"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3194 OF 2015
(Arising out of SLP (C) No.20379 of 2006)

Ved Mitter Gill … Appellant

versus

Union Territory Administration, Chandigarh and others … Respondents

WITH

TRANSFERRED CASE (C) NO.41 OF 2010

TRANSFERRED CASE (C) NO.42 OF 2010

TRANSFERRED CASE (C) NO.43 OF 2010

TRANSFERRED CASE (C) NO.44 OF 2010

J U D G M E N T

Jagdish Singh Khehar, J.

1. Through this common order we propose to dispose of the Special Leave Petition (C) No. 20379 of 2006 as well as the Transferred Case (C) Nos. 41-44 of 2010. The aforesaid transferred cases were pending before the High Court of Punjab and Haryana at Chandigarh (hereinafter referred to as 'the High Court'). Whilst the Special Leave Petition (C) No. 20379 of 2006 came to be filed before this Court assailing the order dated 1.5.2006 passed by the High Court in Civil Writ Petition No. 5682 of 2006. The prayer for transfer was premised on the fact that the transferred cases were couched in the same factual foundation and raised similar legal issues, as were being canvassed through Special Leave

Petition (C) No. 20379 of 2006. In the above view of the matter, while disposing of the special leave petition, as well as, the transferred cases, we shall refer to the facts in Ved Mitter Gill's case, i.e., the matter pending in this Court as against the order passed by the High Court on 1.5.2006 dismissing Civil Writ Petition No.5682 of 2006.

2. Leave granted.

3. In January 2004, appellant-Ved Mitter Gill was holding charge of the post of Deputy Superintendent of Police, Model Jail, Burail, Chandigarh. At the same juncture, Dalbir Singh Sandhu (petitioner in Transferred Case (C) No. 42 of 2010) was also holding the post of Deputy Superintendent of Jail, whilst Paramjit Singh Rana (petitioner in Transferred Case (C) No. 41 of 2010) was posted as Assistant Superintendent of Jail, Nishan Singh (petitioner in Transferred Case (C) No. 44 of 2010) and Inder Singh (petitioner in Transferred Case (C) No. 43 of 2010) were working as Head Warder and Warder respectively.

4. Whilst the appellant/petitioners were discharging their duties in the capacity indicated hereinabove, four under trials namely Jagtar Singh Hawara, Paramjit Singh and Jagtar Singh Tara (who were facing trial for the assassination of a former Chief Minister of Punjab Shri Beant Singh) and Jagdev Singh, who was being tried for the charge of murder, escaped from the Model Jail, Burail, Chandigarh, by digging an underground tunnel. The approximate length of the tunnel is stated to be 94 feet. The description of the above tunnel has been expressed in a report dated 15.4.2004 submitted by an Enquiry Committee

constituted to go into the lapses committed by the jail authorities in the above episode of escape, as also to determine, the remedial measures for prevention of such a jail-break in future. The description of the tunnel in the report, is reproduced below:

> "2.4 An inspection of barrack No.7 of Burail Jail from where four undertrial escaped made a number of revelations. The 94 feet long and about 21" x 21" broad tunnel was a very professionally done job. The tunnel had three sections, two vertical and one horizontal as under:
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> a) Vertical straight Section below the barrack 14'
>
> b) Horizontal portion with almost perfect precision and direction 72'
>
> c) Vertical portion outside the main perimeter wall used for exit. It was slightly inclined for easy footage for escape" 08'

The aforesaid under-trials had escaped during the night intervening January 21-22, 2004. Resultantly, a first information report bearing no. 17 was registered at Police Station Sector 34, Chandigarh. The appellant, as well as, the petitioners came to be detained after the registration of the first information report.

5. By an order dated 1.3.2004, the Advisor to the Administrator, Union Territory, Chandigarh having invoked clause (b) to the second proviso under Article 311(2) of the Constitution of India, dismissed the appellant from service with immediate effect. Similar orders were passed against the petitioners.

6. Dissatisfied with the order dated 1.3.2004, the appellant as well as the petitioners, assailed the respective orders of their dismissal from service, by preferring appeals to the Administrator, Union Territory, Chandigarh. General

(Retd.) S.F. Rodrigues, the then Administrator of the Union Territory, Chandigarh, adjudicated upon their appeals both on merits, as well as, on their maintainability. Insofar as the merits are concerned, he arrived at the conclusion, that the competent authority had rightly invoked clause (b) of the second proviso under Article 311(2) of the Constitution of India. Insofar as the issue of maintainability is concerned, the Administrator of the Union Territory of Chandigarh recorded, that the appeals were not maintainable, as the order passed by the Advisor to the Administrator, Union Territory of Chandigarh, constituted an order passed by the Government, from which there was no remedy of appeal.

7. The order of dismissal from service dated 1.3.2004, passed by the Advisor to the Administrator of the Union Territory of Chandigarh, as well as the order dated 11.2.2005 passed by the Administrator, Union Territory, Chandigarh were assailed by the appellant, as well as by the petitioners, before the Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as, the Administrative Tribunal). Ved Mitter Gill, the appellant herein, preferred Original Application No. 149/PB of 2005, Dalbir Singh Sandhu filed Original Application No. 97/PB of 2005, Paramjit Singh Rana had raised his challenge by filing Original Application No. 188/PB of 2005, whereas, Nishan Singh and Inder Singh filed Original Application Nos. 39/PB and 40/ PB of 2005 respectively.

8. All the above applications were dismissed by the Administrative Tribunal through a common order dated 30.1.2006. Ved Mitter Gill assailed the order

dated 30.1.2006 passed by the Administrative Tribunal before the High Court, by preferring Civil Writ Petition No. 5682 of 2006. The same was dismissed by an order dated 1.5.2006. The order passed by the High Court on 1.5.2006 came to be challenged before this Court through Special Leave Petition (C) No. 20379 of 2006. The same has given rise to the present appeal. The writ petitions filed by the others, namely, Dalbir Singh Sandhu, Paramjit Singh Rana, Nishan Singh and Inder Singh were pending before the High Court. Separate writ petitions were preferred on their behalf, wherein they had assailed the common order passed by the Administrative Tribunal dated 30.1.2006. The above writ petitions were transferred to this Court, to be heard along with the Special Leave Petition (C) No. 20379 of 2006. This is how the present appeal and petitions have jointly come up for hearing before us.

