.Ahmed
Addl. CGSC, CAT
Guwahati

No:- F6-1/2001-2002 dated at Dhubri the 14.12.09.

Sub:- OA-166/09 filed by Jaya Talukdar –VS-UOI & others.

Enclosed kindly find herewith a copy of CAT order dated 08.12.09 passed by the Hon'ble, CAT ,Guwahati on the noted case.

The relevant records as sought for by the Hon'ble CAT are arranged in the form of "affidavit as to documents" and enclosed herewith.

Kindly prepare Addl Affidavit as to documents as per CAT order dated 08.12.09 and hand over the same to the officer deputed for the purpose for verification , signature and submission before the CAT on or before 29.12.09. Kindly also submit the affidavit before the CAT within 3 weeks as ordered on 08.12.09.

List of document enclosed:-

D1:- Memo. F6-1/2001-2002 dated 09.01.03 of the SPO's, Dhubri.
D2:- Memo No KJR/Crime/09/2002/10,418 dated 23.10.02 of the Supdt. Of Police Kokrajhar.
D3:- Review order dated 19.12.2005 signed by J. Charukeshi ,DPS/Guwahati, B . Bairagi ,SPO's, Nalbari & R.Rabha, SPO's, Dhubri(in two pages).
D4:- "Note" dated 03.01.06 recorded by the Supdt. Of Post Offices, Dhubri(in single page)
D5:- Memo. KJR/Crime/9/2005/5203 dated 29/08/05 of the Supdt. Of Police, Kokrajhar.
D6:- Memo No. F6-1/2001-2002 dated 10.02.06 of the Supdt. Of Post Office, Dhubri (in 4 pages)
D7:- Exrtact of Rule-19(ii) of the CCS(CCA) Rules,1965.
D8:- Letter dated 18.04.02 of the Incharge, Bengtal Police ,Out post wherein they reported at para-2 that Sri Talukdar is absconding himself from arrest.
D9:- Certified copy of order dated 21.11.05 along with FIR in GR No. 450/2001 of the CJM Office. Kokrajhar(in 4 pages).
D10:- Certified copy of FIR –GR No 450/2001 of the CJM,s office, Kokrajhar dated 24.07.01 (in 3 pages).
D11:- Certified copy of charge sheet No 27 dated 30.05.2002(4 pages)
D12 :- Certified copy of E.O,s report(Sri Upendra Nath Brahma ,ASI) ,Dhaligaon PS- (in page2)
D13:- GID No .(10) below Rule 54 of CCS(Pension) Rules,1964.

Supdt. Of Post Offices
Goalpara Divn. Dhubri.

Copy to:-

1. Sri R.K. Farid, ASPO's(Divn), Dhubri. He will kindly proceed to Guwahati and hand over this letter with documents to Addl CGSC, CAT. The Addl affidavit to documents should be obtained from CGSC for signature and submission within 29.12.09.
2. The Chief PMG(VIG), Assam Circle, Guwahati-1 w.r.t his No. Vig/5/XV/09 dated 10.12.09.

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OA-166/2009 BEFORE THE CAT ,GUWAHATI BENCH, GUWAHATI.

FILED BY Smt Jaya Talukdar -VS- UOI & Others.

Affidavit as to documents/records as ordered to produce vide CAT/Guwahati orders dated 08.12.09.

1. I have in my possession the documents relating to the matter in questioned in this OA set forth at item(i) (ii) (iii) (iv) &(v) of para 2 of orders dated 08.12.09 :-

(a) With regards to item(i) of para-2 of orders dated 08.12.09 I beg to state that the said Sri Chakreswar Talukdar was placed under deemed suspension w.e.f **17.07.01** vide Supdt. Of Post Offices, Dhubri Memo. **F6-1/2001-2002 dated 09.01.03** only after receipt of confirmation report vide Supdt. Of Police , Kokrajhar Memo No **KJR/Crime/09/2002/10,418 dated 23.10.02**. No subsistence allowance was paid during the deemed suspension to the said Sri Talukdar as per decision of Review Committee dated **19.12.2005**.

The above documents are marked as below:-

D1:- Original Memo. F6-1/2001-2002 dated 09.01.03 of the SPO's, Dhubri.

D2:- Memo No KJR/Crime/09/2002/10,418 dated 23.10.02 of the Supdt. Of Police Kokrajhar.

D3:- Review order dated 19.12.2005 signed by J. Charukeshi ,DPS/Guwahati, B . Bairagi ,SPO's, Nalbari & R.Rabha, SPO's, Dhubri(in two pages).

(b) With regards to item (ii) of para-2 of the orders dated 08.12.09 I beg to state that No Memorandum of charges under Rule-14 of CCS (CCA) Rules,1965 was served to Sri Chakreswar Talukdar as per "Note" dated 03.01.06 recorded by the Supdt. Of Post Offices, Dhubri. The "Note" dated 03.01.06 was recorded by the Supdt. Of Post Offices, Dhubri as per report of the Supdt. Of Police , Kokrajhar which received vide their Memo. KJR/Crime/9/2005/5203 dated 29/08/05. Since Sri Talukdar reported to have been absconded by the Supdt. Of Police, Kokrajhar and since it was not practically reasonable to hold oral inquiry against Sri Talukdar hence it was decided to settle disciplinary case against Sri Talukdat as per Rule-19(ii) of CCS (CCA) Rules,1965 and accordingly the disciplinary case was settled under the said Rules-19(ii) vide Supdt. Of PO's, Dhubri Memo No F6-1/2001-2002 dated 10.02.06 .

The documents as mentioned in this para are produced with the mark as below:-

D4:- "Note" dated 03.01.06 recorded by the Supdt. Of Post Offices, Dhubri(in single page)

D5:- Memo. KJR/Crime/9/2005/5203 dated 29/08/05 of the Supdt. Of Police, Kokrajhar.

D6:- Memo No. F6-1/2001-2002 dated 10.02.06 of the Supdt. Of Post Office, Dhubri (in 4 pages)

(c) With regards to item (iii) of Para-2 of the CAT order dated 08.12.09 I beg to that there is no any provision in Rules 19(ii) of CCS (CCA) Rules ,1965 to afford any opportunity of hearing to the wife of the accused Govt Official. Hence no opportunity was given to the wife the Sri Talukdar as per non availability of any provision in Rules. When there is no chance to give any opportunity to the charged official due to his absconding the Rules-19 (ii) of CCS(CCA) Rules,1965 are resorted to. Accordingly giving chance to Sri Talukdar or to

his wife does not arise. The extract of Rule 19(ii) of CCS(CCA) Rules, 1965 is produced as below:-

D7:- Extract of Rule-19(ii) of the CCS(CCA) Rules,1965.

(d) With regards to order at item (iv) of para-2 of the order dated 08.12.09 I beg to produce the following documents on the basis of which the Supdt. Of Post Offices, Dhubri reached to the conclusion that Sri Talukdar was absconded though the same has been declared legally by the Court of CJM, Kokrajhar only on 20.06.06 after trailed. The documents are produced as below:-

D8:- Letter dated 18.04.02 of the Incharge, Bengtal Police ,Out post wherein they reported at para-2 that Sri Talukdar is absconding himself from arrest.

D2:- Memo No KJR/Crime/09/2002/10,418 dated 23.10.02 of the Supdt. Of Police Kokrajhar wherein the Supdt. Of Police , Kokrajhar reported that the Police case against Sri Talukdar was charged sheeted on 30.05.02 showing Sri Talukdar as " absconder".

D5:- Memo. KJR/Crime/9/2005/5203 dated 29/08/05 of the Supdt. Of Police, Kokrajhar wherein the Supdt. Of Police ,Kokrajhar, confirmed that Sri Talukdar misappropriated Govt cash at his official capacity but he could not be arrested since he was absconding.

D9:- Certified copy of order dated 21.11.05 along with FIR in GR No. 450/2001 of the CJM Office, Kokrajhar(in 4 pages).

D10:- Certified copy of FIR –GR No 450/2001 of the CJM,s office, Kokrajhar dated 24.07.01 (in 3 pages).

D11:- Certified copy of charge sheet No 27 dated 30.05.2002(4 pages)

D12 :- Certified copy of E.O's report of Sri Upendra Nath Brahma ,ASI ,Dhaligaon PS- (in page2)

(e) With regards to order at item (v) of para-2 of the order dated 08.12.09 I beg to state that as per Govt of India decision No 10 below Rule 54 of CCS(Pension) Rules ,1964 the family pension is entitled when a govt servant is missing under normal circumstances subject to the family must lodged the missing to police and must obtain report that the whereabout of the employee could not be traced out by police. No such action was taken by the applicant. Rather the applicant did not submit any claim for grant of pension if any within 1(one) year along with police report. As per Govt of India's decision No.10 below Rule 54 of CCS(Pension) Rules,1972 ,if the Govt servant is missing after committing fraud the family pension is to be considered only on the Govt servant being acquitted in the court of law or after conclusion of disciplinary action. None of the conditions are fulfilled as stated above.So the pension was not granted as per provision of Rules when applied. In support of the above statement the following Ruling are produced:-

D13:- GID No .(10) below Rule 54 of CCS(Pension) Rules,1964.

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Goalpara Divn. Dhubri

(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :

ORDERSHEET

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ORIGINAL APPLICATION No : 166 / 2009

Transfer Application No : ---------/2009 in O.A. No.----------

3. Misc. Petition No : ---------/2009 in O.A. No.----------

4. Contempt Petition No : ---------/2009 in O.A. No.----------

5. Review Application No : ---------/2009 in O.A. No.----------

6. Execution Petition No : ---------/2009 in O.A. No.----------

Applicant (S) : Smti Jaya Talukdar

Respondent (S) : Union of India & ors.

Advocate for the : Mr. A.R. Sikdar
{Applicant (S)} Mr. J.A. Azad

Advocate for the : CGSC
{Respondent (S)}

8.12.09 Applicant, wife of Sri Chakreswar Talukdar, Ex SPM Bengtol SO seeks direction to respondents to release pension and retrial benefits. According to applicant her husband is missing since 17.7.2001. Though she has approached the concerned authorities as well as the police but no FIR was lodged on the plea that a criminal case has already registered by department to the effect that he is absconding with Government money to the tune of more than Rs.1 Lakh. Applicant claims that since 7 years have passed from the date of incident, she is entitled to pensionary benefits, in any case.

On the other hand the respondents stand is that vide order dated 10.2.06 (Annexure-10) the penalty of "dismissal" had been inflicted in exercise of power conferred vide Rule 19(ii) of CCS (CCA) Rules 1965. He was placed under "deemed suspension", as he was absconding since 17.7.2001 and due to said penalty inflicted orders applicant is not entitled for any pensionary benefits. Legal question which arise for consideration are :-

(i) when he was placed under "deemed suspension" and, order to that effect should be produced. Whether any subsistence allowance was paid ?

(ii) the order dated 10.2.06 has been passed though exercising the power under Rule 19, but proceeding under Rule 14 of CCS(CCA) Rules 1965 had been initiated. When such charge memorandum was issued and its copy thereof should be placed on record,

(iii) How an opportunity of hearing was given to Shri Chakreswar Talukdar or his family members under Rule 14

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8.12.09 proceedings or under the provisions of Rule 19(ii) of CCS (CCA) Rules 1965.

(iv) Further how the authorities came to the conclusion that applicant's husband was absconding and had been declared proclaimed offender particularly when order dated 15.7.09 (Annexure-9) addressed to the applicant clearly noticed that learned Court of CJM Kokrajhar declared him as absconder only on 20.6.06 i.e. after the penalty order was passed and not prior to it.

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(v) The manner in which applicant's request for grant of provisional pension was considered and action taken prior to February 2006.

Complete records on above aspects be placed before the court. They would also be at liberty to file additional affidavit highlighting all these aspects. This shall be done within a period of 3 weeks .

List on 11.1.2010.

Sd/- M.K.Gupta
Member (J)

TRUE CO
प्रतिलिपि
अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
गुवाहाटी न्यायपीठ
Guwahati Bench
गुवाहाटी/Guwahati

(D1)

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES GOALPARA DIVISION
DHUBRI :: 783301

Memo No. F6-1/2001-2002 Dated at Dhubri the 09-01-2003

O R D E R

WHEREAS a case against Shri Chakreswar Talukdar, SPM, Bengtol S.O. in respect of a criminal offence is under investigation.

AND WHEREAS the said Shri Chakreswar Talukdar is absconding w.e.f. 17-07-2001 keeping shortage of cash to the tune of Rs. 1,03,809.42 at Bengtol S.O.

NOW THEREFORE, the said Shri Chakreswar Talukdar is deemed to have been suspended with effect from his date of absconding i.e. the 17-07-2001 in terms of sub rule (2) of Rule 10 of the CCS(CCA) Rules 1965 and shall remain under suspension until further order.

It is further ordered that during the period that this order shall remain in force the head quarters of Shri Chakreswar Talukdar, SPM Bengtol S.O. shall be Bengtol and the said Shri Chakreswar Talukdar shall not leave the headquarters without obtaining the previous permission of the undersigned.

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(B. K. MARAK)
Supdt. of Post Offices
Goalpara Division
Dhubri - 783301.

Copy to :-

1. Shri Chakreswar Talukdar, SPM Bengtol S.O. for information.
2. The Postmaster, Dhubri H.O. for information.
3. Staff Branch, Divl. Office, Dhubri.
4. Suspension Register.
5. Office copy.
6. Spare.

Supdt. of Post Offices
Goalpara Division
Dhubri - 783301.

-86- (82) Annex - 4. 13

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OFFICE OF THE SUPERINTENDENT OF POLICE :::::: KOKRAJHAR ::::::: Dated 23/10/2002

No. KJR/Crime/9/2002/ 1464

23 OCT 2002

The Superintendent of Post Office,
Goalpara, Division,
Dhubri.

Sub :- Basugaon P.S. Case No. 71/2001 U/S. 409 I.P.C.

Your letter No. F.6-1/2000-01
Dtd. 17.10.2002.

Sir,

With reference to the above, I am to inform you that Basugaon P.S. Case No. 71/2001 is already charge sheeted vide Basugaon P.S. C.S. No. 27 dtd. 30.5.2002 showing accused Chakreswa Talukder as absconder. At present the case is pending for trial in Court.

This is for your information.

Yours faithfully

Superintendent of Police
Kokrajhar.
23/10

ASP/SP
Submitted P.F.P.O
29/10/02

The SDO Bongaigaon may perhaps be asked to attend the Court and ascertain the present position of the case.
29/10/02

Yes PL. Also ASP (HQ) to examine if we can move appeal against the acquittal

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Minutes of the Review of the suspension case of Shri Chakreswar Talukdar, SPM, Bengtal SO on 19.12.2005 by the Review Committee consisted of :-

1. Disciplinary Authority
& the Supdt of Post Offices
Goalpara Division, Dhubri.

2. The DPS(HQ & Mkt)
O/O the Chief Postmaster General
Assam Circle, Guwahati-781001

3. The Supdt. of Post Offices
Nalbari Barpeta Division
Nalbari-781335

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Shri Chakreswar Talukdar, SPM, Bengtol SO has been deemed to be placed under suspension w.e.f. 17.01.01 i.e. from the date off his absconding vide SPO Dhubri memo No.F6-1/2001-2002 dated 09.01.2003. The memo served to the absconding official at his place of duty was received back with remarks as "ADDRESSEE ABSCONDED" from the delivery Post Office.

The brief of the case is that while Shri Chakreswar Talukdar was functioning as SPM, Bengtol SO under Dhubri HO from 31.03.2000 to 17.07.2001 misappropriated office cash to the tune of Rs 1,03,809.42 (Rupees one lakh three thousand eight hundred nine and paise forty two) only and left the place unauthorisedly from 17.07.01 without handing over office keys and without information. The office was opened on 21.07.01 in presence of Magistrate deputed by the Deputy Commissioner, Kokrajhar.

The case was reported to the Police at Basugaon Police Station on 23.07.01 and the case has been registered there under Basugaon P.S. case No 71/2001 u/s 409 I.P.C. but, the Police could not able to arrest the accused. In the meanwhile the Police has submitted charge sheet no. 17 dated 30.05.2002 for trial before C.J.M. Kokrajhar showing the accused as absconder. The case vide No.CR 430/01 is under trial at the Hon'ble C.J.M. court Kokrajhar for appearance of the accused on 23.03.03, 15.11.03, 02.06.04 but the accused did not appear before the court and non-bail able warrant against the accused official has also been issued by the said Hon'ble court. It is further reported by the IPOs Kokrajhar that the Hon'ble court has issued summon to Police to arrest Shri Chakreswar Talukdar and produce him in the court fixing the date of hearing of the case on 20.12.2005. The court case is still under vigorous pursue.

The order for payment of subsistence allowance was not issued due to absence of the official at his head quarter Bengtol and where about of the official is not known. Last review was done during Jan 05.

Contd ..2

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As the official is still absconding and the court case against him is pending, revocation of the order of suspension is not found feasible as such his suspension is hereby extended upto 28.02.2006(due date of retirement) or without prejudice to any action under Rule 19 of the CCS(CCA) Rules, 1965 whichever is earlier.

19/12/05

(J. Charukeshi)
19/12/05
Dy Chief P.M.G. (Marketing)
Assam Circle, Guwahati-1

19.12.05

(B. Bairagi)
Supdt of Post Offices
Nalbari Barpeta Divn
Nalbari-781335

19.12.05

(R. Rabha)
Supdt of Post Offices
Goalpara Division
Dhubri-783301

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(D4) Type Pl. 1/2/06.

Unit - 89 -

ion for not holding enquiry under Rule 16(1)(b) against CCS, CCA Rules, 1965 against Sri Chakreswar Talukdar, Ex SPM Bengtal S.O.

Sri Chakreswar Talukdar, the then SPM Bengtal whole functions as remained absent from duty unauthorisedly from 17.7.01 keeping the office closed and his movements were not known till date. The IPOs on enquiry by IPOs, Bngn it came to notice that the office was kept close from 17.7.01 to 20.07.01. The office was opened on 21.7.01 by the IPOs, Bngn along with in presence of magistrate and other officers/officials of the department and on sum of Rs. 1,03,809.42 (Rupees Lakhs, Three Thousand Eight hundred nine) only was found short in the cash and stamp balances of the office which was charged as UCS at Bengtal S.O. on 21.07.01.

Subsequently an FIR was lodged at Bengtal Police out post under Bamgaon P.S. on 24.7.01, u/s 409 of I.P.C. The Police submitted charge sheet No. 27 dtd. 30.05.02 before the court of C.J.M. Kokrajhar showing the accused as absconder. The case is now subjudiced in the said honourable court in case No. GR 450/2001. The accused could not be apprehended by Police and produced before the court as the official is absconding since 17.07.01 as per report and a non bailable warrant against the accused official has been issued by the said honourable court.

That the official is absconding till now is evident from the letter no KJR/estbl/9/2005/5203 dtd. 29.08.05 of the Supdt. of Police, Kokrajhar and the honourable C.J.M Court, Kokrajhar order no copy dtd. 21.11.05.

The accused official is due to retire on 28.02.06. As the official is still absconding it is not reasonably practicable to hold an enquiry against the official in the manner prescribed in Rule-14 of the CCS, (CCA) Rules, 1965, hence proceeding of Rule-19 (ii) of the CCS (CCA) Rules, 1965 has been resorted to.

23-01-2006.

Supdt. of Post Offices

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BY Regd Post

OFFICE OF THE SUPERINTENDENT OF POLICE :::::: KOKRAJHAR ::::::

Memo No. KJR/Crime/9/2005/ 5203 Dtd. 29/8/2005

To

The Superintendent of Post Office,
Goalpara Division, Dhubri.

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Sub :- Detail report in connection with Basugaon P.S. Case No. 71/2001 U/S. 409 I.P.C.

Ref :- Your letter No. F6-1/2001-02 dtd. 15-07-2005.

Sir,

With reference to the subject cited above, I am furnishing herewith detail report alongwith present position of the case as follows. On 24/7/2001 the complt. Sri Jaydev Kumar Kar, Inspector of Post Bongaigaon Sub-Division P.S. Bongaigaon Dist. Bongaigaon lodged on FIR. at Basugaon P.S. to the effect that Sri Chakreswar Talukdar S.P.M. of Bengtol Post Office had remained unauthorised absent on his duty since 17.7.01 till date of lodging of the F.I.R. Sri Chakreswar Talukdar while he was working as S.P.M. Bengtol Post Office he misappropriated Govt cash amounting to Rs. 1,03,809'42 (Rupees One lakh three thousand eight hundred nine and forty two Paise)only and KVPP No. 74 C.C./978461-462 of deno. 10,000/- was missing in his official capacity. That was detected by Sri A.K. Tribedi, Executive Magistrate, Kokrajhar on 21.7.2001 and the misapproprited amount had been charged as U.C.P in the S.O. daily account date 23-7-2001. Hence the case.

During investigation of the case it was ascertained that accd. Sri Chakreswar Talukdar S/O. Lt. Anantaram Talukdar, S.P.M., Bengtol P.O. of vill. Dolegaon P.S. Dhaligaon misappropriated Govt. money of Bengtol P.O. while he was working as a S.P.M. of the Bengtol P.O. During investigation of the case accd. Sri Chakreswar Talukdar could not be arrested in connection with this case, sinec he was absconding.

During investigation the case was returned C.S. vide C.S. No. 27 dt. 30/5/02 against Sri Chakreswar Talukdar showing him absconder, which is under trail at Hon'ble C.J.M. Court Kokrajhar.

This is for your information and necessary action.

Yours faithfully

Superintendent of Police,
Kokrajhar.

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DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES
GOALPARA DIVISION :::: DHUBRI – 783 301.

Memo No. F6-1/2001-02 Dated at Dhubri the 10-02-2006

WHEREAS a statement of articles of charges was framed against Shri Chakreswar Talukdar, Ex-SPM Bengtal S.O. under Rule-14 of CCS (CCA) Rules, 1965 but due to prolonged absconding of Shri Talukdar the said memorandum of charges could not be served to the Official. The article of charges and the statement of imputation of misconduct or misbehaviour on the basis of which the charges were framed against the said Shri Chakreswar Talukdar was as below :-

ANNEXURE – I

Statement of articles of charge framed against Shri Chakreswar Talukdar, the then SPM, Bengtal S.O. (Now under deemed to have been placed under suspension and absconder since 17-07-01).

ARTICLE – I

That the said Shri Chakreswar Talukdar while functioning as SPM, Bengtal S.O. during the period from 31-03-2000 onwards remained unauthorized absent from duties w.e.f. 17-07-2001 keeping Bengtal S.O. closed and his movements were not known till this day and his continued absence in duty without proper permission unauthorizedly was subversive of discipline which invites disciplinary action against Shri Talukdar as codified in Rule-62 & 63 of Postal Manual Volume III. This also attracts the provision of Rule 3(1) (ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE – II

That during the aforesaid period and while functioning as such in the aforesaid office the said Shri Chakreswar Talukdar has kept Bengtal S.O. closed and absconded himself w.e.f. 17-07-2001 keeping shortage of cash to the tune of Rs. 1,03,809.42 (Rupees One Lakh three thousand eight hundred nine and paise forty two) only in the office. The above shortage of cash was charged as U.C.P. on 21-07-2001. By doing the above acts the said Shri Chakreswar Talukdar violated the provision of Rule-58 of P& T FHB Volume-I, Rule-658 of P&T Manual Volume-VI Part-III and also Rules 3(1) (i) , (ii), (iii) of CCS (Conduct) Rules, 1964.

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ARTICLE – II

That Shri Chakreswar Talukdar while working as SPM Bengtal S.O. during the period from 31-03-2000 onwards absconded himself w.e.f. 17-07-2001 keeping the office closed and suspending the P.O. works . The office was then opened with the help of Magistrate after observing necessary formalities on 21-07-2001 . An inventory was prepared by the Magistrate himself in presence of staff and other witnesses and following cash and stamps were found :-

Cash	= Rs. 2776.10
Stamp	= Rs. 6701.00
Revenue	= Rs. 1400.00
Total	Rs. 10877.10
Due from BOs	Rs. 7080.09
	Rs. 17957.19

S.O. a/c book of the office (current) was then examined and found that said Shri Talukdar had written up S.O. a/c book upto 13-07-2001 and as per S.O. a/c book dtd 13.07.01 closing balance of Bengtal S.O. was as below .

Cash	= Rs.1,07, 540.02
Stamp	= Rs. 2753.50
Revenue	= Rs. 140.00
Due from BOs	=Rs. 6030.09
	Rs. 1,16,463.61

Said Shri Talukdar was performed his duties on 14.07.2001 and written up B.O. summary upto 14.07.2001 but did not maintain the S.O. a/c book upto 14.07.01. As per B.O. Summary dated 14.07.2001 a sum of Rs. 7080.09 showed due from its Branch Offices. Shri Talukdar also issued M.O. for Rs. 1613/-, paid M.O. for Rs.2000/- and paid bill for Rs. 40/- respectively on 14.07-2001 as per voucher found available . But all the above amount was not brought into a/c on 14-07-2001 .Besides stamp worth Rs.5730/- was remitted to Bengtal S.O. on 10-07-2001 by the SPM, Bongaigaon S.O. , but the amount found not acknowledged and brought into a/c till 14.07.01. All the transactions stated above had been taken into account and assessed closing balances as follows .

CB dated 13.07.2001	= Rs. 1,16,463.61
Stamp remitted to Bengtal but not acknowledged.	= Rs. 5,730.00
M.O. issued but not bring to account.	= Rs. 1,613.00
Total receipt side	= Rs. 1,23,806.61
Less M.O. paid and bills paid	= Rs. 2,040.00
CB	Rs. 1,21,766.61

But on physical verification the executive Magistrate found Rs.10,877.10 as cash/stamp/Revenue balance in the office . A sum of Rs. 7080.09 was due from its B.Os . and hence the total shortage was (Rs.1,21,766.61- 17,957.19) = Rs.1,03,809.42 (Rupees one lakh three thousand eight hundred nine & paise forty two)only .

The above shortage of amount was charged as UCP in the daily a/c of Bengtal S.O. on 21.07.2001.

By doing the above acts the said Shri Chakreswar Talukdar violated the provision of Rule-58 of P&T Financial Hand Book Volume –I, Rule-658 of P&T Manual volume-VI Part-III and failed to maintained absolute integrity and devotion to duty and acted in a manner of unbecoming a Govt. Servant violating Rule 3 (1) (i) ,(ii) ,(iii) of CCS (Conduct) Rules.1964.

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DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES
GOALPARA DIVISION :::: DHUBRI – 783 301.

Memo No. F6-1/2001-02 Dated at Dhubri the 10-02-2006

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ANNEXURE – III

List of documents by which the articles of charges framed against Shri Talukdar the then SPM, Bengtal S.O. are proposed to be sustained .

(1) Inventory dtd 21.07.01 of Bengtal S.O. prepared by Shri A.K. Tribedi , EAC Kokrajhar in presence of Shri B. K. Marak, SPOs, Dhubri and other witnesses.

(2) S.O. a/c book of Bengtal S.O. dtd 21.07.01 Containing period from 31-03-2000 to 21.07.2001.

(3) S.O. daily account of Bengtal S.O. dtd 21.07.2001 duly accounted by Dhubri H.O. on 26-07-2001.

(4) Debit Charge for Rs. 1,03,809.42 dated 21.07.2001 from Dhubri H.O. dated against UCP.

(5) B.O. Summary of Bengtal S.O. covering period from 18-10-00 to 23.07.2001.

ANNEXURE – IV

List of witnesses by whom the article of charges framed against Shri Chakreswar Talukdar the then, SPM Bengtal S.O. are proposed to be sustained .

1. Shri A. K. Trebedi , EAC, Kokrajhar .
2. Shri B. K. Marak, SPOs, Dhubri.
3. Shri B. U. Ahmed, IPOs(PG)/Dhubri .
4. Shri J. Karmakar, IPOs, Bongaigaon.
5. Shri S. K. Choudhury, O/S Mail Bongaigaon .
6. Shri Tamir Uddin Ahmed, PA, Kokrajhar H.O.

The said Shri Talukdar misappropriated Govt. money to the tune of Rs. 1,03,809.42 (Rupees one lakh three thousand eight hundred nine & paise forty two) only in his official capacity and absconded keeping Bengtal S.O. closed from 17-07-01. The matter was reported to Police and the Police authority registered the case against the said Shri Talukdar under Basugaon P.S. case No. 71/2001 under section 409 I. P.C. The Police submitted charge sheet bearing No. 27 dated 30-05-02 before the honourable court of C.J.M. Kokrajhar showing the accused as absconder . The case is now subjudiced in the said honourable court in case No. GR 450/2001. The Supdt. of Police, Kokrajhar vide his letter No. KJR/Crime/9/2005/5203 dtd 29-08-05 granted a certificate stating that the accused Shri Talukdar is absconding and the honourable C.J.M. Kokrajhar has also issued order dated 21-11-2005 declaring the accused as prolonged absconder .

Since the whereabouts of the said Shri Chakreswar Talukdar is not known and the Police/Court authority have also certified that the said Shri Talukdar is absconding and therefore, it is not reasonably practicable to hold oral enquiry under Rule-14 of CCS (CCA) Rules, 1965 against the said Shri Talukdar .

In view of the above the undersigned, in exercise of powers conferred by Rule 19 (ii) of CCS (CCA) Rules, 1965 decided to finalize the Rule-14 case of Shri Chakreswar Talukdar without conducting oral enquiry .

I have gone through the case very carefully and also examined all the records and relevant facts in the case and observed that the offence committed by Shri Talukdar is of serious nature and due to his misdeeds the department had to sustain huge loss and valued customers of the department had to suffer during the period of unauthorized closing of the office. SO Shri Talukdar is not fit person retained in service and he deserves severe punishment .So orders are passed against Shri Talukdar as below .

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ORDER

I, Shri R. Rabha, Supdt. of Post Offices, Goalpara Division, Dhubri hereby order that Shri Chakreswar Talukdar, Ex-SPM, Bengtal S.O. and now under deemed suspension be "dismissed" from service with immediate effect .

(R. RABHA)
Supdt. of Post Offices
Goalpara Divn.Dhubri
783 301.

Copy to :-

1. Shri Chakreswar Talukdar, Ex. SPM, Bengtal S.O.
2. The Postmaster, Dhubri H.O. for information and taking necessary action .
3. The Chief Postmaster General, Assam Circle for favour of kind information and necessary action w.r.to C.O's No. INV/GM-3/2001 dtd 13.09.2005 and 7.2.06
4-5. The Punishment Register.
6. Vigilance section of C.O./Guwahati ..
7. Punishment Register of C.O./Guwahati .
8. Notice Board of Divl. Office, Dhubri .
9. The SPM, Bengtal S.O. who will display the copy in his office Notice Board .
10. P/F of the Official .
11. C.R. file of the Official .
12-13. Office copy & Spare.

(R. RABHA)
Supdt. of Post Offices
Goalpara Divn.Dhubri
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19. **Special procedure in certain cases**

Notwithstanding anything contained in rule 14 to rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these 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 Government servant 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.

Government of India's Decisions :

(1) **Scope of second proviso to Article 311 (2) of the Constitution** :-

The judgment delivered by the Supreme Court on 11.07.85 in the case of Tulsi Ram Patel and others has been the cause of much controversy. The apprehension caused by the judgment is merely due to an inadequate appreciation of the point clarified in this judgment and in the subsequent judgement of the Supreme Court delivered on September 12, 1985 in the case of Satyavir Singh and others (Civil Appeal No. 242 of 1982 and Civil Appeal No. 576 of 1982). It is, therefore, imperative to clarify the issue for the benefit and guidance of all concerned.

2. In the first place it may be understood that the Supreme Court in its judgment has not established any new principle of law. It has only clarified the constitutional provisions, as embodied in Article 311 (2) of the Constitution. In other words, the judgment does not take away the constitutional protection granted to government employees by the said Article, under which no government employee can be dismissed, removed or reduced in rank without an inquiry in which he has been informed of the charges against him and given a reasonable opportunity to defend himself. It is only in three exceptional situations listed in clauses (a), (b) and (c) of the second proviso to Article 311 (2) that the requirement of holding such an inquiry may be dispensed with.

3. Even under these three exceptional circumstances, the judgment does not give unbridled power to the competent authority when it takes action under any of the three clauses in the second proviso to Article 311 (2) of the Constitution or any service rule corresponding to it. The competent authority is expected to exercise its power under this proviso after due caution and considerable application of mind. The principles to be kept in view by the competent authority

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while taking action under the second proviso to Article 311 (2) or corresponding service rules have been defined by the Supreme Court itself. These are reproduced in the following paragraphs for the information, guidance and compliance of all concerned.

4. When action is taken under clause (a) of the second proviso to Article 311 (2) of the Constitution or rule 19 (1) of the CCS (CC&A) Rules, 1965 or any other service rule similar to it, the first pre-requisite is that the disciplinary authority should be aware that a Government servant has been convicted on criminal charge. But this awareness alone will not suffice. Having come to know of the conviction of a Government servant on a criminal charge, the disciplinary authority must consider whether his conduct, which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case. In considering the matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the 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. This however, has to be done by the disciplinary authority by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government servant. (The position has been undergone a change with incorporation of first proviso to Rule 19, which may be kept in view). This too has to be done by the disciplinary authority by itself. The principle, however, to be kept in mind is that the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

5. After the competent authority passes the requisite orders as indicated in the preceding paragraph, a Government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the person who was in fact, convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies available to him and still wants to pursue the matter, he can seek judicial review. The court (which term will include a Tribunal having the powers of a court) will go into the question whether impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case or the requirements of the particular service to which the government servant belongs.

6. Coming to clause (b) of the second proviso to Article 311 (2), there are two conditions precedent which must be satisfied before action under this clause is taken against a government servant. These conditions are :-

(i) There must exist a situation which makes the holding of an inquiry contemplated by Article 311 (2) not reasonably practicable. What is required is that holding of inquiry is not practicable in the opinion of the reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be :-

(a) Where a civil servant, through or together with his associates, terrorises, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

Bengal Kolide Dy
Dist. Kokrajhar

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

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

(ii) Another important condition precedent to the application of clause (b) of the second proviso to Article 311 (2), or rule 19 (ii) of the CCS (CCA) Rules, 1965 or any other similar rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311 (2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should be recorded separately in the relevant file. In spite of this legal position, it would be of advantage to incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order of penalty. While the reasons so given may be brief, they should not be vague or they should not be just a repetition of the language of the relevant rules.

7. It is true that the Article 311 (3) of the Constitution provides that the decision of the competent authority under clause (b) of the second proviso to Article 311 (2) shall be final. Consequently, the decision of the competent authority cannot be questioned in appeal, revision or review. This finality given to the decision of the competent authority is, however, not binding on a Court (or Tribunal having the powers of a Court) so far as its power of judicial review is concerned, and the court is competent to strike down the order dispensing with the inquiry as also the order imposing penalty, should such a course of action be considered necessary by the court in the circumstances of the case. All disciplinary authorities should keep this factor in mind while forming the opinion that it is not reasonably practicable to hold an inquiry.

8. Another important guidelines with regard to this clause which needs to be kept in mind is that 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 situation to return to normal.

9. As regards action under clause (c) of the second proviso to Article 311 (2) of the Constitution, what is required under this clause is the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State, it is not expedient to

Bengal Police
Dist. Kolkata

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hold an inquiry as contemplated by Article 311 (2). This satisfaction is for the President or the Governor as a constitutional authority arrived at with the aid and advice of his Council of Ministers. The satisfaction so reached by the President or the Governor is necessarily a subjective satisfaction. The reasons for this satisfaction need not be recorded in the order of dismissal, removal or reduction in rank; nor can it be made public. There is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by disciplinary authority subordinate thereto, a departmental appeal or revision will lie. In such an appeal or revision, the civil servant can ask for an inquiry to be held into his alleged conduct, unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Article 311 (2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review. However, if it is alleged that the satisfaction of the President or Governor, as the case may be, had been reached mala fide or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judicial review because, in such a case, there would be no satisfaction, in law, of the President or the Governor at all. The question whether the court may compel the Government to disclose the materials to examine whether the satisfaction was arrived at mala fide or based on extraneous or irrelevant grounds, would depend upon the nature of the documents in question i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not.

10. The preceding paragraphs clarify the scope of clauses (a), (b) and (c) of the second proviso to Article 311 (2) of the Constitution, rule 19 of CSS (CC&A) Rules, 1965 and other service rules similar to it, in the light of the judgments of the Supreme Court delivered on 11.07.1985 and 12.09.1985. It is, therefore, imperative that these clarifications are not lost sight of while invoking the provisions of the second proviso to Article 311 (2) or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is arbitrary or mala fide. So far as clauses (a) and (c) and service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking clause (b) of the second proviso to Article 311 (2) or any similarly worded service rule, absolute care should be exercised and it should always be kept in view that action under it should not appear to be arbitrary or designed to avoid an inquiry which is quite practicable.

[Department of Personnel & Training OM No. 11012/11/85-Estt. Dated the 11th November, 1985].

(2) **Issue of charge-sheet where action is taken under Rule 19 :-**

Paras 6 to 8 of this Department's OM of even No. dated 11th November, 1985 (Decision No. 1 above) contain instructions relating to factors that are relevant where action is taken under Clause (b) of the second proviso to Article 311 (2) of the Constitution.

2. A question has been raised whether, in a case where clause (b) of the second proviso to Article 311 (2) of the Constitution is invoked, the disciplinary authority may dispense with the issuing of charge memo listing the charges. Clause (b) is attracted in a case where the disciplinary authority concludes, "that it is not reasonably practicable to hold such an inquiry". The circumstances leading to such a conclusion may exist either before the inquiry is commenced

Dongpal Police O.P.
Dist. Kokrajhar

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or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under :-

"It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry".

