
(2014) 10 RAJ CK 0130
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5841/2003

Govind Kalwani

APPELLANT

Vs

The Rajasthan High Court

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Constitution of India, 1950 — Article 310(1), 311, 311(2), 311(2) (b), 311(2)(b)

Citation : (2014) 4 WLN 231

Hon'ble Judges : Sunil Ambwani, Acting C.J.; Vijay Bishnoi, J

Bench : Division Bench

Advocate : M.C. Bhoot, Senior Advocate and Arpit Bhoot, Advocate for the Appellant; G.R. Punia, Senior Advocate and Yashpal Khileri, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, Actg. CJ.

1. We have heard learned counsel appearing for the parties.
2. By this writ petition, the petitioner has challenged the order dated 25.9.2003 issued by the Registrar General, Rajasthan High Court at Jodhpur dismissing him from service under the proviso (b) to Article 311(2) of the Constitution of India with immediate effect.
3. The petitioner was initially appointed as Lower Division Clerk in Rajasthan High Court at Jodhpur. He was promoted in due course. At the relevant time when he was dismissed from service, he was serving as Deputy Registrar (Record) in the High Court. A complaint was made against him by one Dr. Sunita Malviya to Hon'ble the Chief Justice alleging that the petitioner approached her at about 7.00 PM on 18th October, 2002 in her Clinic "Valeda Skin and Hair Institute and Cosmetic Surgery Centre, B-7 Shastri Nagar, Jodhpur" in connection with his obesity. He made an indecent proposal to her, giving her two options, namely, that either she may give money to be given to a sitting Judge,

who was also Inspecting Judge, or to spend a night with him in a hotel for a favourable decision of her pending case. At that time, Mrs. Prabha Tak, Additional Commissioner, Jodhpur was present in the Clinic for her treatment. She had heard the conversation and after talking to the then Hon''ble Chief Judge, she reported the matter to the Divisional Commissioner, who assured to take up the matter for administrative action. It was further alleged in the complaint that she received a telephonic call on 21st October, 2002 at 5.45 PM, which she did not pick up. On a return call, made by her from the Clinic, the petitioner told her that he is coming to her Clinic. She asked Dr. Ajay Malviya to immediately arrange for a tape-recorder for recording the conversation. She also informed to Mrs. Prabha Tak. At about 6.40 PM, the petitioner came to her Clinic and asked her about the proposal. He again made the indecent proposal to her and talked to the Hon''ble Judge in her presence. On this, the persons called by her to witness the incident, surrounded him. He started crying, apologized and threatened to commit suicide. She also called an Advocate Shri Mohnani, who pleaded to pardon him. A written complaint was made to Hon''ble the Chief Justice on 24.10.2002.

4. The petitioner was placed under suspension and a charge-sheet was issued to him on 19.12.2002 with the statement of charges as follows:-

"STATEMENT OF CHARGES FRAMED U/R. 16 OF THE RAJASTHAN CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES 1958.

AGAINST

SHRI GOVIND KALWANI, DEPUTY REGISTRAR (RECORD), RAJASTHAN HIGH COURT, JODHPUR

PRESENTLY UNDER SUSPENSION HEAD QUARTER AT JODHPUR:

STATEMENT OF CHARGE NO. 1

That, you Shri Govind Kalwani (now under suspension), while posted as Deputy Registrar (Record), Rajasthan High Court, Jodhpur, and functioning as such, in the evening of 18.10.02 at about 07.00 P.M. went to "Valeda" Skin and Health Institute and Cosmetic Surgery, at B-7, Shastri Nagar, Jodhpur and offered obscene, filthy and pornographic sexual proposal to Dr. Sunita Malviya, the Incharge of the Institute on behalf of yourself as well as in the name of two sitting Hon''ble Judge of Rajasthan High Court to pay money as bribe or to cohabit one night in a hotel with the named sitting Hon''ble Judge (Shri Arun Madan) of the Rajasthan High Court who is also the Inspecting Judge for Jodhpur and for one night with yourself prior to that, assuring that you will get the case, pending against her in the lower court decided in her favour. While talking to Dr. Sunita Malviya, a phone from a person to whom you addressed as one Pushkar was received on your Mobile No. 98290-23750 whereupon you Shri Kalwani told him that you were going to Justice Bishnoi.

That the matter was settled for twelve peties (lacs) and that six peties (lacs) were insufficient for getting his work done. You also told Dr. Sunita while leaving that you were going to Justice Bishnoi, if she wanted, you could also get her setting with Justice Bishnoi. This conduct & action on your part was not proper and thus you transgressed all limits of decency, failed to maintain the dignity and respect towards the Judiciary. This conduct and act of yours besides being unbecoming of an officer amounts to gross misconduct.