9. It is imperative in the facts and circumstances of this case, to extract herein, the order dated 1.3.2004, passed by the Advisor to the Administrator, Union Territory, Chandigarh against Ved Mitter Gill. The same is accordingly being reproduced hereunder:

> "CHANDIGARH ADMINISTRATION
> HOME DEPARTMENT
>
> ORDER
>
> Shri V.M. Gill, Deputy Superintendent Model Jail, Chandigarh (under suspension) was appointed as Clerk on 1.1.1988 and thereafter promoted as Assistant Superintendent Jail on 28.3.1990 and was promoted as Deputy Superintendent Jail, Model Jail, Chandigarh vide order dated 25.5.2001. He was thus required to be fully aware of his duties as prescribed in the Punjab Jail Manual as adopted for the Union Territory Chandigarh and the duty orders passed by the Superintendent, Model Jail, Chandigarh dated 29.5.2001, read along with paras 92 to 132 of the

Punjab Jail Manual, for the enforcement of laws, rules, regulations, directions and orders concerning the management of the jail and the prisoners confined therein. The said Shri V.M. Gill by virtue of his duties as such was required to do all acts and things necessary or expedient for ensuring the safe custody of all the prisoners at any time receive into or confined in the jail as well as for enforcing and maintaining discipline and order amongst such prisoners and all subordinate officers of the jail. The said Shri Gill was fully aware that he was required to see for himself every prisoner once in every 24 hours and to visit every barrack, ward, cell, compartment and every other part of the jail and premises thereof every 24 hours. It was thereof his duty to be present every evening when the prisoners were locked up for the night and every morning when the prisoners were taken out of the sleeping wards, cells or other compartments, satisfy himself both by night and morning that all the prisoners were present and in safe custody and to forthwith report every unusual occurrence of a serious nature to the Superintendent of the Model Jail. The said Shri Gill was fully aware of his duties that he was required at uncertain times, atleast once a week to cause each prisoner and all clothing and bedding and all wards, cells and other compartments, workshops, latrines and other places frequented by the prisoners, to be thoroughly searched for prohibited articles; to regulate all interviews and communications between the prisoners and persons who were not prisoners and to prevent all persons who were not duly authorized by the competent authority from entering the jail premises or having any access of any kind to, or communication with any prisoner, and to arrange that the proper officer of the jail was present during all the interviews held;

And whereas on the night intervening January 21/22, 2004, four under trial prisoners namely Jagtar Singh Hawara, s/o Sher Singh, Paramjit Singh, s/o Jagjit Singh, Jagtar Singh Tara, s/o Sadhu Singh and Dev Singh, s/o Madan Singh lodged in the Model Jail, Burail escaped through a tunnel dug from their barrack. The first three under-trials namely Jagtar Singh Hawara, s/o Sher Singh, Paramjit Singh, s/o Jagjit Singh and Jagtar Singh Tara, s/o Sadhu Singh were being tried to their involvement in the assassination of S. Beant Singh, then Chief Minister, Punjab and had links with Babbar Khalsa International a terrorist organization, while Dev Singh was being tried for murder. The said Shri V.M. Gill was fully aware that Jagtar Singh Hawara S/o Sher Singh, Paramjit Singh, s/o. Jagjit Singh, Jagtar Singh Tara, s/o Sadhu Singh were dreaded terrorists and high security prisoners;

And whereas a case F.I.R. No.17, dated 22.1.2004 under Sections 223, 224, 452, 457, 120-B, 121, 121-A, 123, 217, 221 IPC, P.S. 34, Chandigarh was registered with respect to the escape of the above mentioned under trials, and from the evidence obtained during the course of the

investigation of the case, it is apparent that the said Shri V.M. Gill, was involved in the conspiracy to facilitate the escape of the under trials by willfully neglecting his duties and by providing them support in different forms. This is evident from some of the following instances:-

(1) Curtains were allowed to be hung on doors and windows from inside the barrack occupied by the said under trials, resulting in absence of visibility from outside and facilitating the prisoners to carry out their plans unobserved in violation of paras 324, 327 and 328 of the Punjab Jail Manual, 1996 as adopted for the Union Territory, Chandigarh. The said Shri Gill, willfully ignored the suspicious activities of the under trials and did not conduct special search of their barrack in violation of paras 97, 98, 100(a), (b) & (f) of the said Manual.

(2) No action was taken by the said Shri V.M. Gill despite reports of lights of the barrack housing the said under trials being switched off during the night hours, playing of television or radio at high volume and continuous flowing of water, facilitating activities of the said under trials in digging of the escape tunnel and disposing the excavated soil, in violation of paras 325 and 329 of the said Manual.

(3) No thorough checking of the barrack housing the under trials was carried out by the said Shri Gill in violation of provisions of the said Manual, including para 97.

(4) A tunnel was reportedly discovered in the barrack then housing the three under trials of the Beant Singh case during June, 2002. The said Shri V.M. Gill in complicity with the under trials and other jail officials suppresses these facts. In November, 2002 a large number of prohibited articles were recovered from the above mentioned under trials, which had been earlier allowed to be delivered to them in complicity with the under trials as well as their co-conspirators. After recovery of the prohibited articles, strict action as warranted under Punjab Jail Manual was not taken against the under trials or any other delinquent jail official. The investigation have revealed that a large number of prohibited articles have again been recovered from the cell of the escaped under trials, clearly indicating the complicity of the said Shri V.M. Gill, who willfully contravened the provisions of the said Manual including paras 105 and 110. It was also found that a number of articles such as cell phone (not recovered), weight lifting iron rod, rope, emergency light, radio, portable fan, electric wires etc., directly assisted the said under trials to escape from the Jail.

(5) Meeting of the under trials with the other suspected prisoners within the jail as well as conspirators outside the jail were neither supervised nor checked in violation of para 106 of the said Manual.