3. Article 311 (2) of the Constitution concerns itself with the punishment of dismissal, removal or reduction in rank, which comes in the category of major punishment under the service rules providing the procedure for disciplinary action against Government servants. The first step in that procedure is the service of a memorandum of charges or a charge-sheet, as popularly known, on the Government servant, listing the charges against him and calling upon him, by a specified date, to furnish a reply either denying or accepting all or any of the charges. An inquiry hence commences under the service rules with the service of the charge-sheet. Obviously, if the circumstances even before the commencement of an inquiry are such that the disciplinary authority holds that it is not reasonably practicable to hold an inquiry, no action by way of service of charge-sheet would be necessary. On the other hand, if such circumstances develop in the course of inquiry, a charge-sheet would already have been served on the Government servant concerned.

4. In para 6 (i) of this Department's OM dated 11th November, 1985 (Decision No. 1 above) certain illustrative cases have been enumerated where the disciplinary authority may conclude that it is not reasonably practicable to hold the inquiry. It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example, referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to anticipate such circumstances as those that are likely to arise, possibly later in time, as grounds for holding that it is not reasonably practicable to hold the inquiry and, on that basis, dispense with serving a charge-sheet on the Government servant.

[Department of Personnel & Training OM No. 11012/11/85-Estt.(A) dated 4th April, 1986].

Annex-3.

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(28)

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From Inspector of Posts, Bongaigaon Sub Division
Bongaigaon, Assam

Dated- 18th April/2002.

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Sub:- Detail report in connection with Basugaon P.S. case No 71/2001 U/S 409 I.P.C.

Ref:- Letter No B-2/Bangtol/01 dtd. Bongaigaon the 17/4/2002

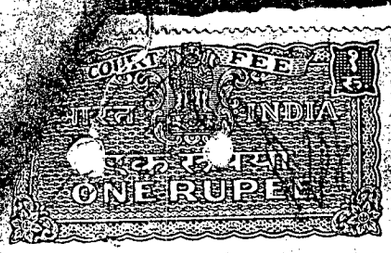
I like to inform you [illegible]
Sub. cited above that on 24-07-2001 Complt. Sri Joydeb Karmakar, Inspector of Posts, Bongaigaon Sub-Division, Bongaigaon Assam. Lodged an Ejahar at Basugaon Police station, to the effect that- one Sri Chakreshwar Talukder, S.P.M. Bangtol Post office is reportedly un-authorishedly absente from his duty since 17-07-2001 to till date, Sri Talukder while working as S.P.M. Bangto S.O. misappropriated govt Cash amounting Rs 1,03,809.42 (One Lakh Three thousand eight hundred nine Rupees and forty two Paise) only and K.V.P No 7466/978461 — 462 of denn 10,000/- missing in his official Capasity. The said case was detected by the executive Magistrate Sri A.K. Tribedi, Kokrajhar on 21-07-2001 and the misappropriated amount has been charged as U.C.P. in the S.O. daily account dated 27-07-2001. In this Connection a case has been registered at Basugaon P.S. vide Basugaon P.S. Case Case No 71/2001 U/S 409 I.P.C.

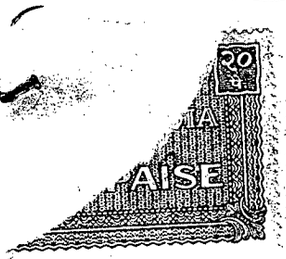
During investigation Previous I/O S.I. Bipin Borgohain visited the P.O., examined all the nearest witness and also seized all the required relavent documents which was Produced by the Complt. During investigaon several attempts was made to arrest the accd. Sri Chakreshwar Talukder but he absconding himself from arrest.

The case is Pending for arrest of- accused and F/1

This is for favour of your information and n/a.

CS [illegible]
Bongaigaon Police [illegible]
18/04/02
Dist. Kokrajhar







90/60

-05	12-12-05	13-12-05	14-12-05	22-12-05

Central Administrative Tribunal
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23 FEB
Guwahati Bench
गुवाहाटी

G.R.NO=450/2001

F.I.R

police station:- Basugaon Dist:- Kokrajhar

Sub-Divn:- Kokrajhar

Case no=71/2001 Date and hour of occurrence:- 21-7-2001

Date and hour when reported: 24-7-2001 At 4-45 pm.

Place of occurrence and distance and direction from police station: Bengtal post offic 3 1/2 Km. North/Ea

Date of despatch from police station: 25-7-2001.

Complainant

Joy deb Karmakar Inspector of posts. Borgaigaon, sub-Divn. PS:- Borgaigaon. Dist: Borgaigaon.

Accused

① Sri chakreswar Talukder S/o m. Bengtal, post offi

offence:- U/S- 409 IPC

Steps:- S.I. B. Borgohain I/C, BTC. Of. to take up the investigation of the case

sd/- Illegible S.I.
Basugaon PS.
Dist: Kokrajhar Dt. 24-7-2

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Received the written ejahar from the compl. and treated as F.I.R. which is enclosed here with.

Sd/- Illegible S.I.
Basugaon P.S. Dist: Kokrajhar
Dt. 24-7-2001

Department of post. India

To,
The officer commanding (O/C)
Basugaon police station. P.O - Basugaon
Dt:- Kokrajhar. Dated:- 24-07-2001

No-B2/Bengtal/01

Sub:- F.I.R.

Sir,

I have the honour to inform you that Shri Chakreswar Talukder S.P.M. Bengtal post office is reported un-authorised absence from duty since 17-7-01 to till date. Shri Talukder while working as SPM Bengtal S.O. mis appropriated Govt Cash amounting Rs-1,03809-42 (Rs. one lakh three thousand eight hundred nine & P. forty two) only. and KVP No -7 HCC/97846L-462 of demo 10,000/- missing in his official capacity.

The case was detected by the executive magistrate Shri A.K. Tribedi, Kokrajhar on 21-7-2001 and the mis appropriated -

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amount has been charged as U.S.P. in the S.O. daily account dated-23-07-2001. Kindly take necessary action against the official under appropriate section of law.

Thanking you
Yours faithfully-
Joydeb Karmakar
24-7-01.
Inspector of posts.
Borgaigaon sub-Divn.
Borgaigaon. Assam-

Copy:-1) The supdt. of post office's Dhubri for kind information and taking N/A.
2) The Incharge, Bengtal police out post, for information.

Sd/-
Inspector of posts
Borgaigaon sub-Divn.
Borgaigaon Assam.

Received and registered Bagaigaon P.S. No-74/2001 U/S-409 IPC.
Certified Copy to be True Copy
Illegible S.I.
Bagaigaon P.S.
Dist-Kokrajhar
24-7-2001

Head Asstt.
C.J.M. Office, Kokrajhar.
Authorised U/S 76 Act. 1 1872

22/12/05

19-12-05

COURT FEE ONE RUPEE

COURT FEE 20 PAISE

COURT FEE 75 PAISE

33 4 143

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In the court of C.J.M. Kokrajhar.

G.R. No = 430/2004

U/s- 409 IPC

State

-Vs-

Sri Chakreswar Talukder

Order sheet

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Guwahati Bench
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Date	order	signature
14-11-05	T.M. is on leave. N.B.W.A. issued against accd. Sig returned with report that the accd. is not available at village Dalay gaon. Issue P.A/N/A against accused. Fixing: 21-12-05 for app. sd/ D.C. Nath Addl C.J.M. Kokrajhar	

Certified Copy to be True Copy
Head Asstt.
C.J.M. Office, Kokrajhar.
Authorised U/S 76 Act. I 1872
22/12/05

22/12/05

13-12

Central Administrative Tribunal
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Date of application for copy	Date of receiving Copy Petition with case record	Date of delivery of the requisite Stamps and folios	Date on which the copy was ready for delivery	Date of making over the copy to the applicant
16-10-07	16-10-07	31-10-07	31-10-07	31-10-07

FIR- GR- No. 450/2001

P.S Bazugaon, Sub-Division - Kokrajhar, Dist. Kokrajhar, Case No. 71/2001, Date and hour of occurrence 21-7-2001

Date and hour reported	P/O and distance and direction from P.S.	Date of despatch from P.S.
24-7-2001 4-45 P.M.	Bengtol Post office 31 K.M. North / East	25-7-2001

Name of complainant	Accused	Offence	Steps
Dilip Kr. Karmakar Postal Assistant Bongaigaon Sub-Division. Bongaigaon - Kokrajhar	1) Sri Chakreswar Talukdar S.P.M. Bengtol Post office	U/S 409 IPC.	S.I. B. Borgohain I/C BTL O.P. to take up the investigation of the case. Sd/- Illegible O/C Bazugaon P.S. 24-7-2001

Received the written ejahar from the complt. and treated as FIR which is enclosed herewith.

Sd/- Illegible
O/C Bazugaon P.S.
24/7/2001

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COURT FEE 75

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Department of Posts: India

To

The Officer Commanding (O/C)
Basugaon Police Station
P.O. Basugaon Dt. Kokrajhar.

No. B2/Bengtol/01 Dated - 24-07-2001.

Sub:- FIR.

Sir,

I have the honour to inform you that Sri Chakreswar Talukdar SPM Bengtol Post-office is reported un-authorisedly absent from duty since 17-7-01 to till date. Shri Talukdar while working as SPM Bengtol S.O. misappropriated Govt. cash amounting Rs. 103809.42 (Rs one Lakh three thousand eight-hundred nine P. forty two) and KVP No-74CC/978461-462 of denn 10,000/- missing in this official capacity.

The case was detected by the executive Magistrate Sri A.K. Tribedi, Kokrajhar on 21-7-200 and the misappropriated amount has been charged as UCP in the S.O. daily account dated 23-07-200

Kindly take necessary action against the

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Official under appropriate section of law.

Thanking you
Yours faithfully.
Joydeb Karmakar
Inspector of Posts
Bongaigaon sub-Divn.
Bongaigaon, Assam 783380
24/7/01

Copy to -
1) The Supdt of Post-office's, Dhubri for f/o kind information and taking n/a.
2) The Incharge, Bengtol Police out Post. for information.

Received and Registered Bazugaon P.S. case no. 71/2001 u/s 409 I.P.C.

Sd/- illegible
O/c Bazugaon P.S.
Dist. Kokrajhar
24/7/2001

Compared by
31/10/07

Certified to be True Copy.
Kishore Kumar Ray 31.10.07
Head Asstt.
C.J.M. Office, Kokrajhar.
Authorised U/S 76 Act.1 of 1877

Copied by
30/10/07

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
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Charge - Sheet

Dist- Kokrajhar, CS.No. 27, Dtd- 30/5/2002
P.S. Barugaon, FIR-No. 71, Dtd. 24/7/2001.

Complainant-

Sri Joydeb Karmakar
Inspector of Post-.
Bongaigaon sub-Division, Bongaigaon.
P.S. & Dist- Bongaigaon (Assam)

Accused (ABSCONDER)

Sri Chakreswar Talukdar
S/o L- Ananta Ram Talukdar
(S.P.M. Bengtol Post-office)
Vill. Dolaygaon, P.S. Thaligaon
Dist- Bongaigaon (Assam)

Permanent-addl

Vill. Bhadra
P.S. & Dist- Nalbari (Assam)

Seizure list-

Bengtol O.P.

MR. No. 7/2001

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23 APR 2019
Guwahati Bench
गुवाहाटी न्यायपीठ

Witnesses

1) Sri Joydeb Karmakar
Inspector of Post, Bongaigaon.
Sub-Division, Bongaigaon.
P.S. & Dist:- ~~Kokrajhar~~ Bongaigaon.

2) Sri Rambabu Berman.
Peon, Bengtol Post-office.
P.S. Baisugaon.

3) Md. Tomiruddin Ahmed
S.P.M. Bengtol Post-office, P.S. Basugaon.

4) Smti Sanyukta Sarmah.
E.D. Packerman, Bengtol Post-office
P.S. Basugaon.

5) Sri A.K. Tribedi A.D.C. Kokrajhar.

6) S.I. Bipin Basgahain Bengtol o.p.

7) S.I. Sirajul Hoque Bengtol o.p.
P.S. Basugaon.
Dist:- Kokrajhar (Assam).

Description

[illegible] 28/9/2002 [illegible]
[illegible] Inspector of Post, Bongaigaon Sub-Division, P.S. & Dist:- Bongaigaon (Assam) [illegible] Post-office [illegible] Sub-Post-Master [illegible]

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COURT FEE STAMP

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ক্রমিক নং ৭

ক্রমিক নং ৭ ১১২ ৩৯

ক্রমিক নং ৭ ১১২ ৩৯

ক্রমিক নং ৭ ১১২ ৩৯

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Forwarded to the CJM, Kokrajhar through the P.S. of Kokrajhar.

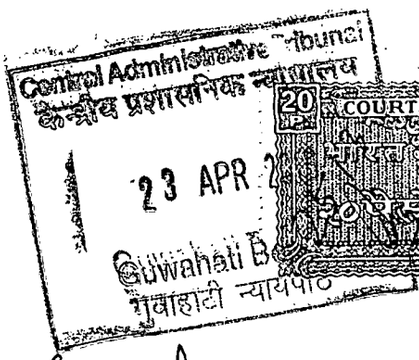
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O/C Basugaon P.S.
Dist- Kokrajhar.
17/6/2002

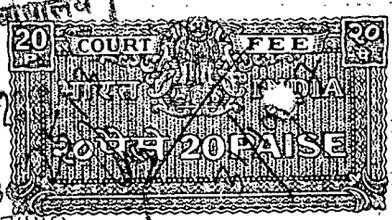
Certified to be True Copy.
Kishore Kumar Roy 31.10.07
Head Asstt.
C.J.M. Office, Kokrajhar.
Authorised U/S 76 Act I of 1877

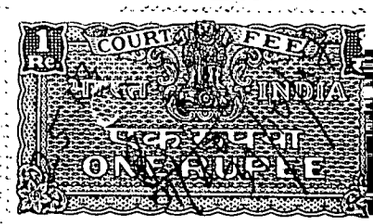
Compared by
31/10/07

Copied by
30/10/07

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In the Court of C.J.M, Kokrajhar
Case No. GR-450/01

State
-Vs-
Sri Sukreswar Talukdar
U/s 409 I.P.C.

Deposition of E.O.
Aged about-57 yrs.
Name: Asi Upendra Nath Barman.
S/o L- Debilal Barman.
Caste Hindu
At Present- Dhuligaon P.S.
P.S. Dhuligaon, Dist- Bongaigaon.
Profn:- Asi. of Police.

বাংলা লিখে,

তারিখ- 21/11/05 ইং তারিখে আমি চার্জশিটভুক্ত আসামী শ্রীসুকেশ্বর তালুকদার ও তার সহযোগীদের বিরুদ্ধে PC Act এর ৭/১৩(১)(ডি) ধারা মোতাবেক তদন্ত করে চার্জশিট দাখিল করি। তদন্তকালীন সময়ে আসামী শ্রীসুকেশ্বর তালুকদার ও তার সহযোগীদের বিরুদ্ধে Proclamation জারি করা হয়েছিল। তদন্তকালীন সময়ে আসামী শ্রীসুকেশ্বর তালুকদার ও তার সহযোগীদের বিরুদ্ধে

30/11/05

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Report / Attachment - ওৱাৰ্ড যোগেৰে ৰিপোৰ্ট কৰা হ'ল। Report - ৰিপোৰ্ট / Ext-1 Proclamation Ext-1(1) report - ৰিপোৰ্ট / Ext-2 Attachment Ext-2(1) report - ৰিপোৰ্ট / Ext-3 Separate report - Ext-3(1) ৰিপোৰ্ট।

R O A C.
Sd/ D.C. ~~Nalbari~~ Chetia phukan
C.J.M, Kokrajhar
20/2/06

Certified to Be True Copy.
Kishore Kumar Roy.
31.10.07
Head Asstt.
C.J.M. Office, Kokrajhar.
Authorised U/S 76 Act-1 of 1877

compared by
31/10/07

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30/10/07

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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
23 APR 2010

In The Court of C.J.M, Kokrajhar.

G.R. Case No. 450/01

State

-vs-

Sri Sukreswar Talukdar

U/S 409 IPC

(ORDER SHEET)

Date	Order	Signature
10/6/06	Accused absent. E.O. Present. He is examined and discharged. The P & A against the accd. Sukreswar Talukdar is Proved. Hence accused is declared as absconder and the case against the accused is filed (sine) further order.	Sd/- D.K. Chetia Phukan C.J.M, Kokrajhar

Certified to be True Copy.
Kishore Kumar Roy
Head Asstt.
C.J.M. Office, Kokrajhar.
Authorised U/S 76 Act-I of 1877
31.10.07

Compared by
31/10/07

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30/10/07

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20 MAY 2010
Guwahati Bench
गुवाहाटी न्यायपीठ

Filed by
Jaya Talukdar
Applicant
C.A. Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

GUWAHATI BENCH, GUWAHATI.

In the Matter of :-

O.A. No. 166/2009

Smt. Jaya Talukdar

... Applicant

-Vs-

The Union of India & Ors.

... Respondents

-And-

In the Matter of :-

Rejoinder filed in O.A. No. 166/09 on behalf of the applicant.

REJOINDER

Smt. Jaya Talukdar, w/o Late Chakreswar Talukdar, c/o Shri Paritosh Chakraborti, aged about 50 years, by Caste Hindu and house wife by profession, resident of B.T. Road (Bye-Lane), P.O. & Dist. Bongaigaon, Assam do hereby solemnly affirm and declare as follows:

Recd
19/5/10

1. That the deponent is one of the applicants in the above noted case which has been filed challenging the impugned order dated 15.7.2008 issued under the signature of Superintendent of Post Offices, Goalpara Division forfeiting

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the claim of past service benefit of her husband. Further prayer is made to set aside the impugned penal order dated 10.2.2006 dismissing the service of her husband on the alleged charges of sustaining of huge loss to the Department and etc. In the said case this Hon'ble Tribunal passed an order dated 8.12.2009 for consideration of five legal questions and the respondents were asked to place the complete records before the Hon'ble Court. The said respondent is also given liberty to file an additional affidavit highlighting all the aforesaid five aspects. Accordingly some documents have been placed before this Hon'ble Court and an additional affidavit also been filed on behalf of the said respondent. The deponent has gone through it and understood the contents thereof which are denied unless specifically admitted, found correct and consistence with the records of the case.

2. That in making this reply in affidavit (Rejoinder) the deponent/applicant begs to state that she reiterates, reaffirms and relied upon the statements already made in the O.A. No. 166 of 2009. However, as regards the statement made in paragraph 1 to the said additional affidavit-in-opposition, the deponent has nothing to comment. The husband of the deponent/applicant No.1 was placed under suspension w.e.f. 17.01.2001 and dismissed on 10.02.2006, but without any intimation to

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her or to the address of the family. No subsistence allowance was paid as admitted by the respondent authority. No communication was ever made to her or to the family as regards the departmental proceeding conducted against her husband. The confirmation report dated 23.10.2002 issued by the Superintendent of Police, Kokrajhar is nothing but a report showing her husband absconder. This was also indicated in the charge sheet vide Basugaon P.S. Case No. 27 dated 30.5.2002 submitted to the learned Court of C.J.M., Kokrajhar. The document vide D_1 is the order whereby the deponent's husband was deemed suspended with effect from the date of alleged absconding i.e. with effect from 17.7.2001 in terms of Sub Rule 2 of Rule 10. However, such Rule is applied although he was neither detained on a criminal charge exceeding 48 hours nor he was convicted. The deponent's husband was reported missing or alleged absconder but till date her husband is not traced out. The document (D_2) dated 23.2.2010 of the Superintendent of Police, Kokrajhar is absconder report. In terms of said absconder report the respondent claimed that the husband of the deponent is alive and therefore the burden to prove her husband's alive is upon the respondent. The document D_3 furnished by the respondent No.3 is the minutes of the review of the suspension of the petitioner husband. The said minutes of the review committee indicate that concerned police and

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the Hon'ble Court at that relevant time was pursuing the production of the deponent's husband. It also indicated that the order of subsistence allowance was not issued due to absence of the deponent husband at its Head Quarter Bangtol and whereabouts of the deponent's husband is not known and still absconding and consequently the order of suspension was extended upto 28.2.2006 which is the date of retirement or not to cause prejudice to any action under Rule 19 of the CCS (CCA) Rules, 1965. The minutes was signed by the Superintendent of the Post Offices, Goalpara Division, Dhubri as disciplinary authority. The Superintendent of Post Offices, Nalbari-Barpeta Division and the DPS (H.Q. and Marketing), Assam, Circle, Guwahati.

The D_4 is the hand written note dated 3.1.2006 of Superintendent of Post Offices, Goalpara Division disclosing the reason for not holding enquiry under Rule 14 of the CCS, CCA Rule, 1965 and resorting to proceed with the case under Rule 19(ii) of the CCS, CCA Rule, 1965. The said Rule is quoted as follows :

"19. Special procedure in certain cases –

Notwithstanding anything contained in Rule 14 to Rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

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(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 Government servant 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."

On perusal of the said report it appears that the reasons of not holding enquiry stated to be the retirement of the accused official is due to retire on 28.2.2006, he is absconding and therefore, it is not reasonably practicable to hold an enquiry against the officer in the manner prescribed in Rule 14 of the CCS (CCA) Rule 1965 hence Rule 19 (ii) is resorted.

3. That as regards the statement made in paragraph 3 to the additional affidavit of the respondent authority the

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deponent applicant No.1 states that the disciplinary case against the husband of the deponent-applicant was decided as per Rule 19 of CCS (CCA) Rules 1965 in the light of Article 311(2) of the Constitution although Memorandum of charges was prepared under Rule 14 of the CCS (CCA) Rule 1965. It is pleaded that Memorandum of charges under Rule 14 could not be served because of alleged absconding. It is contended by the respondent that the disciplinary authority assess the peculiar circumstances of this case, concludes with a view that it is not reasonably practicable to hold any enquiry under Rule 14 and decided the case as per Rule 19(ii) of the CCS (CCA) Rule 1965 in the light of Article 311(2) of the constitution. In this connection the respondent referred D_4, the note of the disciplinary authority, D_5, the report of the S.P., Kokrajhar and D_6, the penal order dismissing the service of the applicant's husband. The deponent-applicant in this connection begs to state that such decision of the disciplinary authority is not exercised in the light of Article 311(2) of the Constitution. The 3-provisos under Article 311(2) are as follows:-

"311(2) .....

(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

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(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."

On bare perusal of above provisos under Article 311(2) it is clear that one can be dismissed dispensing with enquiry when he is convicted in a criminal charge, then it is not reasonably practicable to hold such inquiry subject to condition that the disciplinary authority is satisfied for some reasons recorded in writing and where the President/Governor, as the case may be, is satisfied that such enquiry is not expedient to hold in the interest of security of State. None of these criteria is applicable in the present case. The husband of the applicant is not convicted till date. The enquiry is to be dispensed with only on the basis of subjective satisfaction of the authority that it was not reasonably practicable to hold such enquiry. The reason of such view in the present case as explained is the alleged prolonged absconding of the accused husband of the deponent. No any other reason like threats, violence

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having no possibility of confronted enquiry is present in the given case. The assertion of the reason is not based on certain objective facts and the said assertion of prolonged absconding is not yet proved. The decision of the disciplinary authority dispensing with the departmental enquiry is rested solely on the ipse dixit. It is because the absconding of the deponent husband is not yet proved. If the absconding is accepted as proved in that case the burden of alive of her husband is also upon the said authority. If that burden is not taken by the authority in that case the impugned decision of the authority is bad because of lack of subjective satisfaction as opined by the Hon'ble Apex Court in a reported case of (1991) 1 SCC 362. The Hon'ble Apex Court also hold similar view in another case reported as (1991) 1SCC 729.

4. That as regards the statement made in paragraph 4 to the A.O. of the respondent No.3, the deponent begs to state that the application of Rule 19(ii) of CCS(CCA) Rules, 1965 hold good only in the light of 3 provisos of Article 311(2) of the Constitution. In the given case the source of power to dispense with the inquiry is derived from the 2nd proviso of Article 311(2) not from the service Rule i.e. Rule 19(ii) of CCS(CCA) Rule 1965. This has been discussed in Tulsiram Patel's Case (reported in AIR 1985 SC 1416/1985(2) SLR 576) and also in other subsequent judgment reported as

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1986(1) SLR 255 (Annexure-3). The decision dispensing with the enquiry being improper and subject to judicial scrutiny of this Hon'ble Court. The question raised in the case "whether there is serious lack of subjective satisfaction of the authority in simply holding a view that it was not reasonably practicable to hold enquiry i.e. solely rested on ipse dixit as regards the absconding without any proof?". Even the decision in holding that the delinquent is absconder without any proof or test, without any notice to the family, without reference of the Evidence Act and lack of subjective satisfaction, none of the 3-Proviso of Article 311(2) is applicable in the instant case. There may not be any provision to hear the family/wife of the delinquent but to arrive at satisfactory subjective decision on the point of absconding and in holding a view that it is not reasonably practicable to hold enquiry, wife could be heard. As such the decision is arrived at without subjective satisfaction that too without being recorded in writing. That being not done the decision/dismissal is bad because of whims and caprice. Therefore, Rule 19(ii) of the CCS (CCA) Rules of 1965 is wrongly applied and by such wrong application rights of dependents cannot be taken away. Widow and minors are equally entitled to Family Pension and a matter of right. Pension & Family pension is not merely a statutory right but also fulfillment of constitutional provision as held in AIR 1971 SC 1409 (Deoki Nandan

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Prasad -Vs- State of Bihar) and in 1985 (2) SLR (Poonamal Smt. etc. etc. -Vs- Union of India). Rule 19(ii) of CCS (CCA) Rules, 1965 is nothing but offspring of Article 311(2) of the Constitution.

5. That as regards the statement made in paragraph 5 of the A.O. of the R-3 the deponent begs to state that the C.J.M., Kokrajhar has not convicted the delinquent. As per document D_8 the delinquent is absconding since 17.7.2001 and the decision of the learned Court declaring him as absconder. Reliance and coming to a decision that the delinquent's absconding otherwise shifted the burden upon the authority to prove that he is alive as per section 108 of the Evidence Act. Because the delinquent is untraced since 17.7.2001, about 9 years has elapsed. The section 108 of the Evidence Act is read as follows:-

"108. Burden of proving that person is alive who has not been heard of for seven years - Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it."

The fact is that the delinquent might have been the prey of extremist and no more alive. Therefore he is

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missing not absconded as alleged. The authority is to review/alter the decision to withdraw the dismissal holding him as dead not as absconder.

6. That as regards the statement made in para 6 to the A.O. of the R-3, the deponent begs to state that averment has already been made in paragraphs 4.5 and 4.6 to the O.A. No.166/2009 that she went to the Basugaon Police Station as well as to the Superintendent of Police, Bongaigaon with a request to lodge a missing report or F.I.R. and to rescue her husband. But the police authority told her that the lodging of such report is not necessary as because there is already a report by the postal department. The deponent also made a request to the D.C., Chirang, BTAD, Kokrajhar by petition dated 5.7.2002 to make an investigation into the matter and for a favourable police report in connection with missing of her husband. The copy of the said prayer petition dated 5.7.2002 made by the deponent is not kept out of ignorance. But her petition dated 10.11.2003 to the D.C., Bongaigaon vide Annexure-6 to the original application also indicates her anxiety over the missing of her husband.

The documents available in the case record it is enough that there is already a police report by the postal authority and enough/conclusive police report is with the authority about the missing of the delinquent. Therefore

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the condition of furnishing police report separately by the deponent is not applicable in the present case. Such a plea is unreasonable and only to deny the legitimate due to her on mere technicalities. The provision of furnishing police report is applicable when there is no other police case or report. The charge of committing fraud cannot be treated as established when the delinquent is still untraced and may be presumed to meet the death. Holding guilty of such charge upon a dead person and curtailing terminal benefit, denial of subsistence allowance are absolutely beyond jurisdiction and absolutely in violation of fundamental rights guaranteed under Article 14, 16, 21 and 23 of the Constitution.

7. That it is submitted on behalf of the applicant that assuming but not admitting the dismissal of the applicant's husband was rightly done, in that case also the respondent authorities are to consider to grant compassionate allowance to the family of the delinquent who are in extreme hardship in view of the provision under Rule 41 of Central Civil Services (Pension) Rules, 1972.

8. That the contentions raised by the respondents are not based on facts and law and therefore the same may be rejected allowing the prayer of the applicant made in the O.A. No. 166/2009.

9. That this rejoinder is filed bonafide in the interest of justice.

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VERIFICATION

I, Smt. Jaya Talukdar, w/o Late Chakreswar Talukdar, aged about 51 years, c/o Shri Paritosh Chakraborti, by Caste Hindu and house wife by profession, resident of B.T. Road (Bye-Lane), P.O. & Dist. Bongaigaon, Assam do hereby solemnly affirm and declare that the statements made in paragraphs ....1, 8 & 9..... are true to my knowledge and belief and the statements made in paragraphs 2, 3, 4, 5, 6 & 7..... are believed to be legal advice and I have not suppressed any material facts.

And I sign this verification on this 20th day of May, 2010 at Guwahati.

Jaya Talukdar
Signature.

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the Corporation and was in charge of the investigation of the death claims. The learned counsel for the appellant has contended that certain observations in the judgment of the High Court amount to a criticism of the Administrative Officer. We do not think that the observations can be described as strictures, but, in any event, we would like to clarify the position that in our view no exception can be taken against the conduct of the officer in the matter of investigation of the present case. He was under a duty to have made a thorough inquiry in the circumstances, which certainly on the face appeared to be suspicious, and he was performing his duty with all seriousness as he ought to have done.

12. For the reasons mentioned above, the appeal is dismissed, but, in the circumstances, without costs.

(1991) 1 Supreme Court Cases 362

(BEFORE K. JAGANNATHA SHETTY AND A.M. AHMADI, JJ.)

JASWANT SINGH .. Appellant;

Versus

STATE OF PUNJAB AND OTHERS .. Respondents.

Civil Appeal No. 10587 of 1983†, decided on November 27, 1990

Constitution of India — Article 311(2) second proviso (b) — Dismissal under, dispensing with departmental inquiry — Subjective satisfaction of the authority that it was not reasonably practicable to hold such inquiry — Open to judicial review — Authority obliged to show that his satisfaction was based on objective facts — In absence of any independent material justifying reliance on clause (b) of the second proviso, held, order of dismissal cannot be sustained — Service Law — Dismissal

Constitution of India — Article 136 — Remand — Writ petition dismissed in limine by High Court — Appeal before Supreme Court — Supreme Court would not remit the matter to High Court for disposal on merits after a lapse of 7 or 8 years when it based its decision on legal aspects only

Pursuant to a departmental enquiry the appellant was dismissed from service in 1979 but the Inspector General of Police on a revision application remanded the case with a direction to reinstate the appellant, reconsider the inquiry report and pass fresh orders. Accordingly the appellant had rejoined service as Head Constable on March 5, 1981 but he was immediately placed under suspension. On April 6, 1981 at about 11 AM an incident of alleged attempt to commit suicide by the appellant took place in which the appellant sustained a knife injury on his right arm and was hospitalised. While he was in hospital show cause notices were served on him at about 10.00 p.m. on April 6, 1981 calling upon him to reply thereto within ten days. Before the appellant could reply to the said show cause notices respondent 3 passed the impugned order of dismissal of the appellant from service on the very next day i.e. April 7, 1981. The impugned order was passed invoking clause (*b*) of the second proviso to Article 311(2) of the Constitution and Rule 16.1(2) of the Punjab Police

† From the Judgment and Order dated August 11, 1982 of the Punjab and Haryana High Court in Civil Writ Petition No. 932 of 1982

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Rules, and giving two reasons in support of the satisfaction that it was not reasonably practicable to hold a departmental enquiry against the appellant. Those reasons were (*i*) the appellant had thrown threats that he with the help of other police employees would not allow holding of any departmental enquiry against him and (*ii*) he and his associates would not hesitate to cause physical injury to the witnesses as well as the enquiry officer. The appellant's writ petition in the High Court challenging the dismissal order was dismissed in limine. Allowing the appeal with costs and quashing the impugned order the Supreme Court

Held :

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. 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. (Para 5)

Union of India v. *Tulsiram Patel*, (1985) 3 SCC 398: 1985 Supp 2 SCR 131: 1985 SCC (L&S) 672, *relied on*

Divisional Personnel Officer v. *T.R. Chellappan*, (1976) 3 SCC 190: (1976) 1 SCR 783: 1976 SCC (L&S) 398; *Satyavir Singh* v. *Union of India*, (1985) 4 SCC 252: 1986 SCC (L&S) 1; *Shivaji Atmaji Sawant* v. *State of Maharashtra*, (1986) 2 SCC 112: 1986 SCC (L&S) 209; *Ikramuddin Ahmed Borah* v. *Superintendent of Police, Darrang*, 1988 Supp SCC 663: 1989 SCC (L&S) 55, *referred to*

In the present case the respondent failed 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. 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. Besides it is difficult to understand how he could have given threats, etc. when he was in hospital. Respondent 3's counter also does not reveal if he had verified the correctness of the information. Thus 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). On this short ground alone the impugned order cannot be sustained. (Para 5)

The appellant shall be reinstated in service forthwith with all monetary benefits as to pay, allowances, etc. available to him from the date of his dismissal. (Para 7)

As it is not necessary to go into the factual aspect bearing on the question of mala fides and the judgment rests on the legal aspect only, it is now not necessary to remit the matter to the High Court after a lapse of 7 or 8 years and vex the appellant by another round of litigation merely because the High Court had dismissed the writ petition in limine. (Para 6)

R-M/T/10374/CLA

Advocates who appeared in this case :

R.K. Garg, Senior Advocate (P.N. Gupta, Advocate, with him) for the Appellant;
M.S. Gujral, Senior Advocate (C.M. Nayyar, Arun Madan and H.S. Munjral, Advocates, with him) for the Respondents.

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The Judgment of the Court was delivered by

AHMADI, J.— Invoking clause (*b*) of the second proviso to Article 311(2) of the Constitution of India and Rule 16.1(2) of the Punjab Police Rules, the Assistant Inspector General, Government Railway Police, Patiala, passed the impugned order dated April 7, 1981 dismissing the petitioner from service with immediate effect. The reasons assigned for dispensing with the departmental enquiry contemplated by Article 311(2) of the Constitution are set out in paragraph 3 of the impugned order, which reads as under:

> "And whereas it has been reported that he has thrown threats that he with the help of other police employees will not allow holding of any departmental enquiry against him and he and his associates will not hesitate to cause physical injury to the witnesses as well as the enquiry officer."

The dismissal order is based on the allegation that the appellant was instigating his fellow police officials to cause indiscipline, show insubordination and exhibit disloyalty; that he was meeting other police officials and inducing them to stand against the senior officers and was thus spreading discontentment, hatred and dissatisfaction amongst his fellow policemen towards the superiors and that he betrayed lack of sense of discipline which was highly unbecoming of a member of the police force expected to maintain law and order. The appellant, feeling aggrieved by this order, preferred an appeal but of no avail. He, therefore, filed a Writ Petition No. 932 of 1982 in the High Court of Punjab and Haryana challenging the impugned order on diverse grounds. The said writ petition was dismissed in limine on August 11, 1982. Feeling aggrieved by the summary dismissal of his writ petition he has preferred the present appeal by special leave. In order to understand his grievance it may be necessary to notice a few facts.

