

**(2023) 03 BOM CK 0005**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 123 Of 2022**

Sachin Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

**Date of Decision :** 01-03-2023

**Acts Referred:**

Constitution Of India, 1950 — Article 32, 226, 311, 311(2)(a), 311(2)(b), 311(2)(c), 311(3)

Railway Protection Force Rules, 1987 — Rule 161, 161(ii)

**Citation :** (2023) 03 BOM CK 0005

**Hon'ble Judges :** S.V. Gangapurwala, J;Sandeep V. Marne, J

**Bench :** Division Bench

**Advocate :** Rahul Walia, Asmita Pendharkar,, Amit R. Tiwar, R. R. Shetty

**Final Decision :** Allowed

## Judgement

Sandeep V. Marne, J

1. Petitioner, an ex-Constable in the Railway Protection Force (RPF), is aggrieved by the Order dated 15th January, 2019 dismissing him from service by dispensing with the enquiry. He also aggrieved by rejection of his appeal by order dated 19th September, 2019.

2. Petitioner was enrolled as a member in RPF on 01st August, 2015 and was appointed on the post of Constable. On 12th December, 2018, he was deployed for platform duty between 7.00 Hrs. to 15.00 Hrs. at Grant Road Railway Station. A complaint was lodged by two passengers against him alleging demand and acceptance of Rs. 12,000/- as illegal gratification by threatening them. It is alleged that the Government Railway Police (GRP) summoned petitioner, when he returned the amount of Rs. 12,000/- to the passengers, on account of which the GRP did not book him.

3. It appears that the fact a finding Enquiry was conducted and a report was submitted by the Inspector, RPF, Mumbai Central. Based on the report so

submitted, Senior Divisional Security Commissioner, RPF, Mumbai Central passed Order dated 15th January, 2019 dismissing petitioner from service observing that it was not reasonably practicable to hold enquiry against him. Petitioner preferred appeal dated 5th February, 2019 before the Inspector General and Chief Security Commissioner, which has been turned down on 19th September 2019. During pendency of appeal, he approached High Court of Gujrat by filing Special Civil Application No.19257 of 2019 challenging the penalty Order dated 15th January, 2019, which he later withdrew on 13th November, 2019 with liberty to take appropriate action before the appropriate forum.

4. Petitioner has accordingly filed the present petition challenging penalty Order dated 15th January, 2019 as well as order of the Appellate Authority dated 19th September, 2019.

5. Appearing for the Petitioner, Mr. Walia the learned counsel would submit that petitioner has been dismissed from service in gross violation of principles of natural justice as the respondents neither conducted nor attempted to conduct any disciplinary enquiry before dismissing him from service. That the finding recorded about impracticability to hold enquiry is unjustifiable in view of absence of any record to show that any genuine attempt was made to conduct enquiry. Inviting our attention to the finding recorded in the dismissal order, Mr. Walia would contend that the reasons recorded for dispensing with the enquiry are speculative in nature. That the finding of dispensing with enquiry cannot be recorded merely on surmises or conjunctures. In support of his contention Mr. Walia would rely upon following judgments:

- i) *Risal Singh vs. State of Haryana and Others*, (2014)13 SCC 244;
- ii) *Jaswant Singh vs. State of Punjab and Others*, (1991)1 SCC 362;
- iii) *Union of India & Others vs. Ram Bahadur Yadav*, (2022)1 SCC 389;
- iv) *Commissioner of Police, Delhi and Ors. vs. Jai Bhagwan* (2011)6 SCC 376.

6. Per contra Mr. Shetty the learned counsel for the respondents would oppose the petitioner and support the order of dismissal. He would submit that considering the nature of misconduct committed by Petitioner in extorting money from passenger, whom he is supposed to protect and his act of entering into private settlement with them, the competent authority is justified in dismissing him from service without holding enquiry. That the conduct displayed by the petitioner, who is uniformed personnel, is so gross that he deserves summary dismissal from the service. That petitioner prevented passengers from giving statement against him by entering into private settlement with them by returning the amount of illegal gratification. On account of such illegal settlement entered into by petitioner, the passengers were not likely to come forward to depose against him and that therefore, the enquiry has correctly been dispensed with. He would invite our attention to the statement of petitioner recorded on 20th December, 2018 in which he admitted return of gratification of Rs.12,000/-. He

would submit that in the light of the admission so given, no purpose would otherwise have been served by conducting any departmental enquiry in the matter.