STATEMENT OF CHARGE NO. 2

That you Shri Kalwani while posted & functioning as stated above in allegation regarding Charge No. 1 in the evening of 21.10.02 at about 06.40 P.M. again went to the Institute of Dr. Sunita Malviya at B-7, Shastri Nagar, Jodhpur and made the proposal to pay money as bribe or to cohabit one night in a hotel, with the named sitting Hon''ble Judge (Shri Arun Madan) of the Rajasthan High Court who is also the Inspecting Judge for Jodhpur and for one night with yourself prior to that, for getting the case, decided in her favour, pending in the lower court against her. By doing so, you Shri Kalwani misused your official position and failed to maintain the dignity of office held by you which amounts to gross misconduct.

STATEMENT OF CHARGE NO. 3

That you Shri Kalwani, while posted & functioning as stated above in the statements of allegation regarding Charges No. 1 and 2 in the evening of 21.10.02 at about 06.40 P.M. again went to the Institute of Dr. Sunita Malviya at B-7, Shastri Nagar, Jodhpur and asked her as to what had she thought of the proposal made by you. You also told her that you would just now arrange her talk with Justice Madan Saheb, he may ask her to come down to Jaipur and in that case she will have to accompany you to Jaipur or she will have to spend one night with him when he comes to Jodhpur but it will not be day time and you repeated that first she would have to sleep with you. You then told Dr. Sunita that you had already talked to Madan Saheb-he has an eye on her- because she is sexy and beautiful. You, then phoned Justice Madan and told him to help Dr. Saheb at Jodhpur, rest you would talk later on. Thereupon, Dr. Ajay Malviya, Mr. Manish Mirdha, Mr. Ramesh rounded you up. At that time, you first tried to be innocent than started weeping and apologizing and said that either you be pardoned or else you would commit suicide. In the meanwhile Shri Mohnani, Lawyer of Dr. Sunita came, who asked her to pardon you. Manish Mirdha holding your hands asked you to apologize in writing. Then Prabha Tak also came and scolded you. After much bickering by you Dr. Ajay let you go. These acts on your part are unbecoming of an officer of the Rajasthan High Court and thereby you have committed gross misconduct.

STATEMENT OF CHARGE NO. 4

The aforesaid acts of yours as narrated in statement of allegation of charge No. 1 to 3 which have been widely published by the news papers and telecasted by the

different channels viz. The Jodhpur Edition of Rajasthan Patrika and Dainik Bhaskar as well as telecast by the Star Plus and Aaj Tak have tarnished the image and credibility of the Judiciary as an Institution, brought disrepute to the Rajasthan High Court and you have thus attempted the character assassination of the Judges of this Court by saying such things against them which were false to your own knowledge and you have thus committed gross misconduct.

Sd/-

DISCIPLINARY

AUTHORITY."

5. The Registrar (Administration), Rajasthan High Court, Jodhpur was nominated as Enquiry Officer. He started the proceedings of enquiry against the petitioner, in which he was informed by letter dated 27.2.2003 to present himself for recording his plea in the enquiry on 4.3.2003. After recording the plea of the delinquent on 4.3.2003, the departmental nominee was required to produce the list of witnesses and documents fixing 20.3.2003. The list of witnesses and documents were submitted on 20.3.2003, on which the petitioner was allowed ten days" time to submit his list of witnesses and documents.

6. The enquiry proceeded, in which on 31.3.2003, the petitioner submitted documents, copies of which were supplied to the departmental representative. On 1.4.2003, the petitioner requested for providing him copies of FSL report, audio cassette and newspapers mentioned in the list of documents submitted by the departmental representative. On 4.4.2003, copies of the newspapers were supplied to the petitioner. For other documents, at item nos. 7 to 8, the Enquiry Officer observed that the photo copies of the same have already been supplied to the petitioner. On a request made by the petitioner to be defended by a lawyer, he was allowed three days" time to give the name of the lawyer. On that date, Dr. Sunita Malviya was called for recording her statement.

7. On 19.4.2003, Shri M.C. Bhoot, the defence lawyer appointed by the petitioner appeared to defend the petitioner. On that date, the statement of Dr. Sunita Malviya was recorded, in part. On the next date on 26.4.2003, the statement of Dr. Sunita Malviya was kept reserved, after which, the matter was fixed on 3.5.2003 for her cross-examination.