(6) The said Sh. Gill, was arrested on Jan. 27, 2004 and on his disclosure statement a book titled 'True Stories of great escapes' was recovered from his official residence in the jail. A rough site plan prepared by the police revealed that the tunnel through which the under trials escaped had similarities with the tunnel mentioned in the said book.

And whereas the above conduct of the said Shri Gill establishes that he was directly involved in the conspiracy to help the above-mentioned under trials to escape from the Model Jail, Chandigarh. It has also come to light during investigation that three of the escaped under trials had linkage with the Babbar Khalsa International, a known and a dreaded terrorist organization, which is involve in anti-national and anti-State activities. The said Shri V.M. Gill is a senior, permanent and non-transferable official of the Model Jail, Chandigarh and junior jail officials, who are witnesses in the above case are not likely to come forward to depose against him if disciplinary proceedings are initiated so long as he remains in service, for fear of earning his wrath in future. Further, due to the involvement of the escaped under trials, with the Babbar Khalsa International, a known and dreaded terrorist organization, no witness is likely to come forward to depose against him in the disciplinary proceedings, if initiated, due to fear of life. Independence assessment also is that three of the escaped under trials are likely, inter alia, to pose a danger to the lives of the people. In these circumstances I am satisfied that the holding of an inquiry as contemplated by Article 311 (2) (b) of the Constitution of India and the Punjab Civil Services (Punishment and Appeal) Rules, 1970 as made applicable to the employees of Union Territory, Chandigarh, is not reasonably practicable;

And whereas I am of the view that in the face of such grave culpable acts of omission and commission there is no justification for the continuation in service of Shri Gill as he has betrayed all responsibility placed upon him by law and rules. From the facts that have transpired, I conclude that there has been misconduct of such magnitude by Shri V.M. Gill that the severest penalty permissible by law is called for.

Now, therefore, I being the competent authority exercising the powers conferred by Article 311 (2) of the Constitution of India, having come to the conclusion that it is not reasonably practicable to hold an inquiry, hereby dismiss the said Shri V.M. Gill, from service with immediate effect.

Sd/-
Advisor to the Administrator,
U.T., Chandigarh

Dated 1.3.2004”

Orders passed against the other petitioners were premised on the same foundation, and were to the same effect.

10. During the course of hearing learned counsel for the appellant/petitioners pleaded, non-application of mind, arbitrariness, discrimination, and malice in fact as well as in law. Insofar as the issue of non- application of mind is concerned, it was the vehement contention of the learned counsel, that they were not assigned duties as would render them blameworthy for the abovementioned jail-break. Besides various contentions advanced on the instant aspect of the matter, the primary submission of the learned counsel was, that personnel from the police department were in overall supervisory control, and that, they regulated not only the ingress and egress of jail mates and other visitors, but also materials and articles which were permitted to enter the jail premises. In the above background, it was the vehement contention of the learned counsel for the appellant/petitioners, that they have been made scapegoats for something that others were truly responsible for.

11. To adjudicate upon the above contention advanced at the hands of the learned counsel for the appellant/petitioners, it is necessary to understand the duties and responsibilities assigned to appellant-Ved Mitter Gill, whose case has been taken as the lead case. The duty chart depicting the responsibilities assigned to the officers of Model Jail, Burail, Chandigarh, is available on the record of the case. A relevant extract thereof is being reproduced hereunder:

"1. Sh. V.M. Gill, Dy. Supdt. Jail
He shall perform his duties under the immediate directions and orders of the Supdt. Jail. The duties of the Dy. Supdt. Jail are contained in para 91 to 132 of the Punjab Jail Manual. In addition to his normal duty he will hold the charge of matters relating to:-

i) Establishment
ii) Accounts
iii) Court cases (pending in various courts)
iv) Diet purchase and all miscellaneous matters."

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IMPORTANT NOTE

1. Besides above duties Executive Officers will perform all other duties assigned to them from time to time in accordance with the provision of Punjab Jail Manual.
2. All Executive Officer will be present inside Jail in their respective executive charge daily at the time of lock-up and lock-outs.
3. All will make night rounds to see the security arrangements and satisfy themselves that inmates are in safe custody.
4. All will accompany the Superintendent, Jail on his weekly parade (on every Monday) inspection of prisoners as per provision of para 75 of the Punjab Jail Manual.

Sd/-
Superintendent,
Model Jail, Chandigarh"

(emphasis is ours)

A perusal of the duty chart relating to Ved Mitter Gill reveals, that he was responsible for duties expressed in paragraphs 92 to 132 of the Punjab Jail Manual. Extracts of the Punjab Jail Manual are also available on record of the case, only a few relevant paragraphs, which highlight the duties and responsibilities vested on the shoulders of Ved Mitter Gill as Deputy Superintendent of Police, Jail, are being extracted hereunder:

"97. Duties of Deputy Superintendent as to safety of prisoners, discipline, visits and attendance. – (1) The Deputy Superintendent shall do all acts and things which may be necessary or expedient for ensuring the safe

custody of all prisoners at any time received into or confined in the jail, as well as for enforcing and maintaining discipline and order amongst such prisoners and all subordinate officers of the jail at any time serving under his orders or control.

(2) The Deputy Superintendent shall, atleast once in every twenty-four hours,-

(a) himself see every prisoner for the time being confined in the jail;

(b) visit every barrack, ward, cell, compartment, and every other part of the jail and the premises thereof, including the hospital; and shall, save as provided in the rules, regulations, directions and orders for the time being in force in that behalf, always remain present within the jail or the premises thereof.

Note- The Deputy Superintendent is permitted to be absent for meals at such times and for such periods as the Superintendent may specify, or when required to appear in a Court of Justice, or when leave of absence is granted by the Superintendent.