7. Mr. Shetty would further submit that even if department enquiry was to be held, petitioner could be punished in absence of depositions of passengers and in that regard, he would place reliance on the judgment of the Apex Court in *State of Haryana Vs. Rattan Singh* (1977) 2 SCC 492. That therefore mere non-holding of enquiry by examination of passengers would have made no difference to the ultimate conclusion which could have been recorded in such enquiry. In support of his contention Mr. Shetty would also rely upon the judgment in *Kendriya Vidyalaya Sangathan and Another vs. S. C. Sharma*, (2005) 2 SCC 363.

8. Rival contentions of the parties now fall for our consideration.

9. In the present case petitioner has been dismissed from service in exercise of powers under Clause (b) of Article 311(2) and 311(3) of the Constitution of India, which is reproduced thus:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause ( 2 ), the decision thereon of the authority empowered to dismiss or remove such person

or to reduce him in rank shall be final

10. Rule 161 of the RPF Rules also contains a *pari materia* provision which reads thus;

161. Special Procedure in certain cases :

"Notwithstanding anything contained anywhere in these rules-

(i) where any punishment 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 authority competent to impose the punishment is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an Enquiry in the manner provided in these rules;

(iii) where the President is satisfied that in the interest of security of State and the maintenance of integrity in the Force, it is not expedient to hold any Enquiry in the manner provided in these rules; the authority competent to impose the punishment may consider the circumstances of the case and make such orders thereon as it deems fit."

11. Thus, both under Article 311(2)(b) as well as Rule 161(ii) of the RPF Rules, the competent authority is empowered to punish member of the force after recording a satisfaction that it is not reasonably practicable to hold an enquiry. Thus, there are two requirements for exercise of power of dispensing with the enquiry viz. (i) satisfaction of competent authority that it is not reasonably practicable to hold enquiry; (ii) recording of reasons for reaching such satisfaction.

12. The Constitution Bench judgment in *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398 has expounded law on scope of judicial review in challenge to order of dismissal by dispensing with inquiry. It is held in Para 138 as under:

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 he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was 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.

(emphasis supplied)

13. In the present case, perusal of dismissal order dated 15th January, 2019 would undoubtedly show that the authority concerned has recorded satisfaction to the effect that it is not reasonably practicable to hold detail Enquiry D&AR enquiry in the manner provided for the enrolled member of the force under RPF Rules. The reasons for reaching that satisfaction are also recorded. Thus, the twin conditions required under the provisions of Article 311(2) (b) and Rule 161(ii) of RPF Rules are met with.

14. Keeping in mind the contours of scope of judicial review expounded in *Tulsiram Patel*, we proceed to examine whether the reasons recorded in order of dismissal are justifiable. The competent authority has recorded following reasons for dispensing with enquiry:

1. As per Inspector Mumbai Central report dated 10.01.2019 both victims have denied for the registration of FIR against the Constable as they got their money back from Constable Sachin Kumar. They have settled the case mutually, thus it is not reasonably practicable to hold departmental enquiry.

2. Producer for holding a department enquiry for imposing major punishment takes a long time. This will defeat the every purpose of awarding exemplary punishment to the person involved in such matter. Being disciplinary authority and officer posted in field duty I am of the view that this shameful, despicable and dastardly act of the member of the Force has undone what had been achieved by the hard work of the other member of the Force.

3. For a proper disciplinary enquiry to be conducted, witnesses would be required to examine, in this case they would be influenced, threatened by the accused or by extraneous elements during the course of D&AR enquiry.

4. During the course of D&AR enquiry victim will not dare to depose their statements as prosecution witness against a uniform member of the Force out of fear. In this regard there are so many examples where witnesses have been influenced by the member of the Force.

5. In view of seriousness of the case and adverse implication on reputation of the

Railway Protection Force and image of Indian Railways, it would not be expedient to hold the enquiry in this case.

6. Delayed action will discourage the responsible member of the Force and it will erode the discipline of Force and if ignore it will spread like contagious disease.

