

(2012) 02 DEL CK 0611

In the Delhi High Court

Case No : WP (C) No. 885 of 2012 and CM No. 1960 of 2012

Manojit Ghosh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 3, 32, 34, 36, 37
Constitution of India, 1950 — Article 226, 311, 311(1), 311(2), 311(3)

Citation : (2012) 02 DEL CK 0611

Hon'ble Judges : Sudershan Kumar Misra, J; Anil Kumar, J

Bench : Division Bench

Advocate : M.K. Singh, for the Appellant; Ravinder Aggarwal, Central Govt.
Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.

CM No. 1960/2012

Allowed subject to all just exceptions.

WP(C) No. 885/2012

1. The petitioner has sought directions to cancel, withdraw or rescind the order of his dismissal from service dated 24th March, 2008 passed by the Senior Commandant, CISF 5th Res. Bn. Ghaziabad, UP and the order dated 25th July, 2009 passed by the Appellate Authority, Dy. Inspector General/NZ, CISF Campus, NZ Headquarters, Saket, New Delhi and the order dated 29th June, 2010 passed by the confirming authority. The petitioner has also sought directions to the respondents to transfer the entire record and documents pertaining to his case and has also sought his reinstatement with benefits including arrears of pay and allowance. The brief facts to comprehend the controversies are that the petitioner was appointed as a Constable under the Central Industrial Security Force (CISF) on 2nd August, 1999 after being selected

on duly following the selection process, comprising of written test, physical test and interview respectively. After selection, the petitioner had reported to the Recruitment Training Centre, CISF at Bhilai in the State of Madhya Pradesh for training and after training, he was posted to the office of Commandant, CISF, 6th RB (A) at Vellore in the State of Tamil Nadu. Later on, the petitioner was deputed to the CISF Unit at Bangalore Airport.

2. The petitioner was also deputed to undergo commando training; training in correct use of Arms; Maintenance and various functions and Q.R.T. training, which were completed by him successfully and thereafter, the petitioner was posted in the Airport Security Unit at Vizaq in Andhra Pradesh. The petitioner had also undergone three months of "VIP Security Course" and was thereafter selected for three months of Commando Training at Barwah in Madhya Pradesh.

3. The petitioner contended that on the basis of his performances during the commando training, he was enlisted as a member of a group of 42 personnel for the purpose of being posted to the Indian Missions Abroad. After being posted on temporary duty at the office of DIG, CISF, Government Building Security, Jamnagar House, New Delhi, he was directed to join the post of security personnel at the Embassy of India at Kathmandu in Nepal for a period of two years. The petitioner had arrived at Kathmandu on 6th November, 2005 pursuant to his order of posting dated 20th October, 2005 and had assumed the charge of the post of Security Guard (SG) at the Embassy of India at Kathmandu in Nepal.

4. It was alleged that on 29th February, 2008, at about 2230 hours, the petitioner had gone to the Hotel Radisson, Kathmandu and forcibly entered into room No. 118 by impersonating himself as a security guard of the hotel. The room was occupied by Ms. Hande Apaydin (Turkish national). The petitioner unauthorizedly entered the room and thereafter outraged the modesty of Ms. Hande Apaydin by touching her body parts with his hands despite strong protest by her. The petitioner was nabbed by the hotel staff and handed over to Durbar Marg Police Station where he was detained from 0000 hours to 1930 hours on 1st March, 2008.

5. Since the misconduct of the petitioner was clearly established, as a measure of damage control and with a view to save the country from ensuing embarrassment, the officials of the Embassy of India at Kathmandu persuaded Ms. Hande Apaydin, not to file a criminal case against the petitioner on the basis of the assurance that action would be taken against the petitioner and consequently, a compromise note was also signed by Ms. Hande Apaydin. During the preliminary investigation conducted against the petitioner, it was found that the evidence on record clearly established the guilt on the part of the petitioner and in the circumstances it was alleged that the misconduct of the petitioner had not only tarnished the image of CISF and the Indian Embassy in Kathmandu but also the country as a whole. The petitioner was thereafter repatriated and was directed to report to the CISF 5th Res./BN Ghaziabad for the disciplinary proceedings by order dated 2nd march, 2008.