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100. Duties as to lock-up, counting, labour, food and reporting unusual occurrences.- (1) It shall be the duty of the Deputy Superintendent to-

(a) be present every evening when the prisoners are locked up for the night and every morning when the prisoners are taken out of the sleeping wards, cells or other compartments;

(b) satisfy himself, both night and morning, that all the prisoners are present and in safe custody;

(c) allot to each prisoner sentenced to undergo rigorous imprisonment a proper task and satisfy himself that every such prisoner, who is fit for labour, is daily put to proper labour and performs his allotted task and, for this purpose, to check the tasks allotted and visit the workshops frequently while the prisoners are engaged at work;

(d) be present at and superintend the daily weighing and serving out of rations and satisfy himself that the food-stuffs are properly cleaned and cooked;

(e) supervise the distribution of food and satisfy himself that each prisoner receives his proper quantities at the prescribed times, and to

(f) forthwith report every unusual occurrence of a serious nature, to the Superintendent.

(2) The Superintendent may by a written order take over such of the duties of the Deputy Superintendent as he may deem necessary for the efficient running of the jail.

(3) Every action taken under sub-rule (2) shall forthwith be reported by the Superintendent to the Inspector-General giving full justification therefor and the Inspector-General may confirm, modify or cancel such order.

101. Duty of Deputy Superintendent on admission of prisoner. - Upon the admission of every prisoner the Deputy Superintendent shall-

(a) examine or cause to the examined the warrant or order under which such prisoner is committed to the Jail and satisfy himself that it is in all respects complete, in order and valid;

(b) remove, or cause to be removed, from such prisoner all money or other articles found on him, including (if such prisoner is not, by law, entitled to retain it) his wearing apparel and (in such case) shall provide him with a complete Jail out-fit;

(c) take measures to preserve and protect all property taken from, or belonging to, the prisoner which may come into his hands; and

(d) shall satisfy himself that the provisions of Chapter IV of the Act, and these rules, as to the admission of prisoners, are duly complied with.

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105. Deputy Superintendent to search weekly for prohibited articles.-
The Deputy Superintendent shall, at uncertain times, at least once a week, cause each prisoner, and all clothing and bedding, and all wards, cells and other compartments, workshops, latrines and other places frequented by prisoners, to be thoroughly searched for prohibited articles.

106. Deputy Superintendent to regulate interviews and communications.-
It shall be the duty of the Deputy Superintendent to regulate all interviews and communications between prisoners and persons who are not prisoners and to prevent all persons who are not duly authorised in that behalf by competent authority from entering the jail premises or having any access of any kind to, or communication with, any prisoner, and to arrange that the proper officer of the Jail is present during all interviews held.

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110. Deputy Superintendent to hold parade every Sunday.-
The Deputy Superintendent shall hold a parade of all the prisoners for the time being confined in the jail on every Sunday Evening and shall,

(a) carefully inspect every prisoner;

(b) examine the clothing, bedding and utensils etc., of every prisoner;

(c) check the muster roll and satisfy himself that every prisoner is present or accounted for;

and satisfy himself generally that everything is in proper order. He shall enter a report of his inspection in his journal, noting therein the state of the clothing, cleanliness, numerical strength and other matters of importance relating to the prisoners.

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117. The Deputy Superintendent shall enter daily in his journal:-
(a) the time the wards were opened;
(b) the members of the staff (if any) who were absent;
(c) the time prisoners began work;
(d) the time work was stopped in the forenoon and when it was recommenced;
(e) the time work was stopped for the day; and
(f) the time the lock-up was completed;
(g) that the gratings and locks of the jail were got tested and found intact.

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120. Deputy Superintendent responsible for the efficiency of the guard.-
(1) The Deputy Superintendent shall satisfy himself that a sufficient strength of the guard to meet all emergencies is at all times present at the jail and ready to be armed, and that the warders sleep in the quarters allotted to them and do not leave the jail premises without permission.
(2) The Deputy and the Assistant Superintendent shall at least once a week in addition to their routine night round search the relieved and relieving night guards between the gates (after 10 P.M. and before 4.00 A.M.).”

(emphasis is ours)

It is not necessary for us to further delve into the nature of duties assigned to appellant-Ved Mitter Gill in his capacity as Deputy Superintendent Jail, because we have highlighted the relevant paragraphs of Punjab Jail Manual, which meticulously highlight the nature of his duties and responsibilities. Having examined the same, we are satisfied, that the responsibility of jail inmates exclusively rests on the shoulders of the jail staff. On the evaluation of the duties and responsibilities of posts of Assistant Superintendent Jail, Head Warder and

Warder, there remains no room for any doubt, about the other petitioners also, that they too were similarly responsible for securing the detention of all jail inmates. We, therefore find no merit in the contention advanced on behalf of the appellant/petitioners, that it was not them, but police personnel from the Chandigarh Police Department, who were responsible for the supervisory control over jail inmates, at the Model Jail, Burail, Chandigarh.

12. Another contention advanced at the hands of the learned counsel for the appellant/petitioners was, that the entire action initiated at the hands of the respondents was vitiated, on account of malice in fact as also malice in law. Insofar as the instant aspect of matter is concerned, our attention has been invited to the factual position pleaded in Civil Miscellaneous Nos. 8930-31 of 2010 in Civil Writ Petition No.5147-CAT of 2007. It would be pertinent to mention, that the aforesaid civil miscellaneous application was filed by Dalbir Singh Sandhu, Deputy Superintendent of Police. Our pointed attention was invited to the following factual position expressed in the aforesaid civil miscellaneous application:

> "….Interestingly a perusal of the record filed before the Criminal Court by the Chandigarh Police of the Special Mulakat Register shows that in those copies the signatures of the supervisory staff i.e. the Chandigarh Police is missing. Apparently these documents have been also considered by the competent authority to pass the impugned order against the petitioner. Photocopies of some of the pages of the Special Mulakat Register have been annexed earlier. The typed copies of the same for the corresponding days as submitted by the prosecution before the Criminal Court and apparently which were considered by the competent authority to terminate the services of the petitioner are annexed herewith as Annexures A/1 and A/2 respectively."