8. On 3.5.2003, Shri M.C. Bhoot, the counsel appearing for the petitioner requested that the next date be fixed on any Saturday for cross-examination of Dr. Sunita Malviya. The matter was thus fixed on 10.5.2003. On that date, the statement of Dr. Sunita Malviya was recorded till 12.25 PM. Shri M.C. Bhoot once again requested for fixing a date on any Saturday for her cross-examination, which was not completed. On 17.5.2003, the statement of Dr. Sunita Malviya was recorded and once again, Shri M.C. Bhoot requested to fix the next date on Saturday for her cross-examination. On the next date fixed on 24.5.2003, the statement of Dr. Sunita Malviya and her cross-examination was concluded. The

Enquiry Officer, thereafter, summoned Dr. Ajay Malviya through Superintendent, Mahatma Gandhi Hospital for recording his statement, once again fixing a Saturday for the convenience of Shri M.C. Bhoot. On 30.5.2003, the statement of Dr. Ajay Malviya was recorded upto 12.30 PM, after which again Shri M.C. Bhoot requested the matter to be fixed on the next date for cross-examination of Dr. Ajay Malviya. His cross-examination was completed on 6.6.2003, after which Shri Manish Mirdha was summoned for recording his statement.

9. On the next date i.e. 13.6.2003, the statement of Shri Manish Mirdha was recorded and once again Shri M.C. Bhoot requested for fixing the next date for his cross-examination. On 25.6.2003, the cross-examination of Shri Manish Mirdha was completed, after which Smt. Prabha Tak was summoned for recording her statement. On 5.7.2003, the statement of Smt. Prabha Tak was recorded, but her cross-examination was not completed on which a request was made by Shri M.C. Bhoot for fixing the next date on Saturday. On 19.7.2003, the petitioner presented an application for adjournment as his counsel Shri M.C. Bhoot was not feeling well. On 26.7.2003, Shri M.C. Bhoot did not complete the cross-examination of Smt. Prabha Tak and on his request, the matter was fixed on 2.8.2003. On that date also, Shri M.C. Bhoot could not complete the cross-examination of Smt. Prabha Tak and requested for next date.

10. On 8.8.2003, the next date fixed in the departmental enquiry, the petitioner prayed for adjournment as his counsel was busy and on the next date fixed on 16.8.2003, the matter was adjourned on receiving information that Smt. Prabha Tak was suffering from fever.

11. On 23.8.2003, Shri M.C. Bhoot started the cross-examination of Smt. Prabha Tak, however, he did not conclude it, on which 30th August, 2003 was fixed for her cross-examination. On 30.8.2003, Smt. Prabha Tak could not appear due to urgent administrative work and on the next date fixed on 6.9.2003, her cross-examination was reserved at 12.00 Noon. On that day, Shri M.C. Bhoot requested for adjournment as he had to attend some meeting of the Advocates. On that date i.e. 6.9.2003, an application was also filed by the departmental nominee to take some documents on record, a copy of which was supplied to the petitioner.

12. On 11.9.2003, the next date fixed in the enquiry, the matter was again adjourned till 12.9.2003 for arguments on the application. The arguments were heard on 12.9.2003 and the application was allowed. On the request of Shri M.C. Bhoot, Smt. Prabha Tak was summoned for cross examination. On the next date fixed on 20.9.2003, the statement of PW4 Smt. Prabha Tak was recorded and kept reserved. Shri M.C. Bhoot again requested for fixing a next date for completing her cross-examination. On that date, Smt. Prabha Tak also made an application to take on record the correspondence made by her with the Rajasthan High Court. Once again, on the request of the counsel appearing for the petitioner, the matter was fixed on 27.9.2003 for completing the statement/cross-examination of Smt. Prabha Tak.

13. In the aforesaid backdrop of the proceedings of the departmental enquiry, which was continuing unabated and in which the cross-examinations were prolonged and were not concluded on the dates fixed and on every date, counsel for the petitioner sought further time, the matter was placed before Hon''ble the Chief Justice for appropriate orders and on which, the then Hon''ble Chief Justice, considering the importance & seriousness of the matter, the sensational charges and the manner in which the enquiry was delayed inordinately and in which the cross-examinations of the witnesses was prolonged by the counsel appearing for the petitioner, took a decision on 25.9.2013 to exercise the powers vested in him by the proviso (b) to Article 311(2) of the Constitution of India to drop the enquiry and to dismiss the petitioner from service with immediate effect. Consequently, on 25.9.2003, an order was issued by the Registrar General, Rajasthan High Court, Jodhpur dismissing the petitioner from service with immediate effect.