2. The appellant was placed under suspension on April 19, 1978 on the ground that he had absented himself from duty to attend the Annual Nirankari Samagam held on April 13, 1978. The allegation was enquired into through the concerned Assistant Superintendent of Police. As nothing objectionable was found he was exonerated and was ordered to be taken back in service with effect from the date of his suspension. Thereafter, two departmental enquiries were initiated against him. The outcome of the first inquiry was his reversion to the lower post of Constable; the second inquiry resulted in his dismissal from service. Both these orders of April 27, 1979 and October 12, 1979, respectively, passed by ASP/GRP, Patiala were challenged by two separate appeals. Both these appeals were dismissed by respondent 3 by his orders dated March 18 and 19, 1990. The appellant preferred two separate revision applications to the Inspector General of Police, Punjab which were allowed on October 13, 1980 and both the cases were remanded with a direction to reconsider the inquiry report and pass fresh orders. The ASP/GRP was

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directed to reinstate the appellant and then issue fresh show cause notices. After the above orders were passed the appellant re-joined duties as Head Constable on March 5, 1981. Respondent 3, however, placed him under suspension forthwith. Thereafter, the appellant sought an interview with the Director General/Inspector General of Police, Punjab by his two letters dated March 23 and 27, 1981 addressed to respondent 3. Since respondent 3 refused permission the appellant claims to have written a letter dated March 24, 1981 to the DG/IGP informing him about the objectionable activities of respondent 3. The receipt of this letter by the office of DG/IGP is, however, disputed although the appellant has produced an acknowledgement dated March 27, 1981 evidencing the receipt thereof. Be that as it may, the fact remains that after the remand orders were passed in the appellant's two revision applications, respondent 3 issued two separate notices, both dated April 4, 1981, calling upon the appellant to show cause within 10 days from the receipt thereof why he should not be dismissed from service. Before the service of these show cause notices an incident occurred at about 11.00 a.m. on April 6, 1981 in GRP Lines, Patiala, where the appellant resided. The allegation is that on that date at the said time and place SI, Niranjan Singh, ASI, Harmel Singh and ASI, Ram Prakash were in the verandah of barrack No. 8. In their full view the appellant appeared in the verandah with a knife in his left hand and tried to plunge the same into his chest with a view to committing suicide. SI, Niranjan Singh, acting on impulse, gave a push to the appellant's left hand but in the process the blade of the knife caused an injury to the appellant on his right arm and his shirt was blood-stained. The appellant was charge-sheeted under Section 309 IPC and was sent to the hospital for treatment. It is alleged that while he was in hospital the two show cause notices were served on him on April 6, 1981 at about 10.00 p.m. Even though 10 days time was allowed to him to show cause, respondent 3 who was biased against him passed the impugned order of dismissal on April 7, 1981. The appellant contends that respondent 3's action was clearly mala fide and actuated by ulterior motives. The appellant further contends that there was no justification for dispensing with the enquiry contemplated by Article 311(2) and the ground given in paragraph 3 of the impugned order is wholly imaginary. He further contends that the impugned order of April 7, 1981 was not actually served on him but his signature was obtained on some piece of paper while he was in hospital. According to him, after he was discharged from the hospital he applied for a copy of the impugned order but respondent 3 failed to furnish the same to him. Similar applications were also addressed to the DG/IGP from time to time but he did not receive any reply to his letters and reminders. Since the period of limitation for filing an appeal was likely to expire he preferred his appeal without being aware of the contents of the impugned order. This appeal was dismissed by the DG/IGP by his order dated January 29, 1982. He then filed a civil suit in the Court of the

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learned Senior Sub-Judge, Patiala, wherein he applied for production of documents and secured an order for the production of a copy of the impugned dismissal order dated April 7, 1981. After a copy of the impugned order was produced he preferred another departmental appeal but that too was dismissed on February 5, 1982. After he failed to persuade the appellate authority to look into his grievances he filed the writ petition which has given rise to this appeal. The department's case found in the counter is that on the night of April 5/6, 1981, the Lines Officer had gone to check the presence of the appellant in his quarter when the latter bolted the door from inside and threatened the Lines Officer and then filed a false case that the Lines Officer had broken his window panes and had thrown stones in his room. On inquiry the complaint was found to be baseless. Thereafter, on April 6, 1981, at about 11.00 a.m. the appellant attempted to commit suicide.

3. Before we deal with the challenge to the impugned order of dismissal it may be stated that the appellant was convicted under Section 309 IPC by the learned Judicial Magistrate, First Class, Patiala, by his order dated March 15, 1985. The appellant preferred an appeal, being Criminal Appeal No. 27 of 1985, in the Court of the learned Sessions Judge, Patiala, which was allowed. The learned Sessions Judge found several flaws in the prosecution version regarding the incident and opined that the two eye-witnessess SI, Niranjan Singh and ASI, Harmel Singh had betrayed special bias against the appellant whose relations with his superiors were strained. The learned Sessions Judge also felt that evidence regarding his radiological examination was suppressed and no effort was made to measure the depth of his injury which would have thrown considerable light. While dealing with the prosecution evidence against the appellant, the learned Sessions Judge observed as under:

> "Against this background, I find no difficulty to deduce the inference that the accused was considered by him (respondent 3) a thorn in flesh. SI Niranjan Singh was also inimically disposed towards the accused. In these circumstances evidence of the eye-witnesses has to be approached with a pinch of salt."

He reached the conclusion of acquittal in paragraph 8 of his judgment in the following words:

> "In the light of the above discussion, it is permissible to conclude that for certain reasons not disclosed on the file, the accused had incurred wrath of his superiors including Shri S.S. Mann (respondent 3), the appointing and dismissing authority of the accused. Before the present occurrence, the authorities had passed very drastic orders against the accused. Against this background, in the absence of any independent and reliable evidence, the possibility of the accused having been falsely implicated in this case cannot be ruled out."

It will thus be seen from the learned Sessions Judge's order that the appellant's defence was that he was wrongly framed at the behest of

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respondent 3 by SI, Niranjan Singh and ASI, Harmel Singh who had posed as eye-witnesses to the incident. According to him there was actually an attempt to take his life. The prosecution admittedly did not pursue the matter any further and allowed the order of acquittal to become final. From the judgment of the learned Sessions Judge two things become abundantly clear, namely, (*i*) that the incident had taken place on the morning of April 6, 1981 at the GRP Lines, Patiala in which the appellant had sustained a knife injury on his right upper arm; and (*ii*) that he was in hospital on April 6 and 7, 1981 when the two show cause notices and the impugned order of dismissal were served upon him. The story that an attempt was made to serve the notices on April 6, 1981 early in the morning cannot be believed. It is in the backdrop of these facts that we must consider the appellant's allegation that the dismissal order was passed in hot haste by respondent 3 who was inimical towards him as he had become a threat to his prejudicial activities.

4. Article 310 of our Constitution which engrafts the pleasure doctrine of the English common law is, however, qualified by the opening words 'except as expressly provided by this Constitution', Article 311 is one such express provision. According to clause (1) thereof, a person who is a member of a civil service cannot be dismissed or removed from service by an authority subordinate to that by which he was appointed. Clause (2) next provides that no such person 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. Then comes the first proviso with which we are not concerned. The second proviso has three clauses but we are concerned with clause (*b*) only. Clause (*b*) of that second proviso reads as under:

> "Provided further that this clause shall not apply—
>
> * * *
>
> (*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."

Thus the English doctrine incorporated in Article 310 which is qualified by the opening words "except as expressly provided by this Constitution" is subject to Article 311(1) and (2) which contains safeguards against termination from service. However, the second proviso to Article 311(2) is again in the nature of an exception and lays down that in cases catalogued in clauses (*a*), (*b*) and (*c*) thereof the requirement of an inquiry can be dispensed with. The scope of Articles 310 and 311 of the Constitution was examined by this Court in *Union of India* v. *Tulsiram Patel*[1] wherein by majority this Court held that once the requirements of the relevant clause of the second proviso are satisfied, the services of a

1 (1985) 3 SCC 398: 1985 SCC (L & S) 672: 1985 Supp 2 SCR 131

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civil servant can be terminated without following the audi alteram partem rule. It was held that since the requirement of Article 311(2) was expressly excluded by the second proviso, there was no question of introducing the same by the back door. On this line of reasoning, the majority held that *Chellappan case*[2] was not correctly decided. It, therefore, took the view that it is not necessary to offer a hearing to the civil servant even on the limited question of punishment. Insofar as clause (*b*) is concerned this Court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These are (*i*) there must exist a situation which renders holding of any inquiry "not reasonably practicable"; and (*ii*) the disciplinary authority must record in writing its reasons in support of its satisfaction. Of course the question of practicability would depend on the existing fact-situation and other surrounding circumstances, that is to say, that the question of reasonable practicability must be judged in the light of the circumstances prevailing at the date of the passing of the order. Although clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry. Also see: *Satyavir Singh* v. *Union of India*[3], *Shivaji Atmaji Sawant* v. *State of Maharashtra*[4] and *Ikramuddin Ahmed Borah* v. *Superintendent of Police, Darrang*[5].

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

2 *Divisional Personnel Officer* v. *T.R. Chellappan*, (1976) 3 SCC 190: 1976 SCC (L & S) 398: (1976) 1 SCR 783
3 (1985) 4 SCC 252: 1986 SCC (L & S) 1
4 (1986) 2 SCC 112: 1986 SCC (L & S) 209
5 1988 Supp SCC 663: 1989 SCC (L & S) 55

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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*[1]: (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

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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.

6. It was then submitted by learned counsel for the respondents that since the High Court had dismissed the appellant's writ petition in limine we may remit the matter to the High Court for disposal on merits. We do not think that we would be justified in doing so after a lapse of almost 7 to 8 years. As we do not consider it necessary to go into the factual aspect bearing on the question of mala fides and rest our judgment on the legal aspect only, we do not think it necessary to remit the matter to the High Court and vex the appellant further by another round of litigation.

7. In the result we allow this appeal, set aside the order of the High Court and quash the impugned order of dismissal dated April 7, 1981 and direct that the appellant shall be reinstated in service forthwith with all monetary benefits as to pay, allowances, etc. available to him from the date of his dismissal. Needless to say that it would be open to the department, if it is so advised notwithstanding the lapse of time, to proceed with the two show cause notices dated April 4, 1981. The respondents will pay the cost of this appeal.

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(1991) 1 Supreme Court Cases 729

(BEFORE M.H. KANIA, J.S. VERMA AND V. RAMASWAMI, JJ.)

CHIEF SECURITY OFFICER AND OTHERS .. Appellants;

Versus

SINGASAN RABI DAS .. Respondent.

Civil Appeal No. 6 of 1990†, decided on January 9, 1991

Service Law — Departmental enquiry — Dispensed with on ground of not being reasonably practicable — Judicial review — Delinquent member of R.P.F. removed from service without inquiry — Reasons that it was considered not feasible or desirable to procure witnesses of the security/other railway employees since that would expose the witnesses and make them ineffective in the future; and that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence — Held, reasons insufficient — There was total absence of sufficient material or good grounds for dispensing with the inquiry — Railway Protection Force Rules, 1959, Rules 44 to 46 — Constitution of India, Article 311(2) second proviso (b)

Divisional Personnel Officer, Southern Rly. v. *T.R. Chellappan*, (1976) 3 SCC 190: 1976 SCC (L&S) 398, *referred to*

Union of India v. *Tulsiram Patel*, (1985) 3 SCC 398: 1985 SCC (L&S) 672, *distinguished*

Appeal dismissed

R-M/A/10443/CLA

Advocates who appeared in this case :

Dr Anand Prakash, Senior Advocate (A.K. Srivastava, B.K. Prasad and C.V. Subba Rao, Advocates, with him) for the Appellants;

Kailash Vasdev, Advocate, for the Respondent.

ORDER

1. The respondent Singasan Rabi Das was removed from service with effect from May 13, 1976 by the Security Officer, Chakradharpur. The respondent was posted at Sini in the District of Singhbhum. By an order dated May 12, 1976 it was held that respondent was guilty of gross misconduct. It was stated in the order that while on duty in the railway yard at Gamharia on April 28, 1976, 22 outsiders entered into the railway yard and lifted railway material and concealed them under a tree and when the respondent came there he allowed the outsiders to carry the stolen material after taking rupee 1 from each of the said outsiders. The said order recited that an enquiry into the above misconduct as provided in Rules 44, 45 and 46 of the Railway Protection Force Rules, 1959 was considered not practicable.

> "because of the facts that it is not considered feasible or desirable to procure the witnesses of the security/other railway employees since this will expose them and make them ineffective for future. These witnesses if asked to appear at a confronted enquiry are likely to suffer personal humiliation and insults thereafter or even they and their family members may become targets of acts of violence."

† From the Judgment and Order dated December 9, 1980 of the Patna High Court in C.W.J.C. No. 154 of 1976(R)

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2. On the abovestated grounds, the respondent was dismissed from service without any enquiry into the charges and without an opportunity being given to him to show cause against the proposed punishment, exercising the powers under Rule 47 of the abovesaid Rules which enabled the appellant to dispense with the procedure prescribed if he were of opinion that such enquiry was not reasonably practicable. The respondent filed a writ petition in the High Court of judicature at Patna. The order was challenged before a Division Bench of that court inter alia on the ground that the order of removal from service was passed without any enquiry into the charges and without giving any opportunity to the respondent to show cause against the proposed punishment hence was bad in law and liable to be set aside following the decision in *Divisional Personnel Officer, Southern Rly.* v. *T.R. Chellappan*[1] and that the reasons given in the order for dispensing with the enquiry were irrelevant.

3. The High Court held that the reasons given in the impugned order were sufficient and on those materials the disciplinary authority could have been satisfied that it was not reasonably practicable to follow the normal procedure. However, it was of the view that the respondent was entitled to a show cause notice against the proposed punishment and since an opportunity had not been given to him to show cause against the proposed punishment the order of removal was bad. In that view the High Court quashed the order of removal. However, it stated that it would be open to the disciplinary authority to pass a fresh order after giving an opportunity to the respondent herein to show cause against the proposed punishment.

4. It was contended by Dr Anand Prakash, learned counsel for the appellant before us that in view of the decision of this Court in *Union of India* v. *Tulsiram Patel*[2] no fresh notice was required to show cause against the proposed punishment before the order of removal was passed and hence the decision of the High Court is liable to be set aside.

5. In our view it is not necessary to go into the submission made by Dr Anand Prakash because we find that in this case the reason given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. It is common ground that under Rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witnesss of the security/other railway employees since this will expose these witnesses and make them ineffective in the

1 (1976) 3 SCC 190 : 1976 SCC (L & S) 398
2 (1985) 3 SCC 398 : 1985 SCC (L & S) 672

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future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal wintesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected, and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry. In this view it is not necessary for us to consider whether any fresh opportunity was required to be given before imposing an order of punishment. In the result the appeal fails and is dismissed. There will be no order as to costs.

(1991) 1 Supreme Court Cases 731

(BEFORE P.B. SAWANT AND S.C. AGRAWAL, JJ.)

ANAND BIHARI AND OTHERS .. Appellants;

Versus

RAJASTHAN STATE ROAD TRANSPORT CORPORATION, JAIPUR THROUGH ITS MANAGING DIRECTOR AND ANOTHER .. Respondents.

Civil Appeal Nos. 1859-63 of 1990, decided on December 20, 1990

Labour Law — Industrial Disputes Act, 1947 — Sections 2(oo)(c) and 25-F — Retrenchment — Exception — 'Continued ill health' — Meaning of — Must affect normal functioning of or discharge of duties — Held, covers defective or subnormal eyesight developed during course of employment as bus drivers — Hence termination of services on that ground would not amount to retrenchment — Words and Phrases

Labour Law — Employees' State Insurance Act, 1948 — Sections 2(8), (15-A) & (15-B) and Second Schedule Part I Item 4, Part II Items 31, 32 and 32-A and Third Schedule Part B Item 11 — Employment injury or occupational disablement — Weakening of eyesight below prescribed standard or defect in eyesight developed during course of employment as bus driver — Held, not covered by the Act — Workmen's Compensation Act, 1923, Section 3(2)

Labour Law — Termination of service — Long services of bus drivers terminated by SRTC on ground of their defective or subnormal eyesight developed during course of employment — Held, termination unjustified, inequitable and discriminatory, though not amounting to retrenchment under Section 2(oo) and as such not requiring compliance with Section 25-F of Industrial Disputes Act — Treating such occupational hazard to which the drivers were exposed same as other ailments unconnected with employment

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AIR 1985 SUPREME COURT 1416(1)

Y. V. CHANDRACHUD, C.J.I., V. D. TULZAPURKAR, R. S. PATHAK, D. P. MADON AND M. P. THAKKAR, JJ.*

Civil Appeals Nos. 6814 of 1983, 3484, 3512 of 1982 and Writ Petns. Nos 2267 to 2269, 2273, 3349 to 3353, 6500, 8120 of 1982 and 562 of 1983 with Civil Appeals Nos. 3231 of 1981 and 4067 of 1983 with Transferred Cases Nos. 6 to 70, 73, 74 and 85 of 1982, 34 to 40 of 1983 and Writ Petn. No. 1953 of 1981 (with W. P. Nos. 7393, 1392 and 2022 of 1981), D/- 11 -7 -1985.

Union of India and another, Appellants v. Tulsiram Patel, Respondent.
AND
Union of India and others, Appellants v. Sadanand Jha and others, Respondents.
AND
Union of India and others, Appellants v. G. P. Koushal, Respondent.
AND
Biswaroop Chatterjee, etc., Petitioners v. Union of India and others, etc., Respondents.
WITH
Achinta Kumar Biswas, etc., Appellants v. Union of India and others, etc., Respondents.
WITH
Nabendu Bose and others, etc., Petitioners v. Union of India and others, etc., Respondents.
AND
Laxmi Narayan and others, Petitioners v. State of M.P., Respondent. @page-SC1417

(A) Constitution of India, Art.310, Art.311 - Pleasure doctrine - Embodiment in Constitution - Not because it is special prerogative of British Crown but because public policy requires so.

Majority view (Thakkar, J. Contra) :-

The pleasure doctrine is neither relic of feudal age nor is based upon any special prerogative of the British Crown but upon public policy. (Para 43A)

Ministers frame policies and legislatures enact laws and lay down the mode in which such policies are to be carried out and the object of the legislation achieved. From the nature of things the task of efficiently and effectively implementing these policies and enactments, however, rests with the civil services. The public is, therefore, vitally interested in the efficiency and integrity of such services. For a Government servant to discharge his duties faithfully and conscientiously, he must have a feeling of security of tenure. Under the Constitution, this is provided for by the Acts and Rules made under Art. 309 as also by the safeguards provided in clauses (1) and (2) of Art. 311. It is, however, as much in public interest and for public good that Government servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service and that the protection afforded to them by the Acts and rules made under Art. 309 and by Art. 311 be not abused by them to the detriment of public interest and public good. When a situation as envisaged in one of the three clauses of the second proviso to clause (2) of Art. 311 arises and the relevant clause is properly applied and the disciplinary inquiry dispensed with, the concerned government servant cannot be heard to complain that he is deprived of his livelihood. The livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood is provided by the public exchequer and the taking away of such livelihood is in the public interest and for public good, the former must yield to the latter. These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown but because public policy requires, public interest needs and public good demands that there should be such a doctrine. The pleasure doctrine embodied in Art. 310 (1), the protection afforded to civil servants by clauses (1) and (2) of Art. 311 and the withdrawal of the protection under clause (2) of Art. 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good. (Paras 44, 45)

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(E) Constitution of India, Art.310, Art.311 - Doctrine of pleasure - Exercise of, need not be by President or Governor personally - Satisfaction as to dispensation of inquiry contemplated by Art. 311 (2) second proviso Cl. (c) need not also be personal of President or Governor.

Majority view (Thakkar, J. Contra) :-

The pleasure of the President or the Governor is not required to be exercised by either of them personally. This is obvious form the language of Art. 311. Under Cl. (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 Art. 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 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 Art. 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 Art. 309 or in rules made under such Acts or made under the proviso to Art. 309; and in the case of clause (c) of the second proviso to Art. 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

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at with the aid and on the advice of the Council of Ministers. (Para 59)

(C) Constitution of India, Art.310, Art.311, Art.309 - Pleasure doctrine - Art. 311 (1) and (2) is an exception to it but not Art. 309 - Rules framed under Art. 309 or Acts referable to it cannot impinge upon pleasure of President or Governor.

Majority View (Thakkar, J. Contra) :-

Clauses (1) and (2) of Art. 311 impose restrictions upon the exercise by the President or the Governor of a State of his pleasure under Art. 310 (1). These are express provisions with respect to termination of service by dismissal or removal as also with respect to reduction in rank of a civil servant and thus come within the ambit of the expression "Except as otherwise provided by this Constitution" qualifying Art. 310 (1). Art. 311 is thus an exception to Art. 310. Art. 309 is, however, not such an exception. It does not lay down any express provision which would derogate from the amplitude of the exercise of pleasure under Art. 310 (1). (Para 54)

The opening words of Art. 309 make that Article expressly "Subject to the provisions of this Constitution". Rules made under the proviso to Art. 309 or under Acts referable to that Article must, therefore, be made subject to the provisions of the Constitution if they are to be valid. Art. 310 (1) which embodies the pleasure doctrine is a provision contained in the Constitution. Therefore, rules made under the proviso to Art. 309 or under Acts referable to that Article are subject to Art. 310 (1). By the opening words of Art. 310 (1) the pleasure doctrine contained therein operates "Except as expressly provided by this Constitution". Art. 311 is an express provision of the Constitution. Therefore, rules made under the proviso to Art. 309 or under Acts referable to Art. 309 would be subject both to Art. 310 (1) and Art. 311. For an Act or a rule to provide that in a case where the second proviso to Art. 311 (2) applies any of the safeguards excluded by that proviso will be available to a government servant would amount to such Act or rule impinging upon the pleasure of the President or Governor, as the case may be, and would be void as being unconstitutional. (Para 54)

(D) Constitution of India, Art.311(2), Second Proviso - Applicable only in cases of major penalties.

Majority View (Thakkar, J. Contra) :-

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The second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Art. 311 (2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry. (Para 62)

(E) Constitution of India, Art.311(2), Second Proviso and Art.14 - Dismissal, removal or reduction in rank - Opportunity of hearing is wholly ruled our under Second Proviso - It cannot be reintroduced by recourse to Art. 14.

Majority View (Thakkar, J., Contra) : -

The language of the second proviso to Art. 311 (2) is plain and unambiguous. The keywords in the second proviso are "this clause shall not apply". By "this clause" is meant clause (2). As clause (2) requires an inquiry to be held against a government servant, the only meaning attributable to these words is that this inquiry shall not be held. The keywords of the second proviso govern each and every clause of that proviso and leave no scope for any kind of opportunity to be given to a government servant. The phrase "this clause shall not apply" is mandatory and not directory. It is in the nature of a Constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Art. 311 (2) or from giving any kind of opportunity to the concerned government servant. There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity by a process of inference or implication. Therefore, the view that even

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where by the application of the second proviso the full inquiry is dispensed with, there is nothing to prevent the disciplinary authority from holding at least a minimal inquiry or giving to the government servant an opportunity of showing cause against the penalty proposed to be imposed or giving of charge-sheet or at least a notice informing the government servant of the charges against him and calling for his explanation is wholly untenable. (Paras 61, 70, 64)

The conclusion which flows from the express language of the second proviso to Art. 311 (2) is inevitable and there is no escape from it. It may appear harsh but the second proviso has been inserted in the Constitution as a matter of public policy and in public interest and for public good. It is in public interest and for public good that a government servant who has been convicted of a grave and serious offence or one rendering him unfit to continue in office should be summarily dismissed or removed from service instead of being allowed to continue in it at public expense and to public detriment. Sympathy and commiseration cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a Constitutional prohibition. After all, it is not as if a government servant is without any remedy when the second proviso has been applied to him. There are two remedies open to him, namely, departmental appeal and judicial review. (Para 70)

The principles of natural justice have come to be recognized as being a part of the guarantee contained in Art. 14 because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject-matter of that Article. A violation of a principle of natural justice by a State action is a violation of Art. 14. Though the two rules of natural justice, namely, nemojudex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implication are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. Not only can the principle of natural justice be modified but in exceptional cases they can even be excluded. 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. Clause (2) of Art.

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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 Art. 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. To hold that once the second proviso is properly applied and clause (2) of Art. 311 excluded, Art. 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 Art. 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. (Paras 97, 101)

A government servant is not wholly without any opportunity. Where the second proviso applies, though there is no prior opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice. (Para 102)

(F) Constitution of India, Art.309, Art.310, Art.311 - Service Rules liberalising exclusionary effect of second proviso to Art. 311 (2) - Such rules are to be read in conjunction with Art. 311 (2) second proviso and not apart from it - Word "consider" in R. 14 of 1968 Rules - It cannot be construed so as to give opportunity of hearing to delinquent.

AIR 1975 SC 2216, Overruled.

Railway Servants (Discipline and Appeal) Rules (1968), R.14 - Central Civil Services (Classification, Control and Appeal) Rules (1965), R.19 - Central Industrial Security Force Rules (1969), R.37

Majority view (Thakkar J. Contra) :-

In view of the will-settled rule of construction of statutes that where two interpretations are possible, one of which would preserve and save the constitutionality

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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. The word consider in Rule 14 of the Railway Servants (Discipline and Appeal) Rules 1968 or in R. 37 of the Central Industrial Security Force Rules 1969 or in R. 17 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 cannot be interpreted as giving opportunity of hearing to the delinquent. (Paras 106, 114, 117, 122)

While 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, the source of his power to dispense with the inquiry is derived from the second proviso to Art. 311 (2) and not from any service rules. Service rules reproducing the provisions of the second proviso to Art. 311 (2) authorizing the disciplinary authority to dispense with the inquiry contemplated by clause (2) of Art. 311 in the three cases mentioned proviso to Art. 311 (2) and cannot be read apart from it. (Para 114)

Rule 14 of the Railway Servants (Discipline and Appeal) Rules 1968 (Railway Servants Rules for short) cannot be interpreted by itself and not in conjunction with the second proviso to Art. 311 (2). The words "the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit" appearing in R. 14 do not warrant an interpretation of R. 14 different from that to be placed upon the second proviso. It is also not possible to accept the interpretation placed upon the word "consider" in Divisional Personnel Officer, Southern Railway v. T. A. Challappan (AIR 1975 SC 2216). According to the view taken in that case, a consideration of the circumstances of the case cannot be unilateral but must be after hearing the delinquent government servant. If such were the correct meaning of the word "consider", it would render this part of R. 14 unconstitutional as restricting the full exclusionary operation of the second proviso. Moreover, the word "consider" in its ordinary and natural sense is not capable of the meaning assigned to it in Divisional Personnel Officer, Southern Railway v. T. R. Challappan (AIR 1975 SC 2216). The consideration under R. 14

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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 warrants is either of dismissal or removal or 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. AIR 1975 SC 2216 Overruled. (Para 114)

The language of R. 19 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 (for short Civil Services Rules) is identical with that of R. 14 of the Railway Servants Rules 1968 and the interpretation of R. 19 of the Civil Services Rules 1965 would be the same as that placed by us upon R. 14 of the Railway Servants Rules 1968. (Para 117)

Rule 37 of Central Industrial Security Force Rules 1964 (for short C.I.S.F. Rules) except the last paragraph thereof, is in pari materia with R. 14 of the Railway Servants Rules 1968 and R. 19 of the Civil Services Rules 1965. The same interpretation as placed on the word "consider" occurring in R. 14 of the Railway Servants Rules 1968 and R. 19 of the Civil Services Rules 1965 must, therefore, be placed upon the word "consider" in R. 37 of the CISF Rules. (Para 122)

The last paragraph of R. 37 of the CISF Rules is clumsily worded and makes little sense. To provide that a member of the CIS force who has been convicted to rigorous imprisonment on a criminal charge "shall be dismissed from service" and at the same time to provide that "only a notice shall be given to the party charged proposing the punishment of dismissal for his having been convicted to rigorous imprisonment and asking him to explain as to why the proposed punishment of dismissal should not be imposed", is a contradiction in terms. If either of these provisions is taken as mandatory, it would be void as violating the second proviso to Art. 311 (2) because the penalty contemplated by the second proviso to Art. 311 (2) is not the penalty of dismissal only but also of removal or reduction in rank, and to make it mandatory to issue a notice to show cause against the proposed penalty of dismissal would equally violate the second proviso because it would whittle down the exclusionary effect of the second proviso. Therefore, both these

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provisions in the last paragraph of R. 37 must be read as directory and not mandatory, not only to make sense out of them but also to preserve their constitutionality. So read, a breach of these provisions would not afford any cause of action to a member of the CIS Force. (Para 122)

(G) Constitution of India, Art.311(2), Second Proviso - Executive instructions liberalising exclusionary effect of Proviso - They are directory to that extent - Cannot alter or liberalise exclusionary effect of Second Proviso. (Para 124)

Majority view (Thakkar, J. Contra) :-

(H) Constitution of India, Art.311(2), Second Proviso - Order removing or dismissing from service a Govt. servant or reducing him in rank without inquiry - Omission to mention relevant clause of Art. 311 (2) Proviso 2 or relevant service Rule - Does not invalidate order. (Para 126)

Majority View (Thakkar, J. Contra) :-

(I) Constitution of India, Art.311(2), Second Proviso, Cl.(b) - Disciplinary inquiry - Holding of, not reasonably practicable - Suspension of delinquent employee until holding of inquiry becomes practicable instead of dismissing; removing him without inquiry, not proper. (Para 129)

Majority view (Thakkar, J. Contra) :-

(J) Constitution of India, Art.311(3) and Art.311(2), Second Proviso, Cl.(b) - Disciplinary inquiry - Dispensation of under Cl. (b) of Second Proviso to Art. 311 (2) - Not to be done lightly or arbitrarily by Disciplinary Authority - Decision of Authority is justiciable.

Majority view (Thakkar, J. Contra) :-

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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 he disciplinary authority by Art. 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. (Para 130)

(K) Constitution of India, Art.311(2), Second Proviso, Cl.(b) - Dispensation of disciplinary inquiry under - Inquiry can be dispensed with even during course of inquiry.

Majority view (Thakkar, J. Contra) :-

It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. Therefore, even where part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso to Art. 311 (2) operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Art. 311 (2). (Para 132)

(L) Constitution of India, Art.311(2), Second Proviso, Cl.(b) - Dispensation of disciplinary enquiry under - Reasons therefor must be recorded in writing - Reasons need not contain detailed particulars but must not be vague or just repetition of language of proviso. (Paras 133, 134)

Majority view (Thakkar, J, Contra) :-

(M) Constitution of India, Art.311(2), Second Proviso, Cl.(b), Art.226- Dispensation of disciplinary inquiry - Reasons for - No obligation that reasons be communicated to Govt. servant - It is however better that they are communicated.

Majority view (Thakkar, J. Contra) :-

The constitutional requirement in clause (b) of Second Proviso to Art. 311 (2) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable

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the government servant to approach the High Court under Art. 226 or, in a fit case, the Supreme Court under Art. 32. If the reasons are not communicated to the government servant and the matter comes to the Court, the Court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. (Para 125)

(MA) Constitution of India, Art.311(2), Second Proviso, Cl.(b), Art.226 - Inquiry dispensed with under Cl. (b) - Any anterior inquiry into question whether disciplinary inquiry should be dispensed with also stands dispensed with.

If under Cl. (b) of Second Proviso to Art. 311 (2) an inquiry into the charges against a government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable the contention, therefore, that though caluse (b) of the second proviso excludes an inquiry into the charges made against a government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary inquiry the government servant should be given an opportunity of

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hearing is illogical and is a contradiction in terms. (Para 136)

(N) Constitution of India, Art.311(2), Second Proviso, Cl.(c) - Dispensing with disciplinary inquiry under - Reasons for satisfaction of President or Governor - They cannot be required to be recorded in final order nor can be made public.

(Per Court) :- The satisfaction of the President or Governor required by Cl. (c) of Second Proviso to Art. 311 (2) is with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing of danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding of an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public. (Para 141, 181)

(O) Constitution of India, Art.311(2), Second Proviso, Cl.(a) - Applicability - Govt. servant convicted of criminal charge, compulsorily retired - Order of compulsory retirement passed by way of imposing penalty - Compulsory retirement amounts to removal from service - Art. 311 (2) Second Proviso Cl. (a) is applicable. **(Para 151)**

Majority view (Thakkar, J.-Contra) :-

(P) Constitution of India, Art.311(2),Second Proviso, Cl.(a), Art.309 - Central Civil Services (Classification, Control and Appeal) Rules (1965), R.19(1) - Govt. servant convicted under S. 332, Penal Code - Compulsory retirement - Order stating that in view of conviction of Govt. servant and nature of offence committed, his retention service was undesirable - Order not defective for not indicating circumstances considered by Disciplinary Authority.

Decision of M.P. High Court, Reversed. **(Para 152)**

Majority view (Thakkar J., Contra) :-

(Q) Constitution of India, Art.311(2), Second Proviso, Cl.(b), Art.309 - Central Industrial Security Force Rules (1969), R.37(b) - Members of Central Industrial Security Force - Dismissal after dispensing with inquiry under R. 37 (b) - Propriety - Held on facts that dispensation of inquiry was proper.

Decisions of Patna and M.P. High Courts, Reversed.

Majority view (Thakkar J. Contra) :-

The facts show that there was a total breakdown of discipline in the Central Industrial Security Force. There was a wilful and deliberate disobedience of orders of the supervisory officers and "gherao" of such officers.

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There was a hunger strike, dharna, shouting of rebellious slogans and threats of violence and bodily harm to supervisory officers and loyal members of the staff. There were acts of insubordination and deliberate neglect and wilful violation of their duties by a very large section of the members of the CIS Force stationed at Bokaro. All these acts virtually amounted to a mutiny and how grave the gravity of the situation could be judged from the fact that the army had to be called out and a pitched battle took place between the army and the members of the Force. No. person with any reason or sense of responsibility can therefore say that in such a situation the holding of an inquiry was reasonably practicable before passing the impugned order. (Para 159)

The acts alleged were not of any particular individual acting by himself. They were acts of a large group acting collectively with the common object of coercing those in charge of the administration of the CIS Force and the

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Government in order to obtain recognition for their association and to concede their demands. It is not possible in a situation such as this to particularize the acts of each individual member who participated in the commission of these acts. The participation of each individual may be of greater or lesser degree but the acts of each individual contributed to the creation of a situation in which a security force itself became a security risk. The fact that dismissal orders did not set out the particular acts done by each of the members of the CIS force in respect of whom dismissal order made is therefore, of no consequence. Decisions of Patna and M. P. High Courts, Reversed. (Para 160)

(R) Constitution of India, Art.311(2), Second Proviso, Cl.(b), Art.309 - Railway Servants (Discipline and Appeal) Rules (1968), R.14(ii) - Railway servants - Participation in all India strike of railway employees - Dismissal without disciplinary inquiry - Held on facts dispensation of inquiry was proper.

The majority of the railway employees who were dismissed or removed are alleged to have been concerned in incidents which took place in all-India strike of railway employees. In the context of an all-India strike where a very large number of railway servants had struck work, the railway services paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for to bring the situation to normal. In these circumstances, it could not be said that an inquiry was reasonably practicable. (Para 172)

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** In this case, the Judges of the Supreme Court differ in their views. The majority view is taken by Y. V. Chandrachud, C. J., V. D. Tulzapurkar, R. S. Pathak and D. P. Madon, JJ. and the minority view is taken by M. P. Thakkar, J. The judgments are printed in the order in which they are given in the Certified Copy - Ed.*

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Judgement

MADON, J. (for himself and on behalf of Y. V. Chandrachud C.J., Tulzapurkar, Pathak JJ. (Majority view):- The above Appeals by Special Leave granted by this Court and the above Writ Petitions filed either in this Court under Art. 32 of the Constitution of India or in different High Courts under Art. 226 and transferred to this Court raise a substantial question of law as to the interpretation of Arts. 309, 310 and 311 of the Constitution and in particular of what is now, after the amendment of clause (2) of Art. 311 by the Constitution (Forty-second Amendment) Act, 1976, the second proviso to that clause.

The Genesis of the Appeals and Writ Petitions

2. To understand what questions fall for determination by this Court in these Appeals and Writ Petitions, it is first necessary to sketch briefly how they have come to be heard by this Constitution Bench.

3. Article 311 of the Constitution confers certain safeguards upon persons employed in civil capacities under the Union of India or a

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State. The first safeguard (which is given by clause (1) of Art. 311) is that such person cannot be dismissed or removed by an authority subordinate to that by which he was appointed. The second safeguard (which is given by clause (2) of Art. 311) is that he cannot be dismissed, 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. The second safeguard is, however, not available to him when he is dismissed, removed or reduced in rank in any of the three cases mentioned in the second proviso to Art. 311(2). These three cases are set out in clauses (a) to (c) of the second proviso. Under clause (a), such person can be dismissed, removed or reduced in rank without any inquiry on the ground of conduct which has led to his conviction on a criminal charge. Under clause (b), any of these three penalties can be imposed upon him where the authority empowered to impose any of these penalties is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry. Under clause (c), any of the above penalties can be imposed upon him where the President or the Governor of a State, 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.

4. All the government servants in the above Appeals and Writ Petitions have been either dismissed or removed from service without holding any inquiry. They have not been informed of the charges against them nor been given any opportunity of being heard in respect of those charges. The penalty of dismissal or removal, as the case may be, has been imposed upon them under one or the other of the three clauses of the second proviso to Art. 311(2) or under similar provisions in rule's made under the proviso to Art. 309 or in rules made under an Act referable to Art. 309, for instance, Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, and Rule 37 of the Central Industrial Security Force Rules, 1969, or under such a rule read with one of the clauses of the second proviso to Art. 311(2).

5. Aggrieved by these orders of dismissal and removal, several government servants filed writ petitions under Article 226 of the Constitution in different High Courts. Some of these writ petitions were allowed, mainly on the basis of a decision of a three-Judge Bench of this Court in Divisional Personnel Officer, Southern Railway v. T. R. Challappan (1976) 1 SCR 783 : (AIR 1975 SC 2216) given on September 15, 1975, while a few were dismissed. Appeals by Special Leave against those judgments were filed in this Court. In three other similar appeals, namely, Civil Appeals Nos. 1088, 1089 and 1120 of 1975, another three-Judge Bench of this Court felt that there was a conflict between Challappan's Case and an earlier decision of another three-Judge Bench of this Court, namely, M. Gopala Krishna Naidu v. State of Madhya Pradesh (1968) 1 SCR 355 : (AIR 1968 SC 240) and directed on November 18, 1976, that the papers in those three appeals be placed before the learned Chief

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Justice to enable him to refer those appeals to a larger Bench. The said appeals were thus referred to the Constitution Bench. Because of the said order all the above Appeals and Writ Petitions were also placed before this Constitution Bench. During the course of hearing of all these matters by this Constitution Bench, the said Civil Appeals Nos. 1088, 1089 and 1120 of 1975, were, however, got dismissed on March 29, 1984, but the above Appeals and Writ Petitions were fully heard and are being disposed of by this Judgment.

Civil Servants

6. Justice Oliver Wendell Holmes in his book "The Common Law", consisting of lectures delivered by him while teaching law at Harvard and published just one year before he was appointed in 1882 an Associate Justice of the Massachusetts, Supreme Judicial Court, said :

"The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is we must know what it has been and what it tends to become."

It will not, therefore, be out of place to begin this Judgment with a brief historical sketch of the civil services in India as also of the law applicable to civil servants and the changes which have taken place in it from time to time.