Having given our thoughtful consideration to the pleadings extracted hereinabove, and having perused the annexures A/1 and A/2 referred to in the above pleadings, we are satisfied that the contention advanced at the hands of the learned counsel for the appellant/petitioners is wholly misconceived. The presence of police personnel to extend external support to a jail facility is understandable. There is nothing wrong about the same. Police personnel may be posted outside the jail premises, for obvious reasons. Such police personnel would be oblivious of the activities within the four walls of the jail itself. The presence of police personnel within the administrative framework of a jail, is out of the question. The appellant/petitioners have not placed any material on the record of the case to demonstrate, that police personnel from the police department were assigned duties within the barracks of Model Jail, Burail, Chandigarh. In our considered view, within the jail premises, only the jail staff can be permitted to function. And in case of lapses within the jail premises, it is the jail staff alone which is responsible. Based on the factual position brought to our notice from the pleadings and annexures referred to above, it is not possible for us to accept the submission advanced at the hands of the learned counsel for the appellant/petitioners, that the action initiated against the appellant/petitioners can be vitiated for the reasons of malice in fact or malice in law.

13. Out of the submission advanced by the learned counsel for the appellant/petitioners, the contention which could have been of some significance was, that the reasons mentioned in the impugned order of dismissal from service,

were a mechanical repetition of grounds routinely and casually expressed without application of mind, in such like orders. And in that view of the matter, the contention, that the satisfaction recorded by the disciplinary authority does not constitute a valid satisfaction in the eyes of law. It was in the instant context, that the learned counsel invited our attention to some judgments rendered by this Court. First of all, reliance was placed on Tarsem Singh v. State of Punjab, (2006) 13 SCC 581. Our pointed attention was invited to the following observations recorded therein:

> "10. It is now a well-settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry. The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under Section 377 IPC. However, it may not be necessary for us to go into the said question.
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> 11. We have noticed hereinbefore that the formal enquiry was dispensed with only on the ground that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means. No material has been placed or disclosed either in the said order or before us to show that subjective satisfaction arrived at by the statutory authority was based upon objective criteria. The purported reason for dispensing with the departmental proceedings is not supported by any document. It is further evident that the said order of dismissal was passed, inter alia, on the ground that there was no need for a regular departmental enquiry relying on or on the basis of a preliminary enquiry. However, if a preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canons of fair play and justice. The appellate authority, as notice hereinbefore, in its order dated 24-6-1998 jumped to the conclusion that he was guilty of grave acts of misconduct proving complete unfitness for police service and the punishment awarded to him is commensurate with the misconduct although no material therefor was available on record.

It is further evident that the appellate authority also misdirected himself in passing the said order insofar as he failed to take into consideration the relevant facts and based his decision on irrelevant factors.

12. Even the Inspector General of Police in passing his order dated 26-11-1999, despite having been asked by the High Court to pass a speaking order, did not assign sufficient or cogent reason. He, like the appellate authority, also proceeded on the basis that the appellant was guilty of commission of offences which are grave and heinous in nature and bring a bad name to the police force of the State on the whole. None of the authorities mentioned hereinbefore proceeded on the relevant material for the purpose of arriving at the conclusion that in the facts and circumstances of the case sufficient cause existed for dispensing with the formal enquiry. This aspect of the matter has been considered by this Court in Jaswant Singh v. State of Punjab, (1991) 1 SCC 362, wherein relying upon the judgment of the Constitution Bench of this Court, inter alia, in Union of India v. Tulsiram Patel, (1985) 3 SCC 398, it was held: (Jaswant Singh case (supra), SCC p. 368, para 4)

> "Although Clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry."

13. In that case also like the present one, the attention of the Court was not drawn to any material existing on the date of passing of the impugned order in support of the allegations contained in the order dispensing with the departmental enquiry."

(emphasis is ours)

Learned counsel thereupon placed reliance on State of Punjab v. Harbhajan Singh, (2007) 15 SCC 217. They invited our attention to the following observation recorded therein:

> "3. Learned counsel then contended that no departmental enquiry could be held against the respondent in view of his involvement with terrorists. In the suit, the State did not place any material to establish that any case was made out for dispensation of a regular departmental enquiry as required under clause (2) to Article 311 of the Constitution of India. The question is now covered by a recent decision of this Court in Tarsem Singh v. State of Punjab, (2006) 13 SCC 581, wherein this Court has opined that if no material is brought to the notice of the Court on the date of passing of the

> impugned order in support of the allegations contained therein as to why it was impractical to hold a regular disciplinary proceeding, the order of termination would not be sustainable."
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> (emphasis is ours)

14. In order to fully clarify the legal position on the issue in hand, learned counsel for the Chandigarh Administration, invited our attention to the decision rendered in Southern Railway Officers Association v. Union of India, (2009) 9 SCC 24. In the above cited judgment, this Court having placed reliance on Union of India v. Tulsiram Patel, (1985) 3 SCC 398, Satyavir Singh v. Union of India, (1985) 4 SCC 252, Kuldip Singh v. State of Punjab, (1996) 10 SCC 659, Union of India v. R. Reddappa, (1993) 4 SCC 269 and Indian Railway Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579, recorded its conclusions as under:

> "26. The law laid down by this Court being clear and explicit, the question which would arise for our consideration is whether in then prevailing situation, what a reasonable man taking a reasonable view would have done.
>
> 27. The High Court in its judgment opined:
> (i) That the statement of the disciplinary authority that "I am convinced that it is not reasonably practicable to hold an inquiry" is against the dicta laid down by this Court in Union of India vs. Tulsiram Patel, (1985) 3 SCC 398.
> (ii) In the absence of any reason, much less recorded, as has been mandated under the Rule, to show that it was not reasonably practicable to hold a disciplinary inquiry, we are of the opinion that the discretionary power was exercised for extraneous purpose to dismiss the delinquents and that the same is arbitrary and perverse since no reasonable person could form such an opinion on the given material and thus the impugned orders of dismissal are hit by malice also. The alleged incident and the impugned orders of dismissal were all dated 31-1-2004 which shows the haste in which the disciplinary authority has acted.
> (iii) While invoking the stringent extraordinary provisions like Rule 14(ii), principles of natural justice require every care to be taken by the authorities concerned. Any haste in invoking such stringent provisions, without even complying with the mandatory requirements of the provision, would make such decision of the disciplinary authority illegal, being an abuse of power conferred upon it.

