IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (C) No. 942 of 2016

Tensubam Khomei Singh, aged about 40 years, S/o (L) T. Mohan Singh, CISF No. 964651076, a resident of Ningomthongjao Kitnapanung, P.O. & P.S. Imphal & Irilbung, District Imphal East, Manipur.

... Petitioner

-Versus-

1. Union of India, represented by Secy. Home Affairs, Shastribhavan New Delhi.
2. Director General CISF H.Q CGO Complex, Lodhi Road, 13-Block, New Delhi – 110003.
3. CO, CIS, Unit Oil Duliajan, Dribugarh, Assam.

… Respondents

B E F O R E
HON'BLEMR. JUSTICE AHANTHEMBIMOL SINGH

For the Petitioner	::	Mr. Kh. Tarunkumar, Advocate
For the respondents	::	Mr. S. Samarjeet, Sr. Panel counsel
Date of Hearing	::	**30-01-2023**
Date of Judgment & Order	::	**14-02-2023**

JUDGMENT & ORDER

[1] Heard Mr. Kh. Tarunkumar, learned counsel appearing for the petitioner and Mr. S. Samarjeet, learned senior panel counsel appearing for the respondents.

[2] The present wit petition had been filed challenging the order dated 25-09-2009 issued by the CO of CISF, Unit Oil Duliajan by which the petitioner was dismissed form his service.

[2] The facts of the present case in a nutshell is that the petitioner was serving as a Constable in the Central Industrial Security Force (CISF) and was posted at CISF, Unit Oil Duliajan, Assam during 2007-2019. On 17-09-2019 while the petitioner was detailed for duty along with another Constable, the Assistant Commandant along with one Inspector came for making a surprise checking and found out that the petitioner and the other Constable were not present at their duty post. The said Officer found the petitioner and the other Constable smoking and sitting with arms and ammunitions far away from their duty post and both of them were under the influence of alcohol. The petitioner and the other Constable were called to the barrack for briefing and further action. After the briefing was over and while the aforesaid Inspector was endorsing his checking report, the petitioner lost his temper and cocked his rifle and aimed it at the Assistant Commandant and also scared other fellow force personnel present there not to come near him and to leave the spot. On seeing the aggressive behaviour of the petitioner, the Personal Security Officer of the Assistant Commandant promptly intervened and tried to overpowered the petitioner by grabbing him and also tried to snatch away the rifle, however, during the process the petitioner fired four rounds from his rifle and one of the bullets hit the left thigh of a Constable, who was the Driver of the Assistant Commandant. Ultimately the petitioner was overpowered and the arms and ammunitions allotted to him was deposited in the unit Kote.

[3] For his extreme act of indiscipline, the authorities initiated criminal proceedings against the petitioner by registering an FIR, however

the petitioner was ultimately acquitted of the charges made against him in the criminal proceedings. The petitioner was, however, dismissed from service by issuing the order dated 25-09-2009 impugned in the present writ petition. The petitioner was dismissed from his service by the authorities without holding any departmental enquiry and without following due procedure prescribed under Rule 36, 37 and 38 of the CISF Rules, 2001.

[4] Mr. Kh. Tarunkumar, learned counsel appearing for the petitioner submitted that the authorities dismissed the petitioner from his service without holding any departmental enquiry as mandated under Rule 36, 37 and 38 of the Central Industrial Security Force Rules, 2001 and without affording any opportunity to the petitioner to defend himself. The authorities issued the impugned order dated 25-09-2009 purportedly in exercise of the power conferred under Rule 39 (ii) of the CISF Rules, 2001. The learned counsel submitted that the only reason given by the authorities for dispensing with holding any enquiry is that the petitioner created a situation by intimidating other force personnel so much so that a situation had been created wherein there was a palpable sense of fear among the witnesses and no one was willing to come forward to depose against the petitioner. According to the learned counsel for the petitioner, the authorities should have first initiated a departmental proceeding against the petitioner by framing the article of charges against him mentioning the list of prosecution witnesses and only when the said witnesses did not turn up during the departmental enquiry, the disciplinary authority can say that because of the sense of fear, the witnesses are not willing to come forward to depose