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7. Civil servants, that is, persons who are members of a civil service of the Union of India or an all-India Service or a civil service of a State or who hold a civil post under the Union or a State, occupy in law a special position. The ordinary law of master and servant does not apply to them. Under that law, whether the contract of service, is for a fixed period or not, if it contains a provision for its termination by notice, it can be so terminated. If there is no provision for giving a notice and the contract is not for a fixed period, the law implies an obligation to give a reasonable notice. Where no notice in the first case or no reasonable notice in the second case is given, the contract is wrongfully terminated and such wrongful termination will give rise to a claim for damages. This is subject to what may otherwise be provided in industrial and labour laws where such laws are applicable. The position of civil servants both in England and in India is, however, vastly different.

The Civil Service in England

8. Our civil services are modelled upon the British pattern though in some respects there are important differences between the two. In England, except where otherwise provided by statute, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown or durante bene placito ("during good pleasure" or "during the pleasure of the appointer") as opposed to an office held dum bene se gesserit ("during good conduct"), also called quadiu se bene gesserit ("as long as he shall behave himself well"). When a person holds office during the pleasure of the Crown, his appointment can be terminated at any time without assigning cause. The exercise of pleasure by the Crown can, however, be restricted by legislation enacted by Parliament because in the United Kingdom Parliament is sovereign and has the right to make or unmake any law whatever and all that a court of law can do with an Act passed by Parliament is to interpret its meaning but not to set it aside or declare it void. Blackstone in his Commentaries has thus described the unlimited legislative authority of Parliament (I B1., Comm. Pp. 160, 161) :

"It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal : this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or new-model the succession to the Crown; as was done in the reign of Henry VIII, and William III. It can after the established religion of the land; as was done in a variety of instances, in the reigns of King Henry VIII and his three children. It can change and create afresh even the

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constitution of the kingdom and of parliaments themselves; as was done by the act of union, and the several statutes for triennial and septennial elections. It can, in short, do everything that is not naturally impossible; and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament. True it is, that what the Parliament doth, no authority upon earth can undo."

Jean Louis De Lolme, the eighteenth-century Swiss constitutionalist in his "Constitution de l "Angleterre" ("Constitution of England"), which gave many on the Continent their ideas of the British Constitution, summed up the position of Parliament in the English constitutional law in the following apophthegm quoted in Dicey's Introduction to the Study of the Law of the Constitution (see 10th Edition, P. 43) :

"It is a fundamental principle with English lawyers, that Parliament can do everything but make a woman a man, and a man a woman."

9. So far as the pleasure doctrine in England is concerned, Lord Diplock in Chelliah Kodeeswaran v. Attorney-General of Ceylon 1970 AC 1111, 1118, (PC) has succinctly stated its position in English law as follows :

"It is now well established in British Constitutional theory, at any rate as it has developed since the eighteenth century, that any appointment as a Crown servant, however subordinate, is terminable at will unless it is expressly otherwise provided by legislation."

In practice, however, a dismissal would take place only as the result of well-established disciplinary processes.

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10. In recent years though the Crown still retains the right to dismiss at pleasure, the legal position of civil servants has radically changed as a result of legislation, and legally binding collective agreements can be entered into between the Crown and representatives of its staff and those representatives can sue for breaches of any conditions of service covered by these agreements. Further, a civil servant can bring an action for unfair dismissal or sue on his conditions of service. But just as an ordinary employee cannot insist on continuing in employment, so also a civil servant cannot insist on continuing in employment. The remedy in both cases is to recover damages for wrongful dismissal. (See Halsbury's Laws of England, Fourth Edition, Volume 8, paras 1106 and 1303).

The Pre-Constitution Civil Services in India

11. It is unnecessary to go back more than two centuries to trace the origin and development of the Civil Service in India. The East India Company sent out to India its own servants and so did the Crown, and from the earliest times, under the various Charters given to the East India Company, the Crown could at its pleasure remove any person holding office, whether civil or military, under the East India Company. The Court of Directors of the East India Company had also the power to remove or dismiss any of its officers or servants not appointed by the Crown. Section 35 of the Act of 1793 (33 Geo. III, C. 52) made it lawful to and for the King's Majesty, his heirs and successors, by any writing or instrument under his or their sign manual, countersigned by the President of the Board of Commissioners for the affairs of India, to remove or recall any person holding any office, employment or commission, civil or military, under the East India Company; while section 36 of that Act provided that nothing contained in that Act should extend, or be construed to extend, to preclude or take away. the power of the Court of Directors of the East India Company from removing or recalling any of its officers or servants and that the Court of Directors shall and may at all times have full liberty to remove, recall or dismiss any of such officers or servants at their will and pleasure in the like manner as if that Act had not been passed. Similar provisions were made in the Act of 1833 (3 and 4 will. IV, C. 85) by sections 74 and 75 of that Act. Section 74 made it lawful "for His Majesty by any Writing under His Sign Manual, countersigned by the President of the said Board of Commissioners, to remove or dismiss any person holding any office, employment or commission, civil or military, under the said Company in India, and to vacate any Appointment or Commission of any person to any such office or employment." Section 75 provided that nothing contained in

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that Act would take away the power of the Court of Directors to remove or dismiss any of the officers or servants of the Company "but that the said Court shall and may at all times have full Liberty to remove or dismiss any of such officers or servants at their will and pleasure."

12. By the end of the nineteenth century a well-organized civil service has developed in India, the control over it being vested in the executive, and the members of the "civil service of the Crown in India" were governed in the matter of their appointments as also the regulation of the conditions of their service, such as, classification, methods of recruitment, pay and allowances, and discipline and conduct, by rules made by the executive.

13. The Government of India Act, 1858 (21 and 22, Vict., c. 106), which vested in the British Crown the territories under the government of East India Company, repealed certain sections of the Government of India Act, 1853 (16 and 17 Vict., c.95), in so far as they applied to or provided for the admission or appointment of persons to the Civil Service of the East India Company and conferred upon the Secretary of State in Council the power to make regulations for the admission of candidates to the Civil Service of India as also with respect to other matters connected therewith. Three years later the Indian Civil Service so envisaged received statutory recognition by the enactment of the Indian Civil Service Act, 1861 (24 and 25 Vict., c.54).

14. The above Acts were repealed by the Government of India Act of 1915 (5 and 6 Geo. V. c. 61). Part VIII of the 1915 Act conferred upon the Secretary of State in Council, with the aid and advice of the Civil Service Commissioners, the power to make rules for the Indian Civil Service examination.

15. None of the above Acts nor the Government of India (Amendment) Act, 1916 (6 and 7 Geo. V, c.37) made any reference to

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the tenure of members of the civil service in India. This was for the first time done by the Government of India Act, 1919 (9 and 10 Geo. V, c.101), which introduced several amendments in the 1915 Act including the insertion of Part VII A consisting of sections 96B to 96E.

16. Section 96B provided as follows :-

96B. The civil services in India. - (1) Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of services, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services :

Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation, for the loss of any of them as the Secretary of State in Council may consider just and equitable.

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(3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874.

(4) For the removal of doubts it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section."

The Fundamental Rules, the Civil Service (Classification, Control and Appeal) Rules of 1930 and the Civil Service (Governors Provinces Classification) Rules are instances of rules made under authority conferred by section 96B. Section 96C provided for the establishment of a Public Service Commission. Sub-section (1) of section 96D provided for an Auditor-General to be appointed by the Secretary of State in Council who was to hold office during ."His Majesty's pleasure", and conferred upon the Secretary of State in Council the power to make rules providing for the Auditor-General's pay, powers, duties and. conditions of employment. Sub-section (2) of section 96D provided that, subject to any rules made by the Secretary of State in Council, no office could be added to or withdrawn from the public service and the emoluments of no post could be varied except after consultation with such finance authority as might be designated in the rules being an

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authority of the Province or of the Government of India, according as the post was or was not under the control of a local Government. Under section 96E rules under Part VIIA could not be made except with the concurrence of the majority of votes at a meeting of the Council of India.

17. Thus, after the 1919 Act, the civil services of India continued to be under the control of the Secretary of State in Council who was to regulate by rules the classification of the civil services, the methods of recruitment, the conditions of services, pay and allowances, and discipline and conduct. Such rules could also provide for delegation of the rule-making power to the Governor-General in Council or the local Governments or authorize the Indian Legislature or Local Legislatures to make laws regulating the public services but only to the extent and in respect of matters as were prescribed by the rules. Thus, even the power of making rules as also the authority to the Indian Legislature and the Local Legislatures to enact Acts regulating the public services was derived by delegation of power made by the Secretary of State in Council.

18. What is really material for the purposes of the present Appeals and Writ Petitions is that section 96B of the Government of India Act, 1919, for the first time expressly stated that every person in the civil service of the Crown in India held office "during His Majesty's pleasure". This was, however, made subject to three safeguards, namely -

(1) a civil servant could not be dismissed by any authority subordinate to that by which he was appointed;

(2) the Secretary of State in Council had the power, unless he provided to the contrary in the rules, to reinstate any person in service who had been dismissed; and

(3) if a civil servant appointed by the Secretary of State in Council thought himself wronged by an order of an official superior in a Governor's Province and on due application made to that superior did not receive the redress to which he considered himself entitled, he could, without prejudice to any other right of redress, complain to the Governor of the Province in order to obtain justice and the Governor had to examine such

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complaint and require such action to be taken thereon as might appear to him to be just and equitable.

19. The position which prevailed with respect to the civil services in India during the intervening period between the Government of India Act, 1919, and the Government of India Act, 1935 (25 and 26 Geo. V, c.42) was that the top echelons of the important services, especially those working under the Provincial Governments, consisted of what were known as the "all India services", which governed a wide variety of departments. There were, in the first place, the Indian Civil Service and the Indian Police Service, which provided the framework of the administrative machinery. In addition, there were the Indian Forest Service, the Indian Educational Service, the Indian Agricultural Service, the Indian Service of Engineers (consisting of an Irrigation Branch and a Roads and Buildings Branch), the Indian Veterinary Service, the Indian Forest Engineering Service and the Indian Medical Service (Civil). The initial appointments and conditions of service for all these services were made by the Secretary of State and each officer executed a covenant with the Secretary of State containing the terms under which he was to serve. In addition to the all-India services there were the central services under the Government of India and the Provincial services in the Provinces; and lastly the subordinate services. (See Indian Statutory (Simon) Commission Report (1930), Vol. I, para 290 ff.) During the years following the 1919 Act it was decided that, as a consequence of the decision to effect progressive transfer of power to Governments in India, the number of all-India services under the direct control of the Secretary of State should be progressively reduced especially in those fields of administration that were transferred to ministerial control. It was now to be left to the Provincial Governments to reorganize in gradual stages the higher cadres of their services in the transferred subjects, and recruitment and control of the Secretary of State in Council were accordingly discontinued. This policy resulted by the early thirties in the Indian Civil Service, the Indian Police Service, the Ecclesiastical Service and the civil branch of the Indian Medical Service being retained by the Secretary of State and the rest being converted into Provincial services, safeguards being provided to secure the rights and privileges guaranteed to officers recruited earlier to the all-India services. (See Report of the Joint Select Committee on Indian Constitutional Reform, (1934), para 277.)

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20. The above position received legislative recognition and sanction under the Government of India Act, 1935 (25 and 26 Geo. V, c. 42), often cited with the year and chapter of the Act in pursuance of which it was reprinted, namely, the Government of India (Reprinting) Act, 1935 (26 Geo. V and I Edw. VIII, c. 1). Part X of the 1935 Act dealt with the services of the Crown in India. Chapter II of Part X made provisions with respect to the civil services. Section 240 provided for the tenure of office of persons employed in civil capacities in India and conferred upon them certain statutory safeguards as regards dismissal or reduction in rank. Section 241 dealt with their recruitment and conditions of service. Under that section power to make appointments was vested in respect of central services in the Governor-General and in respect of the Provincial services in the respective Governors. In the same manner the power to regulate conditions of service of the members of these services was conferred upon the Governor-General or the Governor, as the case may be. The Governor-General as also the Governor could authorize such person as he might direct to make appointments and rules with respect to the conditions of service. Provision was also made for enactment of Acts by appropriate Legislatures to regulate the conditions of service of persons in the civil services. It is unnecessary to look into the details of these provisions as the federal structure envisaged by the 1935 Act never came into existence as it was optional for the Indian States to join the proposed Federation and they did not give their consent thereto. Chapter III of Part X provided for the setting up of a Federal Public Service Commission and a Public Service Commission for each Province. A provision was also made for two or more Provinces to agree to have a joint Public Service Commission or for the Public Service Commission of one of these Provinces to serve the needs of the other Provinces.

21. In the context of the present Appeals and Writ Petitions, it is section 240 of the 1935 Act which is relevant. Section 240 provides as follows :

"240. Tenure of office of persons employed in civil capacities in India.

(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in

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India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this sub-section shall not apply -

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a. member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post."

22. While under the 1935 Act, as under the 1919 Act, every person who was a member of the civil service of the Crown in India or held any civil post under the Crown in India held office "during His Majesty's pleasure", greater safeguards were provided for him under the 1935 Act than under the 1919 Act. Those safeguards were :

(1) under sub-section (2) of section 240, such a person could not be dismissed from service by any authority subordinate to that by which he was appointed, and (2) under sub-section (3) of section 240, such a person could not be dismissed or reduced in rank until he had been given a reasonable opportunity of

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showing cause against the action proposed to be taken in regard to him.

The safeguard as regards a reasonable opportunity of showing cause provided for in section 240(3) did not exist in the 1919 Act. The proviso to sub-section (3) of section 240, however, took away this safeguard in the two cases set out in clauses (a) and (b) of the said proviso. These two cases were :

(a) where a civil servant was dismissed or reduced in rank on ground of conduct which had led to his conviction on a criminal charge, and

(b) where an authority empowered to dismiss him or reduce him in rank was satisfied that for some reason, to be recorded by that authority in writing, it was not reasonably practicable to give to that person an opportunity of showing cause.

The Civil Services under the Constitution

23. Provisions with respect to services under the Union and the States are made in Part XIV of the Constitution of India. This Part consists of two Chapters, Chapter I dealing with services and Chapter II dealing with Public Service Commissions for the Union and the States. Article 308, as originally enacted, defined the expression "State" occurring in Part XIV as meaning, unless the context otherwise required, "a State specified in Part A or B of the First Schedule". This Article was amended by the Constitution (Seventh Amendment) Act, 1956, which was passed in order to implement the scheme for reorganization of States. The amended Article 308 provides, "In this Part, unless the context otherwise requires, the expression 'State' does not include the State of Jammu and Kashmir." Article 309 provides for recruitment and conditions of service of persons serving the Union or a State, Article 310 for the tenure of office of such persons, and Article 311 for the mode of dismissal, removal or

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reduction in rank of persons employed in civil capacities under the Union or a State. Article 312 deals with all-India services and inter alia provides that where the Council of State has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament might by law provide for the creation of one or more all-India services common to the Union and the States and subject to the other provisions of Chapter I regulate the recruitment and conditions of service of persons appointed to any such service; and it further provides that the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under Article 312. Article 313 provides for the continuance in force, so far as consistent with the provisions of the Constitution, of all the laws in force immediately before the commencement of the Constitution and applicable to any public service or any post which continued to exist after the commencement of the Constitution as an all-India service or as service or post under the Union or a State until other provision was made in this behalf under the Constitution. Under clause (10) of Article 366 the expression "existing law" means "any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation." Thus, all Acts, rules and regulations applicable to different services immediately before the commencement of the Consttution continue to apply to such services in so far as they were consistent with the provisions of the Constitution until amended, varied, revoked or replaced by Acts, rules or regulations made in accordance with the provisions of the Constitution.

24. From what has been stated above it will be seen that the provisions with respect to civil services in the Government of India Act, 1935, were taken as the basis for Chapter I of Part XIV of the Constitution.

Articles 309, 310 and 311

25. It is necessary for the purpose of these Appeals and Writ Petitions to set out in extenso the provisions of Articles 309, 310 and 311.

26. Articles 309 and 310 were amended by the Constitution (Seventh Amendment) Act, 1956, to omit from these Articles the reference to the Rajpramukh. Articles 309 and 310, as so amended, read as follows :

"309. Recruitment and conditions of service of persons serving the Union or a State.

Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of

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service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State :

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

"310. Tenure of office of persons serving the Union or a State.

(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not

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being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post."

27. Article 311 as originally enacted was in the following terms :

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

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

The words "or Rajpramukh" in clause (c) of the proviso to Article 311(2) were omitted by the Constitution (Seventh Amendment) Act, 1956.

28. By the Constitution (Fifteenth Amendment) Act, 1963, clauses (2) and (3) of Article 311 were substituted by the following clauses :

"(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 and where it is proposed, after such inquiry, to impose on

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him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry :

Provided that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; 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.

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(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

29. The Constitution (Forty-second Amendment) Act, 1976, made certain amendments in the substituted clause (2) of Article 311 with effect from January 3, 1977. Article 311 as so amended reads as follows :

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. - (1) No 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."

From the original and amended Article 311 set out above it will be noticed that of the original Article 311 only clause (1) remains unaltered, while both the other clauses have become the subject of Constitutional amendments. No submission was founded by either party on the substitution of the present. clause (3) for the original by the Constitution (Fifteenth Amendment) Act, 1963, for the obvious reason that such substitution was made only in order to bring clause (3) in conformity with clause (2) as substituted by the said Amendment Act.

30. A comparison of Article 311 of the Constitution with section 240 of the Government of India Act, 1935, shows that the safeguards provided to civil servants by Article 311 are very much the same as those under section 240 with this difference that while Article 311 also affords safeguards against removal from service section 240 did not. Further, though the proviso to section 240(3) is reproduced in what originally was the only proviso and is now the second proviso to Article 311(2), an addition clause, namely, clause (c) has been added thereto. A provision similar to clause (3) of Article 311 was also absent from the Government of India Act, 1935.

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Thus, while on the one hand Article 311 enlarges the protection afforded to civil servants, on the other hand it increases by one the number of cases in which that protection can be withdrawn.

31. With the above historical background and bearing in mind the relevant provisions of the Constitution, it will be now convenient to turn to the submissions made at the Bar with respect to the pleasure doctrine and the second proviso to Article 311(2) and test the correctness of these submissions.

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The Second Proviso - Rival Submissions

32. The arguments advanced on behalf of the government servants on the pleasure doctrine and the second proviso to Article 311(2) may be sketched in broad outlines as under :

1) The pleasure doctrine in England is a part of the special prerogative of the Crown and has been inherited by India from England and should, therefore, be construed strictly, that is, strictly against the Government and liberally in favour of government servants.

(2) The second proviso which withdraws from government servants the safeguards provided by clause (2) of Article 311 must be also similarly construed for. unless a liberal construction were placed upon it, great hardship would result to government servants as they could be arbitrarily thrown out of employment and they and their dependents would be left without any means of subsistence.

(3) There are several stages before a government servant can be dismissed or removed or reduced in rank, namely, serving upon him of a show cause notice or a charge-sheet, giving him inspection of documents, examination of witnesses, arguments and imposition of penalty. An inquiry starts only after a show cause notice is issued and served upon a government servant. A show cause notice is thus preparatory to the holding of an inquiry and even if the entire inquiry is dispensed with, the giving of a show cause notice and asking for the explanation of the government servant with respect thereto are not excluded.

(4) It is not obligatory upon the disciplinary authority to dispense with the whole of the inquiry. Depending upon the circumstances of the case, the disciplinary authority can dispense with only a part of the inquiry.

(5) Imposition of penalty is not a part of the inquiry and once an inquiry is dispensed with, whether in whole or in part, it is obligatory upon the disciplinary authority to give an opportunity to the government servant to make a representation with respect to the penalty proposed to be imposed upon him.

(6) Article 311 is subject to Article 14 Principles of natural justice and the audi alteram partem rule are part of Article 14 and, therefore, a show cause notice asking for the explanation of the government servant with respect to the charges against him as also a notice to show cause with respect to the proposed penalty are required to be given by Article 14 and the not giving of such notices or either of them renders the order of dismissal, removal or reduction in rank invalid.

33. The submissions on behalf of the Union of India can be thus summarized :

(1) The second proviso must be construed according to its terms. It is unambiguous and does not admit of any such interpretation as canvassed for on behalf of the government servants.

(2) Where under the second proviso, clause (2) of Article 311 is made inapplicable, there is no scope for holding any partial inquiry.

(3) In any event, the very contents of the three clauses of the second proviso show that it is not necessary or not practicable or not expedient that any partial inquiry could be or should be held, depending upon which clause applies.

(4) Article 14 does not govern or control Article 311. The Constitution must be read as a whole. Article 311(2) embodies the principles of natural justice including the audi alteram partem rule. It thus expressly states what is required under Article 14 as a result of the interpretation. placed upon it by recent decisions of this Court. Once the application, of clause (2) is expressly excluded by the Constitution itself, there can be no question of making applicable what has been so excluded by seeking recourse to Article 14.

(5) Consideration of sympathy for the government servants who may be dismissed or removed or reduced in rank are irrelevant to the construction of the second proviso.

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The doctrine of tenure at pleasure in Article 310 and the safeguards given to a government servant under clauses (1) and (2) of Article 311 as also the withdrawal of the safeguard under clause (2) by the second proviso are all enacted in public interest and where public interest conflicts with private interest, the latter must yield to the former.

The Pleasure Doctrine

34. The concept of civil service is not new or of recent origin. Governments - whether monarchial, dictatorial or republican - have to function; and for carrying on the administration and the varied functions of the government a large number of persons are required and have always been required, whether they are constituted in the form of a civil service or not. Every kingdom and country of the world throughout history had a group of persons who helped the ruler to administer the land, whether according to modern notions we may call that group a civil service or not because it is not, possible for one man by himself to rule and govern the land and look after and supervise all the details of administration. As it was throughout history, so it has been in England and in India.

35. In England, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown and their services can be terminated at will without assigning any cause. By the expression "the pleasure doctrine" is conveyed this right of the Crown. This right is, however, subject to what may be provided otherwise by legislation passed by Parliament because in the United Kingdom, Parliament has legislative sovereignty.

36. The foundations of modern European civil services were laid in Prussia in the late seventeenth and eighteenth centuries and by Napoleon's development of a highly organized hierarchy (a model copied by many countries in the nineteenth century); and they are the basis of modern European civil services. In England civil servants were originally the monarch's personal servants and members of the King's household. Clive's creation from 1765 of a civil service to govern such parts of India as were under the dominion of the East India Company and Macaulay's report on recruitment to the Indian Civil Service provided the inspiration for the report of 1854 on the organization of the permanent civil service in Britain which recommended recruitment by open competitive examination, the selection of higher civil servants on the basis of general intellectual attainment, and the establishment of a Civil Service Commission to ensure proper recruitment.

37. In the United Kingdom, until about the middle of November 1981, the Civil Service Department, which was set up in 1968 with the Prime Minister, as Minister for the Civil Service, as its Head, looked after the management and personnel functions in connection with the Civil Service which were until then being looked after by the treasury. These functions included the organization and conduct of the Civil Service and the remuneration, conditions of service, expenses and allowances of persons serving in it; mode of recruitment of persons to the Civil Service; the pay and allowances of, and the charges payable by, members of the armed forces; with certain exceptions, superannuation and, injury payments, compensation for loss of employment or loss or diminution of emoluments or pension rights applicable to civil servants and others in the public sector and to members of the armed forces; the exercise by other persons and bodies of powers to determine, subject to the minister's sanction, the pay or conditions of service of members of public bodies (excluding judicial bodies), or the numbers, pay or conditions of service of staff employed by such bodies or by the holders of certain non-judicial offices; and the appointment or employment and the remuneration, conditions of service, personal expenses or allowances of judges and judicial staff (See Halsbury's Laws of England, Fourth Edition, Volume 8. para 1162.)

38. The Permanent Secretary to the Civil Service Department was the Head of the Home Civil Service and gave advice to the Prime Minister as to civil service appointments, decorations, etc. The Civil Service Department was abolished on November 12, 1981, and its functions, instead of reverting to the Treasury, were divided between the Treasury and the newly created Management and Personnel Office.

39. In India, the pleasure doctrine has received constitutional sanction by being enacted in Article 310(1). Unlike in the United Kingdom, in India it is not subject to any law made by Parliament but is subject only to

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what is expressly provided by the Constitution.

40. The pleasure doctrine relates to the tenure of a government servant. "Tenure" means "manner, conditions or term of holding something" according to Webster's Third New International Dictionary, and "terms of holding; title;. authority" according to the Oxford English Dictionary. It, therefore, means the period for which an incumbent of office holds it. It is for this reason that the statement, of law relating to the pleasure doctrine in" England is given in Halsbury's Laws of England, Fourth Edition, Volume 8, Para 1106, under the heading "Tenure of office".

41. The first time that a statute relating to the government of India provided that civil servants hold office during His Majesty's pleasure was the Government of India Act of 1919 in section 96B of that Act. The marginal note to section 96B did not, however, refer to the tenure of civil servants but stated "The Civil Services in India". This was because, section 96B in addition to dealing with the tenure of civil servants also dealt with matters relating to their recruitment, conditions of service, pay, allowances, pensions, etc. The marginal. note to section 240 of the Government of India Act. 1935, however, was "Tenure of office of persons employed in civil capacities in India." The marginal note to Article 310 of the Constitution also refers to "tenure" and states "Tenure of office of persons serving the Union or a State". Thus, it is the tenure of government servants which Article 310(1) makes subject to the pleasure of the President or the Governor of a State, except as expressly provided by the Constitution.

42. While it was vehemently contended on behalf of the government servants that the pleasure doctrine is a relic of the feudal age - a part of the special prerogative of the Crown - which was imposed upon India by an Imperial power and thus is an anachronism in this democratic, socialist age and must, therefore, be confined within the narrowest limits, it was submitted on behalf of the Union of India that this doctrine was matter of public policy, and it was in public interest and for public good that the right to dismiss at pleasure a government servant who has made himself unfit to continue in office, albeit subject to certain safeguards, should exist and be exercisable in the Constitutional sense by the Crown in England and by the President or the Governor of a State in India. It is not possible to accept the arguments advanced on behalf of the government servants for all the authoritative judicial dicta are to the contrary. As pointed out by Lord Hobhouse in Shenton V. Smith, 1895 AC 229, the pleasure doctrine is founded upon the principle that the difficulty which would otherwise be experienced in dismissing those whose continuance in office is detrimental to the State would be such as seriously to impede the working of the public service. In Dunn v. The Queen, (1896) 1 QB 116; SC : (1895-96) 73 LT 695 and sub nomine Dunn v. Regem in (1895-1899) All ER Rep. 907 the Court of Appeal in England held that it was an implied term of every contract of service that servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown. In that case Lord Herschell observed (pages 119-120) :

"It seems to me that it is the public interest which has led 'to the term which I have mentioned being imported into contracts for employment in the service of the Crown. The cases cited shew that, such employment being for the good of the public, it is essential for the public good that it should be capable of being determined at the pleasure of the Crown, except in certain exceptional cases where it has been deemed to be more for the public good that some restrictions should be imposed on the power of the Crown to dismiss its servants."(Emphasis supplied)

In the same case Kay, L.J., said (page 120) :

"It seems to me that the continued employment of a civil servant might in many cases be as detrimental to the interests of the State as the continued employment of a military officer."

In this case as reported in the Law Times Reports series the judgments of the three learned judges who decided the case (Lord Esher, M. R., being the third judge), though in substance the same, are given in very different language and the passages extracted above do not appear in that report. The report of the case in the All England Law Reports Reprint series is with very minor variations the same as the report in the Times Law Reports series but somewhat abridged. This is because the

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All England Law Reports Reprint series is a revised and annotated reprint of a selection from the Law Times Reports for the years 1843 to 1935. The report from which the above extracts are given is the one in the Law Reports series published by the Incorporated Council of Law Reporting which was established in 1865 and which report is, therefore, more authoritative.

43. In Gould v. Stuart 1896 AC 575, 578-9 JC the Judicial Committee of the Privy Council further held that where by regulations a civil service is established prescribing qualifications for its members and imposing some restriction on the power to dismiss them, such regulations should be deemed to be made for the public good.

43A. The position that the pleasure doctrine is not based upon any special prerogative of the Crown but upon public policy has been accepted by this Court in State of Uttar Pradesh v. Babu Ram Upadhya (1961) 2 SCR 679, 696 : (AIR 1961 SC 751 at P. 759) and Moti Ram Deka v. General Manager, N.E.F. Railways, Maligaon, Pandu, (1964) 5 SCR 683,734-5 : (AIR 1964 SC 600 at Pp. 620-21). This Court has also accepted the principle that society has an interest in the due discharge of their duties by government servants. In Roshan Lal Tandon v. Union of India (1968) 1 SCR 185 : (AIR 1967 SC 1889) Ramaswami, J., speaking for the Court, said (at page 195 of SCR) : (at P. 1894 of AIR) :

"It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of nights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties.concerned." (Emphasis supplied)

44. Ministers frame policies and legislatures enact laws and lay down the mode in which such policies are to be carried out and the object of the legislation achieved. In many cases, in a Welfare State such as ours, such policies and statutes are intended to bring about socio-economic reforms and the uplift of the poor and disadvantaged classes. From the nature of things the task of efficiently and effectively implementing these policies and enactments, however, rests with the civil services. The public is, therefore, vitally interested in the efficiency and integrity of such services. Government servants are after all paid from the public exchequer to which everyone contributes either by way of direct or indirect taxes. Those who are paid by the public and are charged with public administration for public good must, therefore, in their turn bring to the discharge of their duties a sense of responsibility. The efficiency of public administration does not depend only upon the top echelons of these services. It depends as much upon all the other members of such services, even on those in the most subordinate posts. For instance, railways do not run because of the members of the Railway Board or the General Mangers of different railways or the heads of different departments of the railway administration. They run also because of engine-drivers, firemen, signalmen, booking clerks and those holding hundred other similar posts. Similarly, it is not the administrative heads who alone can see to the proper functioning of the post and telegraph service. For a service to run efficiently there must, therefore, be a collective sense of responsibility. But for a government servant

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to discharge his duties faithfully and conscientiously, he must have a feeling of security of tenure. Under our Constitution, this is provided for by the Acts and rules made under Article 309 as also by the safeguards in respect of the punishments of dismissal, removal or reduction in rank provided in clauses (1) and (2) of Article 311. It is, however, as much in public interest and for public good that government servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service and that the protection afforded to them by the Acts and rules made under Article 309 and by Article 311 be not abused by them to the detriment of public interest and public good. When a situation as envisaged in one of the three clauses of the second proviso to clause (2) of Article 311 arises and the relevant clause is properly applied and the disciplinary inquiry dispensed with, the concerned government servant cannot be heard to complain that he is deprived of his livelihood. The livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood is provided by the public exchequer and the taking away of such livelihood is in the public interest and for public good, the former must yield to the latter. These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown which has been inherited by India and transposed into our Constitution adapted to suit the Constitutional set up of our Republic but because public policy requires, public interest needs and public good demands that there should be such a doctrine.

45. It is thus clear that the pleasure doctrine embodied in Article 310(1), the protection afforded to civil servants by clauses (1) and (2) of Article 311 and the withdrawal of the protection under clause (2) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good.

The Scope of the Pleasure Doctrine

46. While under section 96B(1) of the Government of India Act of 1919 the holding of office in the civil service of the Crown in India "during His Majesty's pleasure" was "Subject to the provisions of this Act and the rules made thereunder", under section 240(1) of the Government of India Act, 1935, the holding of such office during His Majesty's pleasure was "Except as expressly provided by this Act." Similarly, the pleasure doctrine as enacted in Article 310(1) is not an absolute one and is not untrammelled or free of all fetters, but operates "Except as expressly provided by this Constitution". The constitutional restrictions on the exercise of pleasure under Article 310(1) other than those contained in Article 311 will be considered later but what is immediately relevant is the group of Articles consisting of Articles 309, 310 and 311. These three Articles are interlinked and form an integrated whole. There is an organic and thematic unity running through them and it is now necessary to see the interplay of these three Articles.

47. These Articles occur in Chapter I of Part XIV of the Constitution. Part XIV is entitled "Services under the Union and the States" and Chapter I thereof is entitled "Services". While Article 309 deals with the recruitment and conditions of service of persons appointed to the public services and posts in connection with the affairs of the Union or a State, Article 310 deals with the tenure of office of members of the defence services and of civil services of the Union and the States and Article 311 provides certain safeguards to persons employed in civil capacities under the Union or a State but not to members of the defence services. The first thing which is required to be noticed about Article 309 is that it itself makes no provision for recruitment or conditions of service of government servants but confers power upon the appropriate Legislature to make laws and upon the President and the Governor of a State to make rules in respect of these matters. The passing of these Acts and the framing of these rules are, however, made "Subject to the provisions of this Constitution". This phrase which precedes and qualifies the power conferred by Article 309 is significantly different from the qualifying phrase in Article 310(1) which is "Except as expressly provided by this Constitution".

48. With reference to the words "conditions of service" occurring in section 243 of the Government of India Act, 1935, under which the conditions of service of the subordinate ranks of the various police forces in India were to be determined by or under

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Acts relating to those forces, the Judicial Committee of the Privy Council held in North-West Frontier Province v. Suraj Narain Anand (1948) 75 Ind App 343, 352-3 : (AIR 1949 PC 112 at P. 114) that this expression included provisions which prescribed the circumstances under which the employer would be entitled to terminate the service of an employee, whether such provisions were constitutional or statutory.

49. In State of Madhya Pradesh v. Shardul Singh (1970) 3 SCR 302, 305-6, this Court held that the expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment until his retirement and even beyond it in matters like pension etc. and would include the right to dismiss such persons from service. Thus, as pointed out in Sardari Lal v. Union of India (1971) 3 SCR 461, 465 : (AIR 1971 SC 1547 at P. 1549) a law can be made by the appropriate Legislature or a rule by the appropriate executive under Article 309 prescribing the procedure and the authority by whom disciplinary action can be taken against a government servant. Thus the functions with respect to the civil service which in England until 1968 were being performed by the Treasury and thereafter by the Civil Service Department and from mid-November 1981 are being performed partly by the Treasury and partly by the Management and Personnel Office are in India under Article 309 of the Constitution to be performed with respect to not only persons, employed in civil capacities but with respect to all persons appointed to public services and posts in connection with the affairs of the Union or any State by authorities appointed under or specified in Acts made under Article 309 or rules made under such Acts or made under the proviso to that Article.

50. As the making of such laws and the framing of such rules are subject to the provisions of the Constitution, if any such Act or rule violates any of the provisions of the Constitution, it would be void. Thus, as held in Moti Ram Deka's case (AIR 1964 SC 600), if any such Act or rule trespasses upon the rights guaranteed to government servants by Article 311, it would be void. Similarly, such Acts and rules cannot abridge or restrict the pleasure of the President or the Governor of a State exercisable under Article 310 (1) further than what the Constitution has expressly done. In the same way, such Act or rule would be void if it violates any Fundamental Right guaranteed by Part III of the Constitution. Two instances of this may be given by way of illustration. In Kameshwar Prasad v. State of Bihar, (1962) Supp. (3) SCR 369 : (AIR 1962 SC 1166), Rule 4A of the Bihar Government Servants' Conduct Rules, 1956, in so far as it prohibited any form of demonstration was struck down by this Court as being violative of sub-clauses (a) and (b) of clause (1) of Article 19. In 0. K. Ghosh v. E. X. Joseph (1963) Supp. (1) SCR 789 : (AIR 1963 SC 812) this Court struck down Rule 4A of the Central Civil Services (Conduct) Rules, 1955, on the ground that it violated sub-clause (c) of clause (1) of Article 19 of the Constitution and that portion of Rule 4A which prohibited participation in any demonstration as being violative of sub-clauses (a) and (b) of clause (1) of Article 19. Further, the application of Article 309 is excluded by certain provisions of the Constitution itself which empower authorities other than those specified in Article 309 to make appointments or to make rules relating to the conditions of service of certain classes of public service, such as, Article 146(1) with respect to the officers and servants of the Supreme Court, Article 148(5) with respect to persons serving in the Indian Audit and Accounts Department, Article 229 with respect to the officers and servants of the High Courts, and Article 324(5) with respect to Election Commissioners and Regional Commissioners.

51. Which would be the appropriate Legislature to enact laws or the appropriate authority to frame rules would depend upon the provisions of the Constitution with respect to legislative competence and the division of legislative powers. Thus, for instance, under Entry 70 in List I of the Seventh Schedule to the Constitution, Union Public Services, all-India Services and Union Public Service Commission are subjects which fall within the exclusive legislative field of Parliament, while under Entry 41 in List II of the Seventh Schedule to the Constitution, State Public Services and State Public Service Commission fall within the exclusive legislative field of the State Legislatures. The rules framed, by the President or the Governor of a State must also, therefore, conform to these legislative

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[illegible] It is however, not necessary that the Act of an appropriate Legislature should specifically deal with a particular service. It is sufficient if it is an Act as contemplated by Article 309 by which provision is made

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regulating the recruitment and conditions in a service (see Ram Pal Chaturvedi v. State of Rajasthan, (1970) 2 SCR 559, 564.)