15. The first reason recorded by the competent authority is premised on the report dated 10th January, 2019 submitted by Inspector, Mumbai Central. We have gone through that report which is produced by the respondents at Exh. R12 to their affidavit in reply. The report refers to past incident dated 20th December, 2018, for which petitioner was given a warning in respect of similar conduct of extorting money from passengers by threatening them. The report refers to attempts made to contact passengers to confirm payment of money and their unwillingness to cooperate further or to lodge any complaint against petitioner. The report also refers to admission by petitioner of return of money to the passengers as well as statement recorded by SIPF Bharatlal Meena. Alongwith the report, statements recorded of various personnel including that of petitioner and passengers are also attached. The report also refers to another incident of 12th January, 2019 in Pushpak Express between CSMT and Kalyan Railway Stations when the petitioner alongwith other GRP colleagues attempted to extort money from passengers, which incident was under investigation. At the end of the report opinion is recorded by the Inspector RPF, Mumbai Central to the effect that after considering the conduct of petitioner, it cannot be denied he would indulge in similar misconduct in future also and that the image of the department was maligned on account of his illegal acts.

16. Though the Inspector's report refers to past and subsequent incidents involving allegations of Petitioner extorting money from passengers, since same is not the ground for his dismissal, we would restrict our findings to the incident of 12th December 2018. The report of the Inspector contains a vague reference to telephonic conversation with the passengers who expressed inability to participate in any 'documentary procedure'. On the basis of such vague reference made in the report of the Inspector, it cannot be said that competent authority had sufficient material before it for arriving at a finding that it was not reasonably practicable to hold the enquiry. On the other hand, various statements attached to the report of the Inspector shows that in addition to passengers, there are other witnesses available who are members of the Force. It appears that statements of Bunty Singh, RPF/CT/BCTR, Deen Dayal, RPF/CT/BCT(L), Kashi Prasad, RPF/CT/BCTR, Banwari Lal, RFP/CT/BCT(L) and Vijay Kumar, RPF/HTC/BCT(L) have also been recorded. We do not wish to record any finding at this stage as to whether those statements, if confirmed during the course of disciplinary enquiry, would constitute sufficient evidence to hold petitioner guilty. Suffice it to hold at this juncture that there are several other witnesses who could be examined during enquiry. It is also pertinent to note that apart from making one telephonic call by the Inspector, no other attempt appears to have been made to contact passengers to explore the possibility of

their examination as witnesses. It is also pertinent to note that the occasion for determining the issue whether passengers would depose in the enquiry would have arrived only after memorandum of chargesheet was issued and witness summons were served on them. It is not the case of the respondents petitioner had threatened the witnesses or that they terrified to depose against him. Inspector's report does not record that during telephonic conversation, the passengers disclosed any threat being given by Petitioner or they refused to act as witnesses out of fear. What they expressed was not to participate in 'documentary procedures'. We therefore do not find the first reason recorded in the impugned order for dispensing with the enquiry to be sustainable.

17. The second reason is consumption of long time in procedure for holding departmental enquiry for imposing major penalty. This reason is stated only to be rejected. If this logic is accepted, enquiry will have to be dispensed with in every case where there is a possibility of consumption of longer time for conduct of departmental enquiry. We therefore find the second reason recorded by the competent authority worth summary rejection.

18. The third reason is about possibility of witnesses being influenced or threatened by Petitioner or by extraneous elements during the course of enquiry. This is nothing but pure speculation. There is no material available on record for arriving at a finding that the petitioner had influenced or threatened the witnesses. The third reason therefore also deserves rejection.

19. The fourth reason is about possibility of victims not showing courage to depose against petitioner, who is uniformed member of the Force out of fear. This again is in the realm of speculation. By citing this reason, enquiry against every uniformed member of the Force can be dispensed with. This is not the purport of Article 311(2) (b) or Rule 161(ii) of the RPF Rules. Specific reasons qua each case are required to be recorded for dispensing with the enquiry, which cannot be resorted to by recording findings of general nature as done in the present case.