(iv) It can very well be held that the impugned orders of dismissal suffer from want of materials and in the absence of any material to substantiate the mere oral stand of the Department that holding an inquiry was not reasonably practicable, without offering any reasons, much less in writing, as mandated by law, the impugned orders of dismissal are liable to be quashed.

(v) In the case in hand, since the authorities have invoked the extraordinary power under Rule 14(ii) dispensing with the inquiry, and further since the alleged incident was held to be not proved by the criminal court, after thorough trial, the appellate and revisional authorities ought to have considered the said aspect of acquittal while imposing the punishment. Therefore, we are of the view that the fact of acquittal is a circumstance to be considered while awarding punishment in this case.

We with respect are unable to agree therewith.

28. The disciplinary authority in its order dated 31-1-2004 categorically stated:

(i) That the delinquent employees attempted to cause bodily harm to Shri S.M. Krishnan; created an ugly scene which brought a bad name to the Railways; officers who tried to protect Shri S.M. Krishnan were badly abused; Shri S.M. Krishnan and his family were threatened to be killed if he goes to Chennai; it was a pre-planned attempt as a handwritten poster was displayed in the workshop as well as at the railway station wherein it was stated that Shri S.M. Krishnan will die on 31-1-2004 and his cremation will be done at 1430 hours when Train No. 6128 leaves the railway station.

(ii) That all of them have conspired and assaulted Shri S.M. Krishnan as a result whereof he could not undertake the journey and had to go by road with escort.

(iii) The formality of holding a disciplinary proceeding was dispensed with stating:

> "You along with other associates threatened, intimidated and terrorized all the officers. The atmosphere of violence, general indiscipline and insubordination is prevailing. In view of this situation I am convinced that it is not reasonably practicable to hold an enquiry."

29. It was concluded:

> "I, therefore, in exercise of the powers conferred upon me under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968, hereby dismiss you from railway service with effect from 31-1-2004 (A/N). You are required to hand over the railway property in your custody. You are also required to vacate the railway quarters, if in occupation, within one month from the date on which a copy of this notice is delivered. You are hereby advised that under Rules 18 and 19 of the Railway Servants (Discipline & Appeal)

Rules, 1968, you may prefer an appeal against these orders to CWM/GOC provided that:

(i) The appeal is preferred within a period of 45 days from the date on which a copy of this notice is delivered.

(ii) The appeal is to be preferred in your own name and presented to the authority to whom the appeal lies and does not contain any disrespectful and improper language."

30. An order of a disciplinary authority in a case of this nature, as laid down by this Court in Tulsiram's case (supra), must be judged by a court exercising power of judicial review by placing himself in his armchair. The disciplinary authority was a man at the spot. He acted on the basis of a report made to him. He also knew about the written poster having been displayed. The atmosphere which was prevailing in the workshop must be known to him. Not only the disciplinary authority but also the appellate authority, having regard to the materials brought on record, arrived at the said finding.

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33. While thus considering as to whether there had been enough material before the disciplinary authority for the purpose of arriving at its satisfaction that it was not reasonably practicable to hold departmental proceedings, the appellate authority, in our opinion, was entitled to consider the situation prevailing from the confidential reports submitted by other employees. They were not relied upon for the purpose of proving misconduct but for the purpose that in the situation which was prevailing, whether it was reasonably practicable to hold an enquiry. There is no dispute that the protection accorded to an employee by reason of the constitutional provision of mandate of recording of reasons is of great significance. Such reasons, in our opinion, in the instant case, have been recorded.

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35. So far as the finding of the High Court that the orders of dismissal suffer from want of material is concerned, the orders of the disciplinary authority themselves disclose existence of sufficient materials. Before the statutory authorities, the incident was not denied. Lodging of the first report was also not denied. The fact that one of the delinquent officials was arrested on the same day was not denied. Arrest of others after a period of two weeks also stood admitted. Display of handwritten poster both at the workshop and at the railway station had also not been denied.

36. We do not find that before the High Court the delinquent employees brought on record any material that the grounds stated in the orders of

> dismissal were wholly non-existent. No mala fides on the part of the disciplinary authority was attributed. It is not the case of the delinquent employees that the disciplinary authority in passing the said order took into consideration any irrelevant fact not germane therefor or failed to take into consideration any relevant fact."
>
> (emphasis is ours)

15. Before delving into the pointed issues canvassed at the hands of the learned counsel representing appellant/petitioners, it is necessary for us to notice the parameters laid down by this Court for invoking clause (b) of the second proviso to Article 311(2) of the Constitution of India. Insofar as the instant aspect of the matter is concerned, the norms stipulated by this Court for the above purpose, require the satisfaction of three ingredients. Firstly, that the conduct of the delinquent employee should be such as would justify one of the three punishments, namely, dismissal, removal or reduction in rank. Secondly, the satisfaction of the competent authority, that it is not reasonably practicable to hold an inquiry, as contemplated under Article 311(2) of the Constitution of India. And thirdly, the competent authority must record the reasons of the above satisfaction in writing.

16. On the issue whether it is reasonably practicable to hold an inquiry as contemplated under Article 311(2) of the Constitution of India is concerned, this Court elaborately expressed the required norms, in Union of India v. Tulsiram Patel (supra), as under:

> "130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not 'impracticable'. According to the Oxford English Dictionary 'practicable' means "Capable of being put into practice, carried out in

action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word 'practicable' inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word 'reasonably' as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through other threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India, (1984) 2 SCC 578, is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant

submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accusor, the chief witness and also the judge of the matter.

131. It was submitted that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that the administrative work carried out by senior officers should be paralysed because a delinquent government servant either by himself or along with or through others makes the holding of an inquiry not reasonably practicable.

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

(emphasis is ours)

17. Insofar as the requirement of reasons reflecting the reasonable practicability, of holding an inquiry in writing is concerned, this Court in the case of Union of India v. Tulsiram Patel (supra) held as under:

> "133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.
>
> 134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.
>
> 135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided

in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons."