against the petitioner. The learned counsel submitted that in the present case, the authorities without initiating any departmental proceeding straightaway resorted to the provisions of Rule 39 (ii) of the CISF Rules, 2001 and dismissed the petitioner from service by completely overlooking the mandatory provisions of Rule 36 of the CISF Rules, 2001 and without affording any opportunity to the petitioner to defend himself. The learned counsel also submitted that there were several eye witnesses at the time of occurrence of the incident including the Assistant Commandant and an Inspector, who are superior Officers of the petitioner and there is absolutely no possibility or capability of the petitioner intimidating such higher Officers and that the disciplinary authority straightaway resorted to the provisions of Rule 39 (ii) in a most arbitrary and malafide manner and dismissed the petitioner from his service. The learned counsel vehemently submitted that such action of the authorities cannot withstand the scrutiny of law and the same deserves to be interfered with by quashing and setting aside the impugned order dated 25-09-2009. In support of the arguments, the learned counsel cited the following judgements:-

1. ***(1991) 1 SCC 362, "Jaswant Singh V. State of Punjab & ors."***

"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 were 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 31(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 wherein by majority this Court held that once the requirements of the relevant clause of the second proviso are satisfied, the services of a 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 black door. On this line of reasoning, the majority held that Chellappan case 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, Shivaji Atmaji Sawant v. State of Maharashtra and Ikramuddin Ahmed Borah v. Superintendent of Police, Darrang."

"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 5, 1981 at about 11:00 a.m. In that incident the appellant sustained an injury on his right arm with a knife. He was, therefore, hospitalised and while he was in hospital the two show cause notices were served on him at about 10:00 p.m. on April 6, 1981. Before the appellant could reply to the said show cause notices respondent 3 passed the impugned order on the very next day i.e. April 7, 1981. Now the earlier departmental enquiries were duly conducted against the appellant and there is no allegation that the department had found any difficulty in examining witnesses in the said inquiries. After the revision applications were allowed the show cause notices were issued and 10 days time was given to the appellant to put in his replies thereto. We, therefore, enquired from the learned counsel for the respondents to point out what impelled respondent 3 to take a decision that it was necessary to forthwith terminate the services of the appellant without holding an inquiry as required by Article 311(2). The learned counsel for the respondents could only point out clause (iv)(a) of sub-para 29(A) of the counter which reads as under:

> *"The order dated April 7, 1981 was passed as the petitioner's activities were objectionable. He was instigating his fellow police officials to cause indiscipline, show insubordinatiion 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:

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

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the counter filed by respondent 3 it is contended that the appellant, instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors. It is also said that he threw threats to beat up the witnesses and the Inquiry Officer if any departmental inquiry was held against him. No particulars are given. Besides it is difficult to understand how he could have given threats, etc. when he was in hospital. It is not shown on what material respondent 3 came to the conclusion that the appellant had thrown threats as alleged in paragraph 3 of the impugned order. On a close scrutiny of the impugned order it seems the satisfaction was based on the ground that he was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. This allegation is based on his alleged activities at Jullundur on April 3, 1981 reported by SHO/GRP, Jullundur. That report is not forthcoming. It is no one's contention that the said SHO was threatened. Respondent 3's counter also does not reveal if he had verified the correctness of the information. To put it tersely the subjective satisfaction recorded in paragraph 3 of the impugned order is not fortified by any independent material to justify the dispensing with of the inquiry envisaged by Article 311(2) of the Constitution. We are, therefore, of the opinion that on this short ground alone the impugned order cannot be sustained."

2. ***(1991) 1 SCC 729, "Chief Security Officer & ors. Vs. Singasan Rabi Das"***

"5. In our view it is not necessary to go into the submissions 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 he 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 witnesses of the security/other Railway employees since this will expose these witnesses and make them ineffective in the 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 witnesses 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."

[5] At the outset, Mr. S. Samarjeet, learned senior panel counsel appearing for the respondents raised the following two preliminary objections regarding maintainability of the present writ petition:-

a) All the incidents in the present case happened within the state of Assam and the dismissal order was also issued at Duliajan, Assam and as such, this Court has no territorial jurisdiction to entertain the present writ petition;

b) Under section 9(2-A) of the Central Industrial Security Force Act, 1968 and Rule 54 of the CISF Rules, 2001, there is provision for preferring a revision petition against the order of dismissal, however, without exhausting such statutory remedies, the petitioner approached this court directly by filing the present writ

petition. Accordingly, the present writ petition is liable to be dismissed.