6. The respondents on taking into consideration that the incident had taken place at Kathmandu, Nepal and that Ms. Hande Apaydin (Turkish national), the victim and the complainant and the other relevant witnesses i.e. hotel employees, members of the Kathmandu police were not likely to come to India to tender their evidence in case of conducting a departmental inquiry; that there was the possibility of the petitioner terrorizing the witnesses if they came to India; that it would be an irritant and reminder of unpleasant incident to the victim and the other staff of the CISF and Indian Embassy; that there was ample evidence adduced during the preliminary enquiry which established the misconduct alleged against the petitioner; that the trial would attract worldwide media attention and that the regular inquiry would have had far reaching implications on the general discipline of the force, therefore, it was held that it would not be reasonably practicable to hold a regular departmental inquiry under Rule 36 of the CISF Rules, 2001. The respondents, therefore, dispensed with holding the regular inquiry by invoking the provisions of Rule 32(i) read with Rule 34 and Rule 39 (ii) of the CISF Rules, 2001 and awarded the penalty of dismissal from service by order dated 24th March, 2008.

7. Against the order of the dismissal dated 24th March, 2008, the petitioner filed an appeal before the Appellate Authority. The Appellate Authority considered the pleas and contentions put forward by the appellant and upheld the penalty of dismissal from service imposed by the Disciplinary Authority and consequently dismissed the appeal by order dated 25th July, 2008.

8. The petitioner challenged the order of dismissal and the order passed by the Appellate Authority by filing the Writ Petition being W.P. (C) No. 28800 (W) of 2008 before the High Court of Calcutta which was not entertained on the ground that the High Court did not have the jurisdiction by order dated 18th March, 2009. Thereafter, the petitioner filed another writ petition before the Delhi High Court being WP(C) No. 1054/2010. Since the petitioner had not exhausted the already existing alternate remedy of filing a Revision Petition under Rule 54 of the CISF Rules, 2001, the petitioner was allowed to withdraw his writ petition by order dated 19th February, 2010 with liberty to file a Revision Petition against his order of dismissal and the dismissal of his appeal by the Appellate Authority.

9. The petitioner, thereafter filed a revision petition dated 6th April, 2010. The revision petition was also dismissed by the Revisional Authority by order dated 29th June, 2010. The Revisional Authority while dismissing the revision petition held that the Disciplinary Authority had enough and justified reasons warranting dispensing with the regular departmental inquiry and that there was no valid reason to proceed with the disciplinary inquiry against the petitioner at Kathmandu itself. The plea of the petitioner that the officials had unduly avoided the course of inquiry, on imaginary and fictitious assumptions was also rejected by the Revisional Authority. While dismissing the revision petition, the Revisional Authority noted as under:-

The plea of the petitioner is not acceptable. The statement of Sh. Surrender

Kumar Kapoor (AP&WO, BOS), Sh. Rajesh Chouhan (AP&WO), Ms. Hande Apaydin (Resident of Istanbul, Turkey), Statement of compromise note and signed between the parties at the Police Station and the statement given by the petitioner to the police clearly shows that the petitioner was picked up by Nepal Police from Hotel, Radisson for forcefully entering in the room No. 118 of Hotel Radisson and outraging the modesty of Ms. Hande Apaydin. The petitioner was also given an opportunity to examine Ms. Hande Apaydin (Complainant) but he did not do so which is also very strange on the part of the petitioner of not examining the accuser, when he was occupy report furnished by the Hotel Authorities, after the incident the lady in question had checked out the Hotel on 2.3.2008. the Disciplinary authority after taking account the entire circumstances of the case found that if a regular inquiry is ordered the witnesses would not come to India for deposing their statements. It would be an irritant and reminder of unpleasant incident to the victim and the other staff of CISF and India Embassy, who were associated with the happening. As several countries are involved the trial would attract worldwide media attention and thus damage the reputation of the country and the general inquiry will have far reaching implications on the general discipline of the force. These unwarranted circumstances and prevailing situation was fair and just on the part of the Disciplinary Authority to conclude that it is not reasonably practicable to hold the inquiry but to take action by involving the provisions of rule 3(ii) of CISF Rules, 2001. The petitioner himself has invited the nemesis, the petitioner is in.