52. It was at one time thought that the right of a government servant to recover arrears of salary fell within the ambit of the pleasure doctrine and a servant of the Crown, therefore, cannot sue for his salary, it being a bounty of the Crown and not a contractual debt. This was so stated in the judgment of Lord Blackburn in the Court of Session (the supreme civil court of Scotland) in the case of Mulvenna v. The Admiralty, 1926 SC (i.e. Sessions Cases) 842. Relying heavily upon this decision, the Judicial Committee of the Privy Council in High Commr. for India and High Commr. for Pakistan v. I.M. Lall (1948) 75 Ind App 225, 243-4 : (AIR 1948 PC 121 at P. 127), though it held that Lall's dismissal was contrary to section 240 (3) of the Government of India Act, 1935, negatived his claim for arrears of pay. In State of Bihar v. Abdul Majid 1954 SCR 786 : (AIR 1954 SC 245) a Constitution Bench of this Court pointed out that the attention of the Judicial Committee was not drawn to section 60 and the other relevant provisions of the Code of Civil Procedure, 1908, and that the rule of English law that a Crown servant cannot maintain a suit against the Crown for recovery of arrears of salary did not prevail in India as it has been negatived by the provisions of statutory law in India. It may be mentioned that in its subsequent decision in Chelliah Kodeeswaran v. Attorney-General of Ceylon (1970 AC 1111) in appeal from the Supreme Court for Ceylon, the Judicial Committee held that Lord Blackburn's reasoning in Mulvenna's case had not been concurred in by the other two members of the Scottish Court of Session, namely, Lord Sands and Lord Ashmore, and had not been subsequently treated in Scotland as correctly laying down the law and that it was defective and the conclusion reached by Lord Blackburn was contrary to authority and was wrong. It further pointed out that there was a current of authority for a hundred years, before 1926 (that being the year in which Mulvenna's case was decided) to the effect that the arrears of salary of a civil servant of the Crown, as distinguished from a member of the armed services, constituted a debt recoverable by a petition of right. According to the Privy Council, as the relevant and prestigious authorities to the contrary, did not appear to have been cited before the Judicial Committee in Lall's Case, this part of the judgment in that case must be regarded as given per incuriam.

53. As seen earlier, in India for the first time a fetter was imposed upon the pleasure of the Crown to terminate the service of any of its servants by section 96B of the Government of India Act, 1919, but that was only with respect to the authority which could dismiss him. In that section the holding of office "during His Majesty's pleasure" was made subject to both the provisions of that Act and the rules made thereunder. Under the Government of India Act, 1935, the reference to the rules to be made under the Act was omitted and the tenure of office of a civil servant was to be "during His Majesty's pleasure except as expressly provided" by that Act. Article 310(1) adopts the same phraseology as in section 240 of the 1935 Act. Under it also the holding of an office is during the pleasure of the President or The Governor "Except as specifically provided by this Constitution". Therefore, the only fetter which is placed on the exercise of such pleasure is when it is expressly so provided in the Constitution itself, that is, when there is an express provision in that behalf in the Constitution. Express provisions in that behalf are to be found in the case of certain Constitutional functionaries in respect of whose tenure special provision is made in the Constitution as, for instance, in clauses (4) and (5) of Article 124 with respect to Judges of the Supreme Court, Article 218 with respect to Judges of the High Court, Article 148(1) with respect to the Comptroller and Auditor-General of India, Article 324(1) with respect to the Chief Election Commissioner, and Article 324(5) with respect to the Election Commissioners and Regional Commissioners.

54. Clauses (1) and (2) of Article 311 impose restrictions upon the exercise by the President or the Governor of a State of his pleasure under Article 310(1). These are express provisions with respect to termination of service by dismissal or removal as also with respect to reduction in rank of a civil servant and thus come within the ambit of the expression "Except as otherwise provided by

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this "Constitution" qualifying Article 310(1). Article 311 is thus an exception to Article 310 and was described in Parshotam Lal Dhingra v. Union of India, 1958 SCR 828,839; (AIR 1958 SC 36, at P. 41) as operating as a proviso to Article 310(1) though set out in a separate Article. Article 309 is, however, not such an exception. It

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does not lay down any express provision which would derogate from the amplitude of the exercise of pleasure under Article 310(1). It merely confers upon the appropriate Legislature or executive the power to make laws and frame rules but this power is made subject to the provisions of the Constitution. Thus, Article 309 is subject to Article 310(1) and any provision restricting the exercise of the pleasure of the President or Governor in an Act or rule made or framed under Article 309 not being an express provision of the Constitution, cannot fall within the expression "Except as expressly provided by this Constitution" occurring in Article 310(1) and would be in conflict with Article 310(1) and must be held to be unconstitutional. Clauses (1) and (2) of Article 311 expressly restrict the manner in which a Government servant can be dismissed, removed or reduced in rank and unless an Act made or rule framed under Article 309, also conforms to these restrictions, it would be void The restrictions placed by clauses (1) and (2) of Article 311 are two: (1) with respect to the authority empowered to dismiss or remove a Government servant provided for in clause (1) of Article 311; and (2) with respect to the procedure for dismissal, removal or reduction in rank of a government servant provided for in clause (2). The second proviso to Article 311 (2), which is the central point of controversy in these Appeals and Writ Petitions, lifts the restriction imposed by Article 311 (2) in the cases specified in the three clauses of that proviso.

55. None of these three Articles (namely, Articles 309, 310 and 311) sets out the grounds for dismissal, removal or reduction in rank of a government servant or for imposition of any other penalty upon him or states what those other penalties are. These are matters which are left to be dealt with by Acts and rules made under Article 309. There are two classes of penalties in service jurisprudence, namely, minor penalties and major penalties. Amongst minor penalties are censure, withholding of promotion and withholding of increments, of pay. Amongst major penalties are dismissal or removal from service, compulsory retirement and reduction in rank. Minor penalties do not affect the tenure of a government servant but the penalty of dismissal or removal does because these two penalties bring to an end the service of a government Servant. It is also now well established that compulsory retirement by way of penalty amounts to removal from service. So this penalty also affects the tenure of a government servant. Reduction in rank does not terminate the employment of a government. servant and it would, therefore, be difficult to say that it affects the tenure of a government servant. It may, however, be argued that it does brink to an end the holding of office in a particular rank and from that point of view it affects the government servant's tenure in the rank from which he is reduced. It is unnecessary to decide this point because Article 311(2) expressly gives protection as against the penalty of reduction in rank also.

Exercise of Pleasure

56. A question which arises in this connection is whether the pleasure of the President or the Governor under Article 310(1) is to be exercised by the President or the Governor personally or it can be exercised by a delegate or some other authority empowered under the Constitution or by an Act or Rules made under Article 309. This question came up for consideration before a Constitution Bench of this Court in Babu Ram Upadhya's case (1961) 2 SCR 679 : (AIR (1961) SC 751). The majority of the Court (speaking through Subba Rao, J., as he then was) stated (at p. 701). (of SCR) : (at p. 761 of AIR) the conclusions it had reached in the form of seven propositions . These propositions are:

(1) In India every person who is a member of a public service described in Article 310 of the Constitution holds office during the pleasure of the President or the Governor, as the case may be, subject to the express provisions therein.

(2) The power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate officer, and can be exercised by him only in the manner prescribed by the Constitution.

(3) This tenure is subject to the limitations

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or qualifications mentioned in Article 311, of the Constitution.

(4) The Parliament or the Legislatures of States cannot make a law abrogating or modifying this tenure so as to

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impinge upon the overriding power conferred upon the President or the Governor under Article 310, as qualified by Article 311.

(5).The Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311 thereof.

(6) The Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of reasonable opportunity' embodied in Article. 311 of the Constitution; but the said law would be subject to judicial review.

(7) If a statute could be made by Legislatures within the foregoing permissible limits, the rules made by an authority in exercise of the power conferred thereunder would likewise be efficacious within the said limits.

57. The question came to be reconsidered by a larger Bench of seven Judges in Moti Ram Deka's case (1964 (5) SCR 683 : AIR 1964 SC 600). While referring to the judgment of the majority in Babu Ram Upadhya's case (AIR 1961 SC 751) the Court observed as follows (at pp. 731-2) (of SCR) : (at p. 619 of AIR) :

"What the said Judgment has held is that while Art. 310 provides for a tenure at pleasure of the President or the Governor, Art. 309 enables the legislature or the executive, as the case may be, to make any law or rule in regard, inter alia, to conditions of service without impinging upon the overriding power recognised under Art 310. In other words, in exercising the power conferred by Art. 309, the extent of the pleasure recognised by Art. 310 cannot be affected, or impaired. In fact, while stating the conclusions in the form of proposition the said judgment has observed that the Parliament or the Legislature can make a law regulating the conditions of service without affecting the powers of the President or the Governor under Art. 310 read with Art. 311. It has also been stated at the same place that the power to dismiss a public servant at pleasure is outside the scope of Art. 154 and, therefore, cannot be delegated by the Governor to a subordinate officer and can be exercised by him only in the manner prescribed by the Constitution. In the context, it would be clear that this latter observation is not intended to lay down that a law cannot be made under Art 309 or a Rule cannot be framed under the proviso to the said Article prescribing the procedure by which, and the authority by whom, the said pleasure can be exercised. This observation which is mentioned as proposition number (2) must be read along with the subsequent propositions specified as (3), (4), (5) and (6). The only point made is that whatever is done under Art. 309 must be subject to the pleasure prescribed by Art. 310."

58. While we are on this point we may as well advert to the decision of this Court in Sardari Lal v. Union of India (AIR 1971 SC 1547). In that case it was held that where the President or the Governor, as the case may be, if satisfied, makes an order under clause (c) of what is now the second proviso to Article 311(2) that in the interest of the security of the State it is not expedient to hold an inquiry for dismissal or removal or reduction in rank of an officer, the satisfaction of the President or the Governor must be his personal satisfaction. The correctness of this view was considered by a seven-Judge Bench of this Court in Shamsher Singh v. State of Punjab (1975) 1 SCR 814 : (AIR 1974 SC 2192). It was categorically stated in that case (at page 835 of SCR) : (at P. 2203 of AIR) that the majority view in Babu Ram Upadhya's case was no longer good law after the decision in Moti Ram Deka's case. Referring to these two cases the Court observed (at pages 834-5) : (at p. 2203 of AIR) :

"This Court in State of Uttar Pradesh v. Babu Ram Upadhya (1961) 2 SCR 679: (AIR 1961 SC 751) held that the power of the Governor to dismiss at pleasure, subject to the provisions of Article 311, is not an executive power under Article 154 but a Constitutional power and is not capable of being delegated to officers subordinate to him. The effect of the judgment in Babu Ram Upadhya's case (supra) was that the Governor could not delegate his pleasure to any officer nor could any law provide for the exercise of that pleasure by an officer with the result

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that statutory rules governing dismissal are binding on every officer though they were subject to the overriding

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pleasure of the Governor. This would mean that the officer was bound by the Rules but the Governor was not.

"In Babu Ram Upadhya's case (supra) the majority view stated seven propositions at p. 701 (of SCR) : (at P. 761 of AIR), of the report. Proposition No. 2 is that the power to dismiss a public servant at pleasure is outside the scope of Article 154 and therefore cannot. be delegated by the Governor to a subordinate officer and can be exercised by him only in the manner prescribed by the Constitution. Propositions Nos. 3 and 4 are these. The tenure of a public servant is subject to the limitations or qualifications mentioned in Article 311 of the Constitution. The Parliament or the Legislatures of States cannot make a law abrogating or modifying this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Article 310 as qualified by Article 311.Proposition No. 5 is that the Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311. Proposition No. 6 is that the Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of reasonable opportunity' embodied in Article 311, but the said law would be subject to judicial review.

"As these propositions were reviewed by the majority opinion of this Court in Moti Ram Deka's case (AIR, 1964 SC 600) (supra) and this Court restated that proposition No. 2 must be read along with the subsequent propositions specified as propositions Nos. 3, 4, 5 and 6. The ruling in Moti Ram Deka's case (supra) is that a law can be framed prescribing the procedure by which and the authority by whom the said pleasure can be exercised. The pleasure of the President or the Governor to dismiss can therefore not only be delegated but is also subject to Article 311. The true position as laid down in Moti Ram Deka's case (supra) is that Articles 310 and 311 must no doubt be read together but once the true scope and effect of Article 311 is determined the scope of Article 310 (1) must be limited in the sense that in regard to cases falling under Article 311 (2) the: Pleasure mentioned in Article 310(2) must be exercised in accordance with the requirements of Article 311.

"The majority view in Babu Ram Upadhya's case (AIR 1961 SC 751) (supra) is no longer good law after the decision in Moti Ram Deka's case (AIR 1964-SC 600) (supra). The theory that only the President or the Governor is Personally to exercise pleasure of dismissing or removing a public servant is repelled by express words in Article 311 that no person who is a member of the civil service or holds a civil post under the Union or a State shall be dismissed or removed by authority subordinate to that by which he was appointed. The words dismissed or removed by an authority subordinate to that by which he was appointed indicate that the pleasure of the President or the Governor is exercised by such officers on whom the President or the Governor confers or delegates power." (Emphasis supplied)

The Court then stated its conclusion as follows (at page 836 of SCR) (at P. 2204 of AIR):

"For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister as the head in the case of the Union and the Chief Minister as the head in the case of State in all matters which vest in the executive whether those functions are executive or legislative in character. Neither the President. nor the Governor is to exercise the executive functions personally."

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 recorded by that authority in writing it is

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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

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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 to 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.

The Second Proviso to Article 311 (2)

60. Clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice and the audi alteram partem rule by providing that a person employed in a civil capacity under the Union or a State shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has. been given a reasonable opportunity of being heard in respect of those charges. To this extent, the pleasure doctrine enacted in Article 310(l) is abridged because Article 311(2) is an express provision of the Constitution. This safeguard provided for a government servant by clause (2) of Article 311 is, however, taken away when the second proviso to that clause becomes applicable. The safeguard provided by clause (1) of Article 311, however, remains intact and continues to be available to the government servant, The second proviso to Article 311(2) becomes applicable in the three cases mentioned in clauses (a) to (c) of that proviso. These cases are:

(a) where a person is dismissed or remove or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; and

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

The construction to be placed upon the second proviso and the scope and effect of that proviso were much debated at the Bar. In Hira Lal Rattan Lal v. State of U. P.(1973) 2 SCR 502: (AIR 1973 SC 1034) this Court observed (at page 512 of SCR) : (at p. 1039 of AIR):

" In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so called proviso has substantially altered the main section."

In Commr. of Income tax, Madras v. Madurai Mills Co. Limited, (1973) 3 SCR 662 : (AIR 1973 SC 1357) this Court said (at page 669): (at Pp. 1361-62 of AIR) :

"A proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect. Further, if the language of the enacting part of the statute is plain and unambiguous and does not contain the provisions which are said to occur in it, one cannot derive those provisions by implication from a proviso."

61. The language of the second proviso is plain and unambiguous. The keywords in the second proviso are "this clause shall not apply" By "this clause" is meant clause (2). As clause (2) requires an inquiry to be held against a government servant, the only meaning attributable to these words is that this inquiry shall not be held. There is no scope for any ambiguity in these words and there is no reason

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to give them any meaning different from the plain and ordinary meaning which they bear. The resultant effect of these words is that when a situation envisaged in any of the three clauses of the proviso arises and that clause becomes applicable, the safeguard provided to a government servant by clause (2) is taken away. As pointed out earlier, this provision is as much in public interest and for public good and a matter of public policy as the pleasure doctrine and the safeguards with respect to security of tenure contained in clauses (1) and (2) of Article 311.

62. Before, however, any clause of the second proviso can come into play the condition laid down in it must be satisfied. The condition for the application of each of these clauses is different. In the case of clause (a) a government servant must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led to him being convicted on a criminal charge. In the case of clause (b) the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. In the case of clause (c) the President or the Governor of a State, as the case may be, must be satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry. When these conditions can be said to be fulfilled will be discussed later while dealing separately with each of the three clauses. The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311 (2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry. The extent to which a government servant can be denied his right to an inquiry formed the subject-matter of considerable debate at the Bar and we, therefore, now turn to the question whether under the second proviso to Article 311(2) even though the inquiry is dispensed with some opportunity at least should not be afforded to the government servant so that he is not left wholly without protection, As most of the arguments on this part of the case were common to all the three clauses of the second proviso, it will be convenient at this stage to deal. at one place with all the arguments on this part of the case, leaving aside to be separately dealt with the other arguments pertaining only to a particular clause of the second proviso.

The Extent of Denial of Opportunity under the_Second Proviso

63. It was submitted on behalf of the government servants that an inquiry consists of several stages and, therefore, even where by the application of the second proviso the full inquiry is dispensed with, there is nothing to prevent the disciplinary authority from holding at least a minimal inquiry because no prejudice can be caused by doing so. It was further submitted that even though the three clauses of the second proviso are different in their content, it was feasible in the case of each of the three clauses to give to the government servant an opportunity of showing cause against the penalty proposed to be imposed so as to enable him to convince the disciplinary authority that the nature of the misconduct attributed to him did not call for his dismissal, removal or reduction in rank. For instance, in a case falling under clause (a) the government servant can point out that the offence of which he was convicted was a trivial or a technical one in respect of which the criminal court had taken a lenient view and had sentenced him to pay a nominal fine or had given him the benefit of probation. Support for this submission was derived from Challappan's case (AIR 1975 SC 2216). It was further submitted that apart from the opportunity to show cause against the proposed penalty it was also feasible to give a further opportunity in the case of each of the three clauses though such opportunity in each case may not be identical. Thus, it was argued that the charge-sheet or at least a notice informing the government servant of the charges against him and calling for his explanation thereto was always feasible. It was further argued that though under clause (a) of the second proviso

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an inquiry into the conduct which led to the conviction of the government servant on a criminal charge would not be necessary, such a notice would enable him to point out that it was a case of mistaken identity and he was not the person who had been convicted but was an altogether different individual. It was urged that there could be no practical difficulty in serving such charge-sheet to the concerned government servant because even if he were sentenced to imprisonment, the charge sheet or notice with respect to the proposed penalty can always be sent to the jail in which he is serving his sentence. So far as clause (b) is concerned, it was argued that even though it may not be reasonably practicable to hold an inquiry, the explanation of the government servant can at least be asked for with respect to the charges made against him so that he would have an opportunity of showing in his written reply that he was not guilty of any of those charges. It was also argued that assuming such government servant was absconding the notice could be sent by registered post to his last known address or pasted there. Similar arguments as in case of clause (b) were advanced with respect to clause (c). It was submitted that the disciplinary authority could never make up its mind whether to dismiss or remove or reduce in rank a government servant unless such minimal opportunity at least was afforded to the government servant. Support for these contentions was sought to be derived from (1) the language of Article 311 (2) and the implications flowing therefrom, (2) the principles of natural justice including the audi alteram partem rule comprehended in Article 14,and (3) the language of certain rules made either under Acts referable to Article 309 or made under the proviso to that Article. We will consider the contentions with respect to each of these bases separately.

64. So far as Article 311(2) was concerned, it was said that the language of the second proviso did not negative every single opportunity which could be afforded to a government servant under different situations though the nature of such opportunity may be different depending upon the circumstances of the case. It was further submitted that the object of Article 311(2) was that no government servant should be condemned unheard and dismissed or removed or reduced in rank without affording him at least some chance of either showing his innocence or convincing the disciplinary authority that the proposed penalty was too drastic and was uncalled for in his case and a lesser penalty should therefore, be imposed upon him. These arguments, though attractive at the first blush, do not bear scrutiny.

65. The language of the second proviso to Article 311(2) read in the light of the interpretation placed upon clause (2) of Article 311 as originally enacted and the legislative history of that clause wholly rule out the giving of any opportunity. While construing Ruler 55 of the Civil Services (Classification, Control and Appeal) Rules and the phrase "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" occurring in sub-section (3) of section 240 of the Government of India Act, 1935, the Judicial Committee of the Privy Council in Lall's Case (75 Ind App 225): AIR 1948 PC 121) stated as follows (at pages 242-3) : at Pp. 126-27 of AIR) :

".....sub-s.(3) of S. 240 was not intended to be, and was not,. a reproduction of R. 55, which was left unaffected as an administrative rule. Rule 55 is concerned that the civil servant shall be informed of the grounds on which it is proposed to take action,' and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked contrast to the statutory provision of a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges and the actual punishment to follow is provisionally determined on. Before that stage, the charges are unproved and 'the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which sub-s. (3) makes provision. Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage, if the civil, servant has been through an inquiry under R. 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry. On

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this view of the proper construction of sub- s. (3) of S. 240, it is not disputed that the respondent has not been

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given the opportunity to which he is entitled thereunder, and the purported removal of the respondent on August 10, 1940, did not conform to the mandatory requirements of sub-s. (3) of S, 240, and was void and inoperative"

66. The very phrase "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" in sub- section (3), of section 240 of the Government of India Act, 1935, was repeated in clause (2) of Article 311 as originally enacted, that is, in the said clause prior to its amendment by the Constitution (Fifteenth Amendment) Act, 1963. Approving the construction placed by the Judicial Committee upon this phrase, this Court in Khem Chand v. Union of India (1958) SCR 1080 : (AIR 1958 SC 300) held as follows (at pp. 1095-97 of SCR) : (at Pp. 306-7 of AIR) :

"It is true that the provision does not, in terms, refer to different stages at which opportunity is to be given to the officer concerned. All that it says is that the government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. He must not only be given an opportunity but such opportunity must be a reasonable one: In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite obviously necessary that the government servant should have the opportunity, to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. Both these pleas have a direct bearing on the question of punishment and may well be put forward in showing cause against' the proposed punishment. If this is the correct meaning of the clause, as we think it is, what consequences follow? If it is open to the government servant under this provision to contend, if that be the fact, that he is not guilty of any misconduct then how can he take that plea unless he is told what misconduct is alleged against him? If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against, him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause; but this does not exhaust his rights, In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have anopportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser" punishments ought to be sufficient in his case.

To summarise : the reasonable opportunity envisaged by the provision, under consideration includes-

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant. In short the substance of the protection provided by rules, like R. 55 referred to above, was bodily lifted out of the rules and together

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with an additional opportunity embodied in S. 240 (3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Art. 311 (2) so as to convert the protection into a constitutional safeguard."

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67. While the Judicial Committee in Lalls case (AIR 1948 PC 121) held that two opportunities were required one under rule 55 of the Civil Services (Classification, Control and Appeal) Rules to show cause against the charges of misconduct made against a government servant, and the other under subsection (3) of section 240 of the Government of India Act, 1935, to show cause against the proposed penalty, this Court in Khem Chand's case (AIR 1958 SC 300) held that Article 311 (2) bodily lifted the said rule 55 and the additional opportunity provided for in section 240(3) of the 1935 Act and incorporated these provisions in Article 311(2) so as to convert the protection afforded to government servants into a constitutional safeguard This conclusion was reached by this Court even though Article 311(2) used the same language as section 240(3). The Constitution (Fifteenth Amendment) Act, 1963, substituted the whole of clause (2). The substituted clause specifically provided for two opportunities to be given to a government servant: (1) to be informed of the charges against him and to be given a reasonable opportunity of defending himself against those charges, and (2) a reasonable opportunity of making representation on the penalty proposed where after such inquiry it was proposed to impose on him the penalty of dismissal, removal or reduction in rank. No additional rights were, however, conferred upon government servants by the above amendment because it merely declared the fights which a government servant already possessed under the original clause (2) of Article 311 as interpreted by this Court in Khem Chand's Case. This amendment, therefore, was merely declaratory, but in a way it was also clarificatory because it restricted the right of representation on the proposed penalty to a representation only on the basis of the evidence adduced during the inquiry. This clarification perhaps became necessary because as pointed out by this Court in Suresh Koshy George v. University of Kerala, (1969) 1 SCR 317, 326: (AIR 1969 SC 198 at p. 204) there prevailed an erroneous impression in certain quarters, evidently influenced by the provisions of the unamended Article 311(2) that every disciplinary proceeding must consist of two inquiries, one before issuing a show cause notice to be followed by another inquiry thereafter. This amendment, therefore, made it expressly clear that the inquiry to be held against a government servant was to be one in which a charge-sheet or a show-cause notice was to be issued to him informing him of the charges against him and giving him a reasonable. opportunity of. being heard in respect of those charges and a further opportunity of making representation on the penalty proposed to be imposed on him but only on the basis of the evidence adduced during such inquiry. The substituted clause, therefore, showed that the issue of a charge sheet or a show-cause notice in respect of the charges framed against a government servant and a notice to show cause against the proposed penalty, were part of the inquiry contemplated by Article 311(2). Even assuming for the sake of argument that because Article 311(2), as substituted by the Constitution (Fifteenth Amendment) Act, spoke of "a reasonable opportunity of making representation on the penalty proposed" in a case "where it is proposed, after such inquiry, to impose on him any such penalty", the show cause notice with respect to penalty was not a part of the inquiry, the opening words of the proviso to clause (2) (now the second proviso to that clause) namely, "Provided further that this clause shall not apply", would, where any of the three clauses of the said proviso applies, take away both the right to have an inquiry held in which the government servant would be entitled to a charge-sheet as also the right to make a representation on the proposed penalty. As mentioned above, the words "this clause shall not apply" are the keywords in the second proviso and govern each and every clause thereof and by reason of these words not only the holding of an inquiry but all the provisions of clause (2) have been dispensed with.

68. The question which then arises is, Whether the Constitution (Forty-second Amendment) Act, 1976, which further amended substituted clause (2) of Article 311 with effect from 1st January 1977, has made any change in the law?" The amendments made by this Act are that in clause (2) that portion which required a reasonable opportunity of making

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representation on the proposed penalty to be given to a government servant was deleted and in its place the first proviso was inserted, which expressly provides that it is not necessary to give to a delinquent government servant any opportunity of making representation on the proposed penalty. Does this affect the operation of the original proviso which, by the Constitution (Forty-second Amendment) Act, became the second proviso? Such obviously was not and could not have been the, intention of Parliament. The opening words of the second

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proviso remain the same except that the word 'further' was inserted after the word 'Provided', because the original proviso by reason of the insertion of another proviso before it became the second proviso. It should be borne in mind that the show-cause notice at the punishment stage was originally there as a result of the interpretation placed by the Judicial Committee in Lall's Case (AIR 1948 PC 121) and by this Court in Khem Chand's Case (AIR 1958 SC 300) upon the phrase "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him". Clause (2) as substituted by the Constitution (Fifteenth Amendment) Act merely reproduced the substance of what was held in Khem Chand's Case. The words which originally found a place in clause (2), "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him", do not any more feature in clause (2). All that clause (2) now provides is an inquiry in which the government servant is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Clause (2), taken by itself even without the first proviso does not provide; expressly or impliedly, for any opportunity to make a representation against the proposed penalty. After the Constitution (Fifteenth Amendment) Act this second opportunity formed a separate part of clause (2), which part was deleted by the Constitution (Forty-second Amendment) Act. Thus, when the second proviso states in its opening words that "Provided further that this clause shall not apply", it means that whatever safeguards are to be found in clause (2) are wholly taken away in a case where any of the three clauses of the second proviso is attracted. In this connection, the following observations of this Court in the case of Suresh Koshy George v. University of Kerala (1969) 1 SCR 317 at pages 326-7 :(AIR 1969 SC 198 at P. 204) are pertinent:

"There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Art. 311 of the Constitution particularly as they stood before the amendment of that article that every disciplinary proceeding must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course."

In Associated Cement Companies Ltd. v. T. C. Shrivastava (1984) 3 SCR 361, 369: (AIR 1984 SC 1227 at P. 1230), this Court held that "neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary". Since a right to such opportunity does not exist in law, it follows that the only right which the government servant had to make a representation on the proposed penalty was to be found in clause (2) of Article 311 prior to its amendment by the Constitution (Forty-second Amendment) Act. This right having been taken away by the Constitution (Forty-second Amendment) Act, there is no provision of law under which a government servant can claim this right.

69. As for the argument that in a case under clause (a) of the second proviso a government servant could be wrongly dismissed, removed or reduced in rank mistaking him for another with the same name unless, he is given an opportunity of bringing to the notice of the disciplinary authority that he is not the individual who has been convicted, it can only be described as being too fanciful and far-fetched for though such a case of mistaken identity may be hypothetically possible, it is highly improbable. As in all other organizations, there is in government service an extremely active grapevine, both departmental and interdepartmental, which is constantly active, humming and bumming with service news and office gossip, and it would indeed to strange if the news that a member of a department was facing prosecution or had been convicted were' to remain a secret for long. Assuming such a case occurs, the government servant is not without any remedy. He can prove in a departmental appeal which service rules provide

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for, save in exceptional cases, that he has been wrongly mistaken for another, Similarly, it not possible to accept the argument that unless a written explanation with respect to the charge is asked for from a government servant and his side of the case known, the penalty which would be imposed upon him, could be grossly out of proportion to his actual misconduct The disciplinary authorities are expected to act justly and fairly after taking into account all the facts and circumstances of the case and if they act arbitrarily and impose a penalty which is unduly excessive, capricious or vindictive, it can be set aside in a departmental appeal. In any event, the remedy by way of judicial review is always open to a government servant.

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70. The position which emerges from the above discussion is that the keywords of the second proviso govern each and every clause of that proviso and leave no scope for any kind of opportunity to be given to a government servant. The phrase "this clause shall not apply" is mandatory and not directory. It is 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 government servant. There is thus no scope for introducing into the second proviso sonic kind of inquiry or opportunity 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. As pointed out by this Court in B. Shankara Rao Badami v. State of Mysore (1969) 3 SCR 112 : (AIR 1969 SC 453 at P. 459). this well-known maxim is a principle of logic and common sense and not merely a technical rule of construction. The second proviso expressly mentions that clause (2) shall not apply where one of the clauses of that proviso becomes applicable. This express mention excludes everything that clause (2) contains and there can be no scope for once again introducing the opportunities provided by clause (2) or any one of them into the second proviso. In Atkinson v. United States of America Government 1971 AC 197 Lord Reid said (at page 232):

"it is now well recognised that the court has power to expand procedure laid down by statute if that is necessary to prevent infringement of natural justice and is not. plainly contrary to the intention of Parliament."

Here, however, the attempt is not merely to do something contrary to the intention of "Parliament", that is, in our case, the Constituent Assembly, but to do something contrary to an express prohibition contained in the Constitution. The conclusion which flows from the express language of the second proviso is inevitable and there is no escape from it. It may appear harsh but, as mentioned earlier, the second proviso has been inserted in the Constitution as a matter of policy and in public interest and for public good just as the pleasure doctrine and the safeguards for a government servant provided in clauses (1) and (2) of Article 311 have been. It is in public interest and for public good that a government servant who has been convicted of a grave and serious offence or one rendering him unfit to continue in office should be, summarily dismissed or removed from service instead of being allowed to continue in it at public expense and to public detriment. It is equally in public interest and for public good that where his offence is such that he should not be permitted to continue to hold the same rank, that he should be reduced in rank. Equally, where a public servant by himself or in concert with others has brought about a situation in which it is not reasonably practicable to hold an inquiry and his conduct is such as to justify his dismissal, removal or reduction in rank, both public interest and public good demand that such penalty should forthwith and summarily be imposed upon him; and similarly, where in the interest of the security of the State it is not expedient to hold an inquiry, it is in the public interest and for public good that where one of the three punishments of dismissal, removal or reduction in rank is called for, it should. be summarily imposed upon the concerned government servant. It was argued that in a case falling under clause (b) or (c), a government servant ought to be placed under suspension until the situation improves or the danger to the security of the State has passed, -as the case may be, and it becomes possible to hold an inquiry. This argument overlooks the fact that suspension involves the payment at least of subsistence allowance and such allowance is paid at public expense, and that neither public interest would be benefited nor public good served by placing such government servant

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under suspension because it may take a considerable time for the situation to improve or the danger to be over. Much as this may seem harsh and oppressive to a government servant, this Court must not forget that the object underlying the second proviso is public policy, public interest and public good and the Court, must, therefore, repel the temptation to be carried away by feelings of commiseration and sympathy for those government servants who have been dismissed, removed or reduced in rank by applying the second proviso. Sympathy and commiseration cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a Constitutional prohibition. The Court must bear in mind that the second proviso has been in the Constitution since it was originally enacted. It was not blindly or slavishly copied from section 240(3) of the Government of India Act, 1935. Article 311 was Article 282-B of the draft Constitution of India and the draft Article 282-B was discussed and a considerable debate took place on it in the

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Constituent Assembly (see the Official Report of the Constituent Assembly-Debates, Vol. IX, pages 1099 to 1116). The greater part of this debate centred upon the proviso to clause (2), of the draft Article 282-B, which is now the second proviso to Article 311. Further, the Court should also bear in mind that clause. (c) of the second proviso and clause (3) of Article 311 did not feature in section 240 of the Government of India Act, 1935, but were new provisions consciously introduced by the Constituent. Assembly in Article 311. Those who formed the Constituent Assembly were not the advocates of a despotic or dictatorial form of government. They were the persons who enacted into our Constitution the Chapter on Fundamental Rights. The majority of them had fought for freedom and had suffered imprisonment in the cause of liberty and they, therefore, were not likely to introduce into our Constitution any provision from the earlier Government of India Acts which had been intended purely for the benefit of a foreign imperialistic power. After all, it is not as if a government servant is without any remedy when the second proviso has been applied to him. There are two remedies open to him, namely, departmental appeal and judicial review. The scope and extent of these remedies will be considered later in the course of this judgment. Article 14 and the Second Proviso.

71. The next question which falls to be considered is, "Does Article 14 make any difference to the consequences which flow from the second proviso to Article 311(2)?" It was submitted on behalf of the government servants that Article 14 in which the principles of natural justice are comprehended permeates the entire Constitution and, therefore, Article 14 must be read into the second proviso to Article 311 (2) and accordingly, if not under that proviso read by itself, under it read with Article 14 a government servant is entitled to an opportunity both of showing cause against the charges made against him as also against. the penalty proposed to' be imposed upon him:, though such opportunity may not extend to the holding of a complete and elaborate inquiry as would be the case where clause(2) of Article 311 applies; According to learned Counsel this is what is required by the audi alteram partem rule which is one of the two main principles of natural justice. In the alternative it was submitted that though an order may be valid and supportable under the second. proviso to Article 311(2), it could none the less be void under Article 14 on the ground that the principles of natural justice have been wholly disregarded. These arguments are based upon an imperfect understanding of the principles of natural justice in their application in courts of law to the adjudication of causes before them and the function of Article 14 vis-a-vis the other provisions of the Constitution and particularly the second proviso to Article 311(2).

72. The principles of natural justice are not the creation of Article 14. Article 14 is not their begetter but their Constitutional guardian. Principles of natural justice trace their ancestry to ancient civilizations and centuries long past. Until about two centuries ago the term "natural justice" was often used interchangeably with "natural law" and at times it is still so used. The expression "natural law" has been variously defined. In. Jowitt's Dictionary of, English Law (Second Edition, page 1221) it is defined as "rules derived from God, reason or nature, as distinct from man-made law." Black's Law Dictionary (Fifth Edition, page 925) states :

"This expression, 'natural law,' or jus naturale, was largely used in the philosophical speculations of the Roman jurists of the Antonine age, and was intended to denote a

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system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his nature, meaning by that word his whole mental, moral, and physical constitution. The point of departure for this conception was the Stoic doctrine of a life ordered 'according to nature, which in its .turn rested upon the purely supposititious existence, in primitive. times, of a state of nature; that is, a condition of society in which men universally were governed, solely by a rational and consistent obedience to the needs, impulses, and promptinigs of their true nature, such nature being as yet undefaced by dishonesty, falsehood, or indulgence of the baser passions. In ethics, it consists in practical universal judgments which man himself elicits. These express necessary and obligatory rules of human conduct which have been established by the author of human nature as essential to the divine purposes in the universe and have been promulgated by God solely through. human reason."

73. There are certain basic values which man has cherished throughout the ages. But man looked about him and

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found the ways of men to be cruel and unjust and so also their laws and customs. He saw men flogged, tortured, mutilated, made slaves, and sentenced to row the galleys or to toil in the darkness of the mines or to fight in an arena with wild and hungry beasts of the jungle or to die in other ways a cruel, horrible and lingering death. He found judges to be venal and servile to those in power and the laws they administered to be capricious, changing with the whims of the ruler to suit his propose. When., therefore, he found a system of law which did not so change, he praised it. Thus, the Old Testament in the Book of Esther (I, 19) speaks admiringly of the legal system of the Achaemenid dynasty (the First Persian Empire) in which "a royal commandment" was, "written among the laws of the Persians and the Medes, that it be not altered." Man saw cities and towns sacked and pillaged, their populace dragged into captivity and condemned to slavery the men to labour, the women and the girls to concubinage, and the young boys to be castrated into eunuchs their only crime being that their ruler had the misfortune to be defeated in battle and to lose one of his cities or towns to the enemy. Thus, there was neither hope nor help in man-made laws or man-established customs for they were one-sided and oppressive, intended to benefit armed might and monied power and to subjugate the down-trodden poor and the helpless needy. If there was any help to be found or any hope to be discovered, it was only in a law based on justice and reason which transcended the laws and customs of men, a law made by someone greater and mightier than those men who made these laws and established these customs. Such a person could only be a divine being and such a law could only be "natural law" or "the law of nature" meaning thereby "certain rules of conduct supposed to be so just that they are binding upon all mankind". It was not "the law of nature" in the sense of "the law of the Jungle" where the lion devours the lamb and the tiger feeds upon the antelope because the lion is hungry and the tiger famished but a higher law of nature or "the natural law" where the lion and the lamb lie down together and the tiger frisks with the antelope.