14. Shri M.C. Bhoot, learned Senior Counsel for the petitioner submits that the petitioner was charged with imputation of allegations against him, which were serious in nature. The petitioner had submitted his defence, on which the departmental enquiry proceeded and in which after supplying the copies of the relevant documents to the petitioner, the witnesses were being examined. At the stage of cross-examination of Smt. Prabha Tak, the fourth witness, who was an eye witness to the allegations made against the petitioner, the departmental enquiry was suddenly dropped and a decision was taken to exercise powers under the proviso (b) to Article 311(2) of the Constitution of India, to dismiss the petitioner from service. He submits that once the departmental enquiry was initiated and was in progress, the High Court was not authorized to exercise the powers, which have been given to the appointing authority, to dispense with the enquiry for the reasons to be recorded in writing that it is not reasonably practicable to hold an enquiry. Shri M.C. Bhoot submits that after the enquiry has been initiated, the powers to dispense with the enquiry are not available to the appointing authority. In any case, the delay in concluding the enquiry in the present case was not attributable to the petitioner or his counsel. He submits that the delay in any case could not be a ground, on which the enquiry may be dispensed with under clause (b) of Article 311(2) of the Constitution of India.

15. Learned counsel for the petitioner further submits that the petitioner or his counsel had not caused any deliberate delay in the enquiry. As the Senior Counsel of the High Court, considering his work schedule he had requested for fixing the dates on Saturdays. The Enquiry Officer had proceeded further in the enquiry, on date fixed by him. There was absolutely no reason to come to the conclusion that since the enquiry in the serious and sensational matter was being delayed by the petitioner or his counsel, the proceedings of the enquiry may be dropped by exercising the drastic powers under the proviso (b) to Article 311(2) of the Constitution of India, to dismiss the petitioner from service. The Supreme Court had visited and interpreted the proviso (b) to Article 311(2) for dispensing with the enquiry, in a number of cases. In the leading case in Union of India and

Another Vs. Tulsiram Patel and Others, the extraordinary powers under Article 311(2) of the Constitution of India were examined by the Constitution Bench threadbare. The majority view on the exercise of such powers has been discussed in para 122 of the judgment as follows:-

"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 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."

16. Shri M.C. Bhoot has further relied on the judgments of the Supreme Court in Bakshi Sardari Lal (Dead) through Lrs and Others Vs. Union of India (UOI) and Another, Jaswant Singh Vs. State of Punjab and others, Ex. Constable Chhote Lal V/s. Union of India and ors. ((2000) 10 SCC 196) and Sudesh Kumar V/s. State of Haryana and ors. ((2005) 11 SCC 525) in submitting that dispensation of the departmental enquiry, after it was initiated and was not concluded, was not justified.

17. Mr. M.C. Bhoot relying on the judgment in Bakshi Sardari Lal (supra) further submits in the alternative that the recording of reasons for dispensing with the enquiry are not sufficient. Such reasons should also be communicated to the delinquent employee. He submits that in the present case, the reasons were not supplied to the petitioner and thus, the order dismissing him from service dispensing with the enquiry, is not sustainable in law. He refer to para 8 of the

judgment, which is quoted below:-

"8. Now coming to the third contention of Mr. Nariman, the matter appears to have been concluded by the judgment of this Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, . Those were also cases of striking railway men against whom orders of dismissal had been made after dispensing with the inquiry by exercise of powers under the same proviso. Four learned Judges representing the majority spoke thorough Madon, J. and this Court held that there was a constitutional obligation to record in writing the reason for the satisfaction that one of the sub-clauses was applicable and if such reason was not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. The Court further stated that communication of the reason to the aggrieved Government servant was not obligatory but perhaps advisable. The record of the case produced before us clearly indicates that the reason has been recorded though not communicated. That would satisfy the requirements of the law as indicated in Tulsiram Patel's case. The plea of mala fides as had been contended before the High Court and casually reiterated before us arises out of the fact that typed orders dated 3rd of June, 1971, were already on record in the file when the papers were placed before the President; such a contention is without any substance. The President's order is dated 2nd of June and the typed orders of dismissal bear the date of the following day. In this setting, there is no scope to suggest that typed orders representing Government's decision were available on the record by the time the matter was placed before the President."

18. Shri M.C. Bhoot further submits that the decision to dispense with the enquiry cannot be rested solely on the ipse dixit of the concerned authority. In the present case, he submits that the High Court was not justified to drop the enquiry midway and to dismiss the petitioner from service on the ground that the charges were sensational and that the enquiry was being prolonged by the petitioner, whereas no deliberate or intentional delay was caused by the petitioner or his counsel in the enquiry, which was proceeding and was advancing towards conclusion. He has strongly relied upon the observations made by the Supreme Court in Jaswant Singh (supra), which are quoted as below:-

"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 No. 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 p. 270 (of Union of India and Another Vs. Tulsiram Patel and Others, of Tulsi Ram's 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 the third respondent 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 the third respondent 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. The third respondent'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 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."