(emphasis is ours)

18. Whilst examining the requirements, pertaining to the applicability of clause (b) to the second proviso under Article 311(2) of the Constitution of India is concerned, it would also be proper to notice the observations of this Court in Union of India v. Tulsiram Patel (supra), wherein it was held 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 is ours)

19. Reference may also be made to the decision in Kuldip Singh v. State of Punjab, (1996) 10 SCC 659, wherein this Court recorded the following observations:

"3. On appeal, the appellant did have links with the terrorists and was mixed up with them and he was supplying secret information of the police department to terrorists which was creating hindrance in the smooth functioning of the police department. The appellate authority also found that it was impossible to conduct an enquiry against the appellant because nobody would come forward to depose against such "militant police official". The appellate authority also referred to the fact that the appellant was interrogated in a case, FIR No. 219 of 1990, and that during interrogation he admitted that he was having links with Major Singh Shahid and Sital Singh Jakhar and was working for them. It further stated in its order that the appellant was preparing to murder some senior police officers while taking advantage of his position.

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8. Proviso (b) to Article 311(2) says that the enquiry contemplated by clause (2) need not be held

> "where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry".

Clause (3) of Article 311 expressly provides that

> "If, in respect of any such person as aforesaid, the question arises whether it is reasonably practicable to hold such enquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final".

These provisions have been the subject-matter of consideration by a Constitution Bench of this Court in Union of India v. Tulsi Ram Patel, (1985) 3 SCC 398. It would be appropriate to notice a few relevant holdings in the said judgment: (SCR pp. 205-74: SCC pp. 454-507, paras 62-138)

> "…before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the government servant concerned 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 enquiry.
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> * * *
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> It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the government servant concerned is or is not a party to bringing about such an atmosphere. … The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. ... The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned....
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> 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. ... 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. ... 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."
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> (emphasis is ours)

20. We shall now advert to the impugned order to determine, whether the three parameters laid down for the valid invocation of clause (b) to the second

proviso under Article 311(2) of the Constitution of India, were made out. The first ingredient, which is a prerequisite to the sustainable application of the above clause (b) is, that the delinquency alleged should be such as would justify, any one of the three punishments, namely, dismissal, removal or reduction in rank. We have already extracted hereinabove the order dated 1.3.2004, whereby, the appellant-Ved Mitter Gill was dismissed from service, with immediate effect. Its perusal reveals, that the punishment was based on reasons (recorded in the impugned order) divided into different compartments. The first is contained in the first paragraph, which deals with the duties and responsibilities vested with Ved Mitter Gill, as Deputy Superintendent, Model Jail, Burail, Chandigarh. The second component deals with the escape of four under-trials from Model Jail, Burail, Chandigarh. Three of the under-trials, who had escaped, were involved in the assassination of Shri Beant Singh, a former Chief Minister of State of Punjab. The instant paragraph also records, the factum that the said three under-trials were having links with Babbar Khalsa International, a terrorist organization. The fourth under-trial was being tried separately, for the offence of murder. The third component of the impugned order, relates to the material taken into consideration to evaluate the lapses committed by the appellant/petitioners, as would reveal their involvement with reference to the alleged delinquency, justifying the punishment of dismissal from service.

21. We shall now advert to the factual position emerging from the above. A reference was first of all made to the duties and responsibilities assigned to the appellant – Ved Mitter Gill. Having detailed the express duties assigned to him in

paragraph 11 above, we have concluded therefrom, that the responsibility of all the jail inmates (safe custody of all prisoners) rested on his shoulders, and the petitioners herein, who assisted him in the same. The appellant – Ved Mitter Gill was required to satisfy himself once in every twenty-four hours, about the safe custody of the prisoners. He was also duty-bound to visit every barrack, ward, cell and compartment every twenty-four hours. He was to be present every morning and evening, when the prisioners were taken out of the sleeping wards or cells or other compartments, and then, restored to the same. He was to make a daily report by day-break and by night, that all the prisoners were present, and in safe custody. He was also required to report forthwith, any unusual occurrence. He was required at least once a week to inspect clothing, beddings, as well as, other articles, by thoroughly checking all places frequented by prisoners. And to make a report, if he discovered any prohibited article, during the checking. The petitioners were associated with the appellant and assisted him in discharging his aforementioned duties. Had the appellant - Ved Mitter Gill, and the petitioners, performed their duties diligently, there could not have been any possibility, of the escape under reference. It cannot be overlooked, that the escape was made good, by digging the escape tunnel, which measured ninety-four feet in length (with diagonal dimensions of 21" x 21"). Six separate reasons have been expressed, by the competent authority in arriving at its conclusion. We have extracted the impugned order dated 1.3.2004, in its entirety, hereinabove. It fully establishes the inferences recorded by us. The determination by the competent authority, when viewed dispassionately with

reference to the duties assigned to Ved Mitter Gill, leaves no room for any doubt, that the competent authority was justified in concluding, that the four prisoners referred to above could never have escaped, if the appellant – Ved Mitter Gill, and the petitioners, had diligently discharged the duties assigned to them. Having so concluded, about the responsibility and blameworthiness of the appellant/petitioners, there can be no doubt that the punishment of dismissal from service, was fully justified, as their delinquency had resulted in the escape of four dreaded prisoners.

22. The second ingredient which needs to be met, for a valid exercise of clause (b) to the second proviso under Article 311(2) of the Constitution of India, is the satisfaction of the competent authority, that it was not reasonably practicable, to hold a regular departmental enquiry, against the employees concerned. On the question whether it was reasonably practicable to hold an inquiry, the competent authority has recorded its conclusion in the paragraphs, preceding the one depicting the involvement of the appellant/petitioners. Amongst the reasons indicated, it has been recorded, that Ved Mitter Gill being a senior, permanent and non-transferable officer of Model Jail, Burail, Chandigarh, his junior jail officers, who alone would have been witnesses in such departmental proceedings, were not likely to come forward to depose against him, for fear of earning his wrath in future. The links of the escaped under-trial prisoners, with the Babbar Khalsa International, a known and dreaded terrorist organization were also clearly expressed in the impugned order, as one of the

reasons, for it being impracticable, to hold an inquiry against the appellant/petitioners. It is a matter of common knowledge, and it would be proper to take judicial notice of the fact, that a large number of terrorists came to be acquitted during the period in question, on account of the fact, that witnesses did not appear to depose against them on account of fear, or alternatively, the witnesses who appeared before the concerned courts, for recording their deposition, turned hostile, for the same reason. The situation presented in the factual narration noticed in the impugned order, clearly achieves the benchmark, for the satisfaction at the hands of the competent authority, that it would not have been reasonably practicable, to hold a departmental proceeding against the appellant/petitioners, in terms of the mandate contained under Article 311(2) of the Constitution of India.