20. The fifth and sixth reasons for dispensing with the enquiry are about seriousness of the case and adverse implication on reputation of RPF and Indian Railways as well as erosion of discipline of the Force. True it is that RPF is a disciplined force and every enrolled member is required to respect discipline at all time. However, merely because discipline is breached or reputation of Force is allegedly maligned, the same cannot be a reason enough for dispensing with enquiry. Under Article 311, a special protection is accorded to every government servant, who cannot be dismissed, removed or reduced in rank without holding departmental enquiry. Clauses (a), (b) and (c) to Article 311(2) offer exceptions to this protection. Such exceptional power cannot be used in a routine manner without making out specific case for dispensing with the enquiry.

21. Thus, all the reasons recorded by the competent authority for dispensing with the enquiry are unsustainable. We are conscious of limitation on power of

judicial review and we do not wish to sit as an appellate authority over reasons recorded for dispensing with enquiry. However none of the reasons are cogent and enquiry in our view, has been dispensed with in an arbitrary manner by grossly abusing the special powers under Article 311(2) (b) and Rule 161 of RPF Rules.

22. As observed above, passenger's unwillingness to depose against Petitioner cannot be speculated at this stage. In worst case scenario of passengers' failure to attend enquiry, Respondents have other witnesses who can be examined in the enquiry, In that event what would be the evidentiary value of other witnesses is something which will have to be determined by the competent authority by evaluating the evidence. Hearsay evidence is not altogether allergic to departmental enquiries. In this regard, reliance of Mr. Shetty on Judgment of the Apex Court in Rattan Singh (supra), though unsupportive to his case, is otherwise apposite. It is held in the judgment as under:

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible.

There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

(emphasis supplied)

23. However, it would be too premature to record any finding of sufficiency of evidence in present case as evidence is yet to be recorded.

Suffice it to state at this juncture is that it is possible to hold departmental inquiry and the finding of impracticability of holding the same is unsustainable.

24. The view which we propose to take in the present case is fully supported by various judgments relied upon by Mr. Walia, in which decision of dispensing with enquiry against members of disciplined forces like Police or CRPF or RPF are not approved by the Apex Court. In *Risal Singh* (supra), the appellant therein, an Assistant Sub Inspector of Police, was involved in corruption allegation in a sting operation by a television channel and was dismissed from service without holding enquiry. One of the main reasons for dispensing with inquiry was tarnishing image of the police force in the eyes of public. The Apex Court, after considering various decisions, held in paragraph No.9 as under;

"9. Tested on the touchstone of the aforesaid authorities, the irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the inquiry is totally unsustainable and is hereby annulled. As the foundation founders, the order of the High Court giving the stamp of approval to the ultimate order without addressing the issue from a proper perspective is also indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction."

25. *Jaswant Singh* (supra) also involved dismissal of constable of police force on charge of showing insubordination and spreading discontentment, \ hatred amongst fellow policemen against superiors. A finding was recorded in the dismissal order that the appellant therein had threatened the witnesses and enquiry officer of causing physical injury. Allowing the appeal, the Apex Court held in paragraph No.5 of the judgment as under;

"..... 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*: (SCC p. 504, para 130)

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

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the counter filed by respondent 3 it is contended that the appellant, instead of relying 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 come 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 that satisfaction was based on the ground that he was instigating his colleagues and was holding dissatisfaction towards his superiors. This allegation is based on his alleged activities at Jullundur on April 2, 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 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."

26. In Ram Bahadur Yadav (supra), the respondent therein was working as Head-Constable in RPF and was indicted as an accused in an incident involving counterfeit of non-judicial stamp papers worth Rs. 1,00,00,000/-. He was dismissed from service holding that it was not reasonably practicable to hold the enquiry. The Apex Court referred to the Rule 161 of the RPF Rules and held in paragraph Nos. 14 to 17 as under;

"14. It is a settled legal position that when Rules contemplate method and manner to adopt special procedure, it is mandatory on the part of the authorities to exercise such power by adhering to the Rule strictly. Dismissal of a regular member of Force, is a drastic measure. Rule 161, which prescribes dispensing with an inquiry and to pass order against a member of Force, cannot be invoked in a routine and mechanical manner, unless there are compelling and valid reasons. The dismissal order dated 22.10.1998 does not indicate any reason for dispensing with inquiry except stating that the respondent had colluded with the other Head Constable for theft of Non Judicial Stamp Papers. By merely repeating the language of the Rule in the order of dismissal, will not make the

order valid one, unless valid and sufficient reasons are recorded to dispense with the inquiry. When the Rule mandates recording of reasons, the very order should disclose the reasons for dispensing with the inquiry.