19. Learned counsel for the petitioner submits that the legal position as advanced by him is also supported by the judgments in *Ex. Constable Chhotte Lal* (supra) and *Sudesh Kumar* (supra), in which it was held that it is established principle of law that an enquiry under Article 311(2) is a rule and dispensing with the enquiry is an exception. The authority dispensing with the enquiry under Article 311(2) (b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an enquiry. The delinquent employee must be allowed to establish his innocence by cross-examining the prosecution witnesses. This can be done only where the enquiry is held in which he is informed of the charges levelled against him. He must be given full opportunity to defend himself.

20. Shri M.C. Bhoot further submits that the seriousness of the charges, sensation and the embarrassment, which could have been caused by the enquiry to the administration of justice, are not the grounds on which the departmental enquiry may be dropped midway by exercising the powers under Article 311(2) (b) of the Constitution of India.

21. Learned counsel for the respondents, on the other hand, submits that considering the nature of the charges and the delay caused in the enquiry by the

counsel appearing for the petitioner, in which he was taking dates after dates to examine the witnesses and was prolonging the matter to the embarrassment to the administration of justice, it was decided by the High Court in public interest and for public good to exercise the powers under the proviso (b) to Article 311(2), to drop the enquiry and to dismiss the petitioner from service. The petitioner as an employee of the High Court has committed serious misconduct. The act of misconduct, prima facie established, had scandalized the administration of justice in the State of Rajasthan. The Hon'ble Judge, after a discreet enquiry conducted by the Hon'ble Judges of the Supreme Court, had resigned from his office on 21.3.2003. The conduct of the petitioner had scandalized the entire judicial system and was being extensively covered by the media. The High Court administration initially considered it proper to hold a departmental enquiry against the petitioner, but the manner in which the enquiry was proceeding in which instead of concluding the departmental enquiry, the counsel for the petitioner was prolonging the cross-examinations of the witnesses, to the extent of causing serious embarrassment to them and the Court administration, it was thought proper to drop the enquiry and to exercise the powers under the proviso (b) to Article 311(2) of the Constitution of India, to dismiss the petitioner from service.

22. Learned counsel for the respondents further submits that a decision, which could be taken by the High Court in the beginning of the enquiry and in which the satisfaction that it was not reasonably practicable to hold an enquiry could not be assailed, could also be taken even during the proceedings of the enquiry. Considering the scandalous and sensational charges against the petitioner and the manner in which the enquiry was proceeding as well as the delay caused by the petitioner and his counsel in cross-examining the witnesses, the enquiry was dropped and dispensed with on the ground that it was not reasonably practicable in the public interest to hold further enquiry. Such a decision, which could be taken in the beginning, could also be taken by the appointing authority, in the process of the enquiry.

23. Learned counsel for the respondents has relied on the affidavit of the Registrar (Writs) of the High Court in justifying the dispensation of enquiry as follows:

"The petitioner was aware of the fact that the matter in issue was assuming dangerous proportions and the matter became of serious concern for all the limbs of society and was extensively long watched and reported by print and electronic media. The answering respondents still acting in good faith and not to be swayed by such reportings, chose the genuine procedure of serving a charge-sheet with details of charges against the petitioner. It is rightly not the case of the petitioner that there was any ambiguity in the charges and particulars thereof or that he did not understand any particular charge against him. The gravity of the charges cannot be over emphasized. It was fundamentally required of the petitioner to have cooperated in the enquiry and to bring it to finality at

the earliest as the petitioner himself was aware that justice must transparently seem to have been done. However, the petitioner chose the path just other way round. Although enquiry officer was ready to proceed with the enquiry with the earliest dispatch, the petitioner took it as a leisure trial as if of an innocuous civil action and all the dilatory tactics of seeking time and adjournments were pressed into service. Even it was insisted that as the assistance of a LP has been extended and the learned LP would be available on Saturdays only, the date in the enquiry should be fixed accordingly. Although, such requests themselves were entirely unreasonable and in the given set of circumstances wholly unwarranted, yet this cooperation was extended. Unfortunately, even this bonafide attitude was attempted to be misused to the maximum. The proceedings in the enquiry show it clearly that even on 4.4.2003 when the petitioner sought further time for giving the name of LP for assistance in his defence, the matter was fixed on 19.4.2003 for recording the statement of complainant, Dr. Sunita Malviya and it was precisely directed that if the statement would not be completed on that date, the proceedings shall take place on day-to-day basis. Her statement commenced on 19.4.2003, was further continued on 26.4.2003, was further postponed for cross-examination at the request of learned LP for 3.5.2003. Then again, it was kept reserved at the request of learned LP for 10.5.2003, then again it was continued on 10.5.2003, yet again it was continued on 17.5.2003 and could be completed only on 24.5.2003. The cross-examination and completion of other statements also took more than one date. The statement of fourth witness Smt. Prabha Tak, Addl. Divisional Commissioner commenced from 5.7.2003 and became an unending exercise till 20.9.2003 for one reason or other.