10. The Revisional Authority also repelled the contention of the petitioner that he had every reason to presume that there may have been some other person who had committed the crime and that he was falsely implicated to bear the brunt of the unfortunate incident and that he has been dismissed from the service arbitrarily by taking shelter under the provisions which exempt due inquiry in certain cases.

11. The Revisional Authority had noted that from the record, it is evident that on 29th February, 2008 at about 2015 hours the petitioner was on deputation with the Indian Mission, stationed abroad at Kathmandu (Birganj, Nepal). He had gone out of the Embassy premises for the purchase of a recharge coupon for his cell phone after taking permission for about 5-10 minutes from Sh. Sardar Singh Badsera, AP & WO/CISF (Sub Inspector/Exe.). However, he did not return to the Embassy within the permitted period. Instead, he proceeded to the Hotel Radisson, Kathmandu and forcibly entered into room No. 118 at about 2030 hours where Ms. Hande Apaydin (Turkish national) was staying by impersonating himself as a security guard of the hotel. He carried out an illegal search of the room and thereafter outraged the modesty of Ms. Hande Apaydin by touching her body parts with his hands despite strong protest by her. Ms. Hande Apaydin alerted the hotel staff who came to the room and nabbed the petitioner and handed him over to the Durbar Marg Police Station where the petitioner was detained from 0000 hours to 1930 hours on 1st March, 2008. On account of the diplomatic implications involved and sensitivity of the case, the officials of the

Indian Embassy had persuaded Ms. Hande Apaydin not to file a criminal case and instead settle the matter by signing a compromise note which was also signed by the petitioner. Thereafter, the preliminary inquiry showed that the allegations against the petitioner were made out. The Revisional Authority after considering the pleas of the petitioner had held as under:-

After due deliberation and objective assessment of evidence on record, I agree with the reason assigned by the Disciplinary Authority and upheld by the Appellate Authority for dispensing with inquiry and to invoke the provision of rule 39(ii) of CISF Rule, 2001. Both the authorities have considered and taken into account all the aspects such as gravity of allegation, requirement of disciplined organisation and latent behaviour of the petitioner before coming to logical conclusion and in deciding the quantum of penalty and had a very reasonable and rational approach and did not leave any slot for intervention at this stage. There has been no miscarriage of justice. Any leniency to such a character in an Armed Force of the Union will be prejudicial and detrimental to force discipline. The petitioner has also not brought out any extenuating or mitigating facts and circumstances to dwell upon or to warrant different nuance.

12. The petitioner has challenged his order of dismissal from service, the dismissal of his appeal and the dismissal of his revision petition on the ground that the orders are illegal, unjustified and unsustainable. The petitioner has alleged that he is a victim of circumstances based on imaginary, false and fictitious allegations. The petitioner has further contended that he was served with the order of suspension dated 3rd March, 2008 at about 2200 hours, while he was undertaking a journey on repatriation from the Indian Embassy at Kathmandu to New Delhi.

13. The petitioner has challenged the dispensing of the regular inquiry on the ground that the respondents did not discharge with the minimum obligation of ascertaining as to whether there had been even the slightest possible legal material on record to conclude that the departmental inquiry was not reasonably practicable. It is asserted by the petitioner that there is nothing on the record to justify that the summons and notices required to be served on the witnesses or the complainant had been issued for requiring their appearance and that their presence could not be secured inspite of the notices or summons. According to the petitioner, the ground taken by the Disciplinary Authority that the petitioner could have terrorized the witnesses and complainant, if they had come to the India in case of any departmental proceedings being initiated against the petitioner is based on surmises and conjectures and cannot be a valid ground for dispensing with the inquiry. The petitioner has alleged that the gravity of allegations made against the petitioner cannot be the deciding factor to dispense with departmental inquiry. The petitioner also relied on *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, wherein it was held that the disciplinary inquiry should not be lightly dispensed with on ipse dixit of the Disciplinary Authority and that it should be done only when it is not reasonably