[6] In connection with the first preliminary objection, the learned counsel for the respondents submitted that the cause of action for preferring the present writ petition arose in the state of Assam inasmuch as all the incidents occurred within the state of Assam and the dismissal order was also issued at Duliajan, Assam and as such, this Court has no territorial jurisdiction to entertain the present writ petition. In support of his contentions, the learned counsel cited the judgment of the Hon'ble Apex Court in the case of **"Nawal Kishore Sharma Vs. Union of India & ors."** reported in **(2014) 9 SCC 329** wherein it has been held as under:-

> "16. *Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."*

[7] In connection with the second preliminary objection, it has been submitted by the learned counsel for the respondents that the petitioner preferred an appeal dated 23-10-2009 against the impugned dismissal order and the said appeal was rejected by the appellate authority by issuing an order dated 30-12-2009 and the said order was communicated to the petitioner. Subsequently, in response to the representations submitted by the wife of the petitioner, the authorities also wrote two letters dated 03-03-2010 and 23-04-2010 informing the wife of the petitioner that the

appellate authority had duly considered and rejected the appeal filed by her husband and also informing her that her husband may prefer a revision petition to the concerned revisioning authority within six months from the date of the appellate order. However, the petitioner did not submitted any revision petition despite the information given by the authorities under the said two letters dated 03-03-2010 and 23-04-2010.

It has been submitted by the learned counsel for the respondents that under section 9(2-A) of the Central Industrial Security Force Act, 1968 and Rule 54 of the CISF Rules, 2001, there is provision for preferring a revision petition against an order passed by the appellate authority and that the petitioner without exhausting the statutory remedy of preferring a revision petition against the appellate order directly approached this court by filing the present writ petition. Accordingly, the present writ petition is liable to be dismissed. In support of his contentions, the learned council cited the following judgements:-

1. ***AIR 1964 SC 1419 "Thansingh Nathmal & ors. Vs. The Superintendent of Taxes, Dhubri & ors."***

"7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Art. 226 and sought to re-open the decision of the taxing authorities on question of fact. The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the

jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Art. 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

2. ***2017-I-LLJ-606 (Megh) "Roshan Thakuri Vs. Union of India & ors."***

"3. On perusal of the said para, it appears that the petitioner's statutory appeal was rejected and observed by the respondent that the petitioner had not exhausted the alternative departmental statutory remedy available to the writ petitioner under section 9(2A) of CISF Act 1968 and as per rule 54 of CISF Rules 2011 by way of revision. In the case of Sh. Khiali Ram v. Union of India and others passed in CWP No. 3080 of 2009 dated 27-05-2016 and ultimately came to the conclusion that; "Accordingly, the present petition is permitted to be withdrawn with liberty granted to the petitioner to avail alternative remedy available to him under the provisions of the Central Industrial Security Force Act, 1968 and is further directed that in any case such revision etc. is filed by the petitioner within a period of eight weeks from today, the concerned authority shall adjudicate the same on merits without entering into the question of limitation etc."

"4. After hearing the submission advanced by the learned counsel for the petitioner, learned CGC for the respondents, Mr. R. Deb Nath did not deny the proposition of law referred by the petitioner counsel. So, after hearing both the parties and considering the affidavit and the judgment referred above, it is hereby ordered that the petitioner is at liberty to avail alternative remedy available to him under CISF Act, 1968 and he can place the revision before the appropriate authority or court within 4(four) weeks from the date of this order and the authority concerned shall adjudicate his grievances on the basis of merit of the case without going to the question of limitation."

[8] On the merit of the case also, it has been submitted by Mr S. Samarjeet that under Rule 39 of the Central Industrial Security Force Rules, 2001, the disciplinary authority is empowered to dismiss the service of the petitioner without holding any departmental enquiry as contemplated under Rule 36 to 38 if the disciplinary authority is satisfied that it is not reasonably practicable to hold enquiry in the manner provided under the said rules. For ready reference, the provisions of the Rule 39 of CISF Rules, 2001 are reproduced hereunder:-

> *"39. **Special procedure in certain cases.** – Notwithstanding anything contained in rules 36 to 38 –*
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> *(i) Where any penalty is imposed on an enrolled member of the Force 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 enrolled member of the Force may be given an opportunity of making representation against the penalty proposed to be imposed before any order is made in case under clause (i)."*