74. Most, if not all, jurists are agreed that "reason" and "the nature of man" constitute the fountain-head of natural law but there is a considerable divergence of opinion amongst them as also amongst philosophers about the nature and meaning of that law and its relation to positive law. Among the ancient Greeks the Sophists, Aristotle in his treatises on "Logic" and "Ethics", and the Stoics developed different theories. The theory propounded by Aristotle in his "Logic" adhered substantially to the point of view of the Sophists, namely, that man is a natural creature but is also endowed with reason. Later, in his "Ethics", Aristotle came to distinguish between natural and legal or conventional justice and postulated that natural law had authority everywhere and was discoverable by the use of reason. The ancient Romans were not given to philosophical speculations or creative originality in art. They preferred to borrow these from the Greeks. The Romans were a hard-headed, practical race of conquerors, administrators and legislators. Roman jurists, therefore, used the concept of natural law-, that is, jus naturale (or His naturale as the Romans wrote it because Roman alphabet had no letter "J" or "j" in it) to introduce into the body of law those parts of laws and customs of foreigners, that is, non-Roman people with whom they came

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in commercial contract or whom they subjugated. The rules which the Romans borrowed from these laws and customs were those which were capable of general application and they developed them into general legal principles, which came to form jus gentium or the law of nations. In doing so they acted upon the principle that any rule of law which was common to the nations (gentes) they knew of must be basically in consonance with reason and, therefore, fundamentally just. They applied jus gentium to those to whom ius civil (civil law) did not apply, that is, in cases between foreigners or between a Roman citizen and a foreigner. On this basic formulation that what was common to all known nations must be in consonance with reason and justice, the Roman jurists and magistrates proceeded to the theory that any rule which instinctively commanded itself to the sense of justice and reason would be part of the jus gentium. The jus gentium of the Romans was different from what we call international law and should not be confused with it, for the scope of the jus gentium was much wider than our international law. Because of the theory of its identity with justice and reason, the term "jus gentium" came at times to be used for aequitas, that is, equity as understood by the Romans, which was the basis of praetorian law or the power of the praetors to grant remedies where none existed under the jus civile. In the Dark Ages the expression "natural law" acquired a theological base and the Fathers of the Church, particularly St. Ambrose, St. Augustine and St. Gregory, held the belief that it was the function of the Church to bring about the best possible

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approximation of human laws to Christian principles. As Europe emerged from the Dark Ages in about the ninth century, Christianity became substituted for reason as the. supreme force in the universe, and this led to the development of a theory of law in which Christianity had the supreme spiritual and legal force and was superior-to all other laws, with the Church as the authentic expositor of the law of nature. Gratian (Francisco Graziano) in the twelfth century in his "Decretuni" or "Concordia discordantium canonum" considered the law of nature as part of the law of God. According to St. Thomas Aquinas (1226-74), natural law was derived from the law of God which was supreme and such of it as was intelligible to men was revealed through Church law as the incorporation of divine wisdom. Thus ,according to this theory, natural law was that part of divine law which revealed itself in natural reason, and man as a reasonable being applied this part of divine law to human affairs. This theory, though it upheld the supreme authority of the Church, made some concession to the authority of the Emperor, that is, the Holy Roman Emperor. Dante in his "De Monarchia" championed the supremacy of the Holy Roman Empire as against the Church on the ground that the Emperor was the legitimate successor of the Roman people and was chosen by God to rule the world. The authority of the law of nature or natural law was repeatedly sought support from during the centuries which saw the struggle for supremacy between the Popes and the General Councils of the Church and between the Popes and the Emperors and later in the struggle between the Catholics and the Protestants. Both sides in these conflicts found in natural law the interpretation of scriptural texts which supported their respective views and were, therefore, according to them, the true interpretation. Bracton, in the thirteenth century, however, considered natural law as that which nature, that is, God, teaches to all animals, and though he tried to reconcile natural law with human law, he acknowldged the difficulty of doing so because he found rules of positive law which' could hardly be so reconciled.

75. Natural law was also seized upon as furnishing arguments in the struggle between the judges and Parliament for supremacy which took place in the seventeenth century. Coke in Dr. Bonhams Case (1610) 8 Co., Rep. 113b, 118. said by way of obiter, "when an Act of Parliament is against common right or reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such Act to be void." There were later assertions to the same effect until the supremacy of Parliament and the legislation enacted by it became firmly established in 1688. However, in British Railways Board v. Pickin 1974 AC 765, sub nomine Pickin v. British Railways Board (1972 (3) WLR 824) the argument was once again advanced before the House of Lords that a court was entitled to disregard a provision in an Act of Parliament and a distinction was sought to be drawn for this purpose between a public Act and a private Act. Referring to the

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argument on this Point, Lord Reid observed (at page 782) :

"In earlier times many learned lawyers seem to have believed that an Act of Parliament could be disregarded in so far as it was contrary to the law of God or the law of nature or natural justice, but since the supremacy of Parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete."

Rejecting the above argument, the House of Lords unanimously held that the function of the court was to consider and apply the enactments of Parliament, and accordingly, in the course of litigation, it was not lawful to impugn the validity of a statute by seeking to establish that Parliament, in passing it, was misled by fraud or otherwise, nor might a litigant seek to establish a claim in equity by showing. that the other party, by fraudulently misleading Parliament, had inflicted damage on him; for any investigation into the manner in which Parliament had exercised its function would or might result in an adjudication by the courts, bringing about a conflict with Parliament.

76. As a result of the infusion of new ideas during the Renaissance and the Reformation, the intellectual authority of reason again came to be substituted for the spiritual authority of divine law as the basis of natural law. This new or rather resuscitated basis of natural law was laid by Grotius (Huigh de Groot) in his "De Jure Belli ac Pacis" the precursor of modern public international law.

77. Reason as the theoretical basis for natural law, however, once again suffered a reversal at the hand of David Hume. According to Hume, only knowledge obtained by mathematical reasoning was certain; knowledge obtained from other sciences being only probable. His theory of justice was that it served both an ethical and a

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sociological function. He contended that public utility was the sole origin of legal justice and the sole foundation of its merit, and that for a legal system to be useful, it must adhere to its rules even though it may cause injustice in particular cases. He did not make a formal analysis of law but distinguished equity or the general system of morality, the legal order, and law, as a body of precepts. According to him, the authority of civil law modified the rules of natural justice according to the particular convenience of each community.

78. Blackstone, however, in his, "Commentaries on the Laws of England" had this to say about natural law:

"This law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times : no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original."

79. In the nineteenth and twentieth centuries there was a reaction against natural law as the basis of law. The French Revolution had enthrowned reason as a goddess. The excesses of the French Revolution, however, led to a reaction against the theory that reason was the basis of law. The utilitarian view was that the basis for law was the practical inquiry as to what would most conduce to the general benefit. The spirit of scientific inquiry which pre-dominated the nineteenth and twentieth centuries could not favour hypotheses which were vague and unprovable. In the twentieth century, disillusionment with the theory that good could come out of the power of the State and positive law has, however, once again brought about a revival of interest in natural law.

80. Apart from providing the subject-matter for philosophical dissertations and speculative theories on the origin and attributes of natural law, the concept of natural law has made invaluable contribution to the development of positive law. It helped to transform the rigidity of the jus civile of the Romans into a more equitable system based on the theory of the jus gentium. It provided arguments to both sides in the struggle during the Middle Ages between the Popes and the Emperors. It inspired in the eighteenth century the movement for codification of law in order to formulate ideas derived from the concept of natural law into detailed rules. In England, the idea of natural law and natural justice has influenced its law in several respects. The origin and development of equity in England owed much to natural law. It also served as the basis for the recognition or rejection of a custom. It was looked to for support in the struggle for supremacy which

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took place between the judges and Parliament in the seventeenth century. The concept of natural law and natural rights influenced the drafting of the Constitution of the United States of America and many of the amendments made thereto as also the Constitutions of its various States, It has provided a basis for much modem international law and International Conventions, Covenants and Declarations. Above all, it has enriched positive law by introducing into it the principles of natural justice, divested of all their philosophical, metaphysical and theological. trappings and disassociated from their identification with, or supposed derivation from, natural law.

81. Natural justice has been variously defined by different judges. A few instances will suffice. In Drew v. Drew and Leburn (1855) 2 Macq. 1, 8. Lord Granworth defined it as universal justice". In James Dunbar Smith v. Her Majesty The Queen (1877-78) 3 App Cas 614,623 JC Sir Robert P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase "the requirements of substantial justice", while in Arthur John Spackman v. The Plumstead District Board of Works(1884- 85) 10 App. Cas -229, 240. Earl of Selbome, L C., preferred the phrase "the substantial requirements of justice". In Voinet v. Barrett (1885) 55 LJRB 39,41 Lord Esher, M. R., defined natural justice as "the natural sense of what is right and wrong". While, however, deciding Hopkins v. Smethwick Local Board of Health (1890) 24 QBD 712,716. Lord Esher, M. R., instead of using the definition given earlier by him in Voinet v. Barret chose to define natural justice as "fundamental justice". In Ridge v. Baldwin, (1963) 1 QB 539, 578 Harman, LJ, in the Court of Appeal equated natural justice with "fair play in action", a phrase favoured by Bhagwati J 'in Maneka Gandhi v. Union of India (1978) 2 SCR 621,676: (AIR 1978 SC 597 at Pp. 625-26). in re H. K. (An Infact) (1967) 2 QB 617, 630 Lord Parker, C. J., preferred to describe natural justice as "a duty to act fairly" In Fairmount Investments Ltd. v. Secretary of State for the Environment (19176) 1WLR 1255, 1265-66 Lord Russell of Killowen somewhat picturesquely described natural justice as "A fair crack of the whip", while Geoffrey Lane, LJ, in Regina v. Secretary of State for Home Affairs,

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Ex parte Hosenball (1977) 1 WLR 766, 784 preferred the homely phrase "common fairness".

82. As some judges for instance, Ormond LJ, in Lewis v. Heffer, (1978) 1 WLR 1061.1076 have found the phrase "natural justice" to be "a highly attractive and potent phrase", it may not be out of place, in order to set the balance right, to reproduce a passage,, full of robust common sense and biting irony, from the judgment of Maugham, J., in Maclean v. Workers' Union (1929) 1 Ch. 602,624.That passage is as follows:

".Eminent judges have at times used the phrase 'the principles of natural justice'. The phrase is, of course, used only in a popular sense and must not be taken to mean that there is any justice natural among men. Among most savages there is no such thing as justice in the modern sense. In ancient days, a person wronged executed his own justice. Amongst our own ancestors, down to the thirteenth century, manifest felony, such as that of a manslayer taken with his weapon, or a thief with the stolen goods, might be punished by summary execution without any form of trial. Again every student has heard of compurgtion and of ordeal; and it is hardly necessary to observe that (for example) a system of ordeal by water in which sinking was the sign of innocence And floating the sign of guilt, a system which lasted in this country for hundreds of years, has little to do with modern ideas of justice. It is unnecessary to give further illustrations. The truth is that justice is a very elaborate conception, the growth of many centuries of civilization; and even now the conception differs widely in countries usually described as civilized."

In the Supreme Court of Ireland, Black, J., in William Green v. Isidore J. Blake (1948) IR 242, after referring to the above passage from the judgment of Maugham, J., proceeded. to state (at page 268):

"I agree but what then does it mean? We may, if we choose, describe as 'natural' every evolutionary advance in our conception of justice. But for me, natural justice means no more than justice without any epithet. I take the essential of justice to mean those desiderata which, in the existing stage of our mental and moral development, we regard as essential, in contra-distinction from the many extraprecautions, helpful to justice, but not indispensable to it , which,by their rules of evidence and procedure, our Courts have made obligatory in actual trials before themselves

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Many advanced; peoples have legal systems which do not insist on all these extra precautions, yet we would hardly say that they disregard the essentials of justice."

Megarry, J., also found it necessary to sound a note of warning in Hounslow London Borough Council v. Twickenham Garden Developments Ltd.(1971) Ch.233. wherein he said (at page 259):

"The priniciples of natural justice are of wide application and great importance, but they must be confined within proper limits and not allowed to run wild"

(Emphasis supplied)

83. Some judges have been faced with the contention as Maugham, L. J., was in Errington v. Minister of Health (1935) 1 KB 249, 280 that "the principles of natural justice are vague and difficult to ascertain". Referring to such contentions Lord Reid said in Ridge v. Baldwin (1964) AC 40, on appeal from LR (1963) 1 QB 539 (at page 64-65) :

"In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist. The idea of negligence is equally insusceptible of exact definition, but what a reasonable man would regard as fair procedure in particular circumstances and what he would regard as negligence particular circumstances are equally capable of serving as tests in law, and natural justice as it has been interpreted in the courts in much more definite than that. It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been, sought to apply the principle."

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(Emphasis supplied.)

84. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing' the principles of natural justice in judicial process including there in quasi-judicial and administrative processes. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria "causas" as stated in (1605) 12 Co. Rep. 114, that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa quia non potest esse judex et pars" (Co. Litt. 141 a), that is, "no man ought to be a judge in his own cause, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule and that is the rule, with which we are concerned in these Appeals and Writ Petitions is "audi alteram partem", that is, "hear the other side". At times and Particularly in continental countries the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely, "qui aliquid statuerit parte inaudita altera, aequum licet dixerit, haud aequum fecerit", that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right" (see Boswell's Case (1605) 6 Co. Rep. 48b, 52a,) or, in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done".

85. The above two rules and their corollary are neither new nor were they the discovery of English Judges. They were recognized in many civilizations and over many centuries. Roman Law recognized the need for a judge to be impartial and not to have a personal interest in the case before him (Digest V. 1. 17) and Tacitus in his "Dialogus" referred to this principle. Under Roman law a judge who heard a cause in which he had an interest was liable as on a quasi-delict to the party prejudiced thereby (Justinian's Institutes IV, 5 pr.; as also Justinians Codex III, 5, 1). Even the Kiganda tribesmen of Buganda have an old proverb which literally translted means "a monkey does not decide an affair of the forest (see "Law and justice in Buganda" by E. S. Haydon, P. 333). The requirement of he arriving both sides before at a decision was. part of the

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judicial oath in Athens. It also formed the subject-matter of a proverb which was often referred to or quoted by Greek playwrights, as for instance, by Aritophanes in his comedy "The Wasps" and Euripides in his tragedies "Heracleidae" and "Andromache", and by Greek orators, for instance, Demosthenes in his speech "De Corona". Among the Romans, Seneca in his tragedy "Medea" referred to the injustice of coming to a decision without a full hearing. In fact, the corollary drawn in Boswell's Case (1605-6 Co. Rep 48b) is taken from a line in Seneca's "Medea". In the Gospel according to St. John (vii, 51), Nicodemus asked the chief priests and the Pharisees, "Doth our law judge any man, before it hear him, and know what he doeth?" Even the proverbs and songs of African tribesmen, for instance, of the Lozi tribe in Barotseland refer to this rule (see "The Judicial Process Among the Barotse of Northern Rhodesia" by Max Gluckman, p. 102).

86. The two rules "nemo judex in causa sua" and "audi alteram partem" and their corollary that justice should not only be done but should manifestly be seen to be done have been recognized from early days in English courts. References to them are to be found in the Year Books - a title preferred to the alternative one of "Books of Years and Terms" - which were a regular series, with a few gaps, of law reports in Anglo-Norman or Norman French or a mixture of English, Norman - French and French, which had then become the court language, from the 1270s to 1535 or, as printed after the invention of the printing press, from 1290 to 1535, that is, from the time of Edward II to Henry VIII. The above principles of natural justice came to be firmly established over the course of centuries and have become a part of the law of the land. Both in England and in India they apply to civil as well as to criminal cases and to the excercise of judicial, quasi-judicial and administrative powers. The expression "natural, justice is now so well understood in England that it has been used without any definition in statutes of Parliament, for example, in section 3(10) of the Foreign Compensation Act, 1969, and section 6(13) of the Trade

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Union and Labour Reforms Act, 1974, which was later repealed by the Trade Union and Labour Relations (Amendment) Act, 1976. These rules of natural justice have been recognized and given effect to in many countries and different system of law. They have now received international recognition by being enshrined in Article 10 of the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations by Resolution 217A (III) of December 10, 1948. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which came into force on September 3, 1953, and Article 14 of the International Covenant on Civil and Political Rights adopted by the General Assembly Resolution 2200A (XXI) of December 16, 1966 which came into force on March 23, 1976.

87. Article 14 does not set out in express terms either of the above two well-established rules of natural justice. The question which then arises is "Whether the rules of natural justice form part of Article 14 and, if so, how?"

88. Article 14 of the Constitution provides as follows :

"14. Equality before law. -

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 14 thus contains an express constitutional, injunction against the, State as defined in Article 12 prohibiting the State from denying to any person (1) equality before the law, or (2) the equal protection of the laws. Neither of these two concepts are new. They are based upon similar provisions in other Constitutions. One instance is section 40(l) of the Constitution of Eire of 1937, which occurs in the Chapter entitled Fundamental Rights in that Constitution. The Constitution of Eire begins on a strong: religious note. It starts by stating :

"In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred.

We, the people of Eire,

Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial ....."

Section 40(1) of that Constitution provides as follows :

"All Citizens shall, as human persons, be held equal before the law.

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This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social functions."

Another instance is Article 3(1) of the Constitution of the Federal Republic of Germany of 1948 which states:

"All persons shall be equal before the law."

Yet another instance is section 1 of the Fourteenth Amendment to the Constitution of the United States of America which reads:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Constitutions of some other countries also have similar provisions but as these Constitutions have suffered political vicissitudes, it is unnecessary to refer to them. Provisions similar to Article 14 are to be found in

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International Charters and Conventions. Thus, Article 7 of the Universal Declaration of Human Rights of 1948, provides as follows:

"All are equal before the law and are entitled without any discrimination to equal protection of the law."

89. Article 14 is divided into two parts. In Re The Special Courts Bill, 1978 (1979) 2 SCR 476: (AIR 1979 SC 478) Chandrachud C.J., described the two parts of Article, 14 as follows (at page 534) (of SCR) ; (at Pp. 508-9 of AIR) :

"The first part of article 14, which was adopted from the Irish 'Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances."

90. Article 14 contains a guarantee of equality before the law to all persons and a protection to them against discrimination by any law. Sub-clause (a) of clause (3) of Article 13 defines law as follows:

"'law' includes any Ordinance, order,. bye law, rule, regulation, notification, custom or usage having in the territory of India the force of law".

What Article 14 forbids is discrimination by law, that is, treating persons similarly. circumstance differently or treating those not similarly circumstance in the same way or, as has been pithily put, treating equals as unequals and unequals as equals. Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation. The propositions deducible from decisions of this Court on this point have been set out in the form of thirteen propositions in the judgment of Chandrachud, C.J., in In re The Special Courts Bill, 1978 (AIR 1979 SC 478). The first of these propositions which describes the nature of the two parts of Article 14 has been extracted earlier. We are not concerned in these Appeals and Writ Petitions with the other propositions set out in that judgment In early days, this Court was concerned with discriminatory and hostile class legislation and it was to this aspect of Article 14 that its attention was directed. As fresh thinking began to take place oh the scope and ambit of Article 14, new dimensions to this guarantee of equality before the law and of the equal protection of the laws emerged and were recognized by this Court. It was realized that to treat one person differently from another when there was no rational basis for doing so would be arbitrary and thus discriminatory. Arbitrariness can take many forms and shapes but whatever form or shape it takes, it is none the less discrimination. It also became apparent that to treat a person or a class of persons unfairly would be an arbitrary act amounting to discrimination forbidden by Article 14. Similarly, this Court recognized that to treat a person in violation of the principles of natural justice would amount to arbitrary and discriminatory treatment and would violate the guarantee given by Article 14.

91. In State of Andhra Pradesh v. Nalla

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Raja Reddy (1967) 3 SCR 28: (AIR 1967 SC 1458) Subba Rao., C. J., speaking for the Court, said (at page 46) (of SCR) : (At P. 1466 of AIR) :

"Official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of a statutory discrimination one knows where he stands, but the wand of official arbitrariness can be waved in all directions indiscriminately."

92. While considering Article 14 and Article 16. Bhagwati, J.; in E. P. Royappa v. State of Tamil Nadu (1974) 2 SCR 348: (AIR 1974 SC 555) in a passage which has become a classic said (at page 386) (of SCR): (At P. 583 of AIR):

"Art 14 is the genus while Art. 16 is a species Art. 16 gives effect to the doctrine of equality in all matters relating to (public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality

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and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., 'a way of life' and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with in aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view, equality antithet to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment' it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on, relevant principles applicable alike to all similarly situate and it must not be guided by any- extraneous or irrelevant considerations because that would be denial of equality Where the operative., reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

(Emphasis supplied)

93. Bhagwati, J., reaffirmed in Maneka Gandhi's case (AIR 1978 SC 597) what he had said in Royappa's case(AIR 1974 SC 555) in these words (at pages 673-74) (of SCR) : (at P. 624 of AIR) :

"Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. as quasi-judicial inquiry is to arrive at a justdecision and if a rule of natural justice is calculated to secure justice, or to. put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of 'fair play in action is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an ,unjust decision in administrative inquiry may have far more serious consequences than a decision in aquasi-judicial inquiry and hence the rules of natural justice must apply equal We must reiterate here what was pointed out by the majority in E. P. Royappa v. State of Tamil Nadu namely, that 'from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness,which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervade Article 14 like a brooding omnipresence ....."

(Emphasis supplied)

In the course of his judgment in the same case Bhagwati, J., further said (at pages 676-7) (of SCR) : (at P. 626 of AIR):

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"Now, if this be the test of applicability of the doctrine of natural justice; there can be no distinction between a quasi-judicial function and an administrative function for the purpose. The aim of both administrative inquiry as

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well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to. put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of 'fair play in action is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences:"Emphasis *supplied*)

94 In Ajay Hasia v. Khalid Mujib Sehravardi (1981) 2 SCR 79 : (AIR 1981 SC 487) the same learned Judge,, speaking for the Court, said (at pages 100-101) (of SCR) : (at P. 498 of AIR):

"The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evalution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that the Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action."

95. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus : violation of a rule of natural justice results in arbitrariness which is the same as discrimination., where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

96. The rule of natural justice with which we are concerned in these Appeals and Writ Petitions, namely, the audi teram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have, the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence; both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi judicial or administrative inquiry. If we look at clause (2) of, Article 311 in the light of what is stated above, it will be apparent that that clause is merely an express statement of the audi alterarn partem rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that Article by recent decisions of this Court Clause (2) of Article 311 requires that before a government servant is dismissed, removed or reduced in rank, an inquiry must

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be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The nature of the hearing to be given to a government servant under clause (2) of Article 311 has been elaborately set out by this Court in Khem Chand's case (AIR 1958 SC 300) in the passages

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from the judgment extracted above. Though that case related to the original clause (2) of Article 311, the same applies to the present clause (2) of Article 311 except for the fact that now a government servant has no right to make any representation against the penalty proposed to be imposed upon him but, as pointed out earlier, in the case of Suresh Koshy George v. University of Kerala (AIR 1969 SC 198), such an opportunity is not the requirement of the principles of natural justice and as held in Associated Cement Companies Ltd. v. T. C. Shrivastava (AIR 1984 SC 1227) neither the ordinary law of the land nor industrial law requires such an opportunity to be given. The opportunity of showing cause against the proposed penalty was only the result of the interpretation placed by the Judicial Committee of the Privy Council in Lall's case (AIR 1948 PC 121) upon section 240(3) of the Government of India Act, 1935, which was accepted by this Court in Khem Chand's case. If, therefore, an inquiry held against a government servant under clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purpose of invalidating it.

97. Though the two rules of natural justice namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are none the less not statutory rules. Each of these rules yields to and changes with the exigencies of different situations They do not apply in the same mannen to situations which are not alike. these rules are not cast in a rigid mould nor can they be put in a legal strait-jacket They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed. There is no difference in this respect between the law in England and in India. It is unnecessary to refer to various English decisions which have held so. It will suffice to reproduce what Ormond, L.J., said in Norwest Holst Ltd. v. Secretary of State for Trade (1978) 1. Ch. 201. (at page 227) :

"The House of Lords and this court have repeatedly emphasised that the ordinary principles of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case. One of the most important of these circumstances, as has been said throughout the argument, is, of course., the provisions of the statute in question : in this case sections 164 and 165 of the Companies Act 1948."

98. In India, in Suresh Koshy George v. University of Kerala (AIR 1969 SC 198) this Court observed (at page 322) (of SCR): (at P. 201 of AIR):

The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions."

After referring to this case, in A. K. Kraipak v. Union of India (1970) 1 SCR 457 : (AIR 1970 SC 150) Hegde, J., observed (at page 469) (of SCR) : (at P. 157 of AIR)

"What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

99. Again in Union of India v. Col.. J. N. Sinha (1971) 1 SCR 791 : (AIR 1971 SC 40) it was said (at page 794-5) (of SCR) : (at P. 42 of AIR):

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"As, observed. by this Court in Kraipak v. Union of India 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made In other words they do not supplant the law but supplement it.' It is true that if a statutory

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provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not, depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

100. In Swadeshi Cotton Mills v. Union of India (1981) 2 SCR 533: (AIR 1981 SC 818) Chinnappa Reddy, J., in his dissenting judgment summarized the position in law on this point as follows (at page 591) (of SCR) (at Pp. 846-47 of AIR) :

"The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Binapani (AIR 1967 SC 1269). Kraipak (AIR 1970 SC 150), Mohnider Singh Gill(AIR 1978 SC851), Maneka Gandhi (AIR 1978 SC 597) etc. etc. They are now considered so fundamental as to be 'implicit in the concept of ordered liberty' and, therefore, implicit in every decision making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice be presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced."

(Emphasis supplied.)

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 and Co. v. State of Orissa (1985) 1 SCR 322, 334-5 : (AIR 1984 SC 1572, 1576-7). 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 alteraim partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi's case at page 681 (of (1978) 2 SCR 621 : AIR 1978 SC 597 at P. 629). If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortior 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

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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

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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.

102. In this connection, it must be remembered that a government servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that Article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the President or the Governor of a State because they being the, highest Constitutional functionaries, there can be no higher authority to which an appeal can lie from an order passed by one of them. Thus, where the second proviso applies, though there is no prior opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice. In Maneka Gandhi's case (AIR 1978 SC 597) and in Liberty Oil Mills v. Union of India(1984) 3 SCC 465: (AIR 1984 SC 1271), the right to make a representation after an action was taken was held to be a sufficient remedy, and an appeal is a much wider and more effective remedy than a right of making a representation.

103. In support of the contention that even though the second proviso to Article 311 (2) excludes any right of hearing, such a right is none the less available under Article 14, reliance was placed on behalf of the government servants upon the case of Rustom Cavasjee Cooper v. Union of India (1970) 3 SCR 530: (AIR 1970 SC 564). In our opinion, this reliance is misplaced. One of the questions which arose in that case was the correctness of the majority view in A. K. Gopalan v. The State of Madras 1950 SCR 88: (AIR 1950 SC 27). In Gopalan's case it was held by the majority that the law of preventive detention did not have to satisfy the combined test of Articles 19 and 21. According to the majority view, it was the form of the State action which would determine which Article in the Chapter on Fundamental Rights would be attracted, and that in respect of preventive detention Article 21 protected substantive rights by requiring a procedure and Article 22 laid down the minimum rules of procedure which even Parliament could not abrogate or overlook. Fazal Ali, J., in his dissenting judgment, however, took the view that preventive detention was a direct violation of sub-clause (d) of clause (1) of Article 19, even if a narrow construction were to be placed upon that sub- clause, and a law relating to preventive detention was, therefore, subject to such limited judicial review as was permitted by clause (5) of Article 19. In R. C. Cooper's case the majority view in Gopalan's case was overruled. In Sambhu Nath Sarkar v. State of West Bengal (1974) 1 SCR 1 : (AIR 1973 SC 1425) after referring to both these cases, this Court observed (at page 24) (of SCR) : (at P. 1441 of AIR) :

"In R. C. Cooper v. Union of India the aforesaid premise of the majority in Gopalan was disapproved and therefore it no longer holds the field. Though Cooper's case dealt with the inter-relationship of Art. 19 and Art. 31, the basic approach to construing the fundamental rights guaranteed in the different provisions of the Constitution adopted in this case held the major promise of the majority in Gopalan to be incorrect."

In Hardhan Saha v. State of West Bengal (1975) 1 SCR 778 : (AIR 1974 SC 2154),this Court held that a law which provided for preventive detention was to be tested with regard to its reasonableness with reference to Article 19. This view was reaffirmed in Khudiram Das v. State of West Bengal (1975) 2 SCR 832 : (AIR 1975 SC 550). All these decisions were again examined in Maneka Gandhi's case (AIR 1978 SC 597). in that case, an order under clause (c) of sub-section (3) of

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section 10 of the Passports Act, 1967, impounding the petitioner's passport was impugned inter alia on the ground. that it violated the petitioner's Fundamental Right under sub-clauses (a) and (g) of clause (1) of Article 19 and Article 21 and also under Article 14 because it was made in violation of the principles of natural justice inasmuch as the petitioner had not been heard before the impugned order was passed. After referring to various cases Beg, C. J., said (at page 648) (of SCR) : (at P. 606 of AIR) :

"Articles dealing with different fundamental riglits contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme

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in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial Justice (social, economic and political), Freedom (not only of thought, expression, belief, faith and worship, but also of association, movement, vocation or occupation as well as of acquisition and possession of reasonable property), of Equality (of status and of opportunity, which imply absence of unreasonable or unfair discrimination between individuals, groups and classes), and of Fraternity (assuring dignity of the individual and the unity of the nation), which our Constitution visualises. Isolation of various aspects of human freedom, for purposes of their protection, is neither realistic nor beneficial but would defeat the very objects of such protection."

The question in Gopalan's case (AIR 1950 SC 27)and Cooper's case (AIR 1970 SC 564) was whether particular Articles guaranting certain Fundamental Rights operated exclusively without having any inter-relation with any other Article in the Chapter on Fundamental Rights. This is not the question before us. Neither Article 19 or 21 excludes the operation of the other Articles in Part III of the Constitution. Where, however, an Article in the constitution expressly excludes the application of certain Fundamental Rights, the view taken in Cooper's case and the other cases which followed it, namely, that the Articles in the Chapter on Fundamental Rights do not operate in isolation, cannot apply. Article 13 invalidates any law which violates any of the Fundamental Rights, Article 31A(1) provides that "Notwithstanding anything contained in article 13, no law providing for..... shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19. Under Article 31B, none of the Acts and Regulations specified in the Ninth Schedule to the Constitution nor any of the provisions thereof are to be deemed to be void on the ground that such Act, Regulation or provision is inconsistent with or takes away or abridges any of the rights conferred by any provisions of Part III. Article 31C provides that "Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing..... shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges. any of the rights conferred by article 14 or article 19....." Can it then be contended in face of these express provisions in the Constitution that none the less Article 14 will apply to the provisions of a law specified in Article 31A(l) or 31B or 31C? Clause (2) of Article 311 is an express statement of what the right of a fair hearing guaranteed by Article 14 would require and by the opening words of the second proviso to that clause that right is expressly taken away, and R. C. Cooper's Case (AIR 1970 SC 564) cannot be invoked to reintroduce that right on the ground that it flows by implication from Article 14. If the contention of the petitioner that in all cases there must be a right of hearing before an order is made to a person's prejudice were correct, the result would be startling and anomalous. For instance, in spite of Articles 21 and 22 no person can be taken in preventive detention unless he has been first given an opportunity of showing cause against the proposed action. Results such as these would make a mockery of the provisions of the Constitution.

104. The majority view in Gopalan's case (AIR 1950 SC 27) was buried, in R. C. Cooper's case (AIR 1970 SC 564); its burial service was' read in Sambhu Nath Sarkar v. State of West Bengal (AIR 1973 SC 1425) Haradhan Saha v. State of West Bengal (AIR 1974 SC 2154) and khudiram Das v. State of West Bengal (AIR 1975 SC. 550); and its funeral oration was delivered in Maneka Gandhi's case (AIR 1978 SC 597). Let us hope and pray that the ghost of that majority view does not at some future imerise from its grave and stand, clanking its chains, seeking to block the onward march of our country to progress, prosperity and the establishment of a Welfare Sate. But none

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the less what was buried was the theory of exclusiveness of each Fundamental Right operating separately and without having any inter-relation with other Fundamental Rights. The decisions in R. C. Cooper's case and the other cases which followed it, however, will not apply where a Fundamental Right (including the audi alteram partern rule comprehended within the guarantee of Article 14) is expressly excluded by the Constitution itself. Here, we must not forget the warning given by Megarry J., in Hounslow London_Borough Council v. Twickenham Garden Developments Ltd. (1971 Ch 233) that the principles of natural justice must be confined within their proper limits and not allowed to run wild. The concept of natural justice is a magnificent thoroughbred on which this_nation gallops forwards towards, its proclaimed and, let us pray, its destined goal of "Justice, social, economic and political". This thoroughbred must not be allowed to turn into a wild arid unruly horse, careering off where it lists, unsaddling its rider, and bursting into fields where the sign "no pasaran" is put

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up.

Service Rules and the Second Proviso Challappan's- case.

105. Rules made under the proviso to Article 309 or under Acts referable to hat Article very often reproduce in whole or in part the provisions of the second proviso to Article 311(2) either in the same or substantially the same language or with certain variations. Such variations at times confer or have been interpreted to confer an opportunity of hearing to a government servant which is excluded by the second proviso. Three such rules are involved in the matters before us, namely, Rule 14 of the Railway Servants (Discipline and Appeal) Rules 1968 (hereinafter referred to in short as the ':Railway Servants Rules"), Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to in short as the "Civil Services Rules") and Rule 37 of the Central Industrial Security Force Rules, 1969 (hereinafter referred to in short as "the CISF Rules"). It was submitted on behalf of the government servants that though an Act or rule restricting or taking away any safeguard provided by clauses (1) and (2) of Article 311 would be void, different considerations would apply when such an Act or rule liberalizes the exclusionary effect of the second proviso.

106. It is not possible to accept this submission. The opening words of Article 309 make that Article expressely "Subject to the provisions of this Constitution". Rules made under the proviso to Article 309 or under Acts referable to that Article must, therefore, be made subject to the provisions of the Constitution if they are to be valid. Article 310(1) which embodies the pleasure doctrine is a provision contained in the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to that Article are subject to Article 310(l). By the opening words of Article 310(l) the pleasure doctrine contained therein operates "Except as expressly provided by this Constitution". Article 311 is an express provision of the Constitution, Therefore, rules made under the proviso to Article 309 or under Acts referable to Article 309 would be subject both to Article 310(l) and Article 311. This position was pointed out by Subba Rao, J., as he then was, in his separate but concurring judgment n Moti Ram Deka's case at page 734 (of 1964-5 SCR 683 : AIR 1964 SC 600 at Pp. 620-2 1), namely, that rules under Article 309 are subject to the pleasure doctrine and the pleasure doctrine is itself subject to the two limitations imposed thereon by Article 311. Thus, as pointed out, in that case, any rule which contravenes clause (1) or clause (2) of Article 311 would be invalid. Where, however, the second proviso applies, the only restriction upon the exercise of the pleasure of the President or the Governor of a State is the one contained in clause (1) of Article 311. For an Act or a rule to provide that in a case where the second proviso applies any of the safeguards excluded by that proviso will be available to a government servant would amount to such Act or rule impinging upon the pleasure of the President or Governor, as the case may be, and would be void as being unconstitutional. It is, however, a well-settled rule of construction of statutes 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. Such constitutionality can be preserved by interpreting that statutory provision as directory and not mandatory. It is equally well-settled that where a statutory

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provision is directory, the courts cannot interfere to compel the performance or punish breach of the duty created by such provision and disobedience of such provision would not entail any invalidity see Craies on Statute Law, Seventh Edition, at page 229. In such a case breach of such statutory provision would not furnish any cause of action or ground of challenge to a government servant for at the very threshold, such cause of action or ground of challenge would be barred by the second proviso to Article 311(2).

107. On behalf of the government servants support for the above contention raised by them was sought to be derived from, Challappan's case (AIR 1975 SC 2216).Bearing in mind what has been stated above, we will, therefore, now examine Challappan's case. Before, however, we come to that case it would be convenient to refer to the observations in M. Gopala Krishna Naidu's case (AIR 1968 SC 240), because it was by reason of the conflict between those observations and what was held in Challappan's case that these matters have all come to be decided by this Constitution Bench M. Gopala Krishna Naidu's case was not directly a case under the second

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proviso to Article 311(2). In that case the appellant, who was an overseer in the Public Works Department of the Central Provinces and' Berar Government, was' suspended from service in 1947 and prosecuted under section 161 of the Indian Penal Code. Ultimately, on orders from the High Court, the prosecution was dropped. The appellant was also exonerated in a departmental inquiry hold against him. Thereafter the Government, by an order held that the charges against the Appellant had not been proved beyond reasonable doubt and the suspension of the appellant and the departmental inquiry "were not wholly unjustified." It accordingly directed that the appellant should be reinstated in service with effect from the date of the said order and retired from that date, he having already attained the age of superannuation and that the entire period of absence from duty should be treated as period spent on duty, under rule 54(5) of the Fundamental Rules for purposes of pension only, but that he should not be allowed any pay beyond what he had actually received or what was allowed to him by way of subsistence allowance during the period of suspension. The appellant's writ petition was dismissed by the High Court. In appeal a three-Judge Bench of this Court allowed the appeal. The Court held that rule 54 of the Fundamental Rules contemplated a duty to act in accordance with the basic concept of justice and fair play, and the authority, therefore, had to afford a reasonable opportunity to the appellant to show cause why clauses (3) and (5) of Rule 54 should not be applied and that this not having been done, the order was invalid. While discussing the scope of Rule 54 of the Fundamental Rules the Court observed as follows (at Pp. 358-9) (of SCR) : (At Pp. 242-43 of AIR): -

"It is true that the order under F.R. 54 is in a sense a consequential order in that it would be passed after an order of reinstatement is made But the fact that it is a consequential order does not determine the question whether the government servant has to be given an opportunity to show cause or not. It is also true that in a case where reinstatement is ordered after a departmental inquiry the government servant would ordinarily have had an opportunity to show cause. In such a case, the authority no doubt would have before him the entire record including the explanation given by the government servant from which all the facts and circumstances of the case would be before the authority and from which he can form the opinion as to whether he has been fully exonerated or not and in case of suspension whether such suspension was wholly unjustified or not. In such a case the order passed under a rule such as the present Fundamental Rule might be said to be a consequential order following a departmental inquiry. But there are three classes of cases as laid down by the proviso in Art. 311 where a departmental inquiry would not be held, viz., (a) where a person is dismissed, 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 for reasons to be recorded in writing that it is not reasonably practicable to hold such an inquiry; and (c) where the President or the Governor as the case may be is satisfied that in the interest of security of the State it is not expedient to hold such inquiry. Since there would be no inquiry in these classes of cases the authority would not have before him any explanation by the Government servant. The authority in such

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cases would have to consider and pass the order merely on such facts which might be placed before him by the department concerned. The order in such a case would be ex parte without the authority having the other side of the picture. In such cases the order that such authority would pass would not be a consequential order as where a departmental inquiry has been held. Therefore, an order passed under Fundamental Rule 45 is not always a consequential order nor is such order a continuation of the departmental proceeding taken against the employee."