practicable to proceed with it. Reliance was also placed on Chief Security Officer & Ors. v. Singasan Rabi Das, (1991) SCC (L&S) 415 wherein it was held that the reason, that it is considered not feasible or desirable to procure witnesses since they may become ineffective in future is not a sufficient and good ground for dispensing with the inquiry. The petitioner contended that since the complainant withdrew the complaint by signing a compromise note this in itself is sufficient evidence indicating the fact that no serious misconduct had been committed by the petitioner and consequently, the Disciplinary Authority had no ground to proceed against the petitioner without considering the compromise note which in effect exonerates the petitioner from any alleged misconduct. The petitioner has also challenged his dismissal on the ground that there were no eye witnesses to the incident and that the compromise was not prepared by the Senior Officer who had asked the petitioner to sign the same at the police station and in spite of this the petitioner had signed the same in good faith without going through it, purely on account of necessity and under duress.

14. Learned Central Govt. Standing Counsel, Mr. Ravinder Aggarwal, who has appeared on advance notice has contended that it is apparent that the petitioner has not denied that he had signed a compromise note and in the circumstances, the plea of the petitioner that he had been falsely implicated on some imaginary incident cannot be sustained. The Learned Counsel has vehemently contended that the inquiry had been dispensed with on the satisfaction arrived at by the competent authority and that in any case the evidence on record before the competent authority shows the guilt of the petitioner. He has contended that the judicial review of the order dispensing with inquiry is of the decision making process and not of the decision in itself and has relied on A.K. Kaul and another Vs. Union of India and another, and Union of India & Ors. v. Balbir Singh & Ors. (1975) 5 SCC 216. Learned Counsel has also contended that the departmental inquiry has not been dispensed with arbitrarily or illegally but is based on cogent reasons, nor has the departmental inquiry been dispensed with on account of any ulterior motive or merely in order to avoid the holding of any inquiry, in the facts and circumstances of the case.

15. this Court has heard the Learned Counsel for the parties in detail. As contended by the Learned Counsel for the respondents, it is not denied by the petitioner that he had signed a compromise notice on the fateful day that the alleged incident had taken place. In the circumstances, it cannot be accepted that the petitioner has been falsely implicated on account of some imaginary incident which had not taken place. Though it had been contended specifically on behalf of the respondents that the petitioner was at the Durbar Police Station at Kathmandu from 0000 hours to 1930 hours at 1st March, 2008, this fact has not been denied by the petitioner. No ulterior motive has been imputed against the respondents to have falsely implicated the petitioner. In the facts and circumstances, it is apparent that the alleged incident had taken place. The plea on behalf of the petitioner that since the compromise note was signed by the complainant and the petitioner, it reflects that no serious misconduct was

committed by the petitioner and that the complainant had in effect withdrew her complaint, rather inculcates the petitioner and, therefore, the plea that such an incident had not taken place or that he had been implicated in an imaginary incident, as contended by the petitioner deserves to be repelled. Even if the same has to be accepted, the next question is whether this Court can go into the justification given by the authorities while dispensing with the regular inquiry. The reasons given by the respondents to dispense with the inquiry are that the incident had taken place at Kathmandu and the complainant was a Turkish national and the relevant witnesses were the Hotel employees of Radisson Hotel, at Kathmandu and the police authorities at Nepal and that consequently they were not likely to come to India to tender their evidence in case a regular departmental inquiry is conducted and that there is a possibility of the petitioner creating unpleasant situation by causing impediment in the smooth functioning of the inquiry; that it would be an irritant and reminder of the unpleasant incident to the victim and the other staff members of the CISF and Indian Embassy; and that the trial would attract worldwide media attention which would in turn have far reaching implications on the general discipline of the force cannot be termed to be such reasons which were lightly considered or were arbitrary while dispensing with the regular departmental inquiry.

16. On the basis of the said reasons the Disciplinary Authority had decided to dispense with the enquiry by invoking the power prescribed under Rule 39(ii) of the CISF Rules, 2001.

Rule 39 of the CISF Rules 2001 is as under:

39. Special procedure in certain cases - Notwithstanding anything contained in Rules 36 to 38

(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.