The enquiry has commenced way back in the month of February, 2003. The incident in question itself was of October, 2002. The enquiry officer was questioned on such an abnormal delay in the enquiry proceedings who pointed out dilatory tactics on the part of the petitioner. With respect, it is submitted, without any comments on the merits of the case, that a bare look at the cross-examination of the witnesses as conducted by and on behalf of the petitioner shows it clearly that the over-stretched and elongated cross-examinations were directed to the large extent to no-where but were simply wayward and intended solely at the protraction of the trial. The petitioner or any delinquent for that matter is not entitled to take departmental proceedings at their whims and fancies or to use them as a hunting ground and therein also for just beating around the bushes. It is absolutely misconceived to contend that Clause (b) of second proviso to Article 311(2) of the Constitution of India cannot be invoked in the midst of the enquiry. It is not the law that situation which makes holding of enquiry not reasonably practicable should exist before the disciplinary enquiry is initiated against the person holding civil post under the Union or the State. Such a situation can also come into existence during the course of enquiry, after service of charge-sheet upon the delinquent employee, or after filing of written statement thereto or even when the evidence has been led in part.

When the credibility of the entire institution was at stake for the serious allegations involving not only the petitioner but for his using the names of the Judges of this Court and holding out obnoxious propositions, the petitioner ought to have come out clear and straight instead of pointless unending cross-examinations. In the peculiar circumstances of the case before such unending trial could get converted itself into a permanent menace, the answering respondents had to act and had acted to hold the credibility of the entire Institution. The petitioner has provided for all the reasons and circumstances leading to the satisfaction of the answering respondents that it was not reasonably practicable to hold and conclude the enquiry. From the material on record, it was more than apparent that it remained no longer reasonably practicable to hold enquiry and the impugned order was not the outcome of the whims or caprice. The power has been exercised bonafide and on the relevant considerations. It is relevant to mention here that by virtue of Article 311(3) of the Constitution of India, the decision of Authority concerned as to impracticability to hold such enquiry as referred to in sub-clause (2) shall be final. Moreover, the validity of order has not been assailed by the petitioner on any allegation of malafides on the part of the answering respondent. The challenge of the petitioner is mainly based on appreciation/evaluation of evidence recorded during the course of enquiry in the disciplinary proceedings before passing of the impugned order which is not relevant in view of Article 311(2) proviso (b). Therefore, the writ petition deserves to be dismissed."

24. Learned counsel for the respondents further submits that the counsel appearing for the petitioner instead of concluding the departmental enquiry expeditiously by completing the cross-examinations of the witnesses on the same day when they appeared, took unnecessary adjournments, to prolong the enquiry. His insistence that proceedings should only be held on Saturdays and the manner in which he was cross-examining the witnesses clearly suggested that he was not interested in concluding the enquiry, to cause serious embarrassment to the administration of justice. The relevant part of the reply on the conduct of the counsel for the petitioner is quoted below:-

"With respect, it is submitted that enquiry has protracted for the tactics adopted by the petitioner. The petitioner prolonged the enquiry on every pretext available including the fact that his assisting LP would attend proceedings on Saturdays. The record shows that the departmental witnesses were subjected to long cross-examination which continued on number of dates. The petitioner has abused the protection afforded by Article 311 of the Constitution of India. The process of enquiry has become unending exercise. Inordinate delay in the completion of the enquiry due to mechanization of the petitioner had the potential to thwart and deflect the course of justice. Continuation of interminable enquiry was causing irreparable and irretrievable damage to the public confidence in the system. In the above circumstances, it was not reasonably practicable to hold further enquiry. Therefore, Hon"ble the Chief Justice passed order to dismiss the petitioner and vide order dtd. 25.9.2003 issued under the signatures of Registrar

General, the petitioner was dismissed from service in exercise of powers conferred by Article 311(2) (prov. b).