108. Challappan's case (AIR 1975 SC 2216) decided three appeals against. a common judgment of the High Court of Rajasthan allowing the writ petitions filed by three railway servants. Chadllappan, the respondent in one of these appeals, was a railway-pointsman. He was arrested at Olavakkot Railway Station platform for disorderly, drunken and indecent behaviour and was prosecuted and convicted under section 51(A) of the Kerala Police Act. Instead of sentencing him, the Sub-Magistrate, Palghat, released him on probation under section 3 of the Probation of Offenders Act, 1958. Thereafter he was removed from service by the disciplinary authority of the Department, without holding any inquiry, on the basis of his conviction in the said criminal case. The order of removal from service was made under clause (i) of Rule 14 of the Railway Servants Rules. The Kerala High Court held that as no penalty was imposed upon him, clause (i) of Rule 14 did not in terms apply, and allowed

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his writ petition. So far as the other two railway employees were concerned, one was convicted under section 3 of the Railway Property (Unlawful Possession) Act, 1966, and the other under section 420 of the Indian Penal Code. Both of them were released on probation and were similarly removed from railway service.

109. The Railway Servants Rules have been made by the President in exercise of the powers conferred by the proviso to Article 309. Rule 6 specifies the' penalties which can be imposed upon a railway servant. These penalties are divided into minor penalties and major penalties. Major penalties include removal from service which is not to be a disqualification for future employment under the Government or railway administration and dismissal from service which is ordinarily to be a disqualification for future employment under the Government or railway administration. Under sub-rule (1) of Rule 7, the President may impose any of the penalties specified in Rule 6 on any railway servant Sub-rule (2) of Rule 7 states that without prejudice to the provisions of sub-rule (1), any of the penalties specified in Rule 6 may be imposed on a railway servant by the authorities specified in Schedules I, II and III to the Railway Servants Rules. Rules 9 and 10 prescribe a detailed procedure for imposing major penalties while Rule 11 prescribes the procedure for imposing minor penalties. Originally, sub-rule (5) of Rule 10 required that a notice be given to a railway' servant informing him of the penalty proposed to be imposed upon him and giving him anopportunity of making a representation on the proposed penalty on the basis of the evidence adduced during the inquiry held under Rule 9. The whole of that sub-rule was substituted by the Railway Servants (Discipline and Appeal) (Third Amendment) Rules, 1978, to bring sub-rule (5) in conformity with clause (2) of Article 311 as amended by the Constitution (Forty-second Amendment) Act, .1976. It may be mentioned that on the respective dates of the orders, impugned in Challappan's case (AIR 1975 SC 2216) the original sub-rule (5) of Rule 10 formed part of the Railway Servants Rules and clause (2) of Article 311 in force was that clause as amended by the Constitution (Fifteenth Amendment) Act, 1963. This, however, does not make any difference to the point which falls to be decided.

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

"14. Special procedure in certain cases.-

Notwithstanding anything contained in Rules 9 to 13:-

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

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided these rules; or

iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules.;

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

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

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

111. Rule 17 of the Railway Servants Rules sets out the orders against which no appeal lies. Under that rule, no appeal inter alia lies against any order made by the President. Under Rule 18, subject to the provisions of Rule 17, an appeal inter alia lies against an order imposing any of the penalties specified in Rule 6, whether made by the disciplinary authority or by any appellate or reviewing authority. Rule 20 prescribes a period of limitation for filing an appeal. The appellate authority is, however, conferred the power to condone the delay in filing the appeal if it is satisfied that the appellant, had sufficient cause for not preferring the appeal, Rule 22.(2) provides as follows:

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"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

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

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

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

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

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

x x x x x x x."

Rule 25 confers power upon (i) the President, (ii). the Railway Board, (iii) the General Manager of a Zonal Railway or an authority of that statu's in any other Railway Unit or Administration in the case of a railway servant serving under him or its control, (iv) the appellate authority not below the rank of a Deputy Head of Department or a Divisional Railway Manager in cases where no appeal has been prefened, or (v) any other authority not below the rank of a Deputy Head of Department or a Divisional Railway Manager in the case of a railway servant serving under its control at any time, either on his or its own motion or otherwise, to call for the records of any inquiry and revise any order made under the Railway Servants Rules. Clause (c) of the first proviso to Rule 25(1) inter alia provides as follows : -

Provided that

x x x x x x.

(c) subject to the provisions of Rule 14, the revising authority shall,

x x x x

(ii) where an inquiry in the manner laid down in Rule 9 has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter on a consideration of the proceedings of such inquiry. pass such orders as it may deem fit".

112. The second proviso to Rule. 25(l) provides for a period of limitation for initiating any revisional proceedings by an appeallate authority other than the President or a revising authority mentioned in item (v) in the list of authorities set out above. In the case of other authorities, the power of revision is not subject to any time-limit, Rule 25-A confers power upon the President at any time either on his own motion or otherwise to review any order passed under the Railway Servants Rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice. Rules 25 and 25-A were substituted by the Railway Servants (Discipline and Appeal) (First Amendment) Rules, 1983, for the original Rule 25 which provided for a review in somewhat similar terms as the present Rule 25.

113. In Challappan's case (AIR 1975 SC 2216)

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the Kerala High Court allowed the writ petitions filed before it solely on the ground that the orders of the Magistrate releasing the concerned railway servants on probation did not amount to imposition of penalty as contemplated by Rule 14 of the Railway Servants Rules. Reversing that view this Court held that the word "penalty" in clause (i) of Rule 14 of the Railway Servants Rules does not refer to a sentence awarded by the court to the accused on his conviction but it merely indicates the nature of the penalty imposable by the

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disciplinary authority if the delinquent employee has been found guilty of conduct which has led to his conviction on a criminal charge. The Court observed (at pages 789-790) (of SCR) : (at Pp. 2220-21 of AIR) :

"The view of the Kerala High Court, therefore, that as the Magistrate released the delinquent employee on probation no penalty was imposed as contemplated by R. 14(i) of the Rules of 1968 does not appear to us to be legally correct and must be overruled. Nevertheless we would uphold the order of the Kerala High Court, on the ground, that the last part of R. 14 of the Rules of 1968 which requires the consideration of the circumstances not having been complied with by the disciplinary authority, the order of removal from service of the delinquent employee was rightly quashed."

The Court pointed out that clause (i) of Rule 14 merely sought to incorporate the principle embodied in clause (a) of the second proviso. The Court in the course of its judgment reproduced the provisions of clause (2) of Article 311 along with clause (a) to the proviso thereto, at that time clause (2) of Article 311 in force being that clause as amended by the Constitution (Fifteenth Amendment) Act, 1963, that is, clause (2) prior to its amendment by the Constitution (Forty-second Amendment) Act, 1976, and the proviso thereto being the same as the second proviso to clause (2) as amended by the Constitution (Forty-second Amendment) Act. The Court then pointed out that there were three stages in a departmental inquiry under Article 311 (2), the third being the stage before actually imposing the penalty in which a final notice to the delinquent employee should be given to show cause why the penalty proposed against him be not imposed on him. It then stated that clause (a) of the proviso (now the second proviso) to Article 311 (2), however, completely dispensed with all the three stages of a departmental inquiry when an employee was convicted on a criminal charge because the employee already had in the criminal trial a full and complete opportunity to contest the allegations against him and to make out his defence. The Court pointed out that clause (a) of the proviso (now the second proviso) is merely an enabling provision and does not enjoin or confer a mandatory duty on the disciplinary authority to pass an order of dismissal, removal or reduction in rank the moment an employee is convicted. The Court then considered the extent and ambit of the last part of Rule 14, namely, the phrase "the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit" and stated its conclusions as follows (at pages 795-797) (of SCR) : (at Pp. 2224-2225 of AIR) :

'The word 'consider' has been used in contradistinction to the word 'determine'. The rule-making authority deliberately used the word 'consider' and not 'determine' because the word' 'determine' has a much wider scope. The word 'consider' merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term 'consider' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under R. 14 of the Rules of 1968 which incorporates the principle 'contained in Art. 311(2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into

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account the entire conduct of the delinquent employee the 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. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T. R. Challappan in Civil Appeal 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guiltyof some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and soon, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but

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I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible. This appears to us to be the scope and ambit of this provision. We must, however, hasten to add that we should not be understood as laying down that the last part of R. 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement. The statutory provision referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair play. The disciplinary authority has the undoubted hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interest of administration to retain such a person in service.

Mr. S. N. Prasad appearing for the appellants submitted that it may not be necessary for the disciplinary authority to hear the accused and consider the matter where no provision like R. 14 exists, because in such cases the Government can, in the exercise of its executive powers, dismiss, remove or reduce in rank any employee who has been convicted of a criminal charge by force of proviso (a) to Art. 311(2) of the Constitution. In other words, the argument was that to cases where proviso (a) to Art 311(2) applies a departmental inquiry is completely dispensed with and the disciplinary authority can on the doctrine of pleasure terminate the services of the delinquent employee. We however refrain from expressing any opinion on this aspect of the matter because the cases of all the three respondents before us are cases which clearly fall within R.14 of the Rules of 1968 where the have been removed from service without complying with the last part of R. 14 of the Rules of 1968 as indicated above. In none of the cases has the disciplinary authority either considered the circumstances or heard the delinquent employees on the limited point as to the nature and extent of the penalty to be imposed if at all. On the other hand in all these cases the disciplinary authority has proceeded to pass the order of removal from service straightway on the basis of the conviction of the delinquent employees by the criminal courts."(Emphasis supplied)

114. So far as Challappan's case (AIR 1975 SC 2216) 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 juagment as being the considerations to be

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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's case. It is, however, not possible to agree with the approach adopted in Challappan's 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 Servants 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

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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(l). 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(l) 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. A rule which provides for any other case in which any of these three penalties can be imposed would be unconstitutional. Service rules may reproduce the provisions of the second proviso authorizing the disciplinary authority to dispense with the inquiry contemplated by clause (2) of Article 311 in the three cases mentioned in the second proviso to that clause or any one or more of them. Such a rule; however, cannot be valid and constitutional without reference to the second proviso to Article 311(2) and cannot be read apart from it. Thus, while the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules, the source of his power to dispense with the inquiry is derived from the second proviso to Article311 (2) and not from any service rules. There is a well-established distinction between the source of authority to exercise a power and the source of such power. The Court in Challappan's case was, therefore, in error in interpreting Rule 14 of the Railway Servants Rules by itself and not in conjunction with the second proviso (at that time the only proviso) to Article 311(2). It appears that in Challappan's case (AIR 1975 SC 2216) the Court felt that the addition of the words "the disciplinary authority may consider the circumstances of the case, and make such orders thereon as it deems fit" warranted an interpretation of Rule 14 different from that to be placed upon the second proviso. This is also not correct. It Is true that the second proviso does not contain these words but from this it does not follow that when acting under the second proviso, the disciplinary authority should not consider the facts and circumstances of the case or make an order not warranted by them. It is also not possible to accept the interpretation placed upon the word "consider" in Challappan's case, According to the view taken in that case a consideration of the circumstances of the case cannot be unilateral but must be after hearing the delinquent government servant. If such were the correct meaning of the word "consider", it would render this part of Rule 14 unconstitutional as restricting the full exclusionary operation of the second proviso. The word "consider" however, does. not bear the meaning placed upon it in Challappan's case. The word "consider" is used in Rule 14 as a transitive verb. The meaning of the word "consider" as so used is given in the Oxford English Dictionary as "To contemplate mentally, fix the mind upon; to think over, meditate or reflect on, bestow attentive thought upon, give heed to, take note of." The relevant

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definition of the word "consider" given in Webster's Third New International Dictionary is "to reflect on : think above with a degree of care or caution". Below this definition are given the synonyms of the word "consider", these synonyms being "contemplate, study, weigh, revolve, excogitate". While explaining the exact different shades of meaning in this group of words, Webster's Dictionary proceeds to state as under with respect to the word "consider"

"Consider often indicates little more than think about. It may occasionally suggest somewhat more conscious direction of thought, somewhat greater depth and scope, and somewhat greater purposefulness."

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's 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 or 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's case. As pointed out earlier,

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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's case (AIR 1975 SC 2216) 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's case, we may, also point out that 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 page 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's case was, therefore, doubted from the very beginning.

116. The next service rule which falls for consideration in these matters is Rule 19 of the Civil Services Rules. The Civil Services Rules are also made under the proviso to Article 309. The scheme of these rules so far as disciplinary proceedings are concerned is very similar to that of the Railway Servants Rules. Rule 11 specifies the penalties which can be imposed on a government servant. These penalties are divided into minor penalties and major penalties. Clauses (i) to (iv) of that rule specify what the minor penalties are while clauses (v) to (viii) specify what the major penalties are. The major penalties include compulsory retirement, removal from service which is not to be a disqualification for future employment under the Government and dismissal from service which is ordinarily to be a disqualification for future employment under the Government. Rules 14 and 15 prescribe the procedure to be followed where a major penalty is to be imposed while Rule 16 prescribes the procedure for imposing a minor penalty. Previously, under sub-rule (4) of Rule 15 the government servant was also to be given a notice of the penalty proposed to be imposed upon him and an opportunity of making representation with respect to such proposed penalty. However, by Government of India, Ministry of Home Affairs (Deptt. of Personnel and Admn. Reforms) Notification No. 11012/2/77-Ests. dated August 18,1978, sub-rule (4) was substituted by a new sub-rule to bring it in conformity with the amendment made in clause (2) of. Article 311 by the Constitution (Forty-second Amendment) Act,

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and the opportunity to show cause against the proposed penalty was done away with. Rule 19 provides as follows:

"19. Special procedure in certain cases.Notwithstanding anything contained in rule 14 to rule 18 -

(i) where any penalty is imposed on Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or,

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

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

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are

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made in any case under this rule."

The word "Commission" is defined by clause (d) of Rule 2 as meaning "The Union Public Service Commission". Under Rule 22, no appeal lies against any order made by the President or orders of certain nature specified in that rule. Subject to the provisions of Rule 22, Rule 23 provides for a right of appeal. Rule 25 provides for a period of limitation for filing an appeal but the appellate authority is. conferred the power to condone the delay in filing the appeal if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time. Rule 27(2) provides as follows :

"(2) In the case of an appeal against an order-imposing any of the penalties specified in rule 11 or enhancinggany penalty imposed under the said rule, the appellate authority shall consider -

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

(b)whether the findings of the disciplinary authority are warranted by the evidence, on the record, and

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

(i) confirming, enhancing, reducing or setting aside the penalty, or

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

x x x x x x x"

Rule 29 provides for a right of revision. Under it an application for revision is to be dealt with in the same manner as if it were an appeal under the Civil Services Rules. Rule 29-A confers upon the President a power of review similar to Rule 25-A of the Railway Servants Rules.

117. It will be noticed that the language of Rule 19 of the Civil Services Rules is identical with that of Rule 14 of the Railway Servants Rules and the interpretation of Rule 19 of the Civil Services Rules would be the same as that placed by us upon Rule 14 of the Railway Servants Rules.

118. The rule which now remains to be considered is Rule 37 of the CISF Rules. The CISF Rules have been made by the Central Government in pursuance of the power conferred by Section 22(l) of the Central Industrial Security Force Act, 1968 (Act No. 50 of 1968) (hereinafter referred to in short as, "the CISF Act"). Section 22(l) of the CISF Act confers upon the Central Government the power to make rules for carrying out the purposes of that Act. Sub-section (2) of section 22 inter alia provides as follows.: .

"(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for -

(a) regulating the classes, ranks, grades, pay and remuneration of supervison officers and members of the Force and their conditions of service in the Force;

x x x x x x

(g) regulating the punishments and prescribing authorities to whom appeals shall be preferred from orders of punishment or remission of fines or other punishments, and the procedure to be followed for the disposal of such appeals;

x x x x x x"

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119. Before we turn to the CISF Rules, it is necessary to refer to certain other provisions of the CISF Act. Section 3 of the CISF Act provides for the constitution and maintenance by the Central Government of a. Force

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to be called the Central Industrial Security Force (hereinafter referred to in short as "the CIS Force") for the better protection and security of industrial undertakings owned by the Government. Clause (i) of section 2(l) of the CISF Act defines "supervisory officer" as meaning " any of the officers appointed under Section 4 and includes any other officer appointed by the Central Government as a supervisory officer of the Force". Section 4 provides for the appointment of supervisory officers and their powers and is in the following terms :

"4. Appointment and powers of supervisory officers.

(1) The Central Government may appoint a person to be the Inspector-General of the Force and may appoint other persons to be Deputy Inspectors-General, Chief Security Officers or Security Officers of the Force.

(2) The Inspector-General and every other supervisory officer so appointed shall have, and may exercise, such powers and authority as is provided by or under this Act."

Sections 8 and 9 provide as follows :

"8. Dismissal, removal, etc., of members of the Force.

Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any supervisory officer may -

(i) dismiss, suspend or reduce in rank any member of the Force whom he thinks, remiss or negligent in the. discharge of his duty, or unfit for the same; or

x x x x.."

9. Appeal and-revision.-

(1) Any member of the Force aggrieved by an order made under Section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal against the order to. such authority as may be, prescribed, and subject. to the provisions of sub-section (3), the, decision of the said authority thereon shall be, final :

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) In disposing of an appeal, the prescribed authority shall follow such procedure as may be prescribed.

(3) The Central Government may call for and examine the record of any proceeding under Section 8 or under sub-section (2) of this section and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act, may pass such order thereon as it thinks fit:

Provided that no order imposing an enhanced penalty under sub-section (2) or sub-section (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected. by such order."

120. We now turn to the relevant CISF Rules. Rule 29-A specifies the disciplinary authorities. Rule 31 specifies the penalties which may be imposed on a member of the CIS Force. Amongst these. penalties are dismissal, removal, compulsory retirement and reduction to a lower class or grade or rank or to a lower time-scale or to a lower stage in the time-scale of pay. CIS Rules do not specify which out of the penalties specified in Rule 31 are the major penalties and which are minor penalties but as these terms are well understood in service jurisdiction the same classification as in the Civil Services Rules and the Railway Servants Rules will apply here. Rule 34 prescribes the detailed procedure for imposing major penalties. and Rule 35 prescribes the procedure for imposing minor penalties. Rule 32 specifies what are described as "petty punishments" to be awarded ordinarily in Orderly Room for petty breaches of discipline and trifling cases of misconduct by members. of the. CIS Force not above, the rank of the Head Security Guard and Rule 36 prescribes the procedure for. imposing these punishments.

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

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"37. Special procedure in certain Cases-

Notwithstanding anything contained in rule 34.rule 35- or rule 36, where a penalty is imposed member of the force-

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

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(b) where the disciplinary authority is satisfied for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in the said rules :

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

A member of the force who has been convicted to rigorous imprisonment on a criminal charge shall be dismissed from service. In such cases, no evidence need be given to prove the charge. Only a notice shall be given to the party charged proposing the punishment of dismissal for his having been convicted to rigorous imprisonment and asking him to explain as to why the proposed punishment of dismissal should not be imposed."

Rule 42 provides for a right of appeal in the case of an order imposing any of the penalties specified in Rule 31. Rule 42-Aprescribes the period of limitation for filing an appeal. The appellate authority, however, has the power to condone the delay in filing an appeal if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time. Sub-rule (2) of Rule 47 provides as follows :

"47. Consideration of appeals-

x x x x x

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

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

(b) whether the findings are justified; and

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

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

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

x x x x x"

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

122. It will be noticed that Rule 37, except the last paragraph thereof, is in pari materia with Rule 14 of the Railway Servants Rules and Rule 19 of the Civil Services Rules with this difference that a provision akin to clause (iii) of Rule 14 of the Railway Servants Rules and clause (iii) of Rule 19 of the Civil Services Rules is not to be found in Rule 37 of the CISF Rules. The same interpretation as placed by us on the word "consider" occurring in Rule 14 of the Railway Servants Rules and Rule 19 of the Civil Services Rules must, therefore, be placed upon the word "consider" in Rule 37 of the CISF Rules. The last paragraph of Rule 37 of the CISF Rules is peculiar to itself and does not find a place either in the said Rule 14 or the said Rule 19. It is clumsily worded and makes little sense. To provide that a member of the CIS Force who has been convicted to rigorous

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imprisonment on a criminal charge "shall be dismissed from service" and at the same time to provide that "only a notice shall be given to the party charged proposing the punishment of dismissal for his having been convicted to rigorous imprisonment and asking him to explain as to why the proposed punishment of dismissal should not be imposed", is a contradiction in terms. If either of these provisions were taken as mandatory, it would be void as violating the second proviso to Article 311(2) because the penalty contemplated by the second proviso to Article 311(2) is not the penalty of dismissal only but also of removal or reduction in rank, and to make it mandatory to issue a notice to show cause against the proposed penalty of dismissal would equally violate the second proviso because it would whittle down the exclusionary effect of the second proviso. Therefore, both these provisions in the last paragraph of Rule 37 must be read as directory and not mandatory, not only to make sense out of them but also to preserve their constitutionality. So read, a breach of these provisions would not afford any cause of action to a member of the CIS Force.

123. A conspectus of the above service rules and the CISF Act shows that a government servant who has been dismissed, removed or reduced in rank without holding an inquiry because his case falls under one of the three clauses of the second proviso to Article 311(2) or a provision of the service rules analogous thereto is not wholly without a remedy. He has a remedy by way of an

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appeal, revision or in some cases also by way of review. Sub-clause (ii) of clause (c) of the first proviso of Rule 25(l) of the Railway Servants Rules expressly provides that in the case of a major penalty where an inquiry has not been held, the revising authority shall itself hold such inquiry or direct such inquiry to be held. This is, however, made subject to the provisions of Rule 14 of the Railway Servants Rules. The other service rules referred to above do not appear to have a similar provision nor does the Railway Servants Rules make the same provision in the case of an appeal. Having regard, however, to the factors to be taken into consideration by the appellate authority which are set out in the service rules referred to above a provision similar to that contained in sub-clause (ii) of clause (c) of the first proviso to Rule 25(l) of the Railway Servants Rules should be read and imported into provisions relating to appeals in the Railway Servants Rules and in the other service rules and also in the provisions relating to revision in the other service rules. This would, of course, be subject to the second proviso to Article 311(2), Rule 14 of the Railway Servants Rules, Rule 19 of the Civil Services Rules and Rule 37 of the CISF Rules. Thus, such a right to an inquiry cannot be availed of where clause (a) to the second proviso of Article 311(2 or a similar provision in any service rule applies in order to, enable a government servant to contend that he was wrongly convicted by the criminal court. He can, however, contend that in the facts and circumstances of the case, the penalty imposed upon him is too severe or is excessive. He can. also show that he is not in fact the government servant who was convicted on a criminal charge and that it is a case of mistaken identity. Where it is a case failing under clause (b) of the second proviso or a provision in the service rules analogous thereto, the dispensing with the inquiry by the disciplinary authority was the result of the situation prevailing at that time. If the situation has changed when the appeal or revision is heard, the government servant can claim to have an inquiry held in which he can establish that he is not guilty of the charges on which he has been dismissed, removed or reduced in rank. He, however, cannot by reason of the provisions of clause (3) of Article 311 contend that the inquiry was wrongly dispensed with and it was reasonably practicable to hold an inquiry because by the said clause (3) the decision on this point of the disciplinary authority has been made final. So far as clause (c) is concerned, dispensing with the inquiry depend upon the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State it is riot expedient to hold an inquiry. In such a case, an order imposing penalty can, however, be passed by a disciplinary authority because in such a case the President of the Governor, as the case may be, can direct the disciplinary authority to consider the facts of the case and impose the appropriate penalty without holding any inquiry'. Clause (iii) of Rule 14 of the Railway Servants Rules and clause (iii) of Rule 19 of the Civil Services Rules envisage this being done. In such a case the satisfaction that the inquiry should be dispensed with as not being expedient in the interest. of the security of the State would be. that of the President or the Governor, the selection of one of the three penalties mentioned Article 311(2) as being the proper penalty to be imposed would be of the disciplinary authority. The satisfaction of the President or the Governor cannot be challenged in appeal or revision but the government servant can in appeal or revision ask for an inquiry to be

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held into his alleged conduct unless even at the time of the appeal or revision, the interest of the security of the State makes it inexpedient to hold such an inquiry. Of course, no such right would be available to a government servant where the order imposing penalty has been made by the President or the Governor of a State, as the case may be

Executive Instructions and the Second Proviso

124. In the course of the arguments certain executive instructions issued by the Government of India were referred to and relied upon on behalf of the government servants. It is unnecessary to deal with these instructions in detail. At the highest they contain the opinion of the Government of India on the scope and effect of the second proviso to Article 311(2) and cannot be binding upon the Court with respect to the interpretation it should place upon that proviso. To the extent that they may liberalise the exclusionary effect of the second proviso they can only be taken as directory. Executive instructions stand on a lower footing than a statutory rule for they do not have the force of a statutory rule. If an Act or a rule cannot alter or liberalize the exclusionary effect of

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the second proviso, executive instructions can do so even much less.

Omission to. Mention the Relevant Clause of the Second Proviso or the Relevant Service Rule in the Impugned, Orders

125. Some of the orders impugned before us refer only to one or the other of the three clauses of the second proviso to Article 311(2) for dispensing with an inquiry without referring to the relevant service rule, some refer both to a clause. of the second proviso and the relevant service rule, while the others refer only to the relevant service rule without making any mention of the particular clause of the second proviso which has been applied. The question is whether the omission to mention the particular clause of the second proviso or the relevant service rule makes any difference.

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 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's Case (AIR 1975 SC 2216) 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 powder 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 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 invaluable an order where the source of such power exists. (See Dr. Ram Manobar Lohia v. State of Bihar (1966) 1 SCR 709,721: (AIR 1966 SC 740, 747) and Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal (1983) 2 SCR 676, 681 : (AIR 1983 SC 537, 539-40)). 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. It may be mentioned that in one of the. matters before us has it been contended that the disciplinary authority which passed the impugned order was not competent to do so.

The Second Proviso - Clause (a)

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127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate, briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For, that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan's case (AIR 1975 SC 2216). This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned goverment servant. Having. decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate .in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and

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circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the. impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in Shankar Dass v. Union of India (1985) 2 SCC 358 : (AIR 1985 SC 772) this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement. in service with full back wages. It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case.

The Second Proviso - Clause (b)

128. The main thrust of the arguments as regards clause (b) of the second proviso to Article 311(2) was that whatever the situation may be a minimal inquiry or at least an opportunity to show cause against the proposed penalty is always feasible and is required by law. The arguments with-respect to a minimal inquiry were founded on the basis of the applicability of Article 14 and the principles of natural justice and the arguments with respect to an opportunity to show cause against the proposed penalty were in addition founded upon the decision in Challappan's Case (AIR 1975 SC 2216). These contentions have already been dealt with and negatived by us and we have further held that Challappan's Case in so far as it held that a Gvernment servant should be heard before imposing a penalty upon him was wrongly decided.

129. The next contention was that even if it is not reasonably practicable to hold an inquiry, a government servant can be placed under suspension until the situation improves and it becomes possible to hold the inquiry. This contention also cannot be accepted. Very often a situation which makes it not reasonably practicable to hold an inquiry is of the creation of the concerned government servant himself or of himself acting in concert with others or of his associates. It can even be that he himself is not a party to bringing about that situation. In all such cases neither public interest nor public good requires that salary or subsistence allowance should be continued to be paid out of the public. exchequer to the concerned government servant. It should also be borne in mind that in the case of a serious situation which renders the holding of an inquiry not reasonably practicable, it would be difficult to foresee how long the situation will last and when normalcy would return or be restored. It is impossible to draw the line as to the period of time for which the suspension should continue and on the expiry of that period action should be taken under clause (b) of the second proviso. Further, the exigencies of a situation

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may require that prompt action should be taken and suspending the government servant cannot serve the purpose. Sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers and agitators as a sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities or agitation. It is true that when prompt action is taken in order to prevent this happening, there is an element of deterrence in it but that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities. After all, clause (b) is pot meant to be applied in ordinary, normal situations but in such situations where it is not reasonably practicable to hold an inquiry.

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 to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done;

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feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform.: capable of being put into practice, done or accomplished: feasible". Further, the words used are not, ".not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a. reasonable view of the prevailing situation. 'It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together, with his associates, so terrorizes, threatens or intimidate witnesses who are going to 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 inimaterial 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. Is ciplinary authority by Article 311(3) is not inding upon the court so far as its power of udicial review is concerned and, in such a se the court will strike down the order ispensing with the inquiry as also the order mposing penalty. The case of Arjun Chaubey v. Union of India (1984) 3 SCR 302 : (AIR 1984 SC 1356) is an instance in point. In that ase, the appellant. was working as a senior lerk in the office of the Chief Commercial uperintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter o the appellant calling upon him to submit his explanation with regard to twelve charges of ross 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

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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.

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

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others makes the holding. of an inquiry not reasonably practicable.

132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government 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. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provisionin the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore find a place in the final order. It would be usual, to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing. the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. At clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review., The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge

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whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not

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communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and famished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons.

136. It was next submitted that though clause (b) of the second proviso excludes an inquiry into the charges made against a government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary inquiry the government servant should be given an opportunity of a hearing by issuing to him a notice to show cause why the inquiry should not be dispensed with so as to enable him to satisfy the disciplinary authority that it would be reasonably practicable to hold the inquiry. This argument is illogical and is a contradiction in terms. If an inquiry into the charges against a government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable.

136A. A government servant who has been dismissed, removed or reduced in rank by applying to his case clause (b) or an-analogous provision of a service rule is not wholly without a remedy. As pointed out earlier while dealing with the various service rules. he can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an inquiry at the time of the hearing of the appeal or revision. Though in such a case as the government servant if dismissed or removed from service, is not continuing in service and it reduced in rank, is continuing in service. with such reduced rank, no prejudice could be caused to the Government or the Department if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time.

137. 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 property 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 s not binding upon the court. The court will also examine the charge of mall 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 collie to tile 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 older 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 fight 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 courtroom, removed in time, from the situation in question. Where two views are

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possible, the court will decline to interfere.

138. During the course of the argument a reference was made to certain High Court decisions and their citations were given. We have carefully gone through those decisions. It is, however, unnecessary to refer to them,

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In so far as what was held in those decisions or any of them is contrary to or inconsistent with what has been held by us, those decisions are not correct and are to that extent hereby overruled,

The Second Proviso - Clause (c)

139. We now turnt ot the last clause of the second proviso to Article 311(2), namely, clause (c). Though its exclusionary operation on the safeguards provided in Article 311(2) is the same as those of the other two clauses, it is very different in content from them. While under clause (b) the satisfaction is to be of disciplinary authority, under clause (c) it is to be of the President or the Governor of a State, as the case may be. Further, while under clause (b) the satisfaction has to be with respect to whether it is not reasonably practicable to hold the inquiry, under clause (c) it is to be with respect to whether it will not be expedient in the interest of the security of the State to hold the inquiry. Thus, in one case the test is of reasonable practicability of holding the inquiry, in the other case it is of the expediency of holding the inquiry, While clause (b) expressly requires that the reason for dispensing with the inquiry should be recorded in writing, clause (c) does not so require it, either expressly or impliedly.

140. The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State,, are graver than those which affect "public order". Thus, of those situations those which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence, production or similar matters being passed on to other countries, whether inimical or not to our country; or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State. can be affected. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military Forces. Disaffection in any of these Forces is likely to spread, for disaffected or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but, is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a para-military force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or para-military Forces. How important the proper discharge of their duties by members of these Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984, Article 33 provided as follows :

"33. Power to Parliament to modify the tights conferred by this Part in their application to Forces.- Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

By the Constitution Fiftieth Amendment) Act, 1984, this. Article was substituted. By the Substituted Article the scope of the Parliament's power to so restrict or abrogate the application of any of the Fundamental Rights is made wider. The substituted Article 33 reads as follows:

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"33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.- Parliament may, by law, determine to what extent any of the rights conferred by this Part shall. in their application to, -

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(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to. in clauses (a) to (c),be restricted or abrogated so as to ensure the proper discharge of: their duties and the maintenance of disc line among them."

Thus, the discharge of their duties by the members of these Forces, and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred power upon Parliament to restric or abrogate any of the Fundamental Rights in their application to them.

141. 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. actualacts 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 Governor must, therefore, be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State. The Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient, disadvantageous in the circumstances, unadvisable impolitic" The same dictionary defines "expedient" as, meaning inter alia "advantageous; fit, proper, or suitable to the circumstances of the case" Webster's Third New International Dictionary also defines the term "expedient" as meaning inter alia "characterized. by suitability, practicality, and efficiency in achieving a particular end. : fit, proper, or advantageous under the circumstances". It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(l) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head: Whenever, therefore, the President or the Governor in the constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the' Governor must, necessarily be, a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at, as a result of 'secret information received by the Government about the brewing danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Goverrunent, making known such information may very Often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in. rank nor can they be made public.

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142. In the case of clause (b) of the second proviso, clause (3) of Article 311 makes the decision of the disciplinary authority that it was hot reasonably practicable to hold the inquiry final. There is no such clause in Article 311 with respect to the satisfaction reached by the President or the Governor under clause (c) of the second proviso. There are two reasons for this. There can be no departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor; and so far as the Court's power of judicial review is concerned, the Court

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cannot sit in judgment over State policy or the. wisdom or otherwise of such policy The Court equally cannot be the Judge of expediency or inexpediency. Given a known situation, it is not for, the Court' to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the inquiry. The satisfaction reached by the President or Governor under clause (c) is subjective satisfaction and. therefore, would not be a fit matter for judicial review, Relying upon the observations of Bhagwati, J., in State of Rajasthan v. Union of India (1978) 1 SCR 1, 82: (AIR 1977 SC 1361,1414 and 1415), it was submitted that the power of judicial review is not excluded where the satisfaction of the President or the Governor has been reached mala fide or is based on wholly extraneous or irrelevant grounds because in such a case, in law there would be no satisfaction of the President or the Governor at, all. It is unnecessary to decide this question because in the matters under clause (c) before us, all the materials, including the advice tendered by the Council of Ministers, have been produced and they clearly show that, in those cases the satisfaction of the Governor was neither reached mala fide nor was it based on any extraneous or irrelevant ground.

143. 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 over looks 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 govern ment 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.

144. It was also submitted that the Government must produce before. the court all materials upon which the satisfaction of the President or the Governor, as the case may be, was reached. So far as the advice given by the Council of Ministers to the President or the Governor is concerned, this submission it is negatived by the express provisions of the Constitution. Article 74(2) of the Constitution provides:

"(2) The question whether any, and if so whit, advice was tendered by Ministers to the' President shall not be inquired into in any Court."

Similarly, Article 163(3) provides :

"(3).The question whether any, and if so what, advice was tendered by Ministers to the Government shall not be inquired into in any Court."

145. It was then submitted that leaving aside the advice given by the Ministers to the President or the Governor, the Government is bound to disclose at least the materials upon which the advice of the Council of Ministers was based so that the Court can examine whether the satisfaction of the President or the Governor, as the case may be, was arrived at mala fide or based on wholly extraneous and irrelevant grounds so that such satisfaction would in law amount to no satisfaction at all. It was further submitted that if the Government does not voluntarily disclose such materials it can be compelled by the Court to do so. Whether this should be done or not would. depend upon whether the documents in question fall within the class of privileged documents. and whether in respect of them privilege has been properly claimed or not. It is unnecessary to examine this question, any further because in the cases under clause (c) before us though at first privilege was claimed, at the hearing privilege was waived and the materials as also the advice given by the Ministers to the Governor of Madhya Pradesh who had passed the impugned orders in those cases were disclosed.

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The Nature of the Challenge to the Impugned Orders?