23. The third essential ingredient, for a valid application of clause (b) to the second proviso under Article 311(2) of the Constitution of India, is that, the competent authority must record, the reasons of the above satisfaction in writing. In the present case, there is no serious dispute on this issue, because the reasons for the satisfaction have been recorded by the competent authority in the impugned order (dated 1.3.2004) itself.

24. For the reasons recorded above, we are satisfied, that all the parameters laid down by this Court, for a valid/legal application of clause (b) to the second proviso under Article 311(2) of the Constitution of India, were duly complied with.

25. Learned counsel for the appellant/petitioners, lastly placed reliance on two sets of facts. Firstly, it was contended, that with reference to the same jail-break incident, a departmental proceeding was also initiated against D.S. Rana, the then Superintendent, Model Jail, Burail, Chandigarh. It was pointed out, that the aforesaid D.S. Rana, was holding the post of Superintendent, Model Jail, Burail, Chandigarh, as a deputationist from the State of Punjab. It was submitted, that the State of Punjab had not invoked clause (b) to the second proviso under Article 311(2) of the Constitution of India, against the aforesaid D.S. Rana. It was pointed out, that the abovementioned D.S. Rana, has been issued a chargesheet, for the same charges on which the appellant/petitioners have been dismissed from service. It was submitted, that a regular departmental enquiry was being conducted against the aforesaid D.S. Rana. The pointed contention of learned counsel was, that if a regular departmental enquiry can be conducted against the aforesaid D.S. Rana, then it can also be conducted against the appellant/petitioners. Secondly, it was the contention of the learned counsel, that a regular trial was ongoing, against the appellant, and the petitioners herein, as also, against the aforesaid D.S. Rana, in furtherance of first information report bearing no. 17 registered at Police Station Sector 34, Chandigarh. Yet again, it was the contention of the learned counsel, that if witnesses can appear in open court proceedings before the trial court, with reference to the same set of allegations, they could surely have appeared, in a departmental proceeding as well.

26. We have given our thoughtful consideration to the above noted contention advanced at the hands of the learned counsel for the appellant/petitioner. It is not possible for us to place the appellant and the petitioners before this Court, on the same pedestal as the aforesaid D.S. Rana, the then Superintendent, Model Jail, Burail, Chandigarh (referred to by in the submission noticed above). The reason for this is, that Ved Mitter Gill was holding the senior-most, permanent and non-transferable position, at Model Jail, Burail, Chandigarh, whereas D.S. Rana, referred to in the submission advanced, was only a deputationist at the said jail. Accordingly, whilst Ved Mitter Gill would always remain superior to the jail staff who would be summoned as witnesses, in the departmental proceedings, the aforesaid D.S. Rana would not fall within the same parameter. D.S. Rana belonged to a different cadre. After his repatriation to his parent cadre, he could not exercise any supervisory or administrative control over the staff of the Model Jail, Burail, Chandigarh. Accordingly, the parallel sought to be drawn between the controversy in the present case, and the departmental proceedings initiated against the abovementioned D.S. Rana, erstwhile Superintendent, Jail, is fallacious.

27. Insofar as the holding of a trial, and the appearance of witnesses therein is concerned, yet again, the analogy invoked by the learned counsel representing the appellant/petitioners, is wholly misconceived. Whilst in a criminal prosecution proof is strict, and must be based on cogent and acceptable evidence. In a criminal case, there is no alternative but to establish guilt of an accused, based

on acceptable evidence. The evidence is to be produced before the Court, trying the criminal case. There is no way the same can be exempted, as in the case of a departmental proceeding. Insofar as the present controversy is concerned, there is a constitutional provision creating an exception. Clause (b) of the second proviso to Article 311(2) of the Constitution of India, is the exception in question, which authorizes the course adopted by the respondents. The reasons for dispensing with the departmental enquiry, cannot be dependent upon the holding or not holding of criminal proceedings, against the appellant/petitioners. Once the parameters stipulated in clause (b) of the second proviso to Article 311(2) of the Constitution of India are satisfied, the submissions advanced at the hands of the learned counsel for the appellant/petitioners, would not arise.

28. No other submission was advanced at the hands of the learned counsel for appellant/petitioners. For the reasons recorded hereinabove, we find no merit in the present appeal, and the connected transferred cases. The same are accordingly dismissed.

…..……J.
(Jagdish Singh Khehar)

…..……J.
(S.A. Bobde)

New Delhi;
March 26, 2015.

ITEM NO.1A COURT NO.4 SECTION IVB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 3194/2015 @ SLP(C) No. 20379/2006

VED MITTER GILL Appellant(s)

VERSUS

U.T. ADMINISTRATION, CHANDIGARH & ORS Respondent(s)
WITH
T.C.(C) No. 41/2010
T.C.(C) No. 42/2010
T.C.(C) No. 43/2010
T.C.(C) No. 44/2010
[HEARD BY HON'BLE JAGDISH SINGH KHEHAR AND HON'BLE S.A.BOBDE,JJ.]

Date : 26/03/2015 This appeal and transferred cases were called on for judgment today.

For Appellant(s) Mr. M. C. Dhingra,Adv.

Ms. Naresh Bakshi,AOR

For Respondent(s)Ms. Naresh Bakshi,AOR

Ms. Kamini Jaiswal,AOR

Mr. Sudarshan Singh Rawat,AOR

Hon'ble Mr. Justice Jagdish Singh Khehar pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice S.A. Bobde.

Leave granted in S.L.P.(C) No.20379 of 2006.

For the reasons recorded in the Reportable judgment, which is placed on the file, the appeal, and the connected transferred cases are dismissed.

(Parveen Kr. Chawla) (Renu Diwan)

Court Master Court Master