A brief resume of the proceedings show it clearly that right from beginning, the petitioner chose to adopt dilatory tactics. The petitioner submitted application on 29.1.2003, that it was not in the interest of justice to submit any written statement as the same would be prejudicial to his right to defend himself. He requested that departmental proceedings be stayed till conclusion of the proceedings initiated against him for the criminal offences. He was directed to submit his reply before 10.2.2003. On 5.2.2003, the petitioner again submitted an application requesting the Disciplinary Authority to furnish the reasons of rejecting his application dated 29.1.2003. The disciplinary authority rejected this application on 5.2.2003 and he was directed to submit his reply on 10.2.2003. The petitioner submitted his reply on 10.2.2003. The Disciplinary Authority after perusing and considering the reply dtd. 10.2.2003 did not find the reply satisfactory and considered it just and proper to proceed with the proceedings. An officer was appointed as Enquiry officer and an officer was nominated as Departmental nominee. On 25.2.2003, the petitioner raised objection about appointment of Enquiry Officer and again prayed that enquiry proceedings be stayed till finalization of criminal proceedings. On his application, the Disciplinary Authority changed the Enquiry Officer and another officer was appointed as Enquiry officer. The second prayer of the petitioner was rejected. The Disciplinary authority ordered to proceed with the enquiry. 4.3.2003 was fixed for recording plea which was recorded on that date. On 4.3.2003 itself the Departmental nominee as well as the petitioner were directed to produce list of witnesses and documents. The enquiry was fixed for 20.3.2003 for further proceedings. The petitioner filed an application dated 5.3.2003 for supply of copies of documents/record. The required documents/record were made available to him. On 20.3.2003, Departmental nominee filed list of witnesses and documents. The petitioner requested for 10 days further time to file list of witnesses and documents. At his request, the matter was fixed on 31.3.2003. Copy of order-sheet dated 20.3.2003 was supplied to him. On 31.3.2003, the petitioner submitted list of documents and documents. At his request, copy of order-sheet dtd. 31.3.2003 was supplied to him. The matter was fixed on 1.4.2003 for further proceedings. On 31.3.2003, the petitioner filed an application to allow him assistance of an Advocate in his defence. The disciplinary authority permitted the petitioner to take assistance of LP as his assisting officer. He was directed to furnish name of LP within three days. On 1.4.2003, the petitioner appeared and prayed that he may be supplied the copy of FSL report, Audio Cassette and newspaper mentioned in the list submitted by the departmental nominee. Departmental nominee was directed to supply the same. The matter was posted on 4.4.2003. A copy of order-sheet dtd. 1.4.2003 was supplied to him. On 4.4.2003, departmental nominee informed the enquiry officer that he could not rely on documents mentioned at items no. 4 to 6 of the list of documents furnished by him in future. He was permitted not to file these

documents. Rest of the documents were given to the petitioner. The petitioner asked for time to furnish the name of lawyer in his defence. He was allowed three days more time. The matter was posted on 19.4.2003 for recording statement of departmental witness No. 1 with clear stipulation that the statement would be recorded day to day. As requested a copy of order-sheet dtd. 4.4.2003 was given to the petitioner. On 7.4.2003, the petitioner filed Vakalatnama of Shri M.C. Bhoot, Advocate. As regards recording of statements it is pertinent to mention here that learned LP appearing on behalf of the petitioner requested the Enquiry Officer on every occasion that statement be recorded only on Saturdays. As a result of his request, statement of PW-1 which started on 19.4.2003 could only be concluded on 24.5.2003; statement of PW2 started on 31.5.2003 and was concluded on 6.6.2003; statement of PW-3 started on 13.6.2003 and was completed on 25.6.2003; statement of PW4 started on 5.7.2003 could not be concluded till passing of order dtd. 25.9.2003 whereby the petitioner was dismissed from service with immediate effect.

It is apparent that answering respondents were required to act and to take serious action. It was apparent that it was not reasonably possible to hold and conclude the enquiry. The order under Article 311(2) (prov. b) of the Constitution has rightly been passed."

25. Learned counsel for the respondents has relied on the majority view taken in the leading case in Tulsiram Patel (supra) and in which it was observed that second proviso in Article 311(2) was inserted as a matter of policy and in public interest and for public good. It is in public interest and public good that the Government servant can be dismissed or removed from service instead of being allowed to continue at public expense and public detriment. Smooth and commiseration cannot be allowed to out-weigh considerations of public policy, concern for public interest regard for public good and peremptory dictate of a constitutional prohibition. The second proviso has been in the Constitution since it was originally enacted. The Government servant is not without remedy when the second proviso has been applied. There are two remedies open to him, namely, departmental appeal and judicial review.

26. We have considered the submissions and examined the original records, which were produced before us by learned counsel appearing for the respondents.

27. We may observe here that the counsel appearing for the petitioner did not request the Court to peruse the record nor was interested in looking into the note of the then Hon"ble Chief Justice presented before us and the reasons given by him in the order on the file under the proviso (b) to Article 311(2) of the Constitution of India for dispensing with the further enquiry and dismissing the petitioner from service.

28. In order to appreciate the contentions raised at the Bar and to arrive at a just conclusion, we have thought it proper to reproduce the reasons given by the then Hon"ble Chief Justice in his order dated 25.9.2003 for exercising the powers

under the proviso (b) to Article 311(2) of the Constitution of India:-

"The enquiry has lingered on due to the delaying tactics adopted by the delinquent. He has successfully prolonged the enquiry on the ground that his counsel cannot attend the enquiry except on Saturdays. It appears from the record that the departmental witnesses were subjected to long cross-examination which continued on number of dates. The protection afforded by Article 311 is being abused by the Officer. The regular enquiry was started in February 2003 and is continuing even after lapse of several months. It seems that the process of enquiry has become an unending exercise. Inordinate delay in the completion of the enquiry due to machinations of the Officer has a potential to thwart and deflect the course of justice. Continuation of interminable enquiry will cause irreparable and irretrievable damage to the public confidence in the system. In the circumstances, it will not be reasonably practicable to hold further enquiry.