[9] The learned counsel for the respondents further submitted that in paragraph 7 and 8 of the impugned order dated 25-09-2009, the authorities have clearly recorded the reasons for dispensing with holding any department enquiry against the petitioner before dismissing him from service. It has also been submitted that the actions of the authorities are not based wholly on extraneous or irrelevant grounds nor is it a case of extraneous or abuse of power and that the truth or correctness or adequacy

of the materials available before the authorities, who have exercise power conferred under the enactment, cannot be revalued or weighed by this court while exercising power of Judicial Review. It has been vehemently submitted by the learned counsel that even if some of the material or reason on which the action is taken is found to be irrelevant or not vary material, this court cannot interfere so long as there is some relevant materials available on which the action of the authorities can be sustained. In support of his contentions, the learned counsel relied on the following judgments:-

1. ***2012 SCC Online Del. 888, "Manojit Ghosh Vs. Union of India & ors."***

"21. Thus clearly the only obligation that needs to be complied with while dispensing with the enquiry is that the Disciplinary Authority is required to record valid reasons in writing for doing so. In the present matter as discussed above the Disciplinary Authority had cited various reasons on the basis of which he deemed it fit to dispense with the enquiry. However, as per the petitioner these reasons are neither valid nor sufficient to justify the Disciplinary Authority's decision of dispensing with the enquiry."

"22. Thus it is imperative to consider the scope of judicial review about the reasons given by the Disciplinary authority while dispensing with the enquiry. The Apex Court has analyzed this aspect in a catena of cases of some of which are as follows:

"23. In Union of India. v. Tulsiram Patel AIR 1985 SC 1416 the scope of judicial review has been considered at length. In para 138, of the said judgment it has been held that in order to decide whether the reasons are germane to Clause (b) of Article 311(2), the Court must put itself in the place of disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The relevant para is as follows:

"138. Where a government servant is dismissed, removed or reduced in rank by applying Clause (b) or an analogous provision of the service rules and the approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether Clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by Clause (3) of Article 311 to the disciplinary authority's decision that it was not

reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by Clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. ***In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to Clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."***

"24. Similarly in Union of India v. Balbir Singh 1998 (5) SCC 216, the Supreme Court considered the scope of judicial review of the order of the Competent Authority to terminate the services of an employee without holding an inquiry. After placing reliance on its earlier judgments in A.K. Kaul v. Union of India MANU/SC/0267/1995; and S.R. Bommai v. Union of India MANU/SC/0444/1994, it observed that the order of the Authority can be examined to ascertain whether it stood vitiated either by malafides or is based on wholly extraneous and/or irrelevant grounds. However, it was also observed that the Court cannot sit in appeal over such an order or substitute its own decision for the satisfaction of the Authority, so long as there is a material before the Authority which is relevant for arriving at his satisfaction about dispensation of inquiry. The Supreme Court enumerated the following principles about the scope of judicial review in such a case:

(i) That the order would be open to challenge on the ground of malafides or being based wholly on extraneous and/or irrelevant grounds;

(ii) The burden is upon the authority who has passed the order to establish that circumstances which warranted the application of the provisions Article 311(2) were existing and the authority concerned had been subjectively satisfied on that count;

(iii) Even if some of the material, on which the action is taken, is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action;

(iv) The truth or correctness of the material cannot be questioned by the Court, nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the Authority;

(v) The ground of malafides takes in, inter alia, situations where the proclamation is found to be clear case of abuse of power or what is sometimes called as fraud on power; and

(vi) The Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the Authority is the best judge of situation and it was also in possession of information and material, on which the decision was based. However, its opinion/decision may not be conclusive."

2. ***(2003) 9 SCC 75, "Sahadeo Singh & ors. Vs. Union of India & ors."***

"6. We have heard learned counsel for the parties and perused the records. Having done so, we find it difficult to accept the argument of the learned counsel for the appellants. Before the disciplinary authority decided to dispense with the inquiry exercising the power under Rule 47 of the Rules, three internal enquiries were conducted by the officials of the Railway Protection Force. A perusal of these enquiry reports clearly shows that though there were witnesses who had seen the incident of theft of rice bags from the goods train in question to which the appellants and others were parties, none of them was willing to either give a statement in writing or give evidence apprehending danger to his life. The facts narrated in these internal reports clearly go to show that these appellants were in league with certain desparate miscreants, therefore, the locals who witnessed the theft were not willing to come forward to give any evidence, therefore, the disciplinary authority, in our opinion, rightly came to the conclusion that it would be impracticable for the Railways to hold an enquiry wherein witnesses could be examined to establish the misconduct of the appellants. From the preliminary reports, it is clear that these appellants were involved in the theft of the rice bags from 733 UP goods train on 25-2-1983 and in view of the apprehension expressed by the witnesses, the Railways was not in a position to hold a proper enquiry. In these circumstances, in our opinion, the authorities rightly invoked Rule 47 of the Rules."