17. The above mentioned Rule is analogous to the provision of Article 311(2) of the Constitution of India. As per Article 311(2) (b) of the Constitution also the penalty of dismissal, removal or reduction in rank can be imposed on a delinquent without an enquiry, when the authority that is empowered to do so, is satisfied that for some reasons, as recorded by the authority in writing, it is not reasonably practicable to hold such an enquiry. A perusal of the said provision would be relevant to consider its import and meaning and to consider the validity

of the respondent's actions.

18. Article 311 of the Constitution contemplates certain safeguards upon persons employed in civil capacities under the Union of India or a State. The first safeguard which is prescribed under Clause (1) of Article 311 is that such person cannot be dismissed or removed by an authority subordinate to that by which he was appointed. The second safeguard as given under Clause (2) of Article 311 is that he cannot be dismissed, removed or reduced in rank, except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

19. The second safeguard is, however, not available to an employee absolutely when he is dismissed, removed or reduced in rank in any of the three eventualities as mentioned in the second proviso to Article 311(2). These three eventualities are set out in Clauses (a) to (c) of the second proviso. Under Clause (a), such person can be dismissed, removed or reduced in rank without any inquiry on the ground of conduct which has led to his conviction on a criminal charge. Under Clause (b), any of these three penalties can be imposed upon him where the authority empowered to impose any of these penalties is satisfied that for some reasons, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry. Under Clause (c), any of the above penalties can be imposed upon him where the President or the Governor of a state, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such an inquiry.

20. 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.

21. 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:

22. In *Union of India and Another Vs. Tulsiram Patel and Others*, 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.

23. Similarly in *Union of India and Another Vs. Balbir Singh and Another*, , 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 and another Vs. Union of India and another*, ; and *S.R. Bommai and others Vs. Union of India and others etc. etc.*, , 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.

24. In *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, it was held by the Supreme Court that if two views are possible about the possibility of holding the departmental inquiry, it is not within the domain of the Court to substitute its view with that of the Disciplinary Authority, as if the Court is sitting as Appellate Authority over the decision of the Disciplinary Authority. It was held that the contemporaneous circumstances can be duly taken note of in arriving at a decision whether or not to dispense with an inquiry. It was further held that what the High Court is expected to do is to see whether there is any scope for judicial review and while doing so it should focus on the impracticability or otherwise of holding the enquiry. It was emphasized that the Court has to be slow to interfere in any such matter unless the decision is tainted by any illegality, procedural impropriety and irrationality impropriety. The relevant Para is as follows:

12. The power to dismiss an employee by dispensing with an enquiry is not to be so exercised as to circumvent the prescribed rules. The satisfaction as to whether the facts exist to justify dispensing with enquiry has to be of the disciplinary authority. Where two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain of the court to substitute its view for that of the disciplinary authority as if the court is sitting as an appellate authority over the disciplinary authority. The contemporaneous circumstances can be duly taken note of in arriving at a decision whether to dispense with an enquiry or not. What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with the enquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry.

25. In the above matter the Apex Court further observed that the High Court had not examined the question as to practicability or otherwise of holding the enquiry in the correct perspective, since it had proceeded on the footing as if the order was mala fide; even when there was no specific allegation of mala fides and without any specific person against whom mala fides were alleged being impleaded in the proceedings. The Supreme Court noted that except for making a bald statement regarding alleged victimization and mala fides, no specific details were given. Thus it was held that the approach of the High Court was not

proper. The Supreme Court in para 22 and 23 had held as under:

22. Neither learned Single Judge nor the Division Bench has examined the question as to practicability or otherwise of holding the enquiry in the correct perspective. They have proceeded on the footing as if the order was mala fide; even when there was no specific allegation of mala fides and without any specific person against whom mala fides were alleged being impleaded in the proceeding. Except making a bald statement regarding alleged victimization and mala fides, no specific details were given.

26. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that malafides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See *S. Pratap Singh Vs. The State of Punjab*, . It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, , Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.

27. Thus it is clear that the mere allegation on the part of the petitioner that he had been falsely implicated in the matter without any specific assertion imputing any malafides on the part of the respondents, cannot in itself suffice for setting aside the order of dismissal.