Accordingly, in exercise of the powers under proviso (b) to Article 311(2) of the Constitution of India the Officer is dismissed from service with immediate effect.

Sd/-

CHIEF

JUSTICE"

29. We find that the then Hon"ble Chief Justice had applied his mind to the facts and circumstances on the record, in which the enquiry was being unreasonably delayed and the effect of the delay on the public confidence in the administration of justice. He had, considering the larger public interest involved and to avoid the erosion of faith in the administration of justice, which is of paramount importance, taken a conscious decision, to exercise the powers under the proviso (b) to Article 311(2) of the Constitution of India. What could be done by the appointing authority, before initiating the proceedings of the enquiry, could also be done by it during the progress of the enquiry, to stop any further enquiry in the public interest and to dismiss a public servant. In our view, there is no bar under Article 311(2), to take a decision that it is not reasonably practicable to hold enquiry, during the progress of the enquiry, if the appointing authority, for reasons to be recorded in writing, is satisfied that it is not reasonably practicable in public interest to hold such enquiry. The words "to hold such enquiry" would also include "to hold such further enquiry" provided the tests for exercising the power are satisfied.

30. In *Tulsiram Patel* (supra), the principles of law for enacting second proviso to Article 311(2) have been discussed in detail. It was held 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. 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 language of the second proviso to Article 311(2) is plain and unambiguous. The key-words in the second proviso are "this clause shall not apply". 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 enquiry shall not be held. The key-words 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.

31. The Supreme Court in *Tulsiram Patel* (supra) observed that 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. Smooth and commiseration cannot be allowed to out-weigh considerations of public policy, concern for public interest, regard for public good and peremptory dictate of a constitutional prohibition. The Government servant under such situation is not without remedy. It is open to him to file a departmental appeal or to approach for judicial review.

32. After discussing the pleasure doctrine embodied in Article 310(1), the Supreme Court in para 45 of the judgment in *Tulsiram Patel* (supra) observed that 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.

33. It was further observed in *Tulsiram Patel* (supra) that it is advisable to give reasons for which the enquiry is dispensed with, but it cannot be said that non-supply of the reasons will vitiate the powers under Article 311(2) of the Constitution of India. The observations were followed in *Bakshi Sardari Lal (Dead)* through LRs. *V/s. Union of India & anr.* (supra), with approval.

34. In the present case, after a discreet enquiry was made by the Supreme Court, the Hon"ble Judge had resigned from his office on 21.3.2003. The charges against the petitioner were very serious and had scandalized the administration of justice, eroding the public faith in the system. It was not a part of duty of the petitioner to have indulged in a conduct, which led the events and in which unfortunately, the matters were brought in public gaze. The media was reporting the events on day to day basis. The counsel appearing for the petitioner in the enquiry did not realise the importance of the matter to the due administration of justice and the faith, which the public reposes in the system. He took his own time and requested to proceed only on Saturdays and thereafter, prolonged the

cross-examinations of the witnesses ad nauseam beyond permissible limits, to allow the matter to simmer. He went beyond his duty as an Advocate defending his client, in prolonging the enquiry, apparently to put the administration of justice to disrepute. We do not want to make any further comment on the conduct of the petitioner and his counsel. It is sufficient to say that in such a situation, the counsel being an officer of the Court sharing the responsibility of public good in the administration of justice, should have made a sincere attempt to bring such matter to an expeditious end.

35. We are of the view that the then Hon^{ble} Chief Justice in the extra-ordinary circumstances, in which the public interest was immensely suffering and in order to protect the dignity of the institution created by the Constitution of India for dispensing justice, upholding the rule of law and for maintaining confidence of the people in the judiciary, took the extreme step to close the enquiry and exercise the extraordinary powers vested in him as the appointing authority under the proviso (b) to Article 311(2) of the Constitution of India, to dismiss the petitioner from service. It was not in the public interest or public good to continue the departmental enquiry and to allow further embarrassment both to the Institution as well as the petitioner. As the Chief Justice of the State, it was his constitutional duty to put the matter to an end expeditiously and not to allow the petitioner and his counsel to continue to cause embarrassment, by which the general public may have lost faith in the system.

36. For the aforesaid reasons, we do not find any merit in this writ petition. The writ petition is dismissed.