[10] I have heard the arguments advanced by the learned counsel appearing for the parties at length and also carefully examined the materials available on record.

With regard to the first preliminary objection raised by the learned counsel appearing for the respondents, it can be seen from examination of the record that both the petitioner and his wife are residents of Imphal East District, Manipur and that the wife of the petitioner submitted a statutory appeal to the concerned appellate authority against the order of dismissal. The said appeal was rejected by the appellate authority by issuing an order dated 30-12-2009 and the said order was duly communicated to the petitioner at his residential address in Imphal East District through registered post.

In view of the above, this Court is of the considered view that cause of action arose partly in the State of Manipur and accordingly, this Court has territorial jurisdiction to entertain the present writ petition. In this regard, we can gainfully refer to the judgement rendered by the Hon'ble Apex Court in the case of "**Nawal Kishore Sharma vs. Union of India & ors.**" reported in **(2014) 9 SCC 329** wherein the Hon'ble Apex Court after considering a number of its earlier judgments held as under:-

> "9. *The interpretation given by this Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke writ jurisdiction. As a result, clause (1-A) was inserted in Article 226 by the Constitution (Fifteenth) Amendment Act, 1963 and subsequently renumbered as clause (2) by the Constitution (Forth-second) Amendment Act, 1976. The amended clause (2) now reads as under:-*
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> *"226.* ***Power of the High Courts to issue certain writs*** *– (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement*

of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) - (4) * * *

On a plain reading of the amended provisions in clause (2), it is clear that now High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226 (2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed. The term 'cause of action' as appearing in clause (2) came for consideration time and again before this Court."

"17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12-4-2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him

> *on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (dilated cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation."*

[11] With regard to the second preliminary objection raised by the learned counsel appearing for the respondents, it is found on record that in response to the representations submitted by the wife of the petitioner to the DG/CISF and the Hon'ble President of India, the authorities of the CISF wrote two letters dated 03-03-2010 and 23-04-2010 addressed to the wife of the petitioner informing her about rejection of the statutory appeal filed on behalf of the petitioner and also informing her that the petitioner can prefer a revision petition to the concerned revisioning authority within six months from the date of the appellate order. It is also found on record that after the petitioner was acquitted from the charges made against him in the criminal trial and as per the information given by the authorities under the aforesaid two letters dated 03-03-2010 and 23-04-2010, a representation dated 30-04-2014 as well as reminder dated 16-07-2014 was submitted on behalf of the petitioner to the Director General, CISF with a request for revoking the dismissal order and to reinstate the petitioner in service with all consequential service benefits. However, there is nothing on record to show that the respondents have considered and disposed of the said representation dated 30-04-2014.

[12] Under section 92(2-A) of the CISF Act, 1968, it is provided that any member of the force aggrieved by an order passed in appeal can prefer a revision petition against the order to such authority as may be prescribed within a period of six months from the date on which the order was communicated to him. Under Rule 54 of the CISF Rules, 2001, it is provided, inter-alia, that any authority superior to the authority making the order may either on his own motion or otherwise call for the records of any enquiry and revised any order made under the said rules and may confirm, modify or set aside the order etc.

[13] In the present case after the petitioner was acquitted from all charges made against him in the criminal trial and in terms of the instruction given by the authorities under their aforesaid letters dated 03-03-2010 and 23-04-2010, a representation dated 30-04-2014 was submitted to the Director General, CISF, who is the superior authority to both the disciplinary authority as well as the appellate authority, on behalf of the petitioner with a request for revoking the dismissal order and for reinstating the petitioner in his service with all consequential benefits.

[14] In my considered view, the DG, CISF has the power and authority to entertain and consider the aforesaid representation dated 30-04-2010 submitted on behalf of the petitioner in terms of the provisions under Rule 54 of the CISF Rules, 2001. Accordingly, this court is of the considered view that there is no merit in the second preliminary objection

raised by the counsel for the respondents and that the present writ petition is maintainable.