28. A Division Bench of this Court in a matter titled as *Ex. Sub. Inspector Csf Kewal Kumar Gogia Vs. Union of India (UOI) and Others*, having a similar factual matrix as in the present case, had held that the Disciplinary Authority was justified in imposing the penalty of dismissal while dispensing with the inquiry. In the said matter the delinquent officer had been dismissed from the service without conducting an enquiry for the reasons that it would have been highly prejudicial to the general interest and discipline of the Force to hold an enquiry and also that since the incident had taken place at Zurich, Switzerland, and the victim as well as the other witnesses belonged to Switzerland and it was not

likely that they could come to India to tender evidence in the regular departmental enquiry. It was also apprehended that the enquiry would have attracted world wide media attention. Thus the Disciplinary Authority had dispensed with the enquiry which was upheld by this Court in the similar facts and circumstances.

29. Considering the seriousness and sensitive nature of the petitioner's duty and the fact that the incident had taken place on foreign soil, that it would have not been possible for a foreign national and other witnesses to the incident, including the Hotel staff and police personnel of Nepal to have travelled to India merely for a departmental enquiry, the reasons given by the Disciplinary Authority are relevant to the provision of Rule 39(ii) of the CISF Rules as extracted hereinabove.

30. The petitioner has also contended that there was no material on the record to presume that he would have terrorized the witnesses and thus it could not have been a reason to have dispensed with the enquiry. However, the aspect of whether or not the Disciplinary Authority was justified in assuming that the petitioner would have terrorized the said witnesses or created unpleasant situation if they would have come to India has to be seen from the point of view of assessment made by the Disciplinary Authority. Even if the satisfaction reached by the Disciplinary Authority may be interpreted differently, the Court will decline to interfere with the same and substitute its view with that of the Disciplinary Authority.

31. The reasons given by the Disciplinary Authority, in the facts and circumstances fully satisfy the mandate of Section 39 (ii) of the CISF Rules, 2001. The petitioner has not imputed any malafides against the respondents to establish that the enquiry had been dispensed in an arbitrary manner. There has been sufficient material before the Disciplinary Authority for the reasons given by it for dispensing with the regular enquiry. In *Tulsi Ram Patel (supra)* the Supreme Court had illustrated a few cases which are as under:

- i. a situation which is of the creation of the concerned government servant himself or of himself acting in concert with others or his associates;
- ii. though, the government servant himself is not a party to the bringing about of a situation yet the exigencies of a situation may require that prompt action should be taken and not taking prompt action may result in the trouble spreading and the situation worsening and at time becoming uncontrollable and necessary concomitance of such an action resulting from a situation which is not the creation of the authorities.

32. The incident which led to situation was the creation of the petitioner himself solely leading to his detention by the police authorities at Nepal. The petitioner was detained for a considerable period and prompt action was required to avoid the situation worsening and becoming uncontrollable and diplomatically embarrassing. The actions of the respondents in entering into a settlement with

the woman, who had been molested by the petitioner, had resulted from a situation which was not the creation of the respondents but was solely attributable to the petitioner. The act of the respondents in dispensing with the enquiry against the petitioner is open to judicial review on well settled parameters of administrative law governing judicial review of administrative actions. The counsel for the petitioner has however failed to show and demonstrate any malafides imputed against the respondents. The actions of the respondents are not based wholly on extraneous and/or irrelevant grounds, nor it is a case of extraneous and/or abuse of power or what is sometimes called fraud on power, i.e where the power is exercised for achieving an oblique end. The truth or correctness or adequacy of the material available before the respondents, who have exercised the power conferred under the enactment, cannot be revalued or weighed by this Court while exercising power of judicial review. Even if some of the material or reason on which the action is taken is found to be irrelevant or not very material, this Court still will not interfere so long as there is some relevant material available on which the action of the respondents can be sustained. For the foregoing reasons in the above noted facts and circumstances, the petitioner has failed to make out any illegality or irregularity or perversity in the action of the respondents which will necessitate the exercise of power by this Court under Article 226 of the Constitution of India in dismissing the petitioner from service after dispensing with the regular enquiry on the basis of the reasons recorded by the respondents before his dismissal. The writ petition in the facts and circumstances is without any merit and, therefore, it is dismissed.