146. In all matters before us the challenge to the validity of the impugned orders was confined only to legal grounds, the main ground being based upon what was held in Challappan's case (AIR 1975 SC 2216) and the application of principles of natural justice.. The contentions with respect to these grounds have been considered by us in the precedig part of this judgment and ha have been negatived In most of the matters the Writ Petitions contain no detailed facts. Several of the petitioners have gone in departmental appeal

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but that fact is not mentioned in the Writ Petition nor the order of the appellate authority challenged where the appeals have been dismissed. Many government servants have combined together to file one Writ Petition and in the case of such of then whose departmental appeals have been allowed and they reinstated in service, the Petitions have not been amended so as to delete their names and they have continued to remain on the record as Petitioners. Several Petitions are in identical terms, if not; almost exact copies of other Petitions. No attempt has been made in such matters to distinguish the case of one Petitioner from the other. Apart from contesting the legal validity of the impugned orders, hardly any one has even stated in his Petition that he was not involved in the situation which has led to clause (b) or clause (c) of the second proviso to Article 311 being applied in his case. There is no allegation of mala fides against the authority passing the impugned orders except at times a mere bare allegation that the order was passed mala fide. No particulars whatever of such alleged mala fides have been given. Such a bare averment cannot amount to a plea of mala fides and! requires to be ignored. in this unsatisfactory state of affairs so far as facts are concerned, the only course which this Court can adopt is to consider whether the relevant clause of the second proviso to Article 311(2) or of an analogous service rule has been properly applied or not. If this court finds that such provision has not been properly applied, the Appellant or the Petitioner, as the case may be, is entitled to succeed. If, however, we find that it has been properly applied, the Appeal or Petition would be liable to be dismissed, because there are no proper materials before the Court to investigate and ascertain whether any particular government servant was, in fact, guilty of the charges made against him or not. It is also not the function of this Court to do so because it would involve an inquiry into disputed questions of facts and this Court will not, except in a rare case, embark upon such an inquiry. For these reasons and in view- of the directions we propose to give while disposing of these matters, we will while dealing with facts refrain from touching any aspect except whether the particular clause of the second proviso to Article 311(2) 'of an analogous service rule was properly applied or not.

C.A. No. 6814 of 1983

147. Civil Appeal No. 6814 of 1983 is the only matter before us under clause (a) of the second proviso to Article 311(2).

148. The Respondent, Tulsiram Patel, was a permanent auditor in the Regional Audit Office, M.E.S., Jabalpur. It appears that orders were issued by Headquarters, C.D.A. C.C., Meerut, stopping the increment of the Respondent for one year. One Raj Kumar Jairath was at the relevant time the Regional Audit Officer, M.E.S., Jabalpur. On July 27, 1976, the Respondent went to Raj Kumar's office and demanded an explanation from him as to why he had stopped his increment whereupon Raj Kumar replied that he was nobody to stop his increment. The Respondent then struck Raj Kumar on the. head with an iron rod. Raj Kumar, fell down, his head bleeding. The Respondent was tried and convicted under Section 332 of the Indian Penal Code by the First Class Judicial Magistrate, Jabalpur. The Magistrate instead of sentencing the Respondent to imprisonment applied to him the provisions of Section 4, of the Probation of Offenders Act, 1958, and released him on his executing a bond of good behaviour for a period of one year. The Respondent's appeal against his conviction was dismissed by the Sessions Judge, Jabalpur. The Controller General of Defence Accounts, who was the disciplinary authority in this case, imposed upon the Respondent the penalty of compulsory retirement under clause (i) of Rule 19 of the Civil Services Rules. The said order was in the following terms :

"Whereas Shri T. R. Patel, Pt. Auditor (Account No. 8295888) has been convicted on a criminal charge, to wit, under Section 332 of I.P.C.,

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Whereas it is considered that the conduct of the said Shri T. R. Patel, Pt. Auditor (Account No. 8295888) which has led to his conviction, is such as to render his further retention in the public service undesirable,

Now therefore, in exercise of, the powers conferred by Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 the undersigned hereby direct that the said Shea T. R. Patel, Pt. Auditor, (Account No. 8295888) shall be compulsorily retired from service with effect from 25-11-1980"

The Respondent, thereupon filed a departmental appeal which was dismissed.

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149. Thereafter the Respondent filed in the Madhya Pradesh High Court as writ petition under Articles 226 and 227 of the Constitution. Relying upon Challappan's case (AIR 1975 SC 2216) the High Court held that no opportunity had been afforded to the Respondent before imposing the penalty of compulsory retirement on him. It further held that the impugned order was defective inasmuch as it did not indicate the circumstances which were considered by the disciplinary authority except the fact of conviction of the Respondent.

150. We are unable to agree with either of the two reasons given by the High Court for setting aside the order of compulsory retirement. So far as the first ground upon which the High Court proceeded is concerned, as already pointed out that part of the judgment in Challappan's case (AIR 1975 SC 2216) is not correct and it was, therefore, not necessary to give to the Respondent any opportunity of hearing before imposing the penalty of compulsory retirement on him.

151. It was, however, argued that the penalty imposed upon, the Respondent was not of dismissal or removal from service but of compulsory retirement and, therefore, clause (a) of Article 311(2) did not apply. The argument cannot be accepted. The compulsory retirement of the Respondent was not by reason of his reaching the age of superannuation or under other rules which provide for compulsorily retiring a government servant on his completing the qualifying period of service The order of compulsory retirement in this case was under clause (i) of Rule 19 of the Civil Services Rules and was by way of imposing upon him one of the major penalties provided for in Rule 11. It is now well settled by decisions of this Court that where an order of compulsory retirement is imposed by way of penalty, it amounts to removal from service and the provisions of Article 311 are attracted. (See State of U.P. v. Shyam Lal Sharma (1972) 1 SCR 184,189: (AIR 1971 SC 2151), and the cases referred to therein).

152. The second ground upon which the High Court rested its decision is equally unsustainable. The circumstances which were taken into consideration by the disciplinary authority have been sufficiently set out in the order of compulsory retirement, they being that the Respondent's conviction under section 332 of the Indian Penal Code and the nature of the offence committed which led the disciplinary authority to the conclusion that the further retention of the Respondent in the public service was undesirable. The mention of section 332 of the Indian Penal Code in the said order itself show's that Respondent was himself a public servant and had voluntarily caused hurt to another public servant in the discharge of his duty as such public consequence of an act done by that person in the lawful discharge of his duty. The facts here are eloquent and speak for themselves. The Respondent had gone to the office of his superior officer and had hit him on the head with an iron rod. It was fortunate that the skull of Raj Kunar was not fractured otherwise the offence committed would have been the more serious one under section 333. The Respondent was lucky in being dealt with leniently by the Magistrate but these facts clearly show that his retention in public service was undesirable. In fact; the conduct of the Respondent was such that he merited the penalty of dismissal from government service and it is clear that by imposing upon him only the penalty of compulsory retirement, the disciplinary authority had in his mind the fact that the Magistrate had released him on probation. We accordingly hold that clause (i) of Rule 19 of the Civil Services Rules was rightly applied to the case of the Respondent.

153. This appeal, therefore, requires to be allowed and the writ petition filed by the Respondent in the Madhy Pradesh High Court deserves to be dismissed.CISF Matters

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154. Civil Appeal No. 3484 of 1982 Union of India and others v. Sada Nand. Jha and others and Civil Appeal NO. 3512 of 1982 Union of India and others v. G. P. Koushal relate to the members of the CIS Force who were dismissed from the Force after dispensing with the disciplinary inquiry by applying clause (b) of Rule 37 of the CISF Rules read with clause (b) of the second proviso of Article 311(2). All except one of them filed a writ petition in the Patna High Court while the remaining one filed a writ petition in the Madhya Pradesh High Court. Both the High Courts allowed the writ petitions relying upon the decisions in Challappan's case

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(AIR 1975 SC 2216). Civil Appeal No. 3484 of 1982 is directed against the judgment of the Patna High Court while Civil Appeal No. 3512 of 1982. is directed against the judgment of the Madhya Pradesh High Court.

155. Before dealing with the relevant facts, we may mention that the -counter-affidavit filed to the writ petition in both the said High Courts were unsatisfactory. At the hearing of these Appeals an application was made on behalf of the Appellants for leave to file a supplementary return. This application was granted by us in the interest of justice and the Supplementary Return annexed to the said application was taken on the record. We will how briefly set out the facts which led to the passing of the impugned orders. The Respondents in Civil Appeal No. 3484 of 1982 are dismissed members of the CISF Unit at Bokaro Steel Plant of the Bokaro Steel United situate at Bokaro in the State of. Bihar while the Respondent in Civil Appeal No. 3512 of 1982 was a temporary security guard in the CISF Unit posted at Security Paper Mill. at Hoshangabad in the State of Madhya Pradesh. We will first deal with the facts of Civil Appeal No. 3484 of 1982. The members of the CISF Unit at, Bokaro had formed an all-India association in March 1979 and one Sadanand Jha, Respondent No. 1, was elected as its General Secretary. Thereafter, a countrywide. agitation. was carried on for recognition of the said association. In June 1979 some of the members of the said association were called upon to meet, the Home Minister at Delhi A delegation of the said association went to Delhi. While there they staged A demonstration. Some of the demonstrators, including Sadanad Jha, were arrested. What happened thereafter can best be related by extracting paragraphs3 to 9 of the Supplementary Return filed by Shri Madan Gopal, the Deputy Inspector-General, CISF Unit of Bokaro Steel Plant, Bokaro, pursuant, to the leave grante by this Court. 'These paragraphs read as follows:

"3. The said persons were arrested at Delhi, but subsequently released on bail. At Bokaro Steel Plant the agitation which was going on assumed aggravated form on and from 27th May, 1979. Out of 1900 persons belonging to CISF Unit Bokaro Steel Plant, Bokaro, about1000 participated in the processions persons and violent demonstrations. The said employees indulged in agitational acts and violent indiscipline. The said personnel unleashed reign of terror in the unit lines and openly incited others to disobey the lawful orders. The said persons indulged in several acts of violence and created a very serious law find order problem and an atmosphere of collective violence and intimidation. The said agitation and the violent activity reached a very serious proportion in the last week of June, 1979 with the result that Army had to be called by the State Authorities on 23-6-1979. Annexed hereto and marked Annexure AFD I is the request from the Home Commissioner, Bihar Govt. to the Ministry of Defence, Government of India dated 23-6-1979 requesting for the deployment of the Army so as to restore normalcy in the area. The State Government had also, deployed 9 Magistrates to assist the Army authorities as also the CRPF for restoring the normal conditions at the Bokaro Steel Plant. A copy of the order is enclosed herewith and marked as Annexure AFD-II.

4. On 24-6-1979, on seeing-the arrival of the Army, the agitators started making preparation for armed resistance by putting up sand bags, flood lights and. barricades in the CISF Lines. They had gained the control of CISF Lines and the Officers were not allowed to have any access to the Lines of to other ranks of CISF.

5. On 25-6-1979, the Army along with 9 Magistrates took up positions round the CISF Lines in the early hours and called upon the agitators to give up charge of the Armoury. In spite of giving repeated warnings by the authorities to give up charge of the Armoury, the agitators did not give up arms, but, instead, resorted to violence. The agitators started firing at 0320 hours at the Army. The Army returned the fire. The said exchange of fire continued for 3 hours before the Army could out the violent retaliation of the agitators. The said violent exchange of fire resulted in the instant death of one Army Major and 2 more Army personnel were also killed as

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a result of firing by the CISF personnel.

6. It may also be stated that there were 22, deaths in the course of the said pitched battle, which. went on for three. hours between the violent, armed agitators and the Army.

7. In regard to the aforesaid violent activities and the commission of offences, about 800 personnel were rounded up, by the Army and

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later on arrested by the local police. It is pertinent to mention here that at the relevant time, about 1900 personnel were deployed in CISF Unit, Bokaro Steel Plant, Bokaro. More. than 1000 personnel participated in the aforesaid agitational activities. Besides the persons arrested by the authorities concerned a substantial number of agitators were at large. Most of them either fled away or went underground and large number of arms and ammunitions were also with them. The search and seizure of arms and ammunition were going.on and as a result thereof up till 1-7-1979, 65 rifles along with large quantity of ammunitions, 11 molotov cooktails, 20 kgs. of sulphur,20 kgs of glass chips and other explosives and 1048 empties of 303 ammunition were recovered from the area after the Army action. A copy of the FIR lodged in connection with aforesaid commission of offences is annexed herewith and marked as Annexure (AFD-IIII).

8. Notwithstanding the arrest of the said about 800 employees, as aforesaid, atmosphere at the Bokaro Steel Plant continued to be vitiated due to terror and collective fear and the functioning of the CISF Unit and its administration at Bokaro had completely broken down. It was only Amy which could control the situation by its continued presence. The Army was withdrawn from the Bokaro Steel Plant only on or about 2-7-1979. However it may not be out of place to mention here that although the Army was withdrawn in the early July , 1979 but atmosphere of terror and tension continued for a couple of months. The CRPF continued performing security duties till Nov 79. Besides this Bihar Military Police took charge of armoury from army and continued to perform some of armed duties of CISF as CISF Unit was not in a position to functionnormally for a considerable time. Even the State authority apprehended a dangerous situation after the Army action including threat to lives of senior officers of CISF.

9. In the. meanwhile, having regard to the violent and disturbed situation which, prevailed in the Bokaro Steel Plant as also the collective actions of violence, mass terror and. intimidation and threats to supervisory and loyal staff, it was reasonably believed that any. inquiry in accordance with the provisions of the Rules 34, 35 and 36 of (CISF Rules, 1969 or in accordance with the requirements of Article 311(2) would be dangerous, counter produtive and would aggravate the already. existing dangerous situation. It was also reasonably believed that the circumstances were such as would make the holding of any inquiry self-defeating, subversive or would result. in consequent detrimental to public interest. It was in these circumstances that the concerned authorities formed reasonable nexus that any inquiry in accordance with the Rules was reasonably impracticable and impugned orders were passed in view thereof."

156. We see no reason to doubt the above statements made by Shri Madan Gopal in the Supplementary Return for these statements are supported by documents which have been annexed to the Supplementary Return. The facts set out in the above paragraphs of the Supplementary Return are eloquent and speak for themselves. They are also reflected in the impugned orders. All the impugned orders are in the same terms apart from the mention the name and service number of the particular member of the said CISF Unit. against whom the order is made. By way of a specimen we set qut below the impugned order dated June 29, 1979, made in the case o f Sadanand Jha. The said order is as follows :

"Whereas a large group of members of Central Industrial Security Force (hereinafter, referred to as the Force) of CISF Unit, Bokaro Steel Ltd., Bokaro have indulged and still continue to indulge in acts of insubordination and indiscipline, dereliction of duty, absenting from PT and parade, taking out processions and raising slogans such as 'Inqulab Zindabad', Vardi Vardi Vardi Bhai Bhai Larke Lenge Pai Pai' 'Jo Hamse Takrayege Choor Choor Ho Jayegp and Punjab Ki Jeet Hamari Hai Aab . CISF ki Bari Hai', participating in the gherao of Supervisory Officers, participating in hunger strike and 'dharna' near the Quarter Guard and Administrative Building of CISF

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Unit, Bokaro Steel Ltd., since 27th May 197.9 in violation of the provisions of CISF Act, 1968. and instructions of the Superior Officers and in complete disregard of their duties as members of the Force; And whereas the aforesaid group also indulged in threats of violence, bodily harm and' other acts of intimidation to Supervisory Officers and loyal members of the Force;

And whereas by the aforesaid collective action, the members of the Force have created a situation where by the normal functioning of

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the Force at the aforesaid CISF Unit has been rendered difficult and impossible;

And whereas 7205199 Security Guard Sada Nand Jha as an active participant of the aforesaid group has been extremely remiss and negligent in the discharge of his duty and has proved totally unfit for the same by absenting himself from parade unauthorisedly and indulging in various acts of extreme indiscipline and misconduct, as aforesaid;

And whereas I am satisfied that in the facts and circumstances, any attempt to. Hold departmental inquiry by serving a written charge-sheet and following other procedures in the manner provided in rules 34, 35 and 36, of the CISF Rules, 1969 will be frustrated by the collective action on the part of the aforesaid group and hence it is not reasonably practicable to hold such inquiry;

And whereas on a consideration of the facts and circumstances of the case I am satisfied that the penalty of dismissal from service should .be imposed on 7205199 Security Guard Sada Nand Jha;

Now, therefore, in exercise of the powers conferred by sub-rule (b) of the rule 37 of the CISF Rules, 1969 read with clause (b) of the second proviso to clause (2) of Article 311 of the Constitution. I hereby order that 7205199 Security Guard Sada Nand Jha be dismissed from service with immediate effect."

157.The CIS Force has been constituted. under the CISF Act for the better protection and security of industrial undertakings owned by the Government. Under Section 14 of the Act, the Inspector-General of the CIS Force may on a request in that behalf from the Managing Director of an industrial undertaking in public sector, showing the necessity thereof, depute such number of supervisory officers and members of the CIS Force as the Inspector- General may consider necessary for the protection and security of that industrial undertaking and any installation attached thereto. The purpose of constituting the CIS Force is set out in the Statement of Objects and Reasons to the Bill which when enacted became the CISF Act. The said Statement of and Reasons is published in the Gazette of India Extraordinary dated August 2, 1966, Pan II, Section 2, at page 435, and is as follows:

"At present security arrangements at important industrial undertakings in the public 1985 S.C./94 XI G-4 sector are handled by the Watch and Ward staff of the Organization concerned. The Watch and Ward staff is generally engaged in guarding the entrances or the perimeter of the industrial undertaking and in preventing entries of unauthorised persons. Unplanned recruitment, inadequate supervision, tramiing and discipline have made the existing watch and Ward staff ill-equipped. to discharge its ,responsibilities. It is considerdd necessary to strengthen the security arrangements in vital industrial undertakings. For that purpose it is proposed to constitute a centrally recruited, organised and trained Industrial Security Force. The Force will primarily be responsible for the watch and ward- of industrial undertakings owned by the Central Government and may be deployed at the request and cost of managements, for security duties of industrial undertakings in public sector."

158. The CIS Force is an armed Force and the security duties to be performed by the CIS Force, are of vital importance to the industrial production of the country. The CIS Force has been conferred very wide powers. Under Section 11 of the CISF Act, any supervisory officer or member of the Force may, without any order from a Magistrate and without a warrant, arrest any person who has been concerned in or against whom a reasonable suspicion exists of his having been concerned in or who is found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence relating to the property belonging to any industrial undertaking or other installations. Similarly, under section 12 for the same purpose a supervisory officer or member of the CIS Force, not below

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the prescribed rank, has the power to search the person and belongings of any person whom he has reason to believe to have committed any such offence as is referred to in section 11. From what is stated above, it is obvious that in a Force entrusted with such large responsibility, maintenance of discipline is most essential and this is made clear by section 18(1) of the CISF Act which provides as follows :

"18. Penalties for neglect of duty, etc.-

(1) Without prejudice to the provisions contained in Section 8, every member of the

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Force who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation. or lawful order made by a supervisory officer, or who shall withdraw from the duties of his office without permission, or who, being absent on leave, fails, without reasonable cause, to report himself for duty on the expiration of the leave, or who engages himself without authority in any employment other than his duty as a member of the Force, or who shall be guilty of cowardice, shall, on conviction, be punished with imprisonment for a term which may extend to six months."

Under section 19 of the CISF Act, the Police (Incitement to Disaffection) Act, 1922, applies to supervisory officers and members of the CIS Force as it applies to members of a Police Force. Under section 20, neither the Payment of Wages Act, 1936, nor the Industrial Disputes Act, 1947, nor the Factories Act, 1948, nor any corresponding State Act applies to the members of the CIS Force.

159. The facts set out in the Supplementary Return of Shri Mohan Gopal and in the impugned orders show that there was a total breakdown of discipline in the CIS Force. There was, a wilful and deliberate disobedience of orders of the supervisory officers and 'gherao' of such officers. There was a hunger strike, dharna, shouting of rebellious slogans and threats of violence and bodily harm to supervisory officers and acts tending to intimidate the supervisory officers and loyal members of the staff. There were acts of insubordination and deliberate neglect and wilful violation of their duties by a very large section of the members of the CIS Force stationed at Bokaro. All these acts virtually amounted to a mutiny and how grave the situation was can be judged from the fact that the army had to be called out and a pitched battle took place between the army and the members of the Force. No person with any reason or sense of responsibility can say that in such a situation the holding of an inquiry was reasonably practicable.

160. It was said that the impugned orders did not get out the particular acts done by each of the members of the CIS Force in respect of whom dismissal order was made, and these were merely cyclostyled orders with the names of individual members of the CIS Force filled in. Here was a case very much like a case under section 149 of the Indian Penal Code. The acts alleged were not of any particular individual acting by himself. These were acts of a large group acting collectively with the common object of coercing those in charge of the administration of the CIS Force and the Government in order to obtain recognition for their association and to concede their demands. It is not possible in a situation such as this to particularize the acts of each individual member who participated in the commission of these acts. The participation of each individual may be of greater or lesser degree but the acts of each individual contributed to the creation of a situation in which a security force itself became a security risk.

161. it was submitted at the Bar that the real reason for passing the orders impugned in Civil Appeal. No. 1484 of 1982 was the encounter with the army on June 25, 1979, and this real reason was not mentioned in the impugned order because the Respondents had been arrested and were being prosecuted and, therefore, before passing the impugned orders, the disciplinary authority would have had to wait till the prosecutions were over. Such an allegation has not been made in the writ petition filed in the High Court. In fact, there is no mention in the writ petition of the help of the army being sought or of the encounter with the army. The impugned orders mentioned the reasons why they were passed. The Supplementary Return bears out these reasons. We have, therefore, no hesitation in accepting what is stated in the impugned orders. In our opinion, clause (b) of Rule 37 of the CISF Rules and clause (b) of the second proviso to Article 311(2) were properly applied to the cases of the Respondents.

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162. Finally, a grievance was made at the Bar that the dismissed members of the CIS Force had filed departmental appeals and the appeals of those who had been discharged by the Magistrate were allowed and these appellants were reinstated. We do not know how. far this is correct nor the reasons for allowing such appeals, but if what is stated is true, it is not fair and the remaining appeals. should be disposed of as early as possible.

163. The impugned order in Civil Appeal No. 3512 of 1982 is in the same terms as the

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impugned orders in Civil Appeal No. 3484 of 1982. The situation at Hoshangabad was very much the same as at Bokaro and in our opinion clause (b) of Rule 37 of the CISF Rules and clause (b) of the second proviso to clause (2) of Article 311 were properly applied to the case of the Respondent.

164. Both these Appeals, therefore, require to be allowed.

Railway Service Matters

165. Civil Appeals Nos.. 3231 of 1981 and 4067 of 1983 and all the writ. petitions filed in this Court (except Writ Petitions Nos. 1953 of 1981, 7393, 1392 and 2022 of 1981) and all Transferred Cases, that is, writ petitions filed in High Courts and transferred to this Court, relate to railway servants who were either dismissed or removed from service by applying to their cases either clause (ii) of Rule 14 of the Railway Servants Rules or clause (b) of the second proviso to Article 311(2) or clause (ii) of Rule 14 read with clause (b) of the second proviso.

166. We have carefully gone through the facts of each of these cases. The majority of the railway employees who were dismissed or removed are alleged to have been concerned in incidents which took place in all-India strikes of railway employees. Many of these employees belonged to the all-India loco-running staff.

167. The proper running of the railway service is vital to the country. Railway trains carry not only those going for a holiday but also those who commute to work or business. In certain cities, for instance Bombay, lakhs commute daily by train for this purpose. The. railway trains also carry those going to. attend the funeral or obsequial ceremonies of near and dear ones and equally they carry marriage parties. They carry those who are in urgent need of medical treatment or have been seriously injured and not having proper medical aid in the places where they reside, have to be rushed to the nearest town, city or district headquarter where such medical aid is available. They carry essential commodities like foodgrains, oil, etc. They carry equipment and machinery vital for the needs of the country. In times of disturbances. they carry members of the Defence Forces and, the Central Reserve Police Force. In this connection, it is pertinent to note what Shah, J.; as he then was, had to say in Moti Ram Deka's case (at pages 795-6) (of 1964) SCR- 683 : AIR 1964 SC 600 at Pp. 609-10) about the railway administration and employment in railway service :

".....employment in the Railways is in a vitally important establishment of the Union in which the employees are entrusted with valuable equipment and a large measure of confidence has to be reposed in them and on the due discharge of the duties the safety of the public and the efficient functioning of the governmental duties depend. Not only the travelling public, but the Union and the States have in a considerable measure to depend upon rail transport for the functioning of the governmental machinery and its welfare activities. It would be possible even for one or a few employees of the Railway to paralyse communications and movement of essential supplies leading to disorder and confusion. The Railway service has therefore a special responsibility in the smooth functioning of our body politic ....."

168. As pointed out in Kameshwar PrasadAd v. State of Bihar (at page 385 of (1962) Supp SCR 369: AIR 1962 SC 1166 at P. 1172) there is no Fundamental Right to resort to a strike. A strike is only legal if an Act permits it and only if it is called in compliance with the conditions prescribed by that Act. The definition of "public utility service" in clause (n) of section 2 of the Industrial Disputes Act, 1947, includes any railway service. The term "strike" is defined in clause (q) of section 2 of the said Act. The said clause (q) is as follows:

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"strike' means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed, to continue to work or to accept employment".

Under sub-section (1) of section 22 of the said Act no person employed in a public utility service can go on strike in breach of contract without giving to his employer a notice of strike as prescribed by that section. Under section 24 a strike is illegal if it is commenced or declared in contravention of section 22. Under section 26(l) any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under the said Act, commits an offence punishable

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with imprisonment for a term which may extend to one month or with a fine which may extend to fifty rupees or with both. The railway strikes were all commenced without complying with the provisions of section 22.These strikes were, therefore, illegal and each of the railway servants who participated in these strikes committed an offence punishable under section 26(1) of the said Act.

169. It may be that the railway servants went on these strikes with the, object of forcing the Government to meet their' demands. Their demands were for their private gain and in their private interest. In seeking to have these demands conceded they caused untold hardship to the public and prejudicially affected public good and public interest and the good and interest of the nation.

170. It was contended that the conduct charged against all employees was not of equal gravity. This is true for in the case of some of the railway servants the acts alleged to have been committed by them would not if committed in normal times, merit the penalty of dismissal or removal from service, but when committed in furtherance of an all-India strike which has paraly sed a public utility service they cannot be viewed in the same light.

171. It was also contended that the punishments were arbitrarily meted out because in some casettes the railway servants were dismissed from service while in some other centres they were removed from service. The quantum and extent of penalty would depend upon the gravity of the situation at A particular centre and the extent to which the alleged acts, though not serious in themselves, in conjunction with acts committed by others, contributed to the bringing about of this situation.

172. In the context of an all-India strike where a very large number of railway servants had struck work, the railway services paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for to bring the situation to normal. In these circumstances, it cannot be said that an inquiry was reasonably practicable.

173. On a careful examination of the facts of these cases and the impugned orders, we find that in each of these cases clause (ii) Rule 14 of the Railway Servants Rules or clause (b) of the second proviso to Article 311(2) or both, as the case may be, were properly applied. All these matters therefore require to be dismissed.

The Madhya Pradesh Police Forces Matters

174. The matters which now remain to be dealt with are Writ Petitions Nos. 1953, 7393, 1392 and 2022 of 1981. The Petitioners belonged either to the Madhya Pradesh District Police Force or the Madhya Pradesh Special Armed Force. The Petitioners were dismissed by orders of the Governor of Madhya Pradesh by applying clause (c) of the second proviso to Article 311(2) to them. All the orders are in !the same terms except for the name and designation of the concerned policeman. One of the orders may be reproduced as a specimen. That order is as follows :

"As the Governor of M.P. under Article 311(2) C clause 2, sub-clause (c) of the proviso of Constitution is satisfied, that it is not expedient in the interest of the security of State that in case of Shri Karansingh const.No. 602, 2nd Bn. SAF the alleged charges to be told, enquiry to be conducted, or opportunity to show cause is to be provided as per provisions of clause (2) of the above article,

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And, as Governor of M.P. is satisfied that the conduct, which appears from his actions. or omissions, is such that it is sufficient ground for his dismissal/termination,

As such, the Governor of M.P. on the ground of powers vested to him under article 311(2)C. read with article 310 of the Constitution dismisses/terminates Shri Karansingh Const. No. 602, 2nd Bn. SAF, under said power, from the services, which will apply with immediate effect.

On behalf and under orders of
the Governor of M.P.
Sd/1- (Indira Mishra)
Under Secretary
Govt. of M.P., Home (Police) Deptt."

175. We have already held that in applying clause (c) of the second proviso the Governor of a State acts on his subjective satisfactiontaking into consideration facts and factors Which are, not proper matters. for judicial

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review. However, the claim of privilege was waived by the Government and all the materials produced at the hearing and inspection given to the other side. These materials disclose that an incident took place on January 18, 1981, at the annual Mela held at Gwalior in which one man was burnt alive. Some persons, including a constable from each of these two Forces, were arrested. These persons were remanded into judicial custody.. On January 20, 1981, several members of these two Forces indulged in violent demonstrations and rioted at the Mela ground, demanding the release of their colleagues. They attacked the police station at the Mela ground, ransacked it and forced the operator to close down the wireless set. The situation became so dangerous that senior district and police officers had to approach the Judicial Magistrate at night and get the two arrested constables released on bail. This incident was. discussed at a Cabinet meeting, a decision was taken and the advice of the Council of Ministers was tendered to the Governor of Madhya Pradesh who accepted it and issued the impugned orders. On further scrutiny some names were. deleted from the Est of dismissed personnel and some others included. As a result of this, some other members of these Forces began carrying on an active propaganda against the Government, visiting Jabalpur and other places in the State of Madhya Pradesh, holding secret meetings, distributing leaflets, and inciting the constabulary in these places to rise against the administration as a body, in protest against the action taken by the Government. On this information being received, they too were, similarly dismissed. These facts speak for themselves, The police normally oppose the grant of bail to an accused but here we have the paradoxical situation of some of the highest police and district officers going at midnight to the Magistrate's house to apply for bail for the accused. The police are the guardians of law and order. They stand guard at the border between the green valleys of law and order and the tough and hilly terrain of lawlessness and public disorder. If these guards turn lawbreakers and create violent public disorder and incite others to do the same, we can only exclaim with Juvenal. "Quis custodiet ipsos Custodes?" "'Who is, to guard the guards themselves?" (Satires, VI, 347). These facts leave no doubt that the situation was such that prompt and urgent action was necessary and the holding of an inquiry into the conduct of each of the Petitioners would not have been expedient in the interest of the security of the State. All these four petitions, therefore, deserve to be dismissed.

Final Orders in the Appeals and Writ Petitions

176. For the reasons set out above, we pass the following orders in the above matters :

(1) Civil Appeal No. 6814 of 1983 is allowed and the judgment and order appealed against are reversed and set aside and the writ petition filed by the Respondent in the High Court is hereby dismissed.

(2) Writ Petitions Nos. 1953,7393,1392and 2022 of 1981 are hereby dismissed.

(3) All the remaining Writ Petitions and all the Transferred Cases and Civil Appeals Nos. 3231 of 1981 and 4067 of 1983 are dismissed while Civil Appeals Nos. 3484 and 3512 of 1982 are allowed and the judgments and

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orders appealed against are reversed and set. aside and the writ 'Petitions filed by the Respondents in the High Courts are hereby dismissed. We direct the appellate authority under the Central. Industrial Security Force Rules, 1969, to dispose of as expeditiously as possible such appeals of the members of the Central Industrial Security Force as may still be pending. In the case of those government servants in this particular group of matters who have not filed any appeal, in view of the fact that they were relying upon the decision of this Court in Challappan's Case (AIR 1975 .SC 2216), we give them time till September 30,1985, to file a departmental appeal, if so advised, and we direct the concerned appellate authority to condone in the exercise of its power under the relevant service rule the delay in filing the appeal and, subject to what, is stated in this Judgment. under the headings "Service Rules and the Second Proviso - Challappan's Case and "The Second Proviso Clause (b)", to hear the appeal on merits.

(4) All interim orders made in the above matters are vacated but the government servants will not be liable to refund any amount so far paid to them.

(5) There will be no order as to costs in all the above matters.

(6) All other matters pending in this Court in which a question of the interpretation of

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the second proviso to clause (2) of Article 311 or of an analogous service rule is involved will stand disposed of in accordance with this Judgment.

177. **THAKKAR, J(Minority view):-** A benevolent and justice- oriented decision of a three-Judge Bench of this Court, rendered ten years back in a groupof service matters, (D.P.O. Southern Railway v. T. R. Challappan) (1976) 1 SCR 783: (AIR1975 SC 2216); is sought to be overruled by the judgment proposed to be delivered by my learned Brother Madon, J, with which, the majority appear to agree. "Challappan" having held the field for such a long time, it would have been appropriate if a meeting of the Judges constituting the Bench had been convened to seriously deliberate and evolve a consensus as to whether or not to overrule it.A 'give' and 'take' of ideas, with due respect for the holders of the opposite point of view (in a true democratic spirit of tolerance), with willingness to accord due consideration to the same, would not have impaired the search forthe true solution. Or hurt the cause of justice.The holders of the rival view points could have, perhaps, successfully persuaded and converted the holders of the opposite point of view. Or got themselves persuaded and converted to the other point of view.

178. Brother Madon, J, to whom the judgment was assigned by the learned Chief Justice, also appears to suffer heart-ache on the same score, for, in his covering letter dated July 6, 1985 forwarding the first instalment of 142 pages he says:

".....I regret to state that the draftjudgment could not be sent to you earlier. The reason was that as we did not have a meeting to discuss this matter, I did not know what would be the view of my other Brothers on the large number of points which fall to be determined in these cases, except partly in the case of two of my Brothers with whom by chance I got an opportunity to discuss certain broad aspects ....."

If only there had been a meeting in order to have a dialogue, there might have been a meeting of minds, and we might have spoken in one voice. Failing which, the holders of the dissenting view point could have prepared their dissenting opinions. That was not to be. On the other hand, it has so transpired, that, the full draft judgment, running into 237pages has come to be circulated in the morning of July 11, 1985, less than 3 hours before the deadline for pronouncing the judgment. There is a time-compulsion to pronounce the judgment, on 11th July, 1985, as the learned Chief Justice who has presided over the Constitution Bench is due to retire on that day, and the judge-time invested by the five Judges would be wasted if it is not pronounced before his retirement. The judge time would be so wasted because the entire exercise would have to be done afresh. The neck-to-neck race against time and circumstances is so keen that it is impossible to prepare an elaborate judgment presenting the other point of view within hours and circulate the same amongst all the Judges constituting the Bench in this important matter which was heard for months, months ago. I am, therefore, adopting the only course open to me

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in undertaking the present exercise.

179. 'Challappan' (AIR 1975 SC 2216), in my opinion, has been rightly decided. And there is no compulsion to overrule it, even if the other point of view were to appear to be more 'attractive', it is neither a good nor a sufficient ground to overrule Challappan'. After all what does 'Challappan do? It does no more than enjoin in the context of Rule 14(l)(a) (and therefore, as a logical corollary, also in the context of Rule 14(l)(b)) of the Railway Servants (Discipline and Appeal) Rules, 1968, that an employee must at least be heard on the question of quantum of punishment before he is dismissed or removed from service without holding any inquiry. The ratio of the decision is so innocuous that there is hardly any need to overturn it. Apart from the weighty reasons articulated by the three.Judge Bench, there are some more which can be called into aid. But while the 'will' is very much there, not the 'time., to elaborate the reasons to buttress Challappan and to counter the criticism levelled against the thesis propounded therein. Or to expound my point of view in regard to propositions in respect of which I have reservations. I propose to do so later if deemed necessary.

180. For the pre sent,, therefore, suffice it to say, I am unable to persuade myself to fall in line with the majority in overruling 'Challappan' and unable to concur with the consequential 'orders being passed in that context. I am also unable to associate myself

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with the exposition of law in regard to the true meaning and content of the 'pleasure doctrine' and its implications and impact.

181. The sphere in which I am able to agree with the proposed judgment is in regard to the matters arising out of orders passed in exercise of powers under Article 311 (2)(c) of the Constitution of India and the orders proposed. to be passed therein.

182. In the result :

I

Following the law laid down in 'Challappan' (AIR 1975 SC 2216), the undermentioned appeals are dismissed with no order as to costs :-

Civil Appeal No. 6814 of 1983 Union of India and Anr. v. Tulsiram Patel

Civil Appeal No. 3484 of 1982 Union of India and Ors. v. Sadanand Jha and Ors.

Civil Appeal No. 3512 of 1982 Union of India and Ors. v. G. P. Koushal

II

Following the law laid down in'Chaflappan the Writ Petitions and allied appeals and the companion matters hereafter mentioned are allowed and the impugned orders against the petitioners are declared to be void and quashed with no order as to costs:-

Writ Petitions Nos. 2267, 2268. 2269, 2273, 3349, 3350. 3351, 3352, 3353, 6500. 8120 of. 1982. 562 of 1983

Bishwaroop Chatterjee etc. v. Union of India and Others etc.

with Civil Appeal Nos. 3231 of 1981 and 4067 of 1983

Achinta Biswas etc. v. Union of India and Ors. etc.

and other allied Transferred cases and matters arising out of Railway service matters.

III

The same orders dismissing the Writ Petitions coupled with the same directions as per the majority judgment in :

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Petition No, 1953 of 1981, 7393, 1392, 2202 of 1981 and other allied M. P. Police Force matters under Art. 311 (2)(c).

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(Paras 44, 45)

Endnotes

...pup - Remark)
...LIED ON AIR 1996 SC 1065
...LIED ON AIR 1989 SC 1185
...LIED ON AIR 1988 SC 2245
...OLLOWED IN AIR 1988 SC 285

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