[15] With regard to the merit of the present case, there is no dispute that the petitioner had been dismissed from service without holding any departmental enquiry as mandated under Rule 36 of the CISF Rules, 2001 and without affording him any opportunity of defending himself. It is also an admitted fact that the impugned order dated 25-09-2009 had been issued by the disciplinary authority by exercising the power provided under Rule 39 (ii) of the CISF Rules, 2001. According to the learned counsel for the respondents, the reasons for dispensing with the departmental enquiry is clearly recorded under paragraph 7 and 8 of the impugned order. The said paragraphs are reproduced hereunder for ready reference:-

> "*07. AND WHEREAS, CISF No. 964651076 Constable T.K. Singh has been allotted family quarter located at South Bank, but at the time of said incident, he was living in the location barrack line (Bachelor Accommodation) along with other fellow constables. There are creditable information received from various sources that CISF No. 964651076 Constable T.K. Singh had created state of fear by instigating and threatening fellow CISF personnel by eulogizing his action of defiance against a Gazetted Officer."*
>
> *"08. AND WHEREAS, CISF No. 964651076 Constable T.K. Singh has created a situation by intimidating other Force personnel so much so that a situation has been created wherein there is a palpable sense of fear among the witnesses and no one is willing to come forward to depose against the said Constable in inquiry."*

[16] It is an undeniable fact that at the time of occurrence of the incident, there were many eye witnesses including the Assistant Commandant, the Inspector, the PSO and the Driver of the Assistant Commandant. As at least two of the aforesaid four witnesses are high ranking Officers of the CISF and as the petitioner, who is a mere Constable,

had been placed under suspension, this Court failed to understand as to how in such situation the petitioner can intimidate the said Officers from deposing against him. Moreover, it is also on record that at the time of the criminal trial against the petitioner, as many as seven prosecution witnesses including all the aforesaid four CISF personnel were examined.

[17] In view of the above, this Court is of the considered view that there is total absence of sufficient materials or good grounds for dispensing with the enquiry and that the reasons given by the authorities for dispensing with the enquiry are totally insufficient in law. In my considered view, the subjective satisfaction recorded in paragraphs 7 & 8 of the impugned order is contrary to the materials available on record and the said reasons are not fortified by any independent material to justify the dispensing of the enquiry envisaged under Rule 36 of the CISF Rules and accordingly, I am of the considered view that on this ground alone, the impugned order cannot be sustained.

[18] On careful perusal of the judgements cited by the learned counsel appearing for the respondents, this Court is of the considered view that the facts and circumstances under which the said judgments have been passed are totally different from the facts and circumstances of the present case and accordingly, the said judgements are of no help to the respondents. In the case of **"U.P. State Electricity Board Vs. Pooran Chandra Pandey & ors."** reported in **(2007) 11 SCC 92**, the Hon'ble Apex Court held as under:-

"12. As observed by this Court in State of Orissa v. Sudhansu Sekhar Misra (vide AIR pp. 651-52, para 13):

13. …. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, L.C. said in Quinn v. Leathem: (All ER p. 7 G-I)

'Before discussing the case of Allen v. Flood and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before- that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

"13. In Ambica Quarry Works v. State of Gujarat & others (vide SCC p. 221, para 18) this Court observed:

"18. ….The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

"14. In Bhavnagar University v. Palitana Sugar Mills (P) Ltd. (vide SCC p. 130, para 59) this Court observed:

"59. ….It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

"15. As held in Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed: (SCC pp. 584-85, paras 9-12)

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid`s theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to

embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. vs. Horton (AC at p. 761), Lord MacDermot observed: (AII ER p. 14 C-D)

> *'The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.*

10. *In Home Office vs. Dorset Yacht Co. Ltd. (All ER p. 297 g-h) Lord Reid said, Lord Atkin`s speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances. Megarry, J. in Shepherd Homes Ltd. V. Sandham (No. 2) observed: (AII ER p. 1274d)*

    > *'One must not, of course, construe even a reserved judgment of Russell, L. J. as if it were an Act of Parliament;'*

    And, in Herrington v. British Railways Board Lord Morris said: (AII ER p. 761c)

    > *'There is always peril in treating the words of a speech or judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'*

11. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

12. *The following words of Lord Denning in the matter of applying precedents have become locus classicus:*

    > *'Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.*

***　　　***　　　***

> *Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.”*

[19] For the findings and reasons given hereinabove, the present writ petition is allowed by quashing and setting aside the impugned order dated 25-09-2009. The respondents are further directed to reinstate the petitioner in service forthwith with all consequential benefits.

With the aforesaid directions, the present writ petition is disposed of. Parties are to bear their own costs.

JUDGE

FR / NFR

Devananda