15. The argument of learned Senior Counsel for the appellants that if file contains reasons, same is sufficient to maintain the order, deserves rejection. When inquiry is not conducted, member of the Force is entitled to know the reasons for dispensing with inquiry before passing any order as a disciplinary measure.

16. The respondent was only a Head Constable during the relevant point of time and he was not in powerful position, so as to say that he would have influenced or threatened the witnesses, had the inquiry was conducted. The very fact that they have conducted confidential inquiry, falsifies the stand of the appellants that it was not reasonably practicable to hold an inquiry. The words 'not reasonably practicable' as used in the Rule, are to be understood in a manner that in a given situation, ordinary and prudent man should come to conclusion that in such circumstances, it is not practicable. In the present case, there appears no valid reason to dispense with inquiry and to invoke Rule 161 of the Rules. We are in agreement with the view taken by the High Court. In the case of *Sahadeo Singh & Others v. Union of India & Others 1*, this Court has held that in the facts and circumstances of the said case, it was not reasonably practicable to hold a fair inquiry, as such, it was held to be justifiable on the facts of the case. Whether it is practicable or not to hold an inquiry, is a matter to be considered with reference to the facts of each case and nature of charge, etc.

17. In the judgment in the case of *Tarsem Singh v. State of Punjab & Others 2*, this Court has categorically held that when the Authority is of the opinion that it is not reasonably practicable to hold inquiry, such finding shall be recorded on the subjective satisfaction by the authority, and same must be based on the objective criteria. In the aforesaid case, it is further held that reasons for dispensing with the inquiry must be supported by material."

27. The judgment in *Jai Bhagwan (supra)* relied upon by Mr. Walia would not assist the case of the petitioner as order of dismissal was passed in that case after holding departmental enquiry.

28. Reliance of Mr. Shetty on judgment *Kendriya Vidhyalaya Sanghatan (supra)*, far from assisting case of respondents, actually militates against them. In that case, the respondent therein was dismissed from service without holding enquiry on allegation of absenteeism. The Central Administrative Tribunal set aside the order of dismissal, which was upheld by High Court. The Apex Court concurred with the view recorded by the High Court. The Apex Court further held that the respondent therein was not entitled full back wages and cast burden on him to prove that he was not gainfully employed. The Apex Court has also granted liberty to the employer to conduct departmental enquiry. We propose to grant similar liberty to Respondents in this case.

29. After considering the entire conspectus of the matter, we are of the view that the competent authority has erred in dispensing with the enquiry in the present case. The order of dismissal passed under the provisions of Article 311(2) (b) of the Constitution and Rule 161(ii) of the RPF Rules therefore cannot be sustained. At the same time, petitioner cannot be permitted to go scot-free and the respondents would be at liberty to conduct departmental enquiry against him in respect of misconduct alleged. There are allegations of past and subsequent involvement of petitioner in similar incidents. The same can also be taken into consideration while initiating departmental enquiry against him. Considering the nature of allegations leveled against him and also the fact that the order of dismissal is being set aside only for technical reason of violation of principles of natural justice, petitioner would not be entitled to full back wages during the intervening period, which would be treated as deemed suspension. He would be entitled to subsistence allowance during that period. Depending upon the outcome of departmental enquiry, the respondents would treat the intervening period as duty or otherwise.

30. We accordingly proceed to pass following order:

- i) The order passed by the Senior Divisional Security Commissioner, RPF, Mumbai Central on 15th January, 2019 dismissing Petitioner from service as well as the order passed by appellant authority dated 19th January, 2019 are quashed and set aside.
- ii) Respondents are directed to reinstate petitioner in service with effect from 15th January, 2019.
- iii) Respondents are at liberty to conduct disciplinary proceedings against petitioner for alleged misconduct.
- iv) The intervening period from the date of dismissal till reinstatement shall be treated as deemed suspension and petitioner would be entitled for payment of subsistence allowance as per Rules.
- v) Depending on outcome of the departmental enquiry, the respondents shall take decision with regard to treatment of intervening period as duty or otherwise.
- vi) The writ petition is accordingly allowed. Rule is made absolute in above terms. There shall be no orders